



UNODC

United Nations Office on Drugs and Crime

Country Review Report of Sweden

Review by Canada and France
of the implementation by Sweden
of articles 15 – 42 of Chapter III. “Criminalization and law
enforcement” and articles 44 – 50 of Chapter IV.
“International cooperation”
of the United Nations Convention against Corruption for the
review cycle 2010 - 2015

I. Introduction

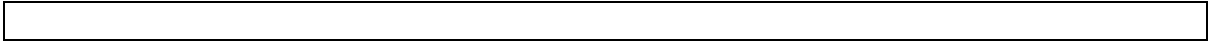
1. The Conference of the States Parties to the United Nations Convention against Corruption was established pursuant to article 63 of the Convention to, inter alia, promote and review the implementation of the Convention.
2. In accordance with article 63, paragraph 7, of the Convention, the Conference established at its third session, held in Doha from 9 to 13 November 2009, the Mechanism for the Review of Implementation of the Convention. The Mechanism was established also pursuant to article 4, paragraph 1, of the Convention, which states that States parties shall carry out their obligations under the Convention in a manner consistent with the principles of sovereign equality and territorial integrity of States and of non-intervention in the domestic affairs of other States.
3. The Review Mechanism is an intergovernmental process whose overall goal is to assist States parties in implementing the Convention.
4. The review process is based on the terms of reference of the Review Mechanism.

II. Process

5. The following review of the implementation by Sweden of the Convention is based on the completed response to the comprehensive self-assessment checklist received from Sweden, and any supplementary information provided in accordance with paragraph 27 of the terms of reference of the Review Mechanism and the outcome of the constructive dialogue between the governmental experts from Canada, France and Sweden, by means of telephone conferences and e-mail exchanges and involving: Ms. Alexandra Vaillant from France, Ms. Mathilda Haykal Sater from Canada and Ms. Anne Due, Ms. Erika Goldkuhl and Mr. Per Hedvall from Sweden. The staff members from the Secretariat were Mr. Dimosthenis Chrysikos and Mr. Oliver Landwehr.
6. A country visit, agreed to by Sweden, was conducted from 24 to 26 September 2013. During the on-site visit, meetings were held with representatives from the Ministry of Foreign Affairs, the Ministry of Justice, the Ministry of Finance, the Prosecution Authority (the National Anti-Corruption Unit), the Police Authority and the Financial Intelligence Unit (FIU). The review team also met with lawyers and a representative from the academia; a judge from the Court of Appeals; and civil society organizations, including the national chapter of Transparency International and the Anti-Corruption Institute. The members of the review team had also meetings with the Swedish International Development Cooperation Agency and the Ethical Council of the Swedish National Pension Funds. There was also a presentation on a Business Anti-Corruption Portal, financed by the Governments of Austria, Denmark, Germany, Netherlands, Norway, Sweden and the UK.

III. Executive summary

- 7.



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1.Introduction

1.1. Overview of the legal and institutional framework of Sweden in the context of implementation of the United Nations Convention against Corruption

Sweden signed the United Nations Convention against Corruption (UNCAC) during the High-level Political Conference in Mérida (Mexico), held from 9 to 11 December 2003. Sweden deposited its instrument of ratification with the Secretary-General on 25 September 2007.

Sweden is a member of the EU, the OECD, the Council of Europe's GRECO, and FATF.

In Sweden, the sources of law consist mainly of statutes, case law and preparatory works on proposed laws. According to established legal tradition, explanations in the preparatory works are regarded as a reliable source of clarification of legal texts, very much in the same way as case law.

The relationship between national and international law is dualistic in the Swedish legal system. International agreements need to be implemented in order to be applied by the courts and other bodies.

The anti-corruption legal framework in Sweden consists of provisions contained in the Penal Code (PC), the Code of Judicial Procedure (CJP), as well as other specific acts including the Police Act and the Act on Extradition for Criminal Offences.

Sweden has put in place a robust institutional framework to address corruption. The authorities with relevant mandates include the National Anti-Corruption Unit (NACU) within the Swedish office of the public prosecutor and the National Anti-Corruption Police Unit (NACPU).

2. Chapter III: Criminalization and Law Enforcement

2.1. Observations on the implementation of the articles under review

Bribery and trading in influence (arts. 15, 16, 18, 21)

The provisions on active and passive bribery are contained in Chapter 10, sections 5b and 5a respectively of the PC, with aggravating circumstances prescribed in section 5c PC and a specific offence on "negligent financing of bribery" established in section 5e PC. Chapter 10, sections 5a et. seq., cover "employees" and performers of functions in both the public and the private sector, regardless of the nature of their function or nationality.

The "undue advantage" includes non-pecuniary rewards. The assessment of the impropriety of the advantage should take into account, in less obvious cases, factors such as the financial value and character of the advantage and the circumstances surrounding the giving of the advantage.

Chapter 10, sections 5a et. seq. cover cases where the undue advantage is received, agreed to be received or requested for a third party and not only for the official himself/herself. While the words "directly or indirectly" are missing from the text of Chapter 10, sections 5a and 5b, it is covered by the aforementioned sections.

The domestic bribery provisions include bribery of foreign public officials or officials of public international organizations.

Trading in influence is criminalized in Chapter 10, section 5d, PC. However, the provision is only applicable in relation to cases of exercise of public authority or public procurement.

Art. 21 UNCAC is implemented through Chapter 10, sections 5a and 5b, PC, which equally apply in the private sector and go beyond the Convention in that they do not require a breach of duty.

Money-laundering, concealment (arts. 23, 24)

The main provisions criminalising money laundering are found in Chapter 9, Sections 6a and 7a, PC (money receiving and petty money receiving). Money laundering acts can in some instances also be covered by the offences of receiving and petty receiving (Sections 6 and 7 of the same Chapter), as well as by the offence of protecting a criminal (Chapter 17, Section 11). Whereas complicity (aiding, abetting, facilitating and counselling the commission of the offence) to any of these offences is criminalised, attempt, preparation and conspiracy is criminalised only in relation to the offence of gross money receiving.

Sweden applies an “all crimes approach” with reference to which crimes can be predicate offences to a money-laundering offence. Thus, any crime, which can generate proceeds, including tax crimes, can be a predicate offence. It is not necessary that the predicate offence has been committed in Sweden. Self-laundering is currently considered to be “co-punished” with the predicate offence.

A new Act on Penalties for Money Laundering Offences will enter into force on 1 July 2014. The new Act comprises provisions on money laundering offences and on the seizure and forfeiture of laundered property. The criminalisation will cover “self-laundering”, attempt, preparation and conspiracy to commit a money laundering offence (which is not petty), as well as complicity (aiding, abetting, facilitating and counselling the commission of the offence).

Embezzlement, abuse of functions and illicit enrichment (arts. 17, 19, 20, 22)

The domestic provisions which correspond to art. 17 UNCAC are contained in Chapter 10, sections 1, 4 and 5, PC. The Swedish legislation does not separate crimes of embezzlement and other breaches of trust committed in the private sector or in the service of the State. Although the term “property”, as an object of embezzlement, is not defined in the PC, both public and private funds, as well as securities and other things of value, are considered “property”.

Art. 19 UNCAC is implemented through the provision on misuse of office in Chapter 20, section 1, PC. This section provides for aggravating circumstances where the offender “seriously abused his position”.

Sweden has considered criminalizing illicit enrichment, but decided not to implement Art. 20 UNCAC because implementation of the article would in practice put the burden on the suspect to prove his innocence, which in Sweden is considered to be incompatible with the presumption of innocence that applies in criminal cases.

Obstruction of justice (art. 25)

Art. 25(a) UNCAC is implemented through provisions in Chapter 15

PC, namely sections 1 (perjury), 2 (untrue statement), 3 (careless statement), 4a (false statement before a Nordic court), 4b (untrue statement before an international court) and 8 (tampering with evidence), as well as section 10 of Chapter 17 (interference in a judicial matter). Interference in the giving of testimony or the production of evidence through coercive means is covered in the latter provision (section 10 of Chapter 17 PC). Although there is no stand-alone offence, the offering or giving of an undue advantage to induce false testimony or the production of evidence in a proceeding is punishable under the provisions in Chapter 23 on Attempt, Preparation, Conspiracy and Complicity, read together with the provisions in Chapter 15, on Perjury, False Prosecution and Other Untrue Statements.

Art. 25(b) UNCAC is implemented through Chapter 17, sections 1 (violence or threat to public servant) and 2 (outrageous conduct toward a public servant) PC.

Liability of legal persons (art. 26)

Under Swedish legislation, legal persons cannot commit crimes. However, corporate fines can be imposed on a legal person if a crime has been committed in the course of business of the legal person under certain conditions. Corporate fines are regulated in the PC and are applied relatively often in the case of environmental offences and less often for economic or financial offences. With specific regard to corruption cases, corporate fines have been imposed for active bribery in one case.

A conviction of the natural person who perpetrated the offence is not needed to establish corporate liability.

The corporate fines amount to between SEK 5,000 and 10,000,000. Furthermore, all economic advantages derived by the legal person from the crime can be confiscated. The reviewing experts noted that the maximum amount of the corporate fines, even after the 2006 amendments, amounts to little more than €1 million.

Participation and attempt (art. 27)

Art. 27(1) UNCAC is implemented in Chapter 23, section 4, PC. The general rule about attempt is regulated in Chapter 23, section 1, PC. Sweden has criminalized the attempt of almost all the crimes in the Convention. However, in many cases, petty crimes are excluded. The general rule about preparation is regulated in Chapter 23, section 2, PC. The section requires that the preparation of the crime is specially mentioned in the Chapter that penalizes the crime.

Prosecution, adjudication and sanctions; cooperation with law enforcement authorities (arts. 30, 37)

The range of punishment for corruption crimes makes it possible to take into account the gravity of the relevant offences.

The provisions granting immunities for Swedish public officials concern members of the Riksdag (Parliament), the Speaker of the Riksdag, the Head of State and ministers. The functional immunities regulated in the Instrument of Government are not extended to judges or any other categories of public officials. Investigative steps can be taken before the immunity is lifted.

The Swedish criminal procedure rules are based on the principle of

mandatory prosecution. In the sections where mandatory prosecution does not apply, the prosecutor has to prosecute if it is necessary from the standpoint of the society. On the other hand, prosecutors may waive prosecution, provided that no compelling public or private interest is disregarded (Chapter 20, section 7 CJP).

A defendant who does not show up voluntarily at court proceedings can have conditional fines imposed on him. The Swedish regulation about parole can be found in Chapter 26, sections 6 and 7, PC.

Art. 30(6) UNCAC is implemented through several different laws, e.g. Chapter 20, Section 4, PC and the Act of Employment in the Public Sector.

Sweden has not established procedures for the disqualification of persons convicted of corruption offences from holding public office since they are considered not to be in compliance with fundamental principles of the Swedish legal system.

Sweden can apply disciplinary and criminal sanctions simultaneously.

The Swedish legislation promotes the reintegration into society of persons convicted of offences. In particular, Chapter 1 Section 5 of the Swedish Act on Imprisonment provides that enforcement shall be devised so as to facilitate the prisoner's adjustment in the community and counteract negative consequences of deprivation of liberty.

In determining the appropriate punishment the court has the possibility to render a milder sentence if the accused had and used a possibility to prevent or eliminate damage. Sweden does not however apply plea bargaining system and it is not possible for a person to get a milder sentence by assisting in obtaining evidence in relation to other offenders (so called "crown witnesses"). The Prosecutor has no discretion to offer lesser sentence, although the prosecution will argue mitigating circumstances. Persons who have participated in the commission of an offence and provide the law enforcement authorities with useful information for investigative and evidentiary purposes (collaborators of justice) are equally covered by Section 2 of the Police Act and Section 2 of the Ordinance (2006:519) on special personal safety programmes.

Protection of witnesses and reporting persons (arts. 32, 33)

Witnesses and experts who give testimony enjoy effective legal protection against retaliation and intimidation. Witnesses do not have to be physically present in the courtroom, but can attend the hearings through video conference (Chapter 5, section 10 CJP). The police can also take measures to protect the identity and whereabouts of witness, such as giving them new identities and fictitious personal data.

Section 2 of the Police Act authorizes the police to carry out personal security operations to ensure effective legal protection from physical retaliation for witnesses and other persons under threat.

The Ordinance (2006:519) on special personal safety programmes may also cover victims ("injured parties") insofar as they are witnesses.

The protection of reporting persons has been implemented through the offence of interference in a judicial matter, Chapter 17, section 10, PC. Both the Freedom of the Press Act and the Fundamental Law on Freedom of Expression contain protection rules for a public official who, in writing or speech, wants to disclose information for publication. As regards employees involved in whistle-blowing, 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.

Freezing, seizing and confiscation; bank secrecy (arts. 31, 40)

The domestic legal framework on freezing, seizing and confiscation can be found in Chapter 36 PC (confiscation) and Chapters 26 (provisional attachment) and 27 (seizing) CJP. These Chapters cover not only proceeds of crime, but also instrumentalities used, or intended to be used, in the commission of a crime.

Chapter 26, section 1 and Chapter 27, section 1, CJP stipulate that proceeds of crime which can be confiscated at a later stage can be subject to seizure or provisional measures.

According to Chapter 36, Section 1 of the PC, any proceeds of crime (in whatever shape or form) shall be declared confiscated, unless this is manifestly unreasonable. The concept of proceeds of crime in this context also covers property that has replaced the (original) proceeds, as well as income or other benefits deriving from such property.

Sweden has not established an asset management agency to specifically dispose of frozen, seized or confiscated property. The administration of frozen or seized property is handled by the police or by the enforcement agency.

It is possible to seize/freeze documents for evidentiary and confiscation purpose even if the documents are kept by a bank. Banks are also obliged to give information to the police or prosecutor if asked to in relation to an on-going investigation (section 11 of the Banking and Financing Act). No court order is needed to access bank documents. Instead, the prosecutor can order that these documents be made available.

The reversal of the burden of proof has not been implemented. However, Chapter 36, Section 1b, PC provides for a lower evidentiary threshold for confiscation in certain cases.

The rights of bona fide third parties are protected under Chapter 36, section 5 PC.

Statute of limitations; criminal record (arts. 29, 41)

The rules about the statute of limitations are regulated in Chapter 35 PC. According to Swedish law, the length of the statute of limitation depends on the range of the punishment. The statute of limitation starts at the time of commission of the act, irrespective of knowledge of the authorities. The prescription period for corporate fines is five years or the longer period that applies in relation to the perpetrator of the underlying offence.

In the determination of the punishment the court has the possibility to take into consideration any previous conviction (Chapter 29, section 4, PC).

Jurisdiction (art. 42)

Sweden has implemented the territorial principle and the active personality principle for establishing jurisdiction in Chapter 2, sections 1, 2 and 4, PC. There is no general provision giving Swedish courts jurisdiction over crimes committed against Swedish citizens. There are

no provisions specially linked to the issue of establishing jurisdiction in lieu of extradition of Swedish nationals. However, Swedish courts have jurisdiction over crimes committed by Swedish nationals outside Swedish territory provided that the dual criminality requirement is met.

Consequences of acts of corruption; compensation for damage (arts. 34, 35)

The Swedish legal system offers various possibilities to annul or rescind an agreement or a decision adopted by the public administration, which have been affected by acts of corruption.

The Tort Liability Act contains rules about compensation for loss or damage. The possibilities to demand compensation for damages in a criminal case are regulated in Chapter 22 CJP and in the Criminal Injuries Compensation Act.

Specialized authorities and inter-agency coordination (arts. 36, 38, 39)

There is no specialized anti-corruption agency in Sweden but a number of institutions or units with mandates related to the fight against corruption. Within the Swedish office of the public prosecutor, there is a special division working exclusively on corruption (the National Anti-Corruption Unit, NACU), established in 2003. It is assisted by a special police unit, the National Anti-Corruption Police Unit (NACPU). The NACPU was established in 2012 to further increase the efficiency and the expertise in the handling of corruption related cases.

In corruption-related cases, according to Chapter 23 CJP, a prosecutor instead of a police staff is conducting the investigation because of the complex nature of these cases and the special training that these prosecutors have. Training for prosecutors is offered by the Swedish Prosecution Authority and the Swedish Economic Crime Authority. The Judicial Academy arranges specialist training in economic crimes for judges.

Sweden has a police-type FIU which is part of the National Bureau of Criminal Investigations.

According to the Swedish Police Act, the police have to cooperate with the authorities and public officials. The Swedish Prosecution Authority and the Swedish Police have defined in MoUs the parts of the process of prosecution for which each authority is responsible.

Sweden has different laws which include cooperation and the obligation to report different kinds of information. There is also a constant dialogue between offence investigating authorities and financial institutions.

2.2. Successes and good practices

Overall, the following successes and good practices in implementing Chapter III of the Convention are highlighted:

- Chapter 10, section 5e PC was highlighted because it does not require intent but establishes liability for commercial organizations which “through gross negligence furthers the offences of giving a bribe”. This new provision, while still untested by the courts, could prove to be very effective in the fight against corruption;*
- The Swedish legislation on bribery in the private sector (Art. 21 UNCAC) goes beyond the Convention in that it does not require a*

breach of duty;

- *The reviewing experts consider the Sweden regime for the protection of witnesses, experts and victims to constitute a good practice;*
- *The provision in Chapter 36, section 1b PC lowering the evidentiary threshold for confiscation was considered to be a good alternative to the reversal of the burden of proof (Art. 31(8) UNCAC);*
- *The establishment of specialized anti-corruption units both within the prosecution and the police authorities was considered a good practice (Art. 36 UNCAC).*
- *The possibility to prohibit financial institutions from informing customers and external parties that certain checks are being carried out can be considered a good practice (Art. 40 UNCAC).*

2.3. Challenges in implementation, where applicable

While noting Sweden's advanced anti-corruption legal system, the reviewers identified some challenges in implementation and/or grounds for further improvement and made the following remarks to be taken into account for action or consideration by the competent national authorities (depending on the mandatory or optional nature of the relevant UNCAC requirements):

- *Consider including a provision in the national legislation establishing a specific stand-alone offence that explicitly covers the offering or giving of an undue advantage to induce false testimony or the production of evidence in a proceeding (Art. 25(a) UNCAC).*
- *Review the provisions on liability of legal persons to ensure their effectiveness. Ensure that the fines imposed on legal persons are dissuasive and commensurable with those imposed for other economic offences, such as competition offences (Art. 26 UNCAC);*
- *Amend the legislation to provide for the suspension of the statute of limitations period in cases where the alleged offender has evaded the administration of justice (Art. 29 UNCAC);*
- *Consider introducing specific labour law provisions for the protection of whistleblowers in the private sector against retaliation by their employers (Art. 33 UNCAC);*
- *Consider expanding the scope of criminal jurisdiction, as prescribed in the national legislation, to cover offences committed against Swedish nationals (passive personality principle, Art. 42(2)(a) UNCAC).*

3. Chapter IV: International cooperation

3.1. Observations on the implementation of the arts. under review

*Extradition; transfer of sentenced persons; transfer of criminal proceedings
(arts. 44, 45, 47)*

Extradition is regulated by the following legal acts: the Act (1957:668) on Extradition for Criminal Offences, the Act (2011:1165) on Surrender

from Sweden According to the Nordic Arrest Warrant and the Act (2003:1156) on Surrender from Sweden According to the European Arrest Warrant.

Double criminality is generally required for extradition to non-Nordic States. However, it is the act itself, not its legal qualification or denomination, which determines whether or not the requirement of double criminality is met. Sweden can, pursuant to the Act (2011:1165) on Surrender from Sweden According to the Nordic Arrest Warrant, extradite to the other Nordic countries in the absence of dual criminality. In the context of surrender to other EU Member States on the basis of a European Arrest Warrant (EAW), double criminality is not required for 32 offences punishable by deprivation of liberty of at least three years, including corruption and money-laundering.

Extradition may be granted only if the act for which it is requested corresponds to an offence for which imprisonment for one year or more is prescribed by Swedish law. If the person has been sentenced for the act in the requesting state, he may be extradited only if the sentence is deprivation of liberty for at least four months or other institutional custody for a corresponding period.

Extradition may take place irrespective of the existence of an extradition treaty between the parties, provided that the conditions of the Extradition Act are met and the offences are extraditable. Statistics with regard to a single Convention are not available. In general, however, it is noted that the UNCAC has been used in a very limited number of cases.

The grounds for refusal of an extradition request are prescribed in the Act (1957: 668) on Extradition for Criminal Offences (nature of the offence as military or political one; discriminating treatment in the requesting State; youth, state of health and other personal circumstance of the person sought; lapse of time; ne bis in idem; pending criminal proceedings in Sweden). The nature of the crime as an offence involving fiscal matters is not included among the grounds for refusal.

As a main rule, Sweden does not extradite Swedish nationals (Extradition Act, section 2). Pursuant to the Nordic Arrest Warrant, section 6, Swedish nationals can under certain conditions be extradited to other Nordic countries. A provision on conditional extradition or surrender is stated in the Act (2003:1156) on surrender from Sweden according to the EAW (Chapter 3, section 2). Enforcement of a foreign penal judgment against a national who is not extradited can be considered in the context of the Act on Surrender from Sweden according to the EAW (Chapter 2, section 6).

The time needed for granting an extradition request will depend on the process followed and is subject to the exhaustion of the available judicial remedies. A simplified process, whereby the person sought consents to his or her surrender, is completed within four months. The extradition to other Nordic countries is carried out in an expeditious manner. The maximum period for the execution of an EAW is 90 days.

Sweden has bilateral agreements with the United States, Canada and Australia and has ratified multilateral agreements relating to extradition (the 1957 European Convention on Extradition and its two additional protocols (1975 and 1978); the United Nations Drug Trafficking Convention (1988); UNTOC and UNCAC).

In order to assess the effectiveness of the domestic legal framework on extradition, the Swedish legislation on extradition is currently under review.

All extradition requests (except from other Nordic countries) go through the Office of the Prosecutor-General.

Sweden has entered into several agreements on the transfer of sentenced persons and the pertinent regulation offers the opportunity to transfer enforcement of sentences both from and to Sweden. Sweden is a party to the 1983 European Convention on the Transfer of Sentenced Persons and its 1997 Additional Protocol, as well as the 1970 European Convention on the International Validity of Criminal Judgements. In relation to the other Nordic States, the Act concerning cooperation with Denmark, Finland, Iceland and Norway on the enforcement of criminal sanctions etc. (1963:193) is applied. Sweden has bilateral agreements concerning transfer of sentenced persons with Thailand and Cuba. According to the Act on international cooperation in the enforcement of criminal judgements (1972:260), which is currently under review, the transfer of prisoners can take place also without a treaty base.

The possibility of transferring proceedings is regulated in the Act (1976:19) on International Co-operation on Transfer of Proceedings. The Act applies in relation to the States that have acceded to the 1972 European Convention on the Transfer of Proceedings in Criminal Matters. If the prosecution is transferred to Sweden under the Act, the transferred crime falls under Swedish jurisdiction (Chapter 2, section 3a Penal Code). However, proceedings are often transferred from and to Sweden without any explicit legal basis. Such transfer can take place with or without the support of international agreements that Sweden has acceded to, provided that national jurisdiction over the concerned crimes exists.

Mutual legal assistance (art. 46)

Mutual legal assistance is regulated in the Act (2000:562) on international legal assistance in criminal matters. The Act does not prevent assistance involving other measures if they can be provided without using coercive means. The Act (2003:1174) on certain forms of international cooperation in criminal investigations includes supplementary provisions on legal assistance in some cases.

Sweden can generally provide MLA under the Act on international legal assistance in criminal matters, irrespective of the existence of an agreement on MLA with the other party. Assistance can also be provided in relation to matters that are being dealt with in administrative proceedings or in other proceedings than criminal proceedings in the requesting state or in Sweden.

Pursuant to Chapter 2, section 2, dual criminality is a requirement with regard to certain measures, such as coercive measures, but not with regard to other measures covered by the Act.

The general grounds on which Swedish authorities can deny MLA are stated in Chapter 2, section 14 (violation of national sovereignty; risk to national security or conflict with Swedish general principles of law or other essential interests; and the nature of the offence as or military political one). The nature of the crime as an offence involving fiscal matters is not included among the grounds for refusal. Although Sweden has both secrecy legislation and a blocking law regarding commercial secrets, the Swedish authorities do not decline MLA requests on the grounds of bank secrecy.

The Division for Criminal Cases and International Judicial Cooperation (BIRS) at the Ministry of Justice is the Swedish central

authority to deal with MLA requests. A relevant notification has been submitted to the Secretary-General of the United Nations. Requests for mutual legal assistance and any related communications can be transmitted to the central authorities designated by States Parties. Sweden does not require that such requests be submitted through diplomatic channels. In urgent circumstances, MLA requests and related communications can be communicated through the International Criminal Police Organization (INTERPOL).

According to Chapter 2, section 11, if the request contains a request of a particular procedure, this shall be applied, if it does not conflict with the fundamental principles of the Swedish legal system. Chapter 4, section 11 contains special provisions concerning requests for a hearing by telephone conference or videoconference.

According to Chapter 2, section 10, MLA requests shall be executed promptly. According to the guiding principles for the Swedish Prosecution Authority, incoming requests shall, as a general rule, be dealt with within two months.

Sweden uses for MLA purposes a number of multilateral instruments such as the 1959 European Convention on Mutual Assistance in Criminal Matters, including its First Additional Protocol) (1978); the 1990 European Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime; the 1988 United Nations Drug Trafficking Convention; UNTOC and UNCAC. Bilateral agreements on MLA have been concluded with Australia, Canada and the United States.

Law enforcement cooperation; joint investigations; special investigative techniques (arts. 48, 49, 50)

For purposes of law enforcement cooperation, Sweden communicates through INTERPOL, Europol, The Schengen Information System and EUROJUST. NACPU seeks to share information with law enforcement agencies in other countries, as well as with organizations such as Europol, where appropriate.

The mandate of the National Anti-Corruption Police Unit (NACPU) includes the investigation of corruption offences and crime prevention. The strategic and operational intelligence aspect is handled by the Intelligence Section of the National Bureau of Investigation. The FIU of the National Bureau of Investigation is responsible for handling matters related to money-laundering and the recovery of proceeds of corruption and other crimes. Consequently, the international co-operation in this area is handled by the FIU rather than NACPU.

Provisions related to joint investigations are found in the (2003:1174) Act on Joint Investigation Teams for Criminal Investigations. The provisions are based on the system developed within the European Union and apply to joint investigation teams (JITs) established under the Framework Decision on Joint Investigation Teams and the 2000 EU Convention on Mutual Legal Assistance in Criminal Matters.

NACPU has an ongoing close co-operation with Latvia in a case of alleged serious bribery. It actively seeks to establish JITs where appropriate. Other cases involve cooperation in this field with Netherlands and the United States.

The Swedish police and customs authorities have a tradition of using the method of controlled delivery both nationally and in the context of cross-border operations. Controlled delivery is mainly used in criminal

investigations of serious drug offences or drug smuggling.

The Swedish police can, in the context of undercover operations, operate under protected identities. The Swedish police are also part of the International Working Group on Police Undercover Activities (IWG). The practice of using protected identities is regulated in the Act (2006: 939) on qualified protected identities.

Electronic surveillance is used by the Swedish law enforcement authorities to the extent that it can be done without the use of any coercive measures.

Sweden has ratified several conventions regarding special investigative techniques and such techniques are being used in practice by the Swedish authorities. International cooperation is also possible and present in practice. There are no barriers to use evidence that has been gained through special investigative techniques in a Swedish trial.

3.2. Successes and good practices

Overall, the following points are regarded as successes and good practices in the framework of implementing Chapter IV of UNCAC:

- The comprehensive and coherent legal framework on international cooperation in criminal matters, which regulates in a detailed manner all forms of international cooperation used by the Swedish authorities;*
- The fact that assistance can also be provided in relation to matters which are being dealt with in administrative proceedings or in other proceedings than criminal proceedings in the requesting state or in Sweden.*

3.3. Challenges in implementation, where applicable

The following points are brought to the attention of the Swedish authorities for their action or consideration (depending on the mandatory or optional nature of the relevant UNCAC requirements) with a view to enhancing international cooperation to combat offences covered by UNCAC:

- Continue efforts to put in place and render fully operational an information system compiling in a systematic manner information on extradition and MLA cases, as well as law enforcement cooperation cases, with a view to facilitating the monitoring of such cases and assessing the effectiveness of implementation of international cooperation arrangements.*

IV. Implementation of the Convention

A. Ratification of the Convention

8. Sweden signed the Convention during the Merida Conference in 2003. Sweden ratified it on 9 May 2007 and deposited its instrument of ratification with the Secretary-General on 25 September 2007.

9. Sweden made the following declarations to the United Nations on 10 September 2008:

Notifications under articles 6 (3) and 44 (6):

"... Article 6 (3)

The Swedish authority that may assist other States Parties in developing and implementing specific measures for the prevention of corruption is:

The Swedish International Development Cooperation Agency, (Sida)

Valhallavägen 199

SE-105 25 STOCKHOLM

Sweden

sida@sida.se

Article 44 (6)

Sweden does not make extradition conditional on the existence of a treaty. Extradition of aliens is regulated by national legislation."

and on 27th of October 2009:

Article 46 (13)

"The contact details of the Swedish Central Authority are as follows:

Ministry of Justice

Division for Criminal Cases and International Judicial Co-operation

SE-103 39 STOCKHOLM

SWEDEN

E-mail: birs@justice.ministry.se"

10. Prior to ratification, the Ministry of Justice made an assessment of whether the legislation in Sweden was in compliance with the obligations under the convention. In the view of the Ministry of Justice no amendments were necessary to comply with the requirements of the convention. Since the requirements of the convention in many aspects are identical or similar to those in other conventions that Sweden has ratified, adjustments had, where necessary, already been made in the Swedish legislation. No further adjustments were considered necessary in order to comply with the obligations of the convention. The outcome of the assessment made by the Ministry of Justice was submitted to a number of Swedish authorities and associations in order to give them the opportunity to comment on the assessment made by the Ministry of Justice. The assessment was generally supported by the authorities and associations in question.
11. The Government presented a government bill to the Parliament on 8 March 2007 proposing that Sweden should ratify the United Nations Convention Against Corruption and that no amendments in the Swedish legislation was necessary to comply with the requirements of the convention. The Parliament approved the Government's proposals on 9 May 2007.

B. Legal system of Sweden

Sources of law

12. In Sweden, the sources of law consist mainly of statutes, case law and preparatory work on proposed laws.

13. The most important sources of law are the **statutes**. They are printed and proclaimed in codes of statutes. The statutes are divided into acts, ordinances and regulations. Acts are decided by the Parliament, ordinances are decided by the Government and regulations are issued by the authorities.
14. Decisions from the courts, **case law**, play an important part in the application of the law. This particularly applies to decisions from the highest instances, the Supreme Court and the Supreme Administrative Court.
15. **Preparatory work on proposed laws**, i.e. the texts that are created in connection with the legislative process, are also used in the application of the law.
16. Doctrines, commercial customs, contractual provisions and general custom can be said to be supplementary sources of law.

Hierarchy of the sources of law

17. The most important statutes are the constitutional laws. Sweden has four constitutional laws: the Constitution Act, the Act of Succession, the Freedom of the Press Act and the Freedom of Speech Act. These can only be changed through a special procedure. After this come other acts, ordinances and regulations in the order mentioned.
18. Preparatory work and case law are subsidiary, but still significant, sources of law. According to established legal tradition, explanations in the preparatory works are regarded as a reliable source of clarification of legal texts, very much in the same way as case law. This method makes it possible to give clarifications beyond what is possible in the legislation itself. In this context, and especially when a new legal provision is under consideration, the courts, including the Supreme Court, will seek guidance in the preparatory works, as these are also an expression of the legislator's intention. Contrary to the tradition in other legal systems, preparatory work is seen as an authoritative legal source of Swedish law. Although courts are not bound to apply the preparatory works, they are bound to take those works into consideration. The more recent the preparatory work, the more important it is. When legislation is old or when a lot has happened within an area of law, the importance of case law increases.

International agreements

19. The relationship between national and international law is **dualistic** in the Swedish legal system. International agreements must, as a principle rule, be implemented into Swedish law in order to be able to be applied by courts and other bodies applying the law. The agreement can be implemented either by reworking it into a Swedish legislation, or by means of a separate legal act that prescribes that the agreement is to apply in Sweden (incorporation).
20. However, Swedish law is presumed to be in accordance with Sweden's international law obligations. Hence, international treaties and conventions are an important source of law. If more than one interpretation of a Swedish provision is possible, of which only one is in accordance with international law, the alternative that conforms to international law shall be applied.

21. EU legislation is exempted from the principle rule mentioned above as Sweden has transferred part of its regulatory capacity to the EU. EU legislation therefore applies to a certain extent directly in Sweden without any intermediate legislation.
22. Sweden is a member of the EU, the OECD, the Council of Europe's GRECO, and FATF.

C. Anti-corruption legal framework in Sweden

23. The anti-corruption legal framework in Sweden consists of provisions contained in the Penal Code (PC), the Code of Judicial Procedure (CJP), as well as other specific acts including the Police Act and the Ordinance (2006:519) on special personal safety programmes; the Freedom of the Press Act and the Freedom of Speech Act; the Tort Liability Act and the Criminal Injuries Compensation Act; the Act (1957:668) on Extradition for Criminal Offences; the Act (2011:1165) on Surrender from Sweden According to the Nordic Arrest Warrant; the Act (2003:1156) on Surrender from Sweden According to the European Arrest Warrant; the Act concerning cooperation with Denmark, Finland, Iceland and Norway on the enforcement of criminal sanctions etc. (1963:193); the Act on international cooperation in the enforcement of criminal judgements (1972:260); the Act (1976:19) on International Co-operation on Transfer of Proceedings; the Act (2000:562) on international legal assistance in criminal matters; the Act (2003:1174) on certain forms of international cooperation in criminal investigations; and the Act (2006:939) on qualified protected identities.

D. Implementation of articles under review

Chapter III. Criminalization and law enforcement

Article 15 Bribery of national public officials

Subparagraph (a)

Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(a) The promise, offering or giving, to a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties;

(a) Summary of information relevant to reviewing the implementation of the article

24. Sweden confirmed that it has fully implemented this provision of the Convention.

25. The Swedish bribery provisions are contained in Chapter 10, sections 5a to 5e of the Swedish Penal Code ('PC'). The Swedish active bribery provision which corresponds to subparagraph (a) of article 15 is regulated in Chapter 10, section 5b, PC.

Chapter 10. On Embezzlement, Breach of Trust and Bribery

Section 5 a

Anyone who is employed or performs a function and receives, agrees to receive or requests an undue advantage for the performance of his or her employment or function shall be sentenced for taking a bribe to a fine or imprisonment for at most two years. The same applies to contestants and officials in a contest that is open to public betting, provided that it is an undue advantage for the performance of his or her function in the course of the contest.

The first subsection also applies if the offence was committed before the offender gained a position mentioned therein or after that position was terminated.

The offence of taking a bribe under the first and second subsections is an offence also if the advantage is received, agreed to be received or requested for a third party.

Section 5 b

Anyone who gives, promises or offers an undue advantage to a person mentioned in section 5 a, and under circumstances described therein, shall be sentenced for giving a bribe to a fine or imprisonment for at most two years.

Section 5 c [As amended on 1 July 2012]

Where an offence under sections 5 a or 5 b is to be considered gross, imprisonment for at least six months and at most six years shall be imposed for gross taking of a bribe or gross giving of a bribe. In assessing whether the offence is gross, special attention shall be given to whether the offence constituted a misuse of or an infringement on a function entailing

particular responsibility, involved a substantial amount of money or formed part of criminal activities carried out systematically or on a large scale or whether the offence was otherwise of a particularly dangerous nature.

Section 5 e [As amended on 1 July 2012]

A commercial organisation which provides financial or other assets to anyone representing it in a certain matter and which thereby through gross negligence furthers the offences of giving a bribe, gross giving of a bribe or trading in influence under section 5 d (2) in that matter shall be sentenced for negligent financing of bribery to a fine or imprisonment of at most two years.

26. Chapter 10, sections 5a et. seq., cover persons and performers of functions in both the public and the private sector, regardless of the nature of their function or nationality. The term “function” (*uppdrag*) is well known in Swedish legislation, yet not specifically defined in the penal code. A function in this respect can be the result of an agreement, a contract, an election, a duty or a mandate. The issue is dealt with in the preparatory works.
27. In relation to Chapter 10, section 5b (“giving a bribe”), the term *bribe* is the description of the act described in the provision; the undue advantage for a certain performance related to a professional duty.
28. The “undue advantage” includes non-pecuniary rewards. It can be of any kind; pecuniary, material or intellectual. This is dealt with in the preparatory works.
29. While the words “directly or indirectly” are missing from the text of Chapter 10, section 5b, it does not matter if the offence is committed directly or indirectly.

On 19 November 2008 (RH 2009:16) the Göta Court of Appeal convicted three doctors of bribery; through other hospital staff they had asked companies supplying pharmaceutical products, etc. to their clinic to make contributions to a staff trip.
30. The offence includes undue advantages for third parties as well as for the official himself.
31. The active bribery provisions were amended on 1 July 2012. The amendments were sections 5c and 5e.
32. Preparatory works of the reformed bribery legislation (Government Bill 2011/12:79)

Who comes into the category of people concerned?

An ‘employee’ refers to a person who is an employee as defined by civil law. No account should be taken of whether the employment is full-time or part-time, permanent or fixed-term. Nor does it have any significance whether the employer is a legal or natural person.

According to Chapter 20, Section 2, second paragraph, that which applies to employees also applies 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 person who is subject to the Act on Disciplinary Offences within the Total Defence, etc. (1994:1811), 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 a case other than stated in points 1–4, by reason of a position of trust has been given the task on behalf of another to*
 - a) *manage a legal or financial affair,*
 - b) *conduct a scientific or equivalent investigation,*
 - c) *independently handle an assignment requiring advanced technical knowledge, or*
 - d) *exercise supervision over the management of affairs or assignments referred to in a, b or c,*
6. *ministers of a foreign state, members of the legislative assembly of a foreign state or members of a body of a foreign state which corresponds to those referred to in point 1;*
7. *a person who, without holding an employment or assignment as aforesaid, exercises public authority on behalf of a foreign state or a foreign assignment as arbitrator;*
8. *a member of supervisory body, governing body or parliamentary assembly of an intergovernmental organisation or supranational organisation of which Sweden is a member; and*
9. *a judge or other official of an international court whose jurisdiction is accepted by Sweden.*

According to the list in Chapter 20, Section 2, second paragraph, members of parliament (*point 1*), lay judges, estate administrators, public defenders and receivers (*point 2*) and persons performing civilian service under the National Total Defence Service Act (1994:1809) (*point 3*) are covered. The actual exercise of public authority is central to the possibility of a person coming under *point 4*. This category includes average adjusters and certain types of arbitrators, for example under the Act on the disposal of entailed property (1963:583). A legally appointed security officer is also covered by point 4, when he or she refuses entry, removes or takes charge of an individual. Persons in positions of trust who are covered by *point 5* include board members of various types of associations as well as liquidators, accountants and others with administrative or supervisory tasks within such legal entities. Further examples are estate agents, commercial agents, travelling sales representatives, commissioners, accountants conducting special audits or valuation assignments, auctioneers, property managers and others acting as trustees, i.e. on behalf of a principal to perform a legal transaction or property administration measure. The category of people referred to in point 5 also includes, for example, a scientific consultant whose job it is to assess whether a certain preparation meets the requirements for registration as a pharmaceutical or an expert who assists a county council pharmaceuticals committee in decisions concerning the purchase of pharmaceuticals. Leaders of research or development projects are also covered, as well as the heads of computer centres and similar persons with technical responsibility in key positions. Finally, it follows from *points 6–9* that Members of the European Parliament, EU commissioners and judges of the Court of Justice of the European Union and the International Criminal Court are included among the category of people who can be held liable for bribery under Swedish law.

33. Sweden provided the following examples of implementation:

Examples of legal cases

On 11 May 2012 the Supreme Court (NJA 2012 p. 307) convicted a traffic inspector of bribery (gross offence) and professional misconduct for accepting bribes to pass individuals on their driving test; in other words, she had in practice sold driving licences. The penalty was set at 18 months in prison. She was also required to pay SEK 168 000 to the State as the forfeiture value of proceeds of crime. One person was convicted of complicity in bribery (gross offence) and sentenced to one year in prison. Furthermore, two people were convicted of bribery (gross offence) and sentenced to a conditional sentence with community service of 120 hours.

On 31 May 2013 the Svea Court of Appeal convicted a person who was the managing director and subsequently senior adviser at a limited company (KFS) indirectly owned by municipalities and county councils of bribery. The offence consisted of the managing director of KFS entering into a secret agreement with a consultant that meant that the managing director received part of the contract sum for the contracts that the consultant concluded with KFS and KFS members. The penalty for the managing director was set at a conditional sentence and fines. In the district court, the consultant was convicted of bribery and sentenced to a conditional sentence and fines. The consultant was ordered to pay the sum of SEK 380 000 to the State, jointly and severally with their company, as the forfeiture value of proceeds of crime. The forfeiture claim was directed at the consultant and their company as the managing director had repaid the bribe. The consultant's involvement will be examined by the court of appeal at a later date.

On 26 April 2013 the Court of Appeal for Western Sweden convicted a property engineer at a municipal housing company of bribery (gross offence). He had received electrical installations to the value of SEK 80 000 free of charge from a company engaged by the municipality. The penalty imposed was a conditional sentence and fines. He was also required to pay SEK 80 000 to the State as the forfeiture value of proceeds of crime.

See also the legal cases mentioned under Art. 16(1).

34. After the country visit, the Swedish authorities provided the review team with a study on "Reported Corruption in Sweden: Structure, risk factors and countermeasures" (2013). The study, published by the Swedish National Council for Crime Prevention, describes reported corruption, based on the cases found at the National Anti-corruption Unit of the Swedish Prosecution Authority. The material covers, among others, closed corruption cases, including bribery cases, received between 2003 and 2011. This encompasses a total of 684 closed cases and 1248 alleged perpetrators. The study is annexed to the present report.

35. In the context of completing the self-assessment checklist, Sweden provided the following statistics:

The statistics presented below refer to the giving and taking of bribes over the last three years. They cannot be divided into gross and other offences as the offences only have one offence code each. (The offence codes have not been changed in the new legislation but they have new names. The statistics also use the new offence classification for older cases.

Giving and taking of bribes		Year			
Offence code	Decision	2010	2011	2012	

	group				
1708 Giving of bribes (incl. gross)	Preliminary investigation not begun	2	1	-	
1708 Giving of bribes (incl. gross)	Preliminary investigation discontinued	63	96	37	
1708 Giving of bribes (incl. gross)	Prosecution not brought	2	13	2	
1708 Giving of bribes (incl. gross)	Summary imposition of a fine	1	8	2	
1708 Giving of bribes (incl. gross)	Prosecution	17	17	12	
1708 Giving of bribes (incl. gross)	Total	85	135	53	
2003 Taking of bribes (incl. gross)	Preliminary investigation not begun	-	1	1	
2003 Taking of bribes (incl. gross)	Preliminary investigation discontinued	55	114	39	
2003 Taking of bribes (incl. gross)	Prosecution not brought	1	1	3	
2003 Taking of bribes (incl. gross)	Summary imposition of a fine	-	9	-	
2003 Taking of bribes (incl. gross)	Prosecution	8	21	9	
2003 Taking of bribes (incl. gross)	Total	64	146	52	
Total		149	281	105	
<i>Source: Cåbra/Pythia</i>					
<i>Selection status:</i>					
<i>Period: 201012, 201112, 201212</i>					
<i>Decision group: NOTE Responsibility for leading the preliminary investigation is handed over to the investigating authority, Other decisions, closed cases of suspected crime</i>					
<i>Offence code: 1708 Giving of bribes (incl. gross), 2003 Taking of bribes (incl. gross)</i>					
<i>Measures: Established cases of suspected crime</i>					

36. Sweden already assessed the effectiveness of the measures adopted to criminalize active bribery of national public officials: In order to achieve more modern, more efficient and more easily accessible regulations on bribery with clear criteria for criminal liability, the active bribery provision was amended on 1 July 2012.

(b) Observations on the implementation of the article

37. The reviewing experts conclude that Sweden has fully implemented Art. 15(a) UNCAC.

(c) Successes and good practices

38. Ch. 10, Section 5e, PC was highlighted by the reviewing experts as a good practice because it does not require intent but establishes liability for commercial organisations which “through gross negligence furthers the offences of giving a bribe”. This new provision, while still untested by the courts, could prove to be very effective in the fight against corruption.

Subparagraph (b)

Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(b) The solicitation or acceptance by a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties.

(a) Summary of information relevant to reviewing the implementation of the article

39. Sweden confirmed that it has fully implemented this provision of the Convention.
40. Sweden cited the following applicable measures: The Swedish passive bribery provision which corresponds to subparagraph (b) of article 15 is regulated in Chapter 10, section 5a, PC:

Chapter 10, section 5a, PC

Anyone who is employed or performs a function and receives, agrees to receive or requests an undue advantage for the performance of his or her employment or function shall be sentenced for taking a bribe to a fine or imprisonment for at most two years. The same applies to contestants and officials in a contest that is open to public betting, provided that it is an undue advantage for the performance of his or her function in the course of the contest.

The first subsection also applies if the offence was committed before the offender gained a position mentioned therein or after that position was terminated.

The offence of taking a bribe under the first and second subsections is an offence also if the advantage is received, agreed to be received or requested for a third party.

41. The term “public betting” in Chapter 10, section 5a, PC does not refer to public procurement. The scope of the provision is the integrity of the system for public, commercial betting in relation to sports and other events and competitions. The reason for the regulation is – among other things – the fact that it concerns many people; it has large turnovers, an international nature and offers many possibilities to make a lot of money.
42. Offenders “about to gain a position” are included in the scope of the provision because it is emphasized in the preparatory works that the category of offenders should be as broad as possible and that all punishable cases should be covered.

43. Chapter 10, section 5a covers the taking of a bribe if the advantage is received, agreed to be received or requested for a third party. The third party is described in the preparatory works as natural persons or entities connected to the employee or the person performing the function.

44. Preparatory works of the reformed bribery legislation (Government Bill 2011/12:79)

Section 5 a

First sentence

The first sentence specifies the cases in which an employee or a person conducting an assignment can incur liability for taking a bribe. It is clear from this sentence initially, that liability is of a general nature and therefore covers all those who are employees or conduct assignments. Nor is the scope of application limited to Swedish employment or assignment relationships. It is therefore punishable in Sweden for a foreign employee or contract worker to take a bribe, regardless of whether he or she is in the public or private service. There is no requirement that the principal conducts any activity that requires protection for one reason or another or that the employee or the person conducting the assignment is performing tasks that may be considered to be vital in the public interest or dependent on public trust. 'Employees' are those who are covered by the civil law definition of the term 'employee'. The expression 'the person ... conducting the assignment' refers to those listed in the second paragraph of the repealed Chapter 20, Section 2 (see Section 4.1). The basis of the assignment can thus be an election, appointment, duty, or agreement.

Liability requires that an *undue* advantage, or the promise of such, has been accepted or requested by the employer or employee, and that this has occurred *in return for the exercise of the employment or the assignment*.

The latter requirement implies that the dominant relationship between the parties must be of a business nature and that the advantage can therefore be ultimately related to something that is attributable to the activities conducted by the employee's or contract worker's principal. Such a business relationship between the parties does not exist if the advantage is exclusively or essentially based on, for example, a friendship or an acquaintance or another non-business relationship. Criminality does not require the advantage to be focused on something that is ultimately to be performed by the employee or contract worker. It is sufficient that he or she, within the scope of their employment or assignment, can exert influence over a process, for example as a reporter to a decision-maker or being a person who prepares decision-making material. Nor is it required that the advantage be shown to be associated with any particular action, much less necessary to prove that the advantage aimed to, induced or rewarded any improper action or any other action that benefits the person who gave, promised or offered the advantage. However, should it emerge that such circumstances are at hand, this may clearly have significance in considering more severe penalties and classification of the offence.

The assessment of the impropriety of the advantage is to take account of all the surrounding circumstances. Every transaction that, seen objectively, has the potential to

affect the execution of certain tasks or be construed as a reward for how the tasks have been performed is improper. To influence an employee or contract worker is to try to induce him or her to make a certain decision or take or refrain from a certain action. On the other hand, to reward him or her is to provide thanks afterwards for a decision made or an action that has been taken or refrained from. Sometimes it is obvious that it is a case of an undue advantage that influenced or rewarded. For example, such is the case if the investigation finds that the employee or contract worker actually breached their duties or intended to do so. Impropropriety also exists if it is natural that the purpose of the advantage that he or she has received, accepted a promise of or requested cannot be anything other than to induce a breach of duty or reward such behaviour. In less obvious cases, the assessment of impropriety must be made mainly on the basis of such factors as the financial value and character of the advantage and the circumstances surrounding the giving of the advantage. An advantage of insignificant value is generally not of a nature that could influence or reward an employee's or contract worker's performance of duties. However, depending on the circumstances, the same can also sometimes apply in the case of an advantage that *does not* have an entirely insignificant value. This may be the case if the advantage has social or operational justification, which means that it falls within the framework of normal courtesy between people or, for example, constitutes a general custom or accepted practice in professional business activities. However, the situation is quite otherwise in the case of an employee or contract worker receiving, accepting a promise of or requesting cash or other gifts that clearly increase his or her wealth. Such matters may generally without doubt be considered as meeting the criteria for impropriety. Furthermore, an advantage that is accepted against the express wishes of a principal can be likely to influence or reward the performance of duties even if its value is relatively low, and this probably particularly applies if it is accepted in secret. Finally, in certain cases an employee's or contract worker's tasks are considered to require such strong privacy protection that even an advantage of completely insignificant value would meet the requirements for impropriety. This is particularly true in the case of the exercise of public authority and related activities, such as public procurement.

Other factors than those mentioned above can of course impact on the assessment of impropriety. These may be apparent from the case-law of the courts, which continues to hold significance, in relation to the now repealed Chapter 20, Section 2. It is also obvious that guidance for assessment can be found in the codes of conduct that may exist for different aspects of both public and private sector activities.

45. On statistics, see under article 15(a) of UNCAC.

(b) Observations on the implementation of the article

46. The reviewing experts conclude that Sweden has fully implemented Art. 15(b) UNCAC.

Article 16 Bribery of foreign public officials and officials of public international organizations

Paragraph 1

1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the promise, offering or giving to a foreign public official or an official of a public international organization, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties, in order to obtain or retain business or other undue advantage in relation to the conduct of international business.

(a) Summary of information relevant to reviewing the implementation of the article

47. Sweden confirmed that it has fully implemented this provision of the Convention.

48. The Swedish active bribery which corresponds to paragraph 1 of article 16 is regulated in Chapter 10, section 5b, PC. The section includes bribery of a foreign public official or an official of a public international organization, as explicitly mentioned in the preparatory works.

Chapter 10, section 5 b:

Anyone who gives, promises or offers an undue advantage to a person mentioned in section 5 a, and under circumstances described therein, shall be sentenced for *giving a bribe* to a fine or imprisonment for at most two years.

49. Sweden provided the following examples of implementation:

Two cases of foreign bribery.

In the first case, the Svea Court of Appeal, on 1 December 2005, sentenced two people to imprisonment for bribery, etc. for 12 months and 18 months respectively. The offence consisted of the following: A consultant in the construction industry and his accountant paid kickbacks to two officials of the World Bank for rewarding contracts to them in connection with projects in Ethiopia, Kenya, and Sri Lanka.

In the second case, Solna District Court, on 17 July 2013 sentenced two people to conditional sentence (combined with community service for one of the persons) for bribery. The offence consisted of paying bribes to win public procurement contracts in Ukraine for two water projects financed by the World Bank and the Swedish International Development Cooperation Agency (Sida).

50. After the country visit, the Swedish authorities provided the review team with a study on “Reported Corruption in Sweden: Structure, risk factors and countermeasures” (2013). The study, published by the Swedish National Council for Crime Prevention, describes reported corruption, based on the cases found at the National Anti-corruption Unit of the Swedish Prosecution Authority. The material covers, among others, closed corruption cases, including cases of “corruption over national borders” (approximately 6 per cent of the total number of cases), received between 2003 and 2011. This encompasses a total of 684 closed cases and 1248 alleged perpetrators. The study is annexed to the present report.

51. Sweden already assessed the effectiveness of the measures adopted to criminalize active bribery of foreign public officials and officials of public international organizations: In order to achieve more modern, more efficient and more easily accessible regulations on bribery with clear criteria for criminal liability, the active bribery provision was amended on 1 July 2012.

(b) Observations on the implementation of the article

52. The reviewing experts conclude that Sweden has fully implemented Art. 16(1) UNCAC.

Paragraph 2

2. Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the solicitation or acceptance by a foreign public official or an official of a public international organization, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties.

(a) Summary of information relevant to reviewing the implementation of the article

53. Sweden confirmed that it has fully implemented this provision of the Convention.

54. The Swedish passive bribery provision which corresponds to paragraph 2 of article 16 is regulated in Chapter 10, section 5a, PC. The section includes bribery of a foreign public official or an official of a public international organization, as explicitly mentioned in the preparatory works.

Chapter 10, section 5 a:

Anyone who is employed or performs a function and receives, agrees to receive or requests an undue advantage for the performance of his or her employment or function shall be sentenced for taking a bribe to a fine or imprisonment for at most two years. The same applies to contestants and officials in a contest that is open to public betting, provided that it is an undue advantage for the performance of his or her function in the course of the contest.

The first subsection also applies if the offence was committed before the offender gained a position mentioned therein or after that position was terminated.

The offence of taking a bribe under the first and second subsections is an offence also if the advantage is received, agreed to be received or requested for a third party.

(b) Observations on the implementation of the article

55. The reviewing experts conclude that Sweden has fully implemented Art. 16(2) UNCAC.

Article 17 Embezzlement, misappropriation or other diversion of property by a public official

Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally, the embezzlement, misappropriation or other diversion by a public official for his or her benefit or for the benefit of another person or entity, of any property, public or private funds or securities or any other thing of value entrusted to the public official by virtue of his or her position.

(a) Summary of information relevant to reviewing the implementation of the article

56. Sweden confirmed that it has fully implemented this provision of the Convention.

57. The Swedish provisions which correspond to article 17 of the UNCAC are contained in Chapter 10, sections 1, 4 and 5, PC. The Swedish legislation does not separate crimes of embezzlement and other breaches of trust committed in the private sector or in the service of the State.

Chapter 10

Section 1

A person who, through a contract or public or private service or a similar position, has gained possession of property on behalf of another with the obligation to deliver it or account for it, and appropriates the property or otherwise disregards what he has to comply with in order to be able to comply with his obligation, shall, if the act results in gain for him and loss for the owner, be sentenced for embezzlement to imprisonment for at most two years.

Section 4

A person who, in a case other than one provided for earlier in this Chapter, takes any step concerning property in his possession to which the right of ownership or legal security is reserved for, guaranteed to or otherwise belongs to another and by such step the latter is dispossessed of his property or otherwise deprived of his right, shall be sentenced for *unlawful disposal* to a fine or imprisonment for at most two years.

Section 5

A person who, by reason of a position of trust has been given the task of managing another's financial affairs or independently handling an assignment requiring qualified technical knowledge, or exercising supervision over the management of such affairs or assignment, abuses his position of trust and thereby injures his principal, shall be sentenced for breach of faith committed by an agent against his principal to a fine or imprisonment for at most two years. The foregoing does not apply if the crime is punishable under Sections 1-3.

Chapter 23

Section 7

Punishment provided in this Code for cases where someone procures a gain or appropriates something personally by crime shall be likewise imposed when someone intentionally procures a gain for or appropriates something for another person.

58. The term “property” is not defined in the Penal Code. The crucial element is instead that a person has gained possession of property on behalf of another with the obligation to deliver it or account for it. Both public and private funds would be included in property as well as securities and other things of value. In case NJA 1994 s. 480 the Supreme Court ruled that possession of property does not need to be a physical object, it could also be a postal giro account. It could also be intellectual and physical property.

59. The term “similar position” covers for example guardians, administrators/trustees (appointed by a court) and bailiffs.

60. Chapter 10, section 2, PC provides that the crime could be regarded as petty “having regard to the value of the property and other circumstances”. In assessing other circumstances special consideration shall be given to the damage, wrong or danger occasioned by the criminal act (cf. Chapter 29, section 1, PC). The ceiling for the value is

equivalent with that for petty theft (Chapter 8, section 2, PC), i.e. SEK 1 000 (about 110 euros).

61. Sweden provided the following examples of implementation:

See for example NJA 1985:747, 1998:583 and 2011:524

62. After the country visit, the Swedish authorities provided the review team with a study on “Reported Corruption in Sweden: Structure, risk factors and countermeasures” (2013). The study, published by the Swedish National Council for Crime Prevention, describes reported corruption, based on the cases found at the National Anti-corruption Unit of the Swedish Prosecution Authority and covering the period 2003-2011. The material covers, among others, “crimes other than bribery or taking a bribe”, and embezzlement was reported within the category of other crimes”. In addition, “breach of trust against a principal” is also documented as a self-standing category of reported offences. The study is annexed to the present report.

63. In the context of the self-assessment checklist, the Swedish authorities provided the following statistics (the statistics include both civil servants and private sector employees):

Embezzlement and breach of trust		Year				
Offence code	Decision group	2010	2011	2012		
1001 Embezzlement, gross embezzlement, misappropriation	Preliminary investigation not begun	32	22	10		
1001 Embezzlement, gross embezzlement, misappropriation	Preliminary investigation discontinued	636	554	477		
1001 Embezzlement, gross embezzlement, misappropriation	Prosecution not brought	51	55	68		
1001 Embezzlement, gross embezzlement, misappropriation	Summary imposition of a fine	101	95	222		
1001 Embezzlement, gross embezzlement, misappropriation	Prosecution	620	340	765		
1001 Embezzlement, gross embezzlement, misappropriation	Waiver of prosecution	11	29	3		
1001 Embezzlement, gross embezzlement, misappropriation	Total	1,451	1,095	1,545		
1007 Breach of trust	Preliminary investigation not begun	23	20	17		
1007 Breach of trust	Preliminary investigation discontinued	315	201	242		
1007 Breach of trust	Prosecution not brought	19	21	24		
1007 Breach of trust	Summary imposition of a fine	26	37	49		
1007 Breach of trust	Prosecution	184	327	541		
1007 Breach of trust	Total	567	606	873		

<i>Source: Căbra/Pythia</i>						
<i>Selection status:</i>						
<i>Period: 201012, 201112, 201212</i>						
<i>Decision group: NOTE Responsibility for leading the preliminary investigation is handed over to the investigating authority, Other decisions, closed cases of suspected crime</i>						
<i>Offence code: 1001 Embezzlement, gross embezzlement, misappropriation, 1006 Breach of trust, computer technology, 1007 Breach of trust</i>						
<i>Measures: Established cases of suspected crime</i>						

(b) Observations on the implementation of the article

64. The reviewing experts conclude that Sweden has fully implemented Art. 17 UNCAC.

Article 18 Trading in influence

Subparagraph (a)

Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(a) The promise, offering or giving to a public official or any other person, directly or indirectly, of an undue advantage in order that the public official or the person abuse his or her real or supposed influence with a view to obtaining from an administration or public authority of the State Party an undue advantage for the original instigator of the act or for any other person;

(a) Summary of information relevant to reviewing the implementation of the article

65. Sweden considered that it has partly implemented this provision of the Convention. Sweden has entered a reservation in relation to the Council of Europe Criminal Convention Against Corruption, although no reservation has been made in relation to UNCAC. No additional criminalization of trading in influence is currently under consideration.

66. Sweden fulfils the measures in the subparagraph (a) of article 18 through section 5d of chapter 10 PC. The provision is, however, only applicable in relation to cases of exercise of public authority and public procurement.

Chapter 10, section 5d

A person shall be sentenced for trading in influence to a fine or imprisonment for at most two years if he or she, in other cases than those covered by section 5 a and 5 b,

1. receives, agrees to receive or requests an undue advantage for influencing the decision or measure of a third person in connection with the exercise of public authority or public procurement, or
2. gives, promises or offers to a person an undue advantage for that person to influence the decision or measure of a third person in connection with the exercise of public authority or public procurement.

67. Public procurement is singled out as an activity in Chapter 10, section 5d, PC since trading in influence *per se* has a very wide scope, which could interfere with fundamental rights regarding the freedom of expression. The Swedish legislator has thus tried to narrow it down to the two most punishable situations: in connection with the exercise of public authority or public procurement.

68. During the country visit, it was confirmed that supposed influence is enough.

69. Sweden didn't provide any example of implementation.

70. Regarding the efforts to implement the provision under review, trading in influence was criminalized in relation to public procurement and exercise of public authority on 1 July 2012.

(b) Observations on the implementation of the article

71. The reviewing experts conclude that Sweden has adequately implemented Art. 18(a) UNCAC.

Subparagraph (b)

Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(b) The solicitation or acceptance by a public official or any other person, directly or indirectly, of an undue advantage for himself or herself or for another person in order that the public official or the person abuse his or her real or supposed influence with a view to obtaining from an administration or public authority of the State Party an undue advantage.

(a) Summary of information relevant to reviewing the implementation of the article

72. Sweden considered that it has partly implemented this provision of the Convention.

73. Sweden fulfils the measures in the subparagraph (b) of article 18 through section 5d, of chapter 10 PC (see above). The provision is, however, only applicable in relation to cases of exercise of public authority and public procurement.

(b) Observations on the implementation of the article

74. The reviewing experts conclude that Sweden has adequately implemented Art. 18(b) UNCAC.

Article 19 Abuse of Functions

Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the abuse of functions or position, that is, the performance of or failure to perform an act, in violation of laws, by a

public official in the discharge of his or her functions, for the purpose of obtaining an undue advantage for himself or herself or for another person or entity.

(a) Summary of information relevant to reviewing the implementation of the article

75. Sweden confirmed that it has fully implemented this provision of the Convention.

76. Sweden fulfils the measures described in Article 19 UNCAC through the provision on misuse of office in Chapter 20, section 1, PC and through the passive bribery provision in chapter 10, section 5a.

Chapter 20, section 1:

A person who in the exercise of public authority by act or by omission, intentionally or by through carelessness, disregards the duties of this office, shall be sentenced for misuse of office to a fine or imprisonment for at most two years. If, having regard to the perpetrator's official powers of the nature of his office considered in relation to his exercise of public power in other respects or having regard to other circumstances, the act may be regarded as petty, punishment shall not be imposed.

If a crime mentioned in the first paragraph has been committed intentionally and is regarded as gross, a sentence for gross misuse of office to imprisonment for at least six months and at most six years shall be imposed. In assessing whether the crime is gross, special attention shall be given to whether the offender seriously abused his position or whether the crime occasioned serious harm to an individual or the public sector or a substantial improper benefit.

A member of a decision-making national or municipal assembly shall not be held responsible under the provisions of the first and second paragraphs of this Section for any action taken in their capacity.

Nor shall the provisions of the first and second paragraphs of this Section apply if the crime is subject to a punishment under this or some other Law.

77. The crime can be regarded as petty in relation to the perpetrator's official powers or the nature of his office considered in relation to his exercise of public power in other respects or having regard to other circumstances. Petty offences are not prosecuted because they do not constitute a criminal offence.

78. In assessing whether the crime is gross, special attention shall be given to whether the offender seriously abused his position or whether the crime occasioned serious harm to an individual or the public sector or a substantial improper benefit.

79. A serious abuse of position means that someone seriously abuses the competence accompanying his post. One example given in the preparatory works is that a judge intentionally gives an incorrect verdict, another is when a civil servant lets a conflict of interest interfere with his decision making. The terms "substantial improper benefit" mean that the offence has led to a significant hazardous effect. That effect can be of a pecuniary kind.

80. The exception regarding a member of a decision-making national or municipal assembly in the third paragraph of Chapter 20, section 1 is limited to actions taken as a member of a decision-making national or municipal assembly comprising exclusively of other such members. Full responsibility applies to all members in other assemblies.

81. Sweden didn't provide any example of implementation.
82. After the country visit, the Swedish authorities provided the review team with a study on "Reported Corruption in Sweden: Structure, risk factors and countermeasures" (2013). The study, published by the Swedish National Council for Crime Prevention, describes reported corruption, based on the cases found at the National Anti-corruption Unit of the Swedish Prosecution Authority and covering the period 2003-2011. The material covers, among others, "crimes other than bribery or taking a bribe", and misuse of office was reported within the category of other crimes". The study is annexed to the present report.
83. Trading in influence was criminalized in relation to public procurement and exercise of public authority on 1 July 2012. Sweden never assessed the effectiveness of the measures adopted to criminalize abuse of functions.

(b) Observations on the implementation of the article

84. The reviewing experts conclude that Sweden has fully implemented Art. 19 UNCAC.

Article 20 Illicit Enrichment

Subject to its constitution and the fundamental principles of its legal system, each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, illicit enrichment, that is, a significant increase in the assets of a public official that he or she cannot reasonably explain in relation to his or her lawful income.

(a) Summary of information relevant to reviewing the implementation of the article

85. Sweden indicated that it has not implemented this provision of the Convention.
86. Sweden considers the adoption and implementation of the article would in practice put the burden on the suspect to prove his innocence. This is considered to be incompatible with the presumption of innocence that applies in criminal cases and with the fundamental principle that the burden of proof in criminal cases rests on the prosecution. Therefore, no measures have been taken to implement Article 20 UNCAC into Swedish legislation.

(b) Observations on the implementation of the article

87. The reviewing experts observe that Sweden has not implemented this non-mandatory provision. They conclude, however, that Sweden has fulfilled its obligation to consider implementing Art. 20 UNCAC.

Article 21 Bribery in the private sector

Subparagraph (a)

Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally in the course of economic, financial or commercial activities:

(a) The promise, offering or giving, directly or indirectly, of an undue advantage to any person who directs or works, in any capacity, for a private sector entity, for the person himself or herself or for another person, in order that he or she, in breach of his or her duties, act or refrain from acting;

(a) Summary of information relevant to reviewing the implementation of the article

88. Sweden confirmed that it has fully implemented this provision of the Convention.

89. The Swedish active bribery provision which corresponds to subparagraph (a) of article 21 UNCAC is now regulated in chapter 10, section 5b, PC. The section includes bribery of a person who directs or works for a private sector entity.

Chapter 10, section 5 b

Anyone who gives, promises or offers an undue advantage to a person mentioned in section 5 a, and under circumstances described therein, shall be sentenced for *giving a bribe* to a fine or imprisonment for at most two years.

90. Sweden provided the following example of implementation:

On 27 March 2013 the Court of Appeal for Northern Norrland convicted two people of passive bribery (gross offence) and one person of active bribery (gross offence). The person charged with active bribery ran a waste management company that was a subcontractor to a larger recycling company and had paid bribes to two employees of the recycling company. This person, who was also convicted of a gross bookkeeping offence, was sentenced to one year in prison. The two who had taken the bribe were given a conditional sentence and fines and were also required to pay SEK 100 000 and SEK 200 000 to the State as the forfeiture value of proceeds of crime.

91. After the country visit, the Swedish authorities provided the review team with a study on “Reported Corruption in Sweden: Structure, risk factors and countermeasures” (2013). The study, published by the Swedish National Council for Crime Prevention, describes reported corruption, based on the cases found at the National Anti-corruption Unit of the Swedish Prosecution Authority and covering the period 2003-2011. The study contains a separate chapter on sectors and industries that corruption offences occur, based on the findings of the reported cases. The private sector appears to be the largest sector (34 per cent) regarding the distribution of alleged offenders and consists of a total of 410 perpetrators. The majority are alleged to be bribe givers. The study is annexed to the present report.

92. Sweden already assessed the effectiveness of the measures adopted to criminalize bribery in the private sector. In order to achieve more modern, more efficient and more easily accessible regulations on bribery with clear criteria for criminal liability, the active bribery provision was amended on 1 July 2012.

(b) Observations on the implementation of the article

93. The reviewing experts conclude that Sweden has fully implemented Art. 21(a) UNCAC.

(c) Successes and good practices

94. The reviewing experts noted as a good practice that the Swedish legislation goes beyond the Convention in that it does not require a breach of duty.

Subparagraph (b)

Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally in the course of economic, financial or commercial activities:

(b) The solicitation or acceptance, directly or indirectly, of an undue advantage by any person who directs or works, in any capacity, for a private sector entity, for the person himself or herself or for another person, in order that he or she, in breach of his or her duties, act or refrain from acting.

(a) Summary of information relevant to reviewing the implementation of the article

95. Sweden confirmed that it has fully implemented this provision of the Convention.

96. The Swedish passive bribery provision which corresponds to the subparagraph (b) of article 21 is now regulated in chapter 10, section 5a, PC. The section includes bribery by a person who directs or works for a private sector entity.

Chapter 10, section 5a

Anyone who is employed or performs a function and receives, agrees to receive or requests an undue advantage for the performance of his or her employment or function shall be sentenced for taking a bribe to a fine or imprisonment for at most two years. The same applies to contestants and officials in a contest that is open to public betting, provided that it is an undue advantage for the performance of his or her function in the course of the contest.

The first subsection also applies if the offence was committed before the offender gained a position mentioned therein or after that position was terminated.

The offence of taking a bribe under the first and second subsections is an offence also if the advantage is received, agreed to be received or requested for a third party.

97. After the country visit, the Swedish authorities provided the review team with a study on “Reported Corruption in Sweden: Structure, risk factors and countermeasures” (2013). The study, published by the Swedish National Council for Crime Prevention, describes reported corruption, based on the cases found at the National Anti-corruption Unit of the Swedish Prosecution Authority and covering the period 2003-2011. The study contains a separate chapter on sectors and industries that corruption offences occur, based on the findings of the reported cases. The private sector appears to be the largest sector (34 per cent) regarding the distribution of alleged offenders and consists of a total of 410 perpetrators. The study is annexed to the present report.

(b) Observations on the implementation of the article

98. The reviewing experts conclude that Sweden has fully implemented Art. 21(b) UNCAC.

(c) Successes and good practices

99. The reviewing experts noted as a good practice that the Swedish legislation goes beyond the Convention in that it does not require a breach of duty.

Article 22 Embezzlement of property in the private sector

Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally in the course of economic, financial or commercial activities, embezzlement by a person who directs or works, in any capacity, in a private sector entity of any property, private funds or securities or any other thing of value entrusted to him or her by virtue of his or her position

(a) Summary of information relevant to reviewing the implementation of the article

100. Sweden confirmed that it has fully implemented this provision of the Convention.

101. The Swedish provisions which corresponds to article 22 are regulated in Chapter 10, sections 1, 4 and 5, and chapter 23 section 7 PC. The Swedish legislation does not separate crimes of embezzlement and other breaches of trust committed in the private sector or in the service of the State.

Chapter 10, section 1:

A person who, through a contract or public or private service or a similar situation, has gained possession of property on behalf of another with the obligation to deliver it or account for it, and appropriates the property or otherwise disregards what he has to comply with in order to be able to comply with his obligation, shall, if the act results in gain for him and loss for the owner, be sentenced for embezzlement to imprisonment for at most two years.

Section 4

A person who, in a case other than one provided for earlier in this Chapter, takes any step concerning property in his possession to which the right of ownership or legal security is reserved for, guaranteed to or otherwise belongs to another and by such step the latter is dispossessed of his property or otherwise deprived of his right, shall be sentenced for *unlawful disposal* to a fine or imprisonment for at most two years.

Section 5

A person who, by reason of a position of trust has been given the task of managing another's financial affairs or independently handling an assignment requiring qualified technical knowledge, or exercising supervision over the management of such affairs or assignment, abuses his position of trust and thereby injures his principal, shall be sentenced for breach of faith committed by an agent against his principal to a fine or imprisonment for at most two years. The foregoing does not apply if the crime is punishable under Sections 1-3.

Chapter 23, Section 7:

Punishment provided in this Code for cases where someone procures a gain or appropriates something personally by crime shall be likewise imposed when someone intentionally procures a gain for or appropriates something for another person.

102. Sweden provided the following example of implementation:

On 26 June 2013, Nacka District Court sentenced a bank manager to 2 years and 6 months in prison for breach of trust (gross). The bank manager had given a loan for about SEK 100 million backed by false collateral.

103. After the country visit, the Swedish authorities provided the review team with a study on “Reported Corruption in Sweden: Structure, risk factors and countermeasures” (2013). The study, published by the Swedish National Council for Crime Prevention, describes reported corruption, based on the cases found at the National Anti-corruption Unit of the Swedish Prosecution Authority and covering the period 2003-2011. The material covers, among others, “crimes other than bribery or taking a bribe”, and embezzlement was reported within the category of other crimes”. In addition, “breach of trust against a principal” is also documented as a self-standing category of reported offences. The study is annexed to the present report.

(b) Observations on the implementation of the article

104. The reviewing experts conclude that Sweden has fully implemented Art. 22 UNCAC.

Article 23 Laundering of proceeds of crime

Subparagraphs 1 (a) (i) and (ii)

1. Each State Party shall adopt, in accordance with fundamental principles of its domestic law, such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

- (a) (i) The conversion or transfer of property, knowing that such property is the proceeds of crime, for the purpose of concealing or disguising the illicit origin of the property or of helping any person who is involved in the commission of the predicate offence to evade the legal consequences of his or her action;*
- (ii) The concealment or disguise of the true nature, source, location, disposition, movement or ownership of or rights with respect to property, knowing that such property is the proceeds of crime;*

(a) Summary of information relevant to reviewing the implementation of the article

105. Sweden confirmed that it has fully implemented these provisions of the Convention.

106. Sweden has adopted and implemented the measures in subparagraphs 1(a)(i) and (ii) of article 23 UNCAC through the provisions regulated in chapter 9, sections 6, 6a, 7 and 7a, PC. The main offences criminalising money laundering in Sweden are the offences of money receiving (section 6a, including gross cases) and petty money

receiving (section 7a). The offences of receiving and petty receiving, may, however, also be applicable.

Chapter 9

Section 6 – Receiving

A person who

1. takes possession of something of which another has been dispossessed by a crime, and does so in such a manner that the nature thereof renders its restitution difficult,
 2. procures an improper gain from another's proceeds of crime,
 3. improperly promotes the opportunity for another to take advantage of property emanating from the proceeds of crime, or the value of such property,
 4. assists in the removal, transfer, or sale of property which is derived from the proceeds of crime, or takes some similar measure, with the intention of concealing the origin of property, or
 5. by demand, transfer or other similar means asserts a claim arising from a crime,
- Shall be sentenced for receiving to imprisonment for at most two years.

A person who, in business activities or as part of business activities which are conducted habitually or otherwise on a large scale, acquires or receives something which may reasonably be assumed to have been misappropriated from another person by a crime, and does so in such a manner that the nature thereof renders its restitution difficult, shall be similarly sentenced for receiving.

If the crime referred to in the first or second, paragraph is gross, imprisonment for at least six months and at most six years shall be imposed.

Section 6 a – Money Receiving

A person who

1. improperly promotes the opportunity for another to take advantage of property emanating from the proceeds of crime, or the value of such property,
2. assists in removal, transfer, or sale of property which is derived from the proceeds of crime, or take some similar measure, with the intent of concealing the origin of property

shall be sentenced for money receiving to imprisonment for at most two years.

A person who, in cases other than those mentioned in the first paragraph, improperly participates in removing, transferring, conveying, or taking other measures with property with the intention to conceal that another person has enriched himself or herself through a criminal act, shall also be sentenced for money receiving.

If the crime referred to in the first or second paragraph is gross, imprisonment for at least six months and at most six years shall be imposed.

Section 7 – Petty Receiving

If a crime under Section 6 is considered to be petty, imprisonment for at most six months or a fine shall be imposed for petty receiving. A sentence for petty receiving shall also be imposed on a person who

1. in a case other than that provided for in Section 6, second paragraph, acquires or receives something in such a manner that the nature thereof renders restitution difficult which may reasonably be assumed to have been misappropriated from another person by a crime,
2. in a case as provided for in Section 6, first, paragraph, did not realise, but had reasonable cause to assume that a crime was involved, or

3. in a manner as provided for in Section 6, first, paragraph, point 1, participated in the crime whereby property was misappropriated from another and did not realise, but had reasonable cause to assume, that a crime had been committed.

Section 7 a – Petty Money Receiving

If a crime under Section 6 a) is considered to be petty, imprisonment for at most six months or a fine shall be imposed for petty money receiving.

A sentence for petty money receiving shall also be imposed on a person who

1. in a case as provided for in Section 6 a, first paragraph, did not realise, but had reasonable cause to assume that a crime was involved, or
2. in a case provided for in Section 6 a, second paragraph, did not realise, but had reasonable cause to assume that another person had enriched himself or herself through a criminal act.

107. A new Act on Penalties for Money Laundering Offences will enter into force on 1 July 2014. The new Act comprises provisions on money laundering offences and on the seizure and forfeiture of laundered property. The “all crimes” approach will be preserved. The criminalisation will also cover “self-laundering”, attempt, preparation and conspiracy to commit a money laundering offence (which is not petty), as well as complicity (aiding, abetting, facilitating and counselling the commission of the offence) (see Government Bill prop. 2013/14:121 <http://www.regeringen.se/sb/d/17854/a/234841>).

108. No comprehensive statistics are being kept over all such cases, investigations and prosecutions. However, the following statistics were provided:

In 2012 there were a total of 137 convictions concerning money receiving, 29 convictions for gross cases of money receiving and 16 convictions for petty money receiving.

In 2011 there were a total of 166 convictions concerning money receiving, 38 convictions for gross cases of money receiving and 6 convictions for petty money receiving.

For statistics with regard to convictions for the years 2004-2010, see the report by the Committee of Inquiry on Money Laundering, section 5.3 on page 143 <http://www.regeringen.se/content/1/c6/18/82/86/e4194c3b.pdf>

Translation of terms in the tables of statistics:

Penninghäleri – Money receiving

Penninghäleri, grovt brott – Money receiving, gross

Penninghäleriförseelse – Petty money receiving

Penninghäleri som huvudbrott – Money receiving as the main offence

Penninghäleriförseelse som huvudbrott – Petty money receiving as the main offence

Ålder och kön – Age and sex

Kvinnor – Women

Män – Men

109. Sweden didn't provide any example of implementation.

(b) Observations on the implementation of the article

110. The reviewing experts conclude that Sweden has fully implemented Art. 23(1)(a)(i) and (ii) UNCAC.

Subparagraph 1 (b) (i)

1. Each State Party shall adopt, in accordance with fundamental principles of its domestic law, such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(b) Subject to the basic concepts of its legal system:

(i) The acquisition, possession or use of property, knowing, at the time of receipt, that such property is the proceeds of crime;

(a) Summary of information relevant to reviewing the implementation of the article

111. Sweden confirmed that it has fully implemented this provision of the Convention.

112. Sweden referred to the provisions quoted under Art. 23(1)(a).

113. Moreover, Sweden would like to draw attention to the fact that the Swedish criminalisation of money laundering has been considered to be largely compliant (LC) by the Financial Action Task Force (FATF) in the last mutual evaluation. Sweden has also been removed from regular follow-up of that evaluation <http://www.fatf-gafi.org/countries/s-t/sweden/>.

114. To the extent that the possession of proceeds of crime or the acquisition or use of such property can be considered to improperly promote the opportunity for another to take advantage of property emanating from the proceeds of crime (which would normally be the case), or the value of such property each of the described types of conduct is covered by the Swedish Penal Code, Chapter 9, section 6 a), first paragraph, subsection 1 of the Swedish offence of *money receiving*. In cases where the proceeds emanate from e.g., a tax crime, the described behaviour could also be covered by the second paragraph of the same provision. In cases where the person handling the property did not realise, but had reasonable cause to assume that a crime was involved, the provision in Chapter 9, subsection 7 a) could be used.

(b) Observations on the implementation of the article

115. The reviewing experts conclude that Sweden has fully implemented Art. 23(1)(b)(i) UNCAC.

Subparagraph 1 (b) (ii)

1. Each State Party shall adopt, in accordance with fundamental principles of its domestic law, such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(b) Subject to the basic concepts of its legal system:

(ii) *Participation in, association with or conspiracy to commit, attempts to commit and aiding, abetting, facilitating and counselling the commission of any of the offences established in accordance with this article.*

(a) Summary of information relevant to reviewing the implementation of the article

116. Sweden confirmed that it has fully implemented this provision of the Convention.

117. Sweden has adopted and implemented the measures in the subparagraph 1 (b) (ii) of article 23 UNCAC through the provisions regulated in chapter 9, section 11 and chapter 23, sections 1-4 PC.

Chapter 9

Section 11 – Attempt, preparation and conspiracy to commit

An attempt or preparation to commit fraud, gross fraud, extortion, usury, gross receiving or gross money receiving and also conspiracy to commit gross receiving or gross money receiving shall be punished in accordance with the provisions of Chapter 23. The provisions of Chapter 23, Section 3, however, shall not apply to attempt at extortion.

A person who, in order to defraud an insurer, or otherwise with fraudulent intent, inflicts bodily harm on himself or on another or harm to property of his own or of another, shall be sentenced for preparation to commit fraud or gross fraud. The same shall apply if a person with the intent previously mentioned endeavours to bring about such harm. If, before the harm has been inflicted, he has voluntarily refrained from carrying out the act, he shall be free from criminal responsibility. (Law 2001:780)

Chapter 23 - On Attempt, Preparation, Conspiracy and Complicity

Section 1 – Attempt

A person who has begun to commit a crime without bringing it to completion, shall, in cases where specific provisions exist for the purpose, be sentenced for attempt to commit crime if there was a danger that the act would lead to the completion of the crime or such danger had been precluded only because of fortuitous circumstances.

Punishment for attempt shall be at most what is applicable to a completed crime and not less than imprisonment if the least punishment for the completed crime is imprisonment for two years or more.

Section 2 – Preparation and Conspiracy

A person who, with the intention of committing or promoting a crime, presents or receives money or anything else as pre-payment or payment for the crime or who procures, constructs, gives, receives, keeps, conveys or engages in any other similar activity with poison, explosive, weapon, picklock, falsification tool or other such means, shall, in cases where specific provisions exist for the purpose, be sentenced for preparation of crime unless he is guilty of a completed crime or attempt.

In specially designated cases a sentence shall also be imposed for conspiracy. By conspiracy is meant that someone decides on the act in collusion with another as well as that someone undertakes or offers to execute it or seeks to incite another to do so.

Punishment imposed for preparation or conspiracy shall be less than the highest and may be less than the lowest limit applicable to the completed crime. No greater punishment than imprisonment for two years may be imposed unless imprisonment for eight or more years can follow for the completed crime. Punishment shall not be imposed if the danger of the crime being completed was slight.

Section 4 – Aiding and Abetting

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 person. The provisions of this paragraph do not apply if the law provides otherwise in special cases.

118. The participation in, aiding and abetting, facilitating and counselling the commission of an offence is regulated in Chapter 23, section 4 of the Penal Code and covers the participation, aiding and abetting, facilitating and counselling in the commission of any of the offences in the Penal Code, i.e., including the crimes of money receiving and petty money receiving. It also covers offences punishable with imprisonment under any other law.

119. In the Swedish criminal justice system preparatory stages of crimes (*attempt, preparation and conspiracy*) are criminalised in relation to more severe forms of offences, where the preparatory act is in itself a threat to society and not only forms a part of a plan to commit a crime. For these reasons and considering that conspiracy and preparation occur at earlier stages in a criminal plan, they are criminalised to a lesser extent than attempt; conspiracy to an even lesser extent than preparation.

120. It should further be noted that money laundering is always preceded by a predicate offence; *conspiracy* to commit the crime of money laundering (presently money receiving), can therefore frequently be an act which is punishable as participation in the predicate crime.

121. The new Act on Penalties for Money Laundering Offences, which will enter into force on 1 July 2014, criminalises attempt, preparation and conspiracy to commit a money laundering offence (which is not petty), as well as complicity (aiding, abetting, facilitating and counselling the commission of the offence).

122. Sweden did not provide any example of implementation.

(b) Observations on the implementation of the article

123. The reviewing experts conclude that Sweden has fully implemented Art. 23(1)(b)(ii) UNCAC.

Subparagraphs 2 (a) and (b)

2. For purposes of implementing or applying paragraph 1 of this article:

(a) Each State Party shall seek to apply paragraph 1 of this article to the widest range of predicate offences;

(b) Each State Party shall include as predicate offences at a minimum a comprehensive range of criminal offences established in accordance with this Convention;

(a) Summary of information relevant to reviewing the implementation of the article

124. Sweden confirmed that it has fully implemented this provision of the Convention.

125. Sweden applies an “all crimes approach” with reference to which crimes can be predicate offences to a money laundering offence. That is, any crime (including tax crimes) which by its design can generate proceeds, can constitute predicate offences to receiving and money receiving. That means that e.g. theft, fraud, embezzlement, all forms of bribery, illegal gambling and trafficking can constitute predicate offences. Tax crimes cannot be a predicate offence to receiving but to money receiving if committed to hide enrichment through criminal conduct.

126. Sweden didn’t provide any example of implementation.

127. No comprehensive statistics are being kept over all such cases, investigations and prosecutions.

(b) Observations on the implementation of the article

128. The reviewing experts conclude that Sweden has fully implemented Art. 23(2)(a) and (b) UNCAC.

Subparagraph 2 (c)

2. For purposes of implementing or applying paragraph 1 of this article:

(c) For the purposes of subparagraph (b) above, predicate offences shall include offences committed both within and outside the jurisdiction of the State Party in question. However, offences committed outside the jurisdiction of a State Party shall constitute predicate offences only when the relevant conduct is a criminal offence under the domestic law of the State where it is committed and would be a criminal offence under the domestic law of the State Party implementing or applying this article had it been committed there;

(a) Summary of information relevant to reviewing the implementation of the article

129. Sweden confirmed that it has fully implemented this provision of the Convention.

130. For the application of the provisions in chapter 9, sections 6-7a PC, it does not matter whether the predicate offence was committed within or outside Swedish jurisdiction. Swedish jurisdiction over such offences is regulated in chapter 2 PC.

131. According to section 2, paragraph 2 of the new Act on Penalties for Money Laundering Offences, the Act covers a crime under the law of another jurisdiction in so far as the act corresponds to a crime under Swedish law.

132. Sweden didn’t provide any example of implementation.

(b) Observations on the implementation of the article

133. The reviewing experts conclude that Sweden has fully implemented Art. 23(2)(c) UNCAC.

Subparagraph 2 (d)

2. For purposes of implementing or applying paragraph 1 of this article:

(d) Each State Party shall furnish copies of its laws that give effect to this article and of any subsequent changes to such laws or a description thereof to the Secretary-General of the United Nations;

(a) Summary of information relevant to reviewing the implementation of the article

134. Sweden furnished copies of its laws to the Secretary-General of the United Nations as prescribed above.

(b) Observations on the implementation of the article

135. The reviewing experts conclude that Sweden has fully implemented Art. 23(d) UNCAC.

Subparagraph 2 (e)

2. For purposes of implementing or applying paragraph 1 of this article:

(e) If required by fundamental principles of the domestic law of a State Party, it may be provided that the offences set forth in paragraph 1 of this article do not apply to the persons who committed the predicate offence.

(a) Summary of information relevant to reviewing the implementation of the article

136. The new Act on Penalties for Money Laundering Offences which enters into force on 1 July 2014 covers “self-laundering”.

(b) Observations on the implementation of the article

137. The reviewing experts observe that, in compliance with Art. 23(e) UNCAC, Sweden is going to punish self-laundering under the new Act on Penalties for Money Laundering Offences, which will enter into force on 1 July 2014.

Article 24 Concealment

Without prejudice to the provisions of article 23 of this Convention, each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally after the commission of any of the offences established in accordance with this Convention without having participated in such offences, the concealment or continued retention of property when the person involved knows that such property is the result of any of the offences established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

138. Sweden confirmed that it has fully implemented this provision of the Convention.

139. Sweden refers to the answer on Art. 23(1)(a)(i) above. Concealment is not treated differently from money laundering.

(b) Observations on the implementation of the article

140. The reviewing experts conclude that Sweden has fully implemented Art. 24 UNCAC.

Article 25 Obstruction of Justice

Subparagraph (a)

Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(a) The use of physical force, threats or intimidation or the promise, offering or giving of an undue advantage to induce false testimony or to interfere in the giving of testimony or the production of evidence in a proceeding in relation to the commission of offences established in accordance with this Convention;

(a) Summary of information relevant to reviewing the implementation of the article

141. Sweden confirmed that it has fully implemented this provision of the Convention.

142. Sweden has adopted and implemented the measures in subparagraph (a) of article 25 UNCAC through the provisions in chapter 15, sections 1 (perjury), 2 (untrue statement), 3 (careless statement), 4a false statement before a Nordic court), 4b (untrue statement before an international court) and 8 (tampering with evidence), and chapter 17 sections 1 (violence or threat to public servant), 2 (outrageous conduct toward a public servant), 10 (interfering in an judicial matter) and 11 (protecting a criminal) PC.

143. Although there is no stand-alone offence, the offering or giving of an undue advantage to induce false testimony or the production of evidence in a proceeding is punishable under the provisions in chapter 23 on Attempt, Preparation, Conspiracy and Complicity, read together with the provisions in chapter 15, on Perjury, False Prosecution and Other Untrue Statements.

Chapter 15

Section 1

A person who, under legal oath, gives untrue information or withholds the truth, shall be sentenced for *perjury* to imprisonment for at most four years or, if the crime is petty, to a fine or to imprisonment for at most six months. If the crime is gross, imprisonment for at least two and at most eight years shall be imposed. In assessing whether the crime is gross, special attention shall be paid to whether it was done with the intent that an innocent person be convicted of a serious crime or that very considerable harm was done to someone.

Section 2

A person who, during a hearing in court proceedings, after declaring that he will tell the truth gives untrue information or withholds the truth, shall be sentenced for *untrue*

statement by a party to imprisonment for at most two years or, if the crime is petty, to a fine or imprisonment for at most six months.

Section 3

A person who commits an act, as described in Section 1 or 2, through gross negligence, shall be sentenced for *careless statement*, to a fine or imprisonment for at most six months.

Section 4 a

A person who under liability to punishment gives untrue information or withholds the truth from a court in Denmark, Finland, Iceland or Norway, shall be sentenced for *false statement before a Nordic court*, to a sanction as provided in Section 1, if the testimony would have been given under legal oath in this Realm, and in accordance with Section 2 in the case of a testimony by a party to a civil case. If the act is committed through gross negligence, the person shall be sentenced for *careless statement before a Nordic court* to a sanction as provided in Section 3.

Section 4 b

If a witness or an expert under oath before the European Court of Justice, before the Tribunal of that Court or before the European Free Trade Area Court (the EFTA Court) or the International Criminal Court, gives untrue information or withholds the truth, a sentence for *untrue statement before an international court* shall be imposed in accordance with Section 1, provided the statement would have been given under legal oath in this Realm. If the act is committed through gross negligence, a sentence for *careless statement before an international court* shall be imposed in accordance with Section 3.

Section 8

A person who tampers with or removes evidence with the intent that an innocent person be convicted, or with such intent invokes false evidence, shall be sentenced for *tampering with evidence* to imprisonment for at most two years or, if the crime is petty, to a fine or imprisonment for at most six months.

Chapter 17

Section 1

A person who, by violence or threat of violence, attacks anyone in his exercise of public authority or compels him to perform or to prevent him from performing an official act or for the purpose of taking revenge for such act, shall be sentenced for *violence or threat to public servant* to imprisonment for at most four years or, if the crime is petty, to a fine or imprisonment for at most six months. This also applies if a person assaults someone who has previously exercised public authority for something the latter did or failed to do while in office.

Section 2

A person who, otherwise than stated in Section 1, in order to compel or prevent someone in his exercise of public authority or in order to take revenge for an official action, wrongfully engages in an act which causes such person suffering, injury or inconvenience, or threatens to have such consequence, shall be sentenced for *outrageous conduct toward a public servant* to a fine or imprisonment for at most six months. If the crime is gross, imprisonment for at most four years shall be imposed.

Section 10

A person who, by violence or threat of violence, assaults someone because he has, in court or before other authority, filed a complaint, pleaded a cause, testified, or else made a

statement at a hearing, or to prevent him from so doing, shall be sentenced for *interference in a judicial matter* to a fine or to imprisonment for at most two years. The same shall apply to a person who by some other act causes suffering, injury or inconvenience, or by threat of such act, assaults someone because the latter testified or made some other statement at an official hearing, or does so to prevent the making of such a statement. If the crime is gross, imprisonment for at least six months and at most six years shall be imposed.

Section 11

A person who hides someone who has committed a crime, helps him to escape, destroys evidence concerning the crime, or on other like ways thwarts its discovery or prosecution, shall be sentenced for *protecting a criminal* to a fine or to imprisonment for at most one year. If the crime is gross, imprisonment for at least six months and at most four years shall be imposed. A person who did not realize but had reasonable grounds to assume that the other was a criminal, shall be sentenced to pay a fine. No sentence shall be imposed if having regard to the relationship of the accused to the criminal and other circumstances the crime is considered to be petty.

- 144. Sweden didn't provide any example of implementation.
- 145. No comprehensive statistics are being kept over all such cases, investigations and prosecutions.

(b) Observations on the implementation of the article

- 146. The reviewing experts observed that the provisions listed do not seem to deal with the requirements of the article in relation to the "giving of an undue advantage to induce false testimony". During the country visit, it was explained that such behaviour should be covered by the general provisions in chapter 23 on attempt, preparation, conspiracy and complicity. The perpetrator would be considered as an instigator to the offence in chapter 15, section 2. According to a judge interviewed during the country visit, the instigator could even get a higher penalty than the person guilty of the offence in chapter 15, section 2.
- 147. The reviewing experts conclude that Sweden has fully implemented Art. 25(a) UNCAC. They observe, however, that it could be useful to criminalize the conduct referred to in Art. 25(a) UNCAC in a separate stand-alone offence and not only as instigation to an offence, so that the perpetrator can be punished as author of the crime and not merely as an accessory to the perpetrator of the main offence.

(c) Recommendation

- 148. Consider including a provision in the national legislation establishing a specific stand-alone offence that explicitly covers the offering or giving of an undue advantage to induce false testimony or the production of evidence in a proceeding.

Subparagraph (b)

Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(b) The use of physical force, threats or intimidation to interfere with the exercise of official duties by a justice or law enforcement official in relation to the commission of offences established in accordance with this Convention. Nothing in this subparagraph shall prejudice the right of States Parties to have legislation that protects other categories of public official.

(a) Summary of information relevant to reviewing the implementation of the article

149. Sweden confirmed that it has fully implemented this provision of the Convention.

150. Sweden has implemented the measures in subparagraph (b) of article 25 UNCAC through provisions regulated in chapter 17 sections 1, 2, , 10 and 11 PC (see above).

(b) Observations on the implementation of the article

151. The reviewing experts conclude that Sweden has fully implemented Art. 25(b) UNCAC.

Article 26 Liability of legal persons

Paragraphs 1 and 2

1. Each State Party shall adopt such measures as may be necessary, consistent with its legal principles, to establish the liability of legal persons for participation in the offences established in accordance with this Convention.

2. Subject to the legal principles of the State Party, the liability of legal persons may be criminal, civil or administrative.

(a) Summary of information relevant to reviewing the implementation of the article

152. Sweden confirmed that it has fully implemented these provisions of the Convention.

153. Under Swedish legislation, legal persons cannot commit crimes. However, corporate fines can be imposed on a legal person if a crime has been committed in the course of business of the legal person under the following conditions: (i) if the legal person has not done what could reasonably be required of it for prevention of the crime; or (ii) if the crime was committed by a person who has the leading position based on a power of representation of the entrepreneur or an authority to take decisions on behalf of the legal person; or (iii) the crime was committed by a person who otherwise has had a special responsibility of supervision or control of the business (Chapter 36, section 7 PC).

Corporate Fines Section 7

For a crime committed in the exercise of business activities the entrepreneur shall, at the instance of a public prosecutor, be ordered to pay a corporate fine if it for the crime is prescribed a more severe punishment than a summary fine and

1. the entrepreneur has not done what could reasonably be required of him for prevention of the crime, or
2. the crime has been committed by
 - a) a person who has a leading position based on a power of representation of the entrepreneur or an authority to take decisions on behalf of the entrepreneur, or
 - b) a person who otherwise has had a special responsibility of supervision or control of the business.

The provisions of the first paragraph shall not apply if the crime was directed against the entrepreneur.

Section 8

A corporate fine shall consist of at least five thousand Swedish crowns and at most ten million Swedish crowns.

Section 9

In determining the amount of a corporate fine, taking account of the scale of punishment for the crime, special consideration shall be given to the damage or danger occasioned by the crime, the extent of the crime and to its relation to the business activity.

Reasonable account shall also be taken to whether the entrepreneur previously has been ordered to pay a corporate fine.

Section 10

A corporate fine may be set at less than it should have been under the provisions of Section 9:

1. if the crime involves some other payment liability or a special legal effect for the entrepreneur and the cumulative reaction on the crime would be disproportionately severe,
2. if the entrepreneur to the best of his ability has attempted to prevent, remedy or limit the harmful consequences of the crime,
3. if the entrepreneur voluntarily gave himself up, or
4. if there are other special grounds for mitigating the corporate fine.

If it is especially called for with regard to any of the circumstances mentioned in the first paragraph, a corporate fine may be remitted.

Section 10 a

If a crime, which can entail a motion for a corporate fine,

1. has been committed by negligence, and
2. cannot be supposed to entail any other punishment than a fine the crime may be prosecuted by a public prosecutor only if prosecution is called for in the public interest.

154. Under Swedish law, corporate fines are considered as a special legal consequence of a crime (another consequence under law than punishment or payment of damages). Even if legal persons cannot commit a crime under Swedish law, corporate fines are regulated in the Penal Code and an action to pay corporate fines is handled in criminal proceedings, i.e. the corporate fines regime is part of the criminal law.

155. For purposes of dual criminality, corporate liability would be considered criminal law.

156. There is no central register of companies on which corporate fines have been imposed. However, it is possible to find all cases in which corporate fines proceedings have been initiated in the Cåbra system (even though the actual judgment is no longer in Cåbra once

it has gained legal force). It is possible to search in Cåbra by a company's organization registration number and name.

157. Sweden assessed the effectiveness of the measures adopted to establish liability of legal persons: The Swedish legal framework on corporate fines have assessed both nationally and on an international level (including several evaluations by the EU Commission). The provisions were last amended in 2006 when new legislation aimed at increasing the efficiency of the provisions by *inter alia* widening the scope and increasing the size of the fine, entered into force.

For Swedish assessments see e.g. Governments bills 2003/04:12 (page 38), 2005/06:209 (page 39), 2006/07:66 (page 31), 2008/09:25 (page 29), 2009/10:78 (pages 33–34) and 2009/10:152 (page 46). Unfortunately there are no English translations of these documents. For an international assessment see e.g. EU Commission COM (2001) 771 and COM (2011) 309:

COM (2001) 771 subsection 2.2.6 second paragraph

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2001:0771:FIN:EN:PDF>

COM (2011) 309 subsection 2.4 third paragraph

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0309:FIN:EN:PDF>

158. There are a Memorandum produced by the Ministry of Justice (Ds 2001:69 Företagsbot) and a Government Bill (prop. 2005/06:59 Företagsbot) that deal with this issue. Neither of these documents has been translated to English. In short, the 2006 amendments aimed at making the corporate fines sanction more efficient and to increase its use in practice for crimes committed within the framework of business activities and thereby increasing the incentive for an entrepreneur to organise his business in such a way so that the risk for offences is brought down to a minimum. That the liability of legal persons is not secondary to that of natural persons is also expressed in Section 10 a which provides that if a crime has been committed through negligence and cannot be supposed to lead to another punishment than a fine, the crime may be prosecuted by a public prosecutor only if prosecution is called for in the public interest. This means that if prosecution is not called for in the public interest, corporate fines will be the only sanction and if prosecution is called for in the public interest, both sanctions may be imposed.

A review of the legal framework on liability for legal persons

159. 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.
160. The Inquiry will *inter alia* be tasked to increase the maximum level of fines for legal persons (recommendation 2). The Inquiry will also be tasked to analyze 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).
161. According to plan, the Inquiry will be appointed in the fall of 2014.

162. Corporate fines are applied relatively often in the case of environmental offences and sometimes for economic or financial offences. With specific regard to corruption cases, corporate fines have been imposed for active bribery in one case.

In 2012, prosecutors issued 419 summary fines with corporate fines. In addition, there are a number of claims for corporate fines lodged with courts.

163. Sweden presented two examples of case law:

1.

Judgment of Solna District Court of 11 May 2012. The mayor was the CEO of Arenabolaget, the company in which the municipality was one of five partners. He was convicted of receiving compensation in his capacity as consultant to the company for tasks that were part of his duties as mayor. Those prosecuted for bribery were representatives of other partners in the company and had, at the request of the mayor, approved his request for remuneration.

The District Court convicted the mayor of taking a bribe but acquitted those charged with bribery. The result of this was that the company had paid bribes, but because no intent on the part of those who approved the payments (i.e. those charged with bribery) could be proved, corporate fines were dismissed because it was not considered that an offence had been committed within the company.

2.

In the foreign bribery case mentioned under para. 49 above (judgment of Solna District Court of 17 July 2013), the prosecutor presented a claim for a corporate fine against a company that, according to the prosecutor, had been used by the party accused of bribery. The District Court dismissed the claim for a corporate fine, referring to the fact that at the time, the party accused of bribery was not a representative of the company in question, i.e. there was not a sufficient connection between the company and the offence in this case.

164. According to the Public Procurement Act (Chapter 10, Section 1), while there is no registry in place whereby names of the legal persons can be tracked down, companies can be excluded from public procurement with regard to the specific procurement at hand. There is, however, no general ban to participate in public procurements.

165. Sweden also points out that according to the new provision in chapter 10, section 5e, PC, negligent financing of corruption can be punished.

(b) Observations on the implementation of the article

166. The reviewing experts observed that “corporate fines” are triggered by somebody in a position of authority and asked about offences committed through third party agents, lower-level employees, intermediaries, etc. Sweden clarified that Corporate fines are not always triggered by a person in position of authority. If the legal person/entrepreneur has not done what could reasonably be required of him for prevention of the crime, corporate fines can be imposed for all crimes committed in the exercise of the business activities regardless of who has committed the crime, i.e. corporate fines could be imposed on a legal person also in relation to crimes committed by e.g. lower-level employees.

167. Sweden indicated that “normally, an action against the legal person and the natural person takes place in the same proceeding”. However, Sweden clarified that a conviction of the natural person who perpetrated the offence is not needed to establish corporate

liability. If the prosecutor can prove that a crime has been committed corporate fines can be imposed even without a conviction of the natural person who has committed the crime. This means that corporate fines can be imposed even if the prosecutor cannot prove who the specific perpetrator is as long as he can prove that it must have been someone within the organisation of the entrepreneur. It also means that corporate fines can be imposed on the entrepreneur if e.g. the natural person who committed the crime has died. It is thus possible that only the legal person is prosecuted in court.

168. During the county visit, a judge stated that the liability of legal persons may be a weak point in the Swedish legislation. Moreover, the prosecutors did not use the existing possibilities to the full extent. It was also said, however, that the imputation of liability is easier in environmental cases and that in corruption cases, corporate liability does not work well for structural reasons.
169. The reviewing experts conclude that the current regime of administrative liability does not seem to be very effective. They encourage Sweden to make the system of administrative fines more workable.

Paragraph 3

3. Such liability shall be without prejudice to the criminal liability of the natural persons who have committed the offences.

(a) Summary of information relevant to reviewing the implementation of the article

170. Sweden confirmed that it has fully implemented this provision of the Convention.
171. Imposing corporate fines on a legal person does not prevent legal action from being taken against the natural person who has committed the crime. Normally, an action against the legal person and the natural person takes place in the same proceedings.
172. Conversely, a conviction of the natural person who perpetrated the offence is not needed to establish corporate liability. If the prosecutor can prove that a crime has been committed, corporate fines can be imposed even without a conviction of the natural person who has committed the crime.

(b) Observations on the implementation of the article

173. The reviewing experts conclude that Sweden has fully implemented Art. 26(3) UNCAC.

Paragraph 4

4. Each State Party shall, in particular, ensure that legal persons held liable in accordance with this article are subject to effective, proportionate and dissuasive criminal or non-criminal sanctions, including monetary sanctions.

(a) Summary of information relevant to reviewing the implementation of the article

174. Sweden confirmed that it has fully implemented this provision of the Convention.

175. The corporate fines amount to between SEK 5000 and 10 000 000, see chapter 36, section 8, PC. Furthermore all economic advantages derived by the legal person from the crime can be confiscated see chapter 36, section 4, PC. Other sanctions such as exclusion from public procurements can also be imposed on a legal person for crimes committed in course of its business.

176. The Swedish legal framework on corporate fines have assessed both nationally and on an international level (including several evaluations by the EU Commission). The provisions were last amended in 2006 when new legislation aimed at increasing the efficiency of the provisions by inter alia widening the scope and increasing the size of the fine, entered into force.

(b) Observations on the implementation of the article

177. The reviewing experts noted that the maximum amount of the corporate fines, even after the 2006 amendments, amount to little more than €1 million. They questioned the deterrent effect of such fines for large companies.

178. During the country visit, Sweden explained that a company convicted of corruption would not only have to pay a fine but also suffer a reputational damage. In that respect, the court can issue a press release with details of the case. Nevertheless, the reviewing experts thought that arguments in favour of lower sanctions were less relevant in case of legal persons. In order to ensure that legal persons held liable in accordance with this article are subject to effective, proportionate and dissuasive fines, they recommend that such fines be expressed as a percentage of the company's turnover. The maximum fine could be set at 10% of the annual world-wide turnover of the company (cf. e.g. the 10% ceiling in the EU competition Regulation 1/2003). In the alternative, a much higher upper limit (e.g. SEK 100 million) is recommended.

(c) Recommendations

179. Review the provisions on liability of legal persons to ensure their effectiveness. Ensure that the fines imposed on legal persons are dissuasive and commensurable with those imposed for other economic offences, such as competition offences

180. In that respect, the reviewing experts recommend that corporate fines and the maximum fine should be expressed as a percentage of the company's turnover or, alternatively, that the maximum amount be increased substantially.

Article 27 Participation and attempt

Paragraph 1

1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as a criminal offence, in accordance with its domestic law, participation in any capacity such as an accomplice, assistant or instigator in an offence established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

181. Sweden confirmed that it has fully implemented this provision of the Convention.

182. The general rule about participation is regulated in chapter 23, section 4, PC.

Chapter 23, section 4

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. Punishment defined in law for the act of manager, debtor or other person in a special position shall also be imposed on anyone who was an accomplice to the act of such person.

The provisions of this paragraph do not apply if the law provides otherwise in special cases.

183. Sweden explained that the expression “furthered it by advice or deed” is used to cover both material and intellectual contribution to an offence.

184. Sweden referred to the above-mentioned (para. 33) Supreme Court case (NJA 2012 p. 307) and two older Supreme Court cases of complicity in bribery, NJA 1993 p. 539 and NJA 1956 p. 445. After the country visit, Sweden provided summaries of three more Supreme Court cases:

NJA 1985:747

A contractor who carried out transportation on behalf of a haulage firm received loading pallets from the customers of the firm, which he neglected to account for. The issue in the case was whether he gained possession of the pallets under such conditions that the prerequisite for embezzlement according to Chapter 10, Section 1 of the Penal Code was met.

NJA 1998:583

The issue in the case was what significance a personal guarantee has for criminal liability and liability to pay damages for embezzlement.

NJA 2011:524

An employee who was authorised to make payments by means of withdrawal from his employers' bank account transferred money to his own bank account to finance gambling. The issue in the case was whether a bank account could, since a bank account is not physical property, be held in possession in the way stipulated in Chapter 10, Section 1 of the Penal Code and whether the accused could therefore be liable for embezzlement.

(b) Observations on the implementation of the article

185. The reviewing experts conclude that Sweden has fully implemented Art. 27(1) UNCAC.

Paragraph 2

2. Each State Party may adopt such legislative and other measures as may be necessary to establish as a criminal offence, in accordance with its domestic law, any attempt to commit an offence established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

186. Sweden confirmed that it has fully implemented this provision of the Convention.

187. The general rule about attempts is regulated in chapter 23, section 1, PC. Sweden has criminalized the attempt of almost all the crimes mentioned in the Convention. However, in many cases petty crimes are excluded. Nor can a person be sentenced for attempt to misuse of office.

Chapter 23, section 1:

A person who has begun to commit a crime without bringing it to completion, shall, in cases where specific provisions exist for the purpose, be sentenced for attempt to commit crime, if there was a danger that the act would lead to the completion of the crime or such danger has been precluded only because of fortuitous circumstances.

Punishment for attempt shall be at most what is applicable to a completed crime and not less than imprisonment if the least punishment for the completed crime is imprisonment for two years or more.

(b) Observations on the implementation of the article

188. During the country visit, the reviewing experts enquired whether it was possible to attempt the bribery offences. Sweden confirmed that attempt does not exist with regard to the giving and taking of bribes as the offence is, so to speak, a completed offence at the time it is attempted. If, for instance, a letter or mail is sent off but never reaches its addressee, it was thought that the offence would still be completed because the offer does not have to reach the addressee. Attempted embezzlement or breach of trust are in themselves punishable offences but there is no good case-law on this.

189. The reviewing experts conclude that Sweden has adequately implemented Art. 27(2) UNCAC.

Paragraph 3

3. Each State Party may adopt such legislative and other measures as may be necessary to establish as a criminal offence, in accordance with its domestic law, the preparation for an offence established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

190. Sweden confirmed that it has fully implemented this provision of the Convention.

191. The general rule about preparation is regulated in chapter 23, section 2, PC. The section requires that the preparation of the crime is specially mentioned in the chapter that criminalizes the crime. Sweden has criminalized the preparation of some of the crimes mentioned in the Convention. In many cases petty crimes are excluded. Nor can a person be sentenced for preparation of misuse of office.

Chapter 23, section 2:

A person who, with the intention of committing or promoting a crime, presents or receives money or anything else as pre-payment or payment for the crime or who procures, constructs, gives, receives, keeps, conveys or engages in any other similar activity with poison, explosive, weapon, picklock, falsification tool or other such means, shall, in cases where specific provisions exist for the purpose, be sentenced for preparation of the crime unless he is guilty of a completed crime or attempt.

In specially designated cases a sentence shall also be imposed for conspiracy. By conspiracy is meant that someone decides on the act in collusion with another as well as that someone undertakes or offers to execute it or seeks to incite another to do so.

Punishment imposed for preparation or conspiracy shall be less than the highest and may be less than the lowest limit applicable to the completed crime. No greater punishment than imprisonment for two years may be imposed unless imprisonment for eight or more years can follow for the completed crime. Punishment shall not be imposed if the danger of the crime being completed was slight.

(b) Observations on the implementation of the article

192. The reviewing experts conclude that Sweden has adequately implemented Art. 27(3) UNCAC.

Article 28 Knowledge, intent and purpose as elements of an offence

Knowledge, intent or purpose required as an element of an offence established in accordance with this Convention may be inferred from objective factual circumstances.

(a) Summary of information relevant to reviewing the implementation of the article

193. Sweden confirmed that it has fully implemented this provision of the Convention.
194. Knowledge, intent or purpose may be inferred from objective factual circumstances according to the fundamental principle of free submission and assessment of evidence in the Swedish Code of Judicial Procedure. This means that the parties in legal proceedings may in principle refer to all the evidence that they can produce (free submission of evidence) and that the strength of the evidence is evaluated freely by the court (free assessment of evidence).
195. The free submission and assessment of evidence is a fundamental principle in the Swedish Code of Judicial Procedure, together with the principles of directness and oral presentation. Together, these principles form the foundation of the procedural system and influence the way the system has been shaped. As a main rule, the prosecutor and the

defence decide what evidence they would like to present in court. The court shall assess everything that has occurred, in accordance with the principles mentioned, and determine what has been proved in the case. Anything that may be of value as evidence in a case may, in principle, be presented in court. Accordingly, there is no general prohibition on using evidence that has been obtained in contravention of the law. Instead, the circumstances under which the evidence has been collected affect the assessment. Evidence obtained in violation of human rights or other procedural safeguards would certainly be afforded reduced or none evidential value. It should also be noted that there is transparency in the assessment of the evidence – all evidence that has been presented has to be assessed by the court and the assessment has to be articulated in the judgment, which is a public document.

196. The most important reason behind the principle of free submission and assessment of evidence is the interest in having courts that deliver just and materially correct judgments. Formal rules governing what evidence is to be presented in court and how it should be assessed might also be more suitable in legal systems where criminal cases are tried by a jury rather than where trained judges sit on a panel.

197. If an individual feels that his or her rights have been set aside by a judge or another official, he or she can turn to the Parliamentary Ombudsman. This independent body is responsible for supervision of the courts, prosecutors, the police and other agencies, and has far-reaching powers. If an official has failed to fulfil his or her professional obligations, for example by using illegitimate investigative measures, he or she may be held liable for abuse of office, which implies both criminal and disciplinary liability.

198. The Swedish Code of Judicial Procedure

Chapter 35, Section 1

After evaluating everything that has occurred in accordance with the dictates of its conscience, the court shall determine what has been proved in the case.

As to the effect of certain kinds of evidence, the specific provisions thereon shall govern.

(b) Observations on the implementation of the article

199. The reviewing experts conclude that Sweden has fully implemented Art. 28 UNCAC.

Article 29 Statute of limitations

Each State Party shall, where appropriate, establish under its domestic law a long statute of limitations period in which to commence proceedings for any offence established in accordance with this Convention and establish a longer statute of limitations period or provide for the suspension of the statute of limitations where the alleged offender has evaded the administration of justice.

(a) Summary of information relevant to reviewing the implementation of the article

200. Sweden confirmed that it has fully implemented this provision of the Convention.

201. The rules about the statute of limitations are regulated in chapter 35 PC. According to Swedish law, the length of the statute of limitation depends on the range of the punishment.

Chapter 35, section 1

No sanction may be imposed unless the suspect has been remanded in custody or received notice of prosecution for the crime within:

1. two years, if the crime is punishable by at most imprisonment
2. five years, if the most severe punishment is imprisonment for more than one but no more than two years imprisonment,
3. ten years, if the most severe punishment is imprisonment for more than two but no more than eight years,
4. Fifteen years, if the most severe punishment is imprisonment for a fixed term of more than eight years,
5. twenty-five years, if life imprisonment can be imposed for the crime.

If an act includes several crimes, then, regardless of what is stated above, a sanction may be imposed for all of the crimes, provided that a sanction can be imposed for any one of them.

Chapter 35, section 6

In no cases may a sanction be imposed when, from the date mentioned in section 4, the following periods have elapsed:

1. five years, if the crime is not subject to a punishment of more than a fine and the time for the imposition of a sanction for the crime is determined under section 1, point 1,
2. fifteen years if, in cases other than those falling under the first paragraph, the crime is not subject to imprisonment for more than two years,
3. thirty years in other cases.

202. The prescription period (statute of limitation) for corporate fines is five years or the longer period that applies in relation to the perpetrator of the underlying offence. This means that even if the specific offence has a shorter prescription period than five years, action for a corporate fine can be brought up to five years after the time when the offence was committed (*Chapter 36, Section 14 PC*).
203. If a sanction can no longer be imposed because of the death of the offender or for other cause, property may be declared forfeited or a corporate fine imposed by reason of the crime or a measure be prescribed to avert misuse only if, in proceedings pertaining thereto, a summons has been served within five years from the time when the crime was committed. In such a case the prosecutor may institute proceedings only if called for in the public interest. In a case falling under the present description the provisions of Chapter 35, Section 3 shall be correspondingly applicable.

(b) Observations on the implementation of the article

204. During the country visit, Sweden explained that the rules about the statute of limitations are general and apply to all criminal provisions. The statute of limitation starts with the time of commission of the act, irrespective of knowledge of the authorities. What the applicable statute of limitation is in an individual case is decided by the most severe punishment prescribed for the applicable provision. If the most severe punishment prescribed in a provision is imprisonment for more than one but no more than two years imprisonment the statute of limitation is five years. If the most severe punishment is

imprisonment for more than two but no more than eight years the statute of limitation is ten years. If the most severe punishment is imprisonment for a fixed term of more than eight years the statute of limitation is fifteen years and if the most severe punishment is imprisonment for a fixed term of more than eight years it is twenty-five years. Accordingly, most corruption offences would fall into five years category.

205. Sweden further explained that an indictment or custody would suspend statute but mere investigative measures would not.

206. The reviewing experts noted that the domestic legislation does not provide for the suspension of the statute of limitations period when the offender has evaded the administration of justice. . During the country visit, Sweden confirmed that this may pose problems in practice due to the secret nature of many of the corruption offences, and especially in foreign cases where MLA requests take a lot of time.

(c) Recommendation

207. Amend the legislation to provide for the suspension of the statute of limitations period in cases where the alleged offender has evaded the administration of justice.

Article 30 Prosecution, adjudication and sanctions

Paragraph 1

1. Each State Party shall make the commission of an offence established in accordance with this Convention liable to sanctions that take into account the gravity of that offence.

(a) Summary of information relevant to reviewing the implementation of the article

208. Sweden confirmed that it has fully implemented this provision of the Convention.

209. The range of punishment for corruption crimes makes it possible to take into account the gravity of that offence. Most of the offences established in accordance with the provision set out in the conventions such as fraud, active and passive bribery, embezzlement and receiving may lead to imprisonment for at least fourteen days and at most, in gross cases, up to six years.

210. The gravity of the offence is taken into account both in the applicable penalties and in the labelling of the offences. For basic offences, the sanctions are in line with those for theft and fraud (basic offence: up to 2 years; gross up to 6 years).

211. Table of sanctions for bribery offences:

Offence	Range of sanctions
Bribery	Fine (petty offence) or imprisonment up to six years (gross offence)
Foreign Bribery	See above under bribery
Bribery in the private sector	See above under bribery

Fraud	Fine (petty offence) or imprisonment up to six years (gross offence)
Breach of Trust	Fine (petty offence) or imprisonment up to six years (gross offence)
Abuse of Office	Fine (petty offence) or imprisonment up to six years (gross offence)
Obstruction of Justice	Fine (petty offence) or imprisonment up to eight years (gross perjury or interference in a judicial matter)
Theft	Imprisonment up to six years (gross offence)
Possession of property obtained by crime	Imprisonment up to six years (gross receiving)
Intimidation - general	Fine (petty offence) or imprisonment up to four years (gross unlawful threat)
Intimidation of a justice system participant	Fine (petty offence) or imprisonment up to four years (gross violence or threat to public servant)
Secret Commissions	See above regarding bribery
Laundering of proceeds of crime	Fine (petty offence) or imprisonment up to six years (gross offence)

(b) Observations on the implementation of the article

212. The reviewing experts conclude that Sweden's legislation is fully in compliance with Art. 30(1) UNCAC.

Paragraph 2

2. Each State Party shall take such measures as may be necessary to establish or maintain, in accordance with its legal system and constitutional principles, an appropriate balance between any immunities or jurisdictional privileges accorded to its public officials for the performance of their functions and the possibility, when necessary, of effectively investigating, prosecuting and adjudicating offences established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

213. Sweden confirmed that it has fully implemented this provision of the Convention.

214. Swedish legislation contains only few provisions granting immunities for Swedish public servants. There are, however, certain immunities for parliamentarians for comments and acts committed while performing their duties as parliamentarians. There are also certain immunities for diplomats and other such functionaries in accordance with the Vienna Convention.

215. The provisions granting immunities for Swedish public officials concern members of the *Riksdag*, the Speaker of the *Riksdag*, the Head of State and ministers. These provisions are found in the Swedish Constitution, *the Instrument of Government*. According to *chapter 4 article 12 paragraph 1*, legal proceedings may not be initiated

against a person who holds a mandate as a member of the *Riksdag*, or who has held such a mandate, on account of a statement or an act made in the exercise of his or her mandate, unless the *Riksdag* has given its consent thereto in a decision supported by at least five sixths of those voting. Nor may such a person be deprived of his or her liberty, or restricted from travelling within the Realm, on account of an act or statement made in the exercise of his or her mandate, unless the *Riksdag* has given such consent thereto. If, in any other case, a member of the *Riksdag* is suspected of having committed a criminal act, the relevant legal provisions concerning apprehension, arrest or detention are applied only if he or she admits guilt or was caught in the act, or the minimum penalty for the offence is imprisonment for two years (*paragraph 2*). According to *chapter 4 article 13 paragraph 2*, those rules also apply to the Speaker and the Speaker's mandate. According to *chapter 4 article 13 paragraph 3*, the rules relating to a member of the *Riksdag* apply also to an alternate exercising a mandate as a member.

216. Furthermore, according to *chapter 5 article 8*, the King or Queen who is Head of State cannot be prosecuted for his or her actions. Nor can a Regent be prosecuted for his or her actions as Head of State.
217. A minister, or a person who previously has been a minister, may be held accountable for a criminal act committed in the performance of his or her ministerial duties only if he or she has grossly neglected his or her official duty by committing the criminal act, see *chapter 13 article 3*. A decision to institute criminal proceedings shall be taken by the Committee on the Constitution and the case tried before the Supreme Court.
218. The formal procedure under the Instrument of Government *chapter 4 article 12 paragraph 1*, regarding members of the *Riksdag*, is set by *the Riksdag Act, chapter 3 article 16*. If a prosecutor calls for the consent of the *Riksdag* to take legal action against a member of the *Riksdag* or deprive him or her of his or her personal liberty, the prosecutor shall make a written application to the Speaker to this effect. The same procedure shall apply if any other person seeks the consent of the *Riksdag* to the prosecution of a member of the *Riksdag* on grounds of his or her actions.
219. This procedure has been applied twice. In both these cases the responsible committee found that the act in question had not been made in the exercise of his or her mandate. Accordingly, no consent from the *Riksdag* was needed. One of the cases concerned a member of the *Riksdag* who was under the suspicion of taking bribes.
220. The functional immunities regulated in the Instrument of Government are not extended to judges or any other categories of public officials. With the sole exception of the immunity for the Head of State, there are no indications that the existing immunities for Swedish public servants would be a barrier to criminal investigation or prosecution relating to corruption, since the immunities only apply regarding acts made in the specific exercise of the official mandate or duties. Moreover, investigative steps can be taken before the immunity is lifted.

(b) Observations on the implementation of the article

221. The reviewing experts conclude that Sweden's legislation is fully in compliance with Art. 30(2) UNCAC.

Paragraph 3

3. Each State Party shall endeavour to ensure that any discretionary legal powers under its domestic law relating to the prosecution of persons for offences established in accordance with this Convention are exercised to maximize the effectiveness of law enforcement measures in respect of those offences and with due regard to the need to deter the commission of such offences.

(a) Summary of information relevant to reviewing the implementation of the article

222. Sweden confirmed that it has fully implemented this provision of the Convention.

223. The Swedish criminal procedure rules are based on the rule of mandatory prosecution. The consequences are that discretionary legal powers are not used very often. In the sections where mandatory prosecution does not apply, the prosecutor has to prosecute if it is necessary from the standpoint of the society. When the prosecutor decides if it is necessary, he/she has the opportunity to make the considerations mentioned in the article.

224. The most relevant provisions concerning the duty to prosecute are found in chapter 20 in the Swedish Code of Judicial Procedure. The principle rule is outlined in sections 6-7b.

Section 6

Unless otherwise prescribed, prosecutors must prosecute offences falling within the domain of public prosecution. (SFS 1964:166)

Section 7

Prosecutors may waive prosecution (waiver of prosecution), provided no compelling public or private interest is disregarded:

1. if it may be presumed that the offence would not result in another sanction than a fine;
2. if it may be presumed that the sanction would be a conditional sentence and special reasons justify waiver of prosecution;
3. if the suspect has committed another offence and no further sanction in addition to the sanction for that offence is needed in respect of the present offence; or
4. if psychiatric care or special care in accordance with the Act on Support and Service for Certain Persons with Functional Impairments (1993:387) is rendered.

A prosecution may be waived in cases other than those mentioned in the first paragraph if it is manifest by reason of special circumstances that no sanction is required to prevent the suspect from engaging in further criminal activity and that, in view of the circumstances, the institution of a prosecution is not required for other reasons. (SFS 1997:726)

Section 7a

A decision to waive prosecution may be made even after the institution of a prosecution when circumstances emerge that, had they existed or been known at the time of the prosecution, would have led to waiver of prosecution. Prosecution may not be waived, however, if the defendant objects or after judgment has been rendered. (SFS 1981:1285)

Section 7b

A waiver of prosecution may be withdrawn if special reasons so require. (SFS 1985:13)

225. In addition to the above listed sections, there are provisions on waiver of prosecution targeting juvenile offenders.

226. Furthermore, for a limited set of offences, e.g. defamation, petty cases of vandalism and fraud, there is a limitation called particular prosecution probation. This limitation is explicitly mentioned in each relevant crime provision. According to this principle, the prosecutor shall only prosecute if this is considered to be necessary in the public interest. For some of these offences the threshold is higher, stating that prosecution should not be instigated unless the victim of the crime has filed a complaint and there are special reasons for why prosecution is considered necessary in the public interest.
227. The Prosecutor-General has issued guidelines on how to apply the rules on waiver of prosecution (guideline R&R 2008:2). Corruption is not explicitly mentioned in the guideline. It is, however, dealt with in the preparatory works. (Govt Bill 2011/12:79, pages 38-39).
228. When discussing waiver of prosecution and the prerequisite “compelling public interest”, the gravity of the offence and relapse in criminality should be taken into account when deciding whether to prosecute or not. If other legal consequences of the offence, e.g. confiscation, are depending on prosecution, this should also be taken into account and regarded as an argument for prosecution. When considering the prerequisite “compelling private interest”, the interests of the victim of a crime should be taken into account. If the victim has a claim for compensation in relation to the offence, this should be considered as an argument for prosecution. Also serious infringements of the integrity (e.g. sexual offences, violence and threats) should, even though there are no claims for economic compensation, be regarded as strong arguments for prosecution.
229. When discussing particular prosecution probation and the prerequisite “public interest”, the suspect’s relapse in crime, the amount of money involved (fraud cases) and the motives behind the crime are relevant factors to consider.
230. The main motive for the rules on waiver of prosecution is to make the best possible use of the available resources. By abstaining from prosecuting offences in some specified situations, the resources can be used for fighting more resource-demanding and significant offences.

(b) Observations on the implementation of the article

231. The reviewing experts conclude that Sweden’s legislation is fully in compliance with Art. 30(3) UNCAC.

Paragraph 4

4. In the case of offences established in accordance with this Convention, each State Party shall take appropriate measures, in accordance with its domestic law and with due regard to the rights of the defence, to seek to ensure that conditions imposed in connection with decisions on release pending trial or appeal take into consideration the need to ensure the presence of the defendant at subsequent criminal proceedings.

(a) Summary of information relevant to reviewing the implementation of the article

232. Sweden confirmed that it has fully implemented this provision of the Convention.

233. The paragraph is regulated in Chapter 46, Section 15, and Chapter 24, Section 2 in the Swedish Code of Judicial Procedure. A defendant who does not show up voluntarily at court proceedings can have conditional fines imposed on him. He can also be brought before the court by the police or in serious cases be detained.

Chapter 24, Section 1

Any person suspected on probable cause of an offence punishable by imprisonment for at least one year or more may be placed in detention if, in view of the nature of the offence, the suspects circumstances, or any other factor, there is a reasonable risk that the person will:

1. flee or otherwise evade legal proceedings or punishment;
2. ...

Chapter 24, Section 2

A person suspected on probable cause of an offence may be detained regardless of the nature of the offence if:

- 1) his identity is unknown, and he either refuses to provide his name and address or he provides a name and address that can be assumed is false, or
- 2) he does not reside in the Realm and there is a reasonable risk that he will avoid legal proceedings or a penalty by fleeing the country.

Chapter 46, Section 15

If the defendant fails to appear at a main hearing or appears only by council although directed to appear in person, the court firstly shall assess whether the case can be tried according to Section 15 a (in absentia). In this is not possible, the court shall

- 1) direct him to appear in person under penalty of a new default fine,
- 2) order that he be brought before the court either immediately or on a later date, or
- 3) be detained, in such preconditions exist.

234. Chapter 24, sections 1 and 2 also applies regarding appeals.

(b) Observations on the implementation of the article

235. The reviewing experts conclude that Sweden's legislation is fully in compliance with Art. 30(4) UNCAC.

Paragraph 5

5. Each State Party shall take into account the gravity of the offences concerned when considering the eventuality of early release or parole of persons convicted of such offences.

(a) Summary of information relevant to reviewing the implementation of the article

236. Sweden confirmed that it has fully implemented this provision of the Convention.

237. The Swedish regulation about parole can be found in chapter 26, sections 6 and 7, PC.

Chapter 26, section 6:

A person serving imprisonment for a fixed term shall, unless it follows otherwise from the second or third paragraph or by section 7, be conditionally released when two-thirds of the sentence, but at least one month, has been served.

Conditional release may not, however, be granted with imprisonment imposed in accordance with the provisions of chapter 28, section 3, nor from imprisonment in conversion of a fine.

At the request of a sentenced person, conditional release may be delayed to a later time than that which follow from the provisions of the first paragraph or by section 7.

Chapter 26, section 7:

If the sentenced person seriously violates the conditions for the serving of the sentence in a prison, the date for conditional release may be postponed.

Such a postponement may amount to at most fifteen days on each occasion of use.

In deciding on the question of postponement consideration shall be given to whether the infringement may or can have other negative consequences for the sentenced person.

238. A person serving imprisonment for a fixed term shall be conditionally released when two-thirds of the sentence, but at least one month, has been served. The gravity of the offence as such is not taken into account in making decisions concerning conditional release. It does however have an indirect impact on these decisions since the sentence on imprisonment will be longer the more serious the crime is.

(b) Observations on the implementation of the article

239. The reviewing experts conclude that Sweden's legislation is in compliance with Art. 30(5) UNCAC.

Paragraph 6

6. Each State Party, to the extent consistent with the fundamental principles of its legal system, shall consider establishing procedures through which a public official accused of an offence established in accordance with this Convention may, where appropriate, be removed, suspended or reassigned by the appropriate authority, bearing in mind respect for the principle of the presumption of innocence.

(a) Summary of information relevant to reviewing the implementation of the article

240. Sweden confirmed that it has fully implemented this provision of the Convention.
241. Paragraph 6 of article 30 is regulated in several different laws, e.g. Chapter 20, Section 4, PC and the Act of Employment in the Public Sector.

Chapter 20, section 4:

A person elected to a national or local government assignment involving the exercise of public authority may be removed therefrom by a court if he has committed a crime for which the punishment is imprisonment for two years or more and, through the crime, has proved manifestly unsuited for the assignment.

An assignment with such other employers as are referred to in section 2, second paragraph, point 1, shall be considered equivalent to a national or local government assignment.

**Employment Protection Act (1982:80)
Section 18**

An employee may be summarily dismissed where he has grossly neglected his obligations to the employer.

Summary dismissal may not be based solely on circumstances that were known to the employer more than two months before notice was given under Section 30 or, where no such notice was given, two months before the date of dismissal. However, the employer may base the summary dismissal entirely on circumstances known to him for more than two months if upon the request of the employee or with the consent of the employee the employer has delayed the giving of notice or dismissal or where there are extraordinary reasons for invoking such circumstances. (SFS 1993:1496)

242. For public employees, the regulations on termination and dismissal in the Employment Protection Act (1982:80) mainly apply. Under Section 18 of the Employment Protection Act, an employee may be dismissed when he has grossly neglected his obligations to his employer. Offences of a more serious nature – like Convention offences – are normally grounds for dismissal. In offences that are aimed directly at the employer or their operations, dismissal may as a rule also occur for less serious offences. A serious view is also taken of workplace offences against colleagues.

(b) Observations on the implementation of the article

243. The reviewing experts conclude that Sweden has adequately implemented Art. 30(6) UNCAC.

Subparagraph 7 (a)

7. Where warranted by the gravity of the offence, each State Party, to the extent consistent with the fundamental principles of its legal system, shall consider establishing procedures for the disqualification, by court order or any other appropriate means, for a period of time determined by its domestic law, of persons convicted of offences established in accordance with this Convention from:

(a) Holding public office; and

(a) Summary of information relevant to reviewing the implementation of the article

244. Sweden stated that it has not established such procedures since they are not in compliance with fundamental principles of the Swedish legal system.
245. The question of whether a person is suitable to hold a certain public office is determined during the appointment procedure. One of Sweden's basic laws, the Instrument of Government, contains special provisions concerning central government administration and government employees. Under Chapter 12, Section 5, second paragraph of the Instrument of Government, consideration may only be given to objective factors, such as merit and competence, when making appointments to positions within the central government administration. This constitutional rule is echoed in Section 4 of the Public Employment Act (1994:260). In the second paragraph of the section, it is made clear that competence shall be the primary consideration, unless there are special reasons for doing otherwise.
246. If a person has been convicted of an offence that can be of significance in the performance of his duties, it goes without saying that this will be taken into account in the assessment of the applicant's suitability for employment. If someone commits an offence

in their post, matters concerning suspension from employment, disciplinary liability, reports for prosecution and summary dismissal are as a rule decided by the government authority employing the staff member concerned. The examination of such staff disciplinary issues is carried out at most authorities by the authority's staff disciplinary board. This board is not an independent authority; rather it is a decision-making body within an authority. The Government decides whether there is to be such a board at an authority. As a rule, all authorities with 30 employees or more have a staff disciplinary board. If an authority does not have one, such matters are examined by the authority's highest decision-making body, that is, the Governing Board or the head of the authority. For senior public officials, such as heads of mission, judges, prosecutors, police chiefs and professors, it is the Government Disciplinary Board for Higher Officials that examines matters concerning disciplinary liability, reports for prosecution and summary dismissal; see Section 34 of the Public Employment Act.

247. Legal action against a disciplinary board's decision is taken in a district court or the Labour Court in accordance with the Labour Disputes (Judicial Procedure) Act (1974:371).

248. Swedish labour law is largely based on the freedom of contract principle, which also applies to the public sector. In view of this, it would be regarded as alien in Swedish legislation to introduce general regulations giving courts the right to interfere with this freedom. It would therefore be incompatible with the basic principles of Swedish legislation to lay down regulations concerning an individual's employment relationship, beyond what already follows from the regulations in the Employment Protection Act, the Public Employment Act and the enabling act. It is also not possible to disqualify someone from holding public office in the future.

(b) Observations on the implementation of the article

249. The reviewing experts conclude that, in accordance with Art. 30(7)(a) UNCAC, Sweden has fulfilled its obligation to consider establishing the procedures described in that Article, but has decided against it.

Subparagraph 7 (b)

7. Where warranted by the gravity of the offence, each State Party, to the extent consistent with the fundamental principles of its legal system, shall consider establishing procedures for the disqualification, by court order or any other appropriate means, for a period of time determined by its domestic law, of persons convicted of offences established in accordance with this Convention from:

(b) Holding office in an enterprise owned in whole or in part by the State.

(a) Summary of information relevant to reviewing the implementation of the article

250. Sweden stated that, like with regard to subpara. 7(a), it has not established such procedures since they are not in compliance with fundamental principles of the Swedish legal system.

(b) Observations on the implementation of the article

251. The reviewing experts conclude that, in accordance with Art. 30(7)(b) UNCAC, Sweden has fulfilled its obligation to consider establishing the procedures described in that Article, but has decided against it.

Paragraph 8

8. Paragraph 1 of this article shall be without prejudice to the exercise of disciplinary powers by the competent authorities against civil servants.

(a) Summary of information relevant to reviewing the implementation of the article

252. Sweden confirmed that it has fully implemented this provision of the Convention.
253. In Swedish law, criminal punishment does not prevent the competent authorities from exercising disciplinary powers against civil servants. These disciplinary powers could consist in e.g. a warning, a deduction of salary or a termination of the employment.
254. Regarding the exercise of disciplinary powers, see for example section 14 § of the Public Employment Act.

(b) Observations on the implementation of the article

255. The reviewing experts conclude that Sweden's legislation is in compliance with Art. 30(8) UNCAC.

Paragraph 10

10. States Parties shall endeavour to promote the reintegration into society of persons convicted of offences established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

256. Sweden confirmed that it has fully implemented this provision of the Convention.
257. The country under review provided the following laws: The content of the paragraph is in compliance with the fundamental principles in Swedish correctional treatment of criminal offenders, see Chapter 1 Section 5 of the Swedish Act [2010:610] on Imprisonment.

Swedish Act on Imprisonment

Chapter 1, Section 5

Enforcement shall be devised so as to facilitate the prisoner's adjustment in the community and counteract negative consequences of deprivation of liberty.

Enforcement shall, so far as possible and without neglecting the requirement to protect the community, focus especially on measures intended to prevent re-offending. An individual enforcement plan shall be drawn up for each prisoner.

Enforcement shall be planned and devised after consultation with the prisoner and in collaboration with the relevant authorities.

258. Sweden assessed the effectiveness of measures established to promote the reintegration into society of persons convicted of offences established in accordance with the Convention. A new Act on Imprisonment entered into force on 1 April 2011. The aim of the new legislation is to, with a maintained security and without removing the individual's own responsibility, lessen the risk for re-offending.

259. In accordance with the provisions of the Act on Imprisonment, the Swedish Prison and Probation Service works with reducing convicted persons' risk of re-offending and facilitating their adjustment in the community. For this purpose the individual enforcement plan serves as an important instrument. Based on the risks, needs and the receptivity of the individual, the Swedish Prison and Probation Service offer prisoners e.g. different treatment programmes, education and other structured occupational activities. Prisoners may also be granted preparatory release measures. Prisoners include persons convicted of offences established in the Convention. There are however no specific measures only aimed at persons convicted for the offences established in the Convention.

(b) Observations on the implementation of the article

260. The reviewing experts conclude that Sweden's legislation is fully in compliance with Art. 30(10) UNCAC.

Article 31 Freezing, seizure and confiscation

Subparagraph 1 (a)

1. Each State Party shall take, to the greatest extent possible within its domestic legal system, such measures as may be necessary to enable confiscation of:

(a) Proceeds of crime derived from offences established in accordance with this Convention or property the value of which corresponds to that of such proceeds;

(a) Summary of information relevant to reviewing the implementation of the article

261. Sweden confirmed that it has fully implemented this provision of the Convention.

262. The Swedish regulation can be found in chapter 36 (confiscation) PC and chapters 26 (freezing of physical items) and 27 in the Code of Judicial Procedure (freezing measures for real estate, accounts, intellectual property). According to the general provision in Chapter 36, Section 1, proceeds of crime shall be confiscated unless it would be manifestly unreasonable.

Chapter 36, Section 1, PC

The proceeds of a crime as defined in this Code shall be declared forfeited unless this is manifestly unreasonable. The same shall apply to anything a person has received as payment for costs incurred in conjunction with a crime, provided that such receipt constitutes a crime under this Code. The value of the article may be declared forfeited instead of the article itself.

Unless otherwise stated, the provisions in the first paragraph also apply to proceeds of crime and payment for costs incurred in conjunction with a crime under national law or statute, if imprisonment for more than one year is prescribed for that crime.

Code of Judicial Procedure

Chapter 26, Section 1

If a person is reasonably suspected of an offence and there is reasonable cause to anticipate that, by fleeing, removing property or otherwise, he will evade the obligation which can be assumed will be placed upon him because of the offence to pay fines, the value of forfeited property, corporate fines, or other compensation to the community, or damages or any other compensation to an aggrieved person, the court may order provisional attachment of so much of the suspect's property that the claim may be assumed to be secured on execution. Provisional attachment may be ordered only if the reasons for the measure outweigh the consequent intrusion or other detriment to the suspect or to any other adverse interest.

Chapter 26, Section 3

The investigation leader or the prosecutor may take movable property into custody while awaiting the court's order of provisional attachment.

If delay entails risks, a police officer may take such action; however, the police officer must promptly report the measure to the investigation leader or the prosecutor who must immediately consider and determine if the property shall remain in custody.

The taking of property into custody may be ordered only if the reasons for the measure outweigh the consequent intrusion or other detriment to the suspect or to any other adverse interest.

Chapter 27, Section 1

Objects reasonably presumed important to a criminal investigation or taken from a person through a criminal act or subject to criminal forfeiture may be seized.

The provisions in this chapter concerning objects shall also apply to written documents to the extent nothing else is prescribed.

The coercive measures described in this chapter may be ordered only if the reasons for the measure outweigh the consequent intrusion or other detriment to the suspect or to any other adverse interest.

263. Proceeds of crime are both property and other economic advantages from criminal offences. It may consist of any form of property including the pecuniary value of such property and also includes any subsequent reinvestment or transformation of the direct proceeds (see Chapter 36, Section 1c, PC). It also includes income or other benefits derived from the original proceeds of crime.
264. The expression manifestly unreasonable is intended to describe such exceptional cases where full (or partial) confiscation of the proceeds clearly would be unreasonable. In determining whether it would be manifestly unreasonable to declare the proceeds of a crime forfeited under the provisions of the first paragraph, consideration shall be given inter alia, to whether there is reason to believe that liability to pay damages in consequence of the crime will be imposed or otherwise discharged (Section 1 a). Even though confiscation is not considered as a punishment under Swedish law it is part of the criminal law system and the total reaction to a crime (punishment, damages, confiscation, trade prohibition etc.) must be reasonable. If for example a person with low income has committed a crime through negligence and spent the proceeds, full confiscation of the

value of the proceeds could be considered manifestly unreasonable if that person also would suffer other substantial consequences from the crime.

(b) Observations on the implementation of the article

265. The reviewing experts conclude that Sweden has implemented Art. 31(1)(a) UNCAC.

Subparagraph 1 (b)

1. Each State Party shall take, to the greatest extent possible within its domestic legal system, such measures as may be necessary to enable confiscation of:

(b) Property, equipment or other instrumentalities used in or destined for use in offences established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

266. Sweden confirmed that it has fully implemented this provision of the Convention.

267. The Swedish regulation can be found in chapter 36, sections 2 and 3 PC and chapters 26 and 27 in the Code of Judicial Procedure. These provisions cover instrumentalities used, or intended to be used, in the commission of a crime. They also cover confiscation of objects of such nature that they can be used as instrumentalities even if they cannot be connected to a crime in the individual case.

Chapter 36, Section 2

Property which has been used as an auxiliary means in the commission of a crime under this Code may be declared forfeited if this is called for in order to prevent crime or for other special reasons. This also applies to property the use of which constitutes a crime under this Code, provided the crime has been completed or the conduct constitutes a punishable attempt or punishable preparation or conspiracy.

The provisions in the first paragraph also apply to property which is the product of a crime under this Code, property the use of which constitutes a crime or which has been used in a manner which constitutes such a crime.

The value of property may be declared forfeited instead of the property itself.

Unless otherwise stated, the provisions in the first and third paragraph also apply to property, which has been used or intended for use as an auxiliary means in a crime under another law or statute, if imprisonment for more than one year is prescribed for that crime.

Chapter 36, Section 3

Forfeiture may also be decided on in cases other than those described in Section 2 in respect of objects which:

1. by reason of their special nature and other circumstances, give rise to a fear that they may be put to criminal use,
2. are intended for use as a weapon in a crime against human life or health and which have been discovered in circumstances which give rise to a fear that they would be put to such use, or
3. are intended for use as an auxiliary aid in a crime entailing damage to property and have been discovered in circumstances which clearly give rise to a fear that they would be put to such use.

(b) Observations on the implementation of the article

268. The reviewing experts conclude that Sweden has implemented Art. 31(1)(b) UNCAC.

Paragraph 2

2. Each State Party shall take such measures as may be necessary to enable the identification, tracing, freezing or seizure of any item referred to in paragraph 1 of this article for the purpose of eventual confiscation.

(a) Summary of information relevant to reviewing the implementation of the article

269. Sweden confirmed that it has fully implemented this provision of the Convention.

270. The Swedish regulation can be found in chapter 36 PC and chapters 26 and 27 in the Code of Judicial Procedure (see above). According to these provisions property which is subject to a later confiscation can be subject to seizure and provisional measures. These measures are intended to prevent the dissipation, hiding etc. of the property.

271. In addition to the provisions previously mentioned, premises can be searched to look for objects subject to seizure (and confiscation). Chapter 28 Sections 1 and 3 of the Swedish Code of Judicial Procedure prescribes as follows:

Chapter 28, Section 1

If there is reason to believe that an offence punishable by imprisonment has been committed, houses, rooms, or closed storage spaces may be searched to look for objects subject to seizure or to detect other information of potential importance to the inquiry of the offence.

The premises of a person, other than one reasonably suspected of having committed the offence, may not be searched unless the offence was committed there, the suspect was apprehended there, or extraordinary reason indicates that the search will reveal an object subject to seizure or other information concerning the offence.

A suspect's consent is not adequate to justify a search of his premises unless the suspect personally initiated the request for the search. (SFS 1964:166)

Chapter 28, Section 3

Public places, locations frequented by vagrants or criminals, or places where objects of the kind sought are frequently purchased or pawned may be searched for the purposes stated in Sections 1 and 2, even in circumstances other than those specified in Sections 1 and 2.

To a large extent, the practical work of the law enforcement authorities to trace and identify criminal assets etc. are regulated in recommendations and guidelines. Both the police and prosecutors are instructed to search for assets that can be subject to confiscation at an early stage of a criminal investigation.

272. Provisional attachment may be ordered only if the reasons for the measure outweigh the consequent intrusion or other detriment to the suspect or to any other adverse interest. Swedish legislation indicates that objects reasonably presumed important to a criminal investigation, or taken from a person through a criminal act or subject to criminal confiscation may be seized. Proceeds of crime can be subject to criminal confiscation, which means that proceeds can be seized. Objects may be seized by order of the investigation leader or the prosecutor.

273. The CJP (chapter 26, section 1 and chapter 27, section 1) stipulates that proceeds of crime which can be confiscated at a later stage can be subject to seizure or provisional measures. Chapter 26, Section 1, CJP states that in order to secure, inter alia, what can be

assumed to be confiscated from a person suspected of an offence, the court may order the provisional attachment of so much of the suspect's property that the claim (for e.g. confiscation or extended confiscation) may be assumed to be secured on execution.

274. According to Chapter 36, Section 1 PC, any proceeds of crime (in whatever shape or form) shall be declared confiscated, unless manifestly unfounded. Section 1c specifies that the concept of proceeds of crime in this context also covers property that has replaced the (original) proceeds, as well as income or other benefits deriving from such property. In order to secure property that can be expected to be confiscated, the actual property (e.g. stolen goods) can be seized (Chapter 27, Section 1, CJP). In order to secure the payment of the value of property that can be assumed to be confiscated (e.g. the proceeds of crime or damages to the aggrieved party), a court can order the provisional attachment of property (Chapter 26, Section 1, CJP).

(b) Observations on the implementation of the article

275. The reviewing experts conclude that Sweden has adequately implemented Art. 31(2) UNCAC.

Paragraph 3

3. Each State Party shall adopt, in accordance with its domestic law, such legislative and other measures as may be necessary to regulate the administration by the competent authorities of frozen, seized or confiscated property covered in paragraphs 1 and 2 of this article.

(a) Summary of information relevant to reviewing the implementation of the article

276. Sweden confirmed that it has fully implemented this provision of the Convention.
277. The Swedish regulation can be found in chapter 36 in the Penal Code and chapters 26 (section 3a) and 27 (section 10) in the Code of Judicial Procedure. Generally public authorities charged with the management of frozen or seized property are obligated to take care of the property and to take measures to prevent it from being destroyed or decline in value and the State can be liable for damages for negligent managements of such property.

Code of Judicial Procedure

Chapter 26, Section 3 a, third paragraph

Property that has been taken into custody shall be carefully preserved and kept under strict supervision.

Chapter 27, Section 10, third paragraph

Any seized object shall be carefully preserved and strict supervision shall be maintained to ensure that it is not exchanged, altered or misused.

278. So far, there is no specialised administration agency yet. The administration of frozen or seized property is handled by the police or by the enforcement agency (which fulfils functions of a bailiff). Perishable goods or cars can be sold. Shares will not normally be sold.

279. Chapter 27 of the Swedish Code of Judicial Procedure defines that seized, frozen or confiscated property must be well taken care of, supervised, not to be exchanged nor altered, nor subjected to any other abuse. There is also an internal instruction for the police that clarifies and in more detailed manner describes the definitions of the above legislation. For example, if the property is broken or damaged, this should be noted in the protocol. There should also be a note if there are any accessories that come with the property. If the property is damaged during the confiscation, the responsible police authority may need to compensate for the damage (the owner can file a formal complaint and apply for compensation). When confiscated property is returned, the recipient of the property is asked to check for any such damage. Should there be any remarks, the police authority shall document them. The internal instruction also describes how confiscated property is to be stored, depending on what type of property is confiscated.

(b) Observations on the implementation of the article

280. The reviewing experts questioned the efficiency of the system since the administration of frozen or seized property can be seen as an unnecessary burden for the police. However, it was explained by Sweden during the country visit that the enforcement agency works along with the police on that matter.

281. The reviewing experts conclude that Sweden has adequately implemented Art. 31(3) UNCAC.

Paragraph 4

4. If such proceeds of crime have been transformed or converted, in part or in full, into other property, such property shall be liable to the measures referred to in this article instead of the proceeds.

(a) Summary of information relevant to reviewing the implementation of the article

282. Sweden confirmed that it has fully implemented this provision of the Convention.

283. The Swedish regulation can be found in chapter 36, section 1c, PC. Sweden applies a value based confiscation system and property that has replaced proceeds of crime, yield of such property that has replaced proceeds of crime is also regarded as proceeds of crime.

Chapter 36, Section 1 c, PC

In the context of forfeiture, property that has replaced proceeds of crime, yield of such proceeds and yield of such property that has replaced proceeds of crime shall also be regarded as proceeds of crime.

(b) Observations on the implementation of the article

284. The reviewing experts conclude that Sweden has fully implemented Art. 31(4) UNCAC.

Paragraph 5

5. If such proceeds of crime have been intermingled with property acquired from legitimate sources, such property shall, without prejudice to any powers relating to freezing or seizure, be liable to confiscation up to the assessed value of the intermingled proceeds.

(a) Summary of information relevant to reviewing the implementation of the article

285. Sweden confirmed that it has fully implemented this provision of the Convention.

286. In such cases it would be possible to confiscate property or value of the property up to the assessed value of the intermingled proceeds, chapter 36, section 1c, PC.

(b) Observations on the implementation of the article

287. The reviewing experts conclude that Sweden has fully implemented Art. 31(5) UNCAC.

Paragraph 6

6. Income or other benefits derived from such proceeds of crime, from property into which such proceeds of crime have been transformed or converted or from property with which such proceeds of crime have been intermingled shall also be liable to the measures referred to in this article, in the same manner and to the same extent as proceeds of crime.

(a) Summary of information relevant to reviewing the implementation of the article

288. Sweden confirmed that it has fully implemented this provision of the Convention.

289. The Swedish regulation can be found in chapter 36, section 1c, PC. Sweden applies a value based confiscation system and property that has replaced proceeds of crime, yield of such property that has replaced proceeds of crime is also regarded as proceeds of crime.

(b) Observations on the implementation of the article

290. The reviewing experts conclude that Sweden has fully implemented Art. 31(6) UNCAC.

Paragraph 7

7. For the purpose of this article and article 55 of this Convention, each State Party shall empower its courts or other competent authorities to order that bank, financial or commercial records be made available or seized. A State Party shall not decline to act under the provisions of this paragraph on the ground of bank secrecy.

(a) Summary of information relevant to reviewing the implementation of the article

291. Sweden confirmed that it has fully implemented this provision of the Convention.

292. It is possible to seize/freeze property (including documents) for evidentiary and confiscation purpose even if the documents are kept by a bank. Banks are also obliged to give information to the police or a prosecutor if asked to in relation to an on-going investigation.

Code of Judicial Procedure

Chapter 27, Section 1

Objects reasonably presumed important to a criminal investigation or taken from a person through a criminal act or subject to criminal forfeiture may be seized.

The provisions in this chapter concerning objects shall also apply to written documents to the extent nothing else is prescribed.

The coercive measures described in this chapter may be ordered only if the reasons for the measure outweigh the consequent intrusion or other detriment to the suspect or to any other adverse interest.

The Swedish Banking and Financing Act (2004:297),

Chapter 1, Section 11

A Credit Institution is obliged to provide information on individuals relationship with the Institute, if it is required in an investigation according to the provisions on criminal investigation by the investigation leader or by a prosecutor in case of mutual legal assistance in criminal cases on request by another State or by an international court.

293. Corresponding provisions to the one in Chapter 1 Section 11 of the Banking and Financing Business Act also exist in *inter alia* Chapter 2, Section 20 of the Investment Funds Act (Sw. lagen [2004:46] om investeringsfonder), Chapter 10, Section 18 of the Capital Adequacy and Large Exposures Act (Sw. lagen [2006:1371] om kapitaltäckning och stora exponeringar), Chapter 6, Section 8 of the Financial Conglomerates (Special Supervision) Act (Sw. lagen [2006:531] om särskild tillsyn över finansiella konglomerat), Chapter 1 Section 12 of the Securities Act (Sw. lagen [2007:528] om värdepappersmarknaden), Chapter 3 Section 14 of the Act on Payment Services (Sw. lagen [2010:751] om betaltjänster) and in Chapter 3 Section 14 of the Act on Electronic Currency (Sw. lagen [2011:755] om elektroniska pengar). In other words, corresponding obligations to provide information needed in criminal investigations exist all over the financial market/sector.

(b) Observations on the implementation of the article

294. During the country visit, Sweden explained that no court order is needed to access bank documents. Instead, the prosecutor can order that these documents be made available. Since there is no central register of bank accounts, the request has to be sent to all banks. However, this can be done by the FIU and will produce results within a few days.

295. The reviewing experts conclude that Sweden has adequately implemented Art. 31(7) UNCAC.

Paragraph 8

8. States Parties may consider the possibility of requiring that an offender demonstrate the lawful origin of such alleged proceeds of crime or other property liable to confiscation, to the

extent that such a requirement is consistent with the fundamental principles of their domestic law and with the nature of judicial and other proceedings.

(a) Summary of information relevant to reviewing the implementation of the article

296. Sweden considered that it has partly implemented this provision of the Convention.

297. According to Swedish legal tradition, the burden of proof always lies with the prosecutor. The introduction of a provision reversing the burden was analysed in relation to the Swedish ratification of the Convention but was deemed incompatible with the fundamental principle that the burden of proof in criminal cases lies with the prosecution. Reversing the burden of proof would thus not be consistent with fundamental principles of Swedish law.

298. However, the Swedish provisions on extended confiscation allows confiscation of the property if it is substantially more probable that it constitutes proceeds of a crime than not, see chapter 36, Section 1b, PC. This lower evidentiary threshold comes from civil law. It is not a reversal of the burden of proof.

Chapter 36, Section 1b

If a person is convicted of a crime for which is prescribed imprisonment for six years or more and if the crime is of such nature to lead to proceeds, in addition to what is referred to in Section 1, property may also be declared forfeited if it is substantially more probable that it constitutes proceeds of a crime than not. The value of the property may be declared forfeited instead of the property itself.

If the crime is of a nature to give proceeds, the first paragraph shall also apply if someone is convicted of: (List of certain non-corruption related crimes covered by article 3.1.a of Framework Decision 2005/212/JHA) What is stated about forfeiture in the first and second paragraph shall also apply if someone is convicted of attempt, preparation or conspiracy to commit such a crime.

Forfeiture as described in this Section shall not be decided if this is unreasonable.

299. Moreover, chapter 36, section 4, PC allows for the confiscation of profits of legal persons:

Chapter 36, Section 4

If, as a result of a crime committed in the course of business, the entrepreneur has derived financial advantages, the value thereof shall be declared forfeited, even if this is not so provided for in Section 1 or 2 or otherwise specially provided for.

The provisions of the first paragraph shall not apply if forfeiture is unreasonable. In assessing whether such is the case, consideration shall be given inter alia to whether there is reason to believe that some other obligation to pay a sum corresponding to the financial gain derived from the crime will be imposed upon the entrepreneur or will be otherwise discharged by him.

If proof of what is to be declared forfeited cannot, or can only with difficulty, be presented, the value may be estimated to be an amount that is reasonable in view of the circumstances. (Law 1986:1007)

(b) Observations on the implementation of the article

300. The reviewing experts conclude that, in accordance with Art. 31(8) UNCAC, Sweden has fulfilled its obligation to consider establishing the reversal of the burden of proof described in that Article, but has decided against it.

(c) Successes and good practices

301. The provision in chapter 36, Section 1b, PC to lower the evidentiary threshold for confiscation is considered to be a good alternative to the reversal of the burden of proof.

Paragraph 9

9. The provisions of this article shall not be so construed as to prejudice the rights of bona fide third parties.

(a) Summary of information relevant to reviewing the implementation of the article

302. Sweden confirmed that it has fully implemented this provision of the Convention.
303. The Swedish regulation can be found in chapter 36, section 5, PC which give bona fide third parties enough protection. According to that provision, property belonging to a bona fide third party can only be confiscated if the third party e.g. received the property as a gift or inherited it.

Chapter 36, Section 5

Forfeiture of property or its worth in consequence of crime as provided in Sections 1 and 2-4 may, unless otherwise stated, be exacted of:

- a) the offender or an accomplice in the crime,
- b) the person position was occupied by the offender or an accomplice,
- c) the person who profited from the crime or the entrepreneur described in Section 4,
- d) any person who after the crime acquired the property through the division of jointly held marital property, or through inheritance, will or gift, or who after the crime acquired the property in some other manner and, in so doing, knew or had reasonable grounds to suspect that the property was connected with the crime. If the property did not belong to any of the persons in the categories a)-c) in the first paragraph, it may not be declared forfeited. Property that according to Section 1 c shall be regarded of proceeds of crime may be declared forfeited if the property, which the forfeited property has replaced, belonged to any of the categories a)-c) in the first paragraph.

(b) Observations on the implementation of the article

304. The reviewing experts conclude that Sweden has fully implemented Art. 31(9) UNCAC.

Article 32 Protection of witnesses, experts and victims

Paragraph 1

1. Each State Party shall take appropriate measures in accordance with its domestic legal system and within its means to provide effective protection from potential retaliation or intimidation for witnesses and experts who give testimony concerning offences established in accordance with this Convention and, as appropriate, for their relatives and other persons close to them.

(a) Summary of information relevant to reviewing the implementation of the article

305. Sweden confirmed that it has fully implemented this provision of the Convention.

306. In Sweden, witnesses and experts who give testimony enjoy effective legal protection against retaliation and intimidation. For example, witnesses do not have to be physically present in the court room, but can attend the hearings through video conference. It is also possible to order the defendant to leave the court room and listen from another room (the defendant would of course still be allowed to hear the testimony and be allowed to ask questions). The police can also take measures to protect witness, such as in serious cases giving them new identities.

***Code of Judicial Procedure
Chapter 5, Section 10***

Parties and others taking part in a hearing before the court are to be present in the courtroom or the place where the hearing is otherwise held.

If there are grounds to do so, the court may decide that any party or others referred to in the first paragraph should take part via audio or video feed instead. In assessing whether there are grounds for such participation, the court is to pay special attention to the cost or inconvenience that may arise if the party to take part in the hearing has to be present in the courtroom, and whether anyone who is to take part in the hearing feels a palpable fear of being present in the courtroom.

Under the second paragraph, participation may not take place if it is inappropriate considering the purpose of the person's appearance and other circumstances.

A person taking part in a hearing via audio or video feed is to be considered to have appeared before the court.

Chapter 36, Section 18

The court may order the party or listener to be excluded from the courtroom during an examination if there is ground to believe that, in the presence of a party or any listener, a witness does not tell the truth openly through fear or any other cause, or if a party or a listener hinders the witness from testifying by interrupting the witness or otherwise.

When a witness statement under the first paragraph is submitted in the absence of a party, the party is to follow the hearing if possible via audio or video feed. If this is not possible, the witness statement is to be reproduced to the extent necessary when the party is present. The party is to be offered the opportunity to ask the witness questions.

307. There are also various methods for protecting the identity and whereabouts of witnesses. This may be done through 'flagging' personal information as being blocked – which means it is not released without special assessment – and by allowing an individual, under Section 16 of the Population Registration Act (1991:481), to remain registered at their old address.

308. The Act concerning fictitious personal data (1991:483) may be used if a person risks being subjected to serious crime against their life, health or freedom, and needs to change their identity as a result.

Act concerning fictitious personal data (1991:483)

Section 1,

A person entered in the population register who risks being subjected to serious crime against their life, health or freedom may be permitted to use personal data that are not real (fictitious personal data). Permission to do so may be limited to a certain period.

Permission to use fictitious personal data may not be granted if the person can be given adequate protection by means of registration at their former place of residence under Section 16 of the Swedish Population Registration Act (1991:481) or in some other way.

Permission to use fictitious personal data may also be granted to a member of the family of the person referred to in the first paragraph if they permanently reside together.

309. There is also the Ordinance (2006:519) on special personal safety programmes etc which is of relevance regarding the implementation of article 32 of the UNCAC.

Ordinance (2006:519) on special personal safety programmes etc.

Section 1

This ordinance contains provisions on special personal safety programmes in accordance with Section 2 a of the Police Act (1984:387).

Anyone who becomes the subject of a special personal safety programme shall get assistance with the security measures that are deemed feasible and necessary. He or she shall also be assisted in his or her contacts with different authorities and in any measure that is required for the implementation of the personal safety programme.

Besides the Police, the Prison and Probation Service may implement personal safety programmes to the extent specified in this ordinance.

Conditions for special personal safety programmes:

Section 2

Special personal safety programmes may cover

1. suspects, defendants, injured parties, witnesses and other persons who feature or have featured in a preliminary investigation or in legal proceedings regarding serious or organised crime (*persons who have or will be summoned by the prosecution, henceforth referred to as the summoned person*),
2. persons who provide or have provided information to the police on a regular basis in matters regarding serious or organised crime,
3. staff within the judicial system, or
4. persons close to persons under points 1–3.

When special circumstances render it desirable, personal safety programmes concerning the safety of other persons may also be implemented.

Section 3

A person may be covered by a special personal safety programme when there is a tangible risk that his/her or a closely associated person's life, health, freedom or integrity will become the target of serious criminal activities.

Section 4

In order for *persons summoned by the prosecution* to qualify for a special personal safety programme, the following conditions must be fulfilled, in addition to the conditions laid down in Section 3:

1. The information that the *summoned person* provides or has provided is deemed to be of importance for the preliminary investigation or the legal proceedings.
2. The crime risk is linked to the information that is being provided or has been provided by the *summoned person*.
3. The *summoned person* agrees to participate in the safety programme and is deemed to be capable to meet the requirements that may be imposed on him or her.
4. The *summoned person* has or can be assumed to be granted the right to reside in Sweden on a permanent basis.
5. Other security measures are deemed to be insufficient.

For a special personal safety programme regarding other persons than *summoned persons* to be implemented, the conditions laid down in the first paragraph, under points 3 to , must be fulfilled. For persons who provide or who have provided information to the police on a regular basis, the crime risk must also be linked to the provision of the information. For persons employed within the legal system, the crime risk must furthermore be related to the office that the employee holds or has upheld.

Responsibility for the special personal safety programmes

Section 5

The Police Service is responsible for the special personal safety programmes. The Prison and Probation Service is however responsible for special personal safety programmes regarding prisoners who are not

1. serving the sentence outside a prison according to Section 33 a of the Prison Treatment Act (1974:203),
2. sojourning outside a prison according to Section 34 of the same act, or
3. serving a prison sentence outside a prison according to the Act on Intense Electronic Surveillance (1994:451).

Section 6

Within the Police Service, there shall be special units responsible for the implementation of the special personal safety programmes pursuant to this ordinance (henceforth referred to as *witness protection units*). The Swedish National Police Board shall co-ordinate the personal safety programme activities within the police.

The Prison and Probation Service shall appoint one or several officers responsible for handling matters in this field.

Section 7

In matters that fall under this ordinance, the Police Service and the Prison and Probation Service shall co-operate with each other and with other concerned authorities and institutions.

310. Other relevant provisions of the domestic legislation include the following:

Public Access to Information and Secrecy Act

Chapter 22, Section 1

Secrecy applies to information concerning an individual's personal circumstances, if there is particular reason to assume that the individual or those close to them would suffer harm if the information were to be disclosed and the information is found in activities relating to the population register or other similar civil registration and, in so far as the Government issues

regulations concerning it, any another activity that relates to registration of a significant share of the population.

[...]

Secrecy applies to information contained in an official document for a maximum of 70 years.

Population Registration Act (1991:481)

Section 16

A person who, for specific reasons, it may be assumed will be subjected to crime, persecution or some other form of serious harassment, is permitted to be registered as a resident at their old address when they move to another area. Remaining registered at an old address may take place only following an application by the individual.

It may be granted only if the individual's need for protection cannot be provided for through non-contact orders or by other means.

This option may also apply to the accompanying family of the person at risk.

(b) Observations on the implementation of the article

311. The reviewing experts conclude that Sweden has fully implemented Art. 32(1) UNCAC.

(c) Successes and good practices

312. The reviewing experts consider the Sweden regime for the protection of witnesses, experts and victims to constitute a good practice.

Paragraph 2

2. The measures envisaged in paragraph 1 of this article may include, inter alia, without prejudice to the rights of the defendant, including the right to due process:

(a) Establishing procedures for the physical protection of such persons, such as, to the extent necessary and feasible, relocating them and permitting, where appropriate, non-disclosure or limitations on the disclosure of information concerning the identity and whereabouts of such persons;

(b) Providing evidentiary rules to permit witnesses and experts to give testimony in a manner that ensures the safety of such persons, such as permitting testimony to be given through the use of communications technology such as video or other adequate means.

(a) Summary of information relevant to reviewing the implementation of the article

313. Sweden confirmed that it has fully implemented this provision of the Convention.

314. In Sweden, witnesses and experts who give testimony enjoy effective legal protection against physical retaliation. Specific measures can be taken to protect witnesses and others who testify in a trial relating to a serious or organized crime if there is a clear and present risk that a serious crime would be committed against the witness or his or her close relatives.

Police Act

Section 2 a

The Swedish Police may carry out special personal security operations concerning witnesses and other persons under threat. The Government may issue regulations on such security operations. Such regulations may state that other authorities may also carry out special personal security operations.

According to Section 1 of the Ordinance (2006:519) on Special Personal Security Operations etc. a person who is subject to special personal security operations shall receive assistance with the security measures deemed possible and necessary to implement. He or she shall also receive assistance with contacts with government agencies and other things needed for the personal security operations to be carried on.

According to Section 2 of the Ordinance special personal security operations may be carried on with respect to

1. suspects, accused, injured parties, witnesses and others who take part or have taken part in a preliminary investigation or a court procedure regarding serious or organized crime (evidence persons),
2. persons who continuously provide or have provided the police with information in matters regarding serious or organized crime,
3. employees within the judicial system, or
4. relatives of persons under 1-3.

If there are special reasons special personal security operations may be carried on with respect to other persons as well.

According to Section 3 of the Ordinance a person may be subject to special personal security operations if there is a substantial risk that serious crime is directed towards his or hers, or a relatives life, health, freedom or peace.

315. The measures to be included in personal security operations may vary from case to case, as security operations are to be individually tailored, based for example on the threat scenario and the protected person's personal circumstances, in order to achieve the most effective protection possible in each individual case. Measures that may be required can include overt security measures, such as relocating to a safe house and the installation of an alarm system, but may also include dealing with practical situations, such as help with various contacts with the authorities.

316. For security reasons, the Police Authority is unable to specify the exact number or other details of individuals included in the program.

(b) Observations on the implementation of the article

317. During the country visit, the reviewing experts asked if the offences established in accordance with the Convention fall within the definition of "serious crime" in Swedish law and if these specific measures apply with respect to persons giving testimony in respect of offences established in accordance with the Convention. The Swedish police explained that the National Police only take care of the highest risk groups for witness protection. Others are taken care of by the regional police. So far, protection measures have not been used in corruption cases, but they would be dealt with in the same way.

318. The police further explained that witness protection is extended to members of family and that relocation agreements with other countries exist.

319. The reviewing experts conclude that Sweden has fully implemented Art. 32(2) UNCAC.

Paragraph 3

3. States Parties shall consider entering into agreements or arrangements with other States for the relocation of persons referred to in paragraph 1 of this article.

(a) Summary of information relevant to reviewing the implementation of the article

320. Sweden confirmed that it has fully implemented this provision of the Convention.

321. Sweden has adopted national regulations to implement effective measures for personal security in criminal cases, including the relocation of witnesses and, where necessary, their relations. A national ordinance adopted 1 July 2006 concerning personal security is aiming to provide protection for persons taking part in criminal proceedings in Swedish courts as well as judiciary personnel. The measures taken to provide personal security for these persons are aiming to create long-term security in everyday life for a considerable time to come. The Swedish Police is primarily responsible for appropriate measures to be taken in each specific case.

322. Sweden is also co-operating with other states within the field of personal security. The Swedish National Police Board is authorized to enter into international agreements with other states regarding personal security. Sweden has a number of international agreements, mostly with other EU member states, but also with ICTY, the Special Court for Sierra Leone and the War Crimes Chamber in Bosnia and Herzegovina and also an agreement with Canada, all regarding witness protection programmes.

(b) Observations on the implementation of the article

323. The reviewing experts conclude that Sweden has fully implemented Art. 32(3) UNCAC.

Paragraph 4

4. The provisions of this article shall also apply to victims insofar as they are witnesses.

(a) Summary of information relevant to reviewing the implementation of the article

324. In the Swedish domestic legal system, the provisions implementing this article also apply to victims insofar as they are witnesses.

(b) Observations on the implementation of the article

325. The reviewing experts conclude that Sweden has fully implemented Art. 32(4) UNCAC.

Paragraph 5

5. Each State Party shall, subject to its domestic law, enable the views and concerns of victims to be presented and considered at appropriate stages of criminal proceedings against offenders in a manner not prejudicial to the rights of the defence.

(a) Summary of information relevant to reviewing the implementation of the article

326. Sweden confirmed that it has fully implemented this provision of the Convention.

327. In criminal proceedings an aggrieved person (målsägande) is a person against whom the offence was committed or who was affronted or harmed by it (Chapter 20, Section 8, CJP). To be considered an aggrieved person, the offence must be reported to the police and criminal proceedings must be initiated. The court decides whether a person is an aggrieved person when the prosecutor submits a prosecution. Under Swedish law, besides being classified as an aggrieved person it is sometimes necessary to be a party and/or to be heard in the court proceedings in order to obtain certain rights. This is the case, for example, when it comes to interpretation, translation and reimbursement for costs.

328. An aggrieved person who is to be heard by the court and is incapable of understanding and speaking Swedish has the right to free interpretation and translation during the legal proceedings. If the person is a party in the legal proceedings, he or she is informed of his or her right to be represented by the prosecutor or a counsel. All aggrieved persons are also informed of their right to a support person.

329. In certain criminal cases, the court can appoint a counsel for an aggrieved person. The counsel must be a lawyer (advokat), a legal associate at a law firm or another person who is suitable for the task. The counsel assists the party and protects the party's interests as a victim of crime and can, for example, bring an action for damages on the victim's behalf in the criminal case if the prosecutor does not do so. It is the court that appoints the counsel. The counsel is paid by the state, and so does not cost the victim anything (the Act on Counsel for an Injured Party (1988:609)).

330. Victims and witnesses can share their views and concerns and invoke their rights at all stages during the criminal proceedings. As a crime is being reported, the victims receive a letter of information stating what support the society can provide for victims of crime. There is also information on the police website what the victims can do, and where they can turn to, in case they would feel threatened and require extra protection. The police in their turn will then make a relevant threat assessment, document it, and make necessary arrangements to protect the victim(s).

331. Victims of crime have a right to claim compensation/damages from the perpetrator under the Tort Liability Act. In cases where no perpetrator can be identified or where he or she does not have the possibility to pay damages, victims have the general possibility to apply for state compensation. The state compensation is subsidiary to damages and compensation that the victim may obtain from the perpetrator (if his or her identity is known) or under any insurance policy. Such compensation is regulated in the Criminal Injuries Compensation Act (1978:413).

332. When a private claim for compensation is based upon an offence that is subject to public prosecution, the police or the prosecutor must inform the victim of the possibility

to claim damages from the perpetrator or obtain compensation from the state. The prosecutor must also, upon request of the victim, prepare and present the victim's claim for damages in connection with the prosecution, provided that no major inconvenience will result and that the claim is not manifestly devoid of merit (Chapter 22, Section 2 the Code of Judicial Procedure). The counsel for an aggrieved person can also, as mentioned above, bring an action for damages on the victim's behalf in the criminal case if the prosecutor does not do so.

333. The Crime Victim Compensation and Support Authority's main task is to administer and pay out criminal injuries compensation, i.e. compensation that is disbursed by the state. Criminal injuries compensation is primarily intended for personal harm such as psychological and physical injuries arising from an offence. Criminal injuries compensation can be disbursed if, as mentioned above, the offender is unable to pay or is unknown, and the injury is not fully covered by insurance. This kind of compensation covers offences committed, or at least accomplished, in Sweden, regardless of whether the victim is a Swedish resident or is here temporarily. Swedish residents can also be entitled to criminal injuries compensation for crimes committed abroad.

CJP

Chapter 22

PRIVATE CLAIMS IN CONSEQUENCE OF OFFENCES

Section 1

A action against the suspect or a third person for a private claim in consequence of an offence may be conducted in conjunction with the prosecution of the offence. When the private claim is not entertained in conjunction with the prosecution, an action shall be instituted in the manner prescribed for civil actions.

Section 2

When a private claim is based upon an offence subject to public prosecution, the prosecutor, upon request of the aggrieved person, shall also prepare and present the aggrieved person's action in conjunction with the prosecution, provided that no major inconvenience will result and that the claim is not manifestly devoid of merit. If the aggrieved person desires to have his claim entertained together with the prosecution, he shall notify the investigation leader or the prosecutor of the claim and state the circumstances upon which it is based.

During the inquiry of an offence, if the investigation leader or the prosecutor finds that a private claim may be based upon the offence, he shall, if possible, notify the aggrieved person in sufficient time prior to the institution of the prosecution. Paragraphs 1 and 2 shall apply also when the claim has been transferred to another person. (SFS 1988:6)

(b) Observations on the implementation of the article

334. The reviewing experts conclude that Sweden has fully implemented Art. 32(5) UNCAC.

Article 33 Protection of reporting persons

Each State Party shall consider incorporating into its domestic legal system appropriate measures to provide protection against any unjustified treatment for any person who reports in good faith and on reasonable grounds to the competent authorities any facts concerning offences established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

335. Sweden confirmed that it has fully implemented this provision of the Convention.

336. The most important protection in Swedish law regarding this article is the offence of interference in a judicial matter, chapter 17, section 10, PC. Also both the Freedom of the Press Act and the Freedom of Speech law contain rules of protection for a public official who wants, in writing or in speech, to tell about different kinds of wrongdoing.

Chapter 17, Section 10

A person, who by violence or threat of violence, assaults someone because he has, in court or other authority, filed a complaint, pleaded a cause, testified or else made a statement at a hearing, or to prevent him from so doing, shall be sentenced for interference in a judicial matter to a fine or imprisonment for at most two years. The same shall apply to a person who by some other act causes suffering, injury, or inconvenience, or by threat of such act, assaults someone because the latter testified or made some other statement at an official hearing, or does so to prevent the making of such a statement.

If the crime is gross, imprisonment for at least six months and at most six years shall be imposed.

337. The provision on obstructing justice is aimed at protecting whistleblowers against violence and threats. People in public office can use their constitutional right to either reveal irregularities and other malpractices themselves in printed publications or provide information about such irregularities or malpractices to a newspaper or other media company. People who provide such information are entitled to remain anonymous. Freedom of communication also covers the right to disclose information classified as secret, unless it is subject to what is known as ‘enhanced secrecy’.

338. Both the Freedom of the Press Act and the Fundamental Law on Freedom of Expression contain protection rules for a public official who, in writing or speech, wants to disclose information for publication. In addition, the Ordinance (2006:519) on special personal safety programmes may cover persons “who provide or have provided information to the police on a regular basis in matters regarding serious or organized crime”. Furthermore, an employer under public law does not have the right to inquire into which employee has disclosed information for publication, or the right of reprisal against an employee who has done so. A public authority or other public body is not permitted to contravene the constitution by enquiring into who has disclosed the information for publication. Anyone who intentionally violates this prohibition on enquiries may be fined or sentenced to imprisonment for no more than one year. It follows from this constitutional protection that an employer under public law does not have the right of reprisal against an employee who has disclosed information for publication.

339. As regards employees involved in whistle-blowing, 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 – whose report is now being circulated for comment – 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 design of the proposals is to be general in nature and applicable in both the public and private sectors.

340. Moreover, it should be stressed that the provisions on secrecy during a preliminary investigation mean that the name of the reporter is normally protected during the preliminary investigation. Nor is it normally necessary to reveal the name of the person who reported the crime in cases where prosecution proceedings are initiated.

(b) Observations on the implementation of the article and recommendation

341. The reviewing experts conclude that Sweden has adequately implemented Art. 33 UNCAC. However, they encourage Sweden to consider introducing specific labour law provisions for the protection of whistleblowers in the private sector against retaliation by their employers.

Article 34 Consequences of acts of corruption

With due regard to the rights of third parties acquired in good faith, each State Party shall take measures, in accordance with the fundamental principles of its domestic law, to address consequences of corruption. In this context, States Parties may consider corruption a relevant factor in legal proceedings to annul or rescind a contract, withdraw a concession or other similar instrument or take any other remedial action.

(a) Summary of information relevant to reviewing the implementation of the article

342. Sweden confirmed that it has fully implemented this provision of the Convention.
343. The Swedish legal system offers various possibilities to annul or rescind an agreement or a decision adopted by the public administration which have been affected by acts of corruption.
344. The Contracts Act (1915:218) contains rules on the invalidity of legal transactions. If the person against whom a legal transaction has been effected has caused this by fraudulently leading someone to do so or has realised, or should have realised, that the person who effected the legal transaction has been fraudulently led to do so by another person, the legal transaction shall not, under Section 30, be valid in relation to the person led astray. If the person against whom a legal transaction has been effected has fraudulently stated or withheld circumstances that could be assumed to be significant for the legal transaction, he or she shall thereby be seen to have caused the transaction, unless it is shown that the fraudulent conduct did not have any influence on the legal transaction. The abovementioned provision on fraudulent conduct may be relevant in cases where corruption has played a significant role in the origins of a contract.
345. The Tort Liability Act contains rules about compensation for loss or damage. The possibilities to demand compensation for damages in a criminal case are regulated in Chapter 22 CJP. A person convicted of bribery could therefore, in the same court proceedings, be obliged to pay damages to a person who has suffered damages as a result of that crime. In cases where no perpetrator can be identified or where he or she does not

have the possibility to pay damages, victims can apply for state compensation. Such compensation is subsidiary to damages and compensation that the victim may obtain from the offender and is regulated in the Criminal Injuries Compensation Act. The Crime Victim Compensation and Support Authority has the task to administer and pay out criminal injuries compensation, i.e. compensation that is disbursed by the State.

346. If an administrative decision is incorrect and this is due to corruption, the decision cannot normally be reviewed (Section 26 of the Administrative Procedure Act (1986:223)). This is because the revocation of a permit or similar is detrimental to an individual party. However, such a circumstance often serves as a basis for a decision being amended pursuant to a material rule.

347. Sweden also referred to the answer to Art. 32(5) UNCAC.

(b) Observations on the implementation of the article

348. The reviewing experts conclude that Sweden has adequately implemented Art. 34 UNCAC.

Article 35 Compensation for damage

Each State Party shall take such measures as may be necessary, in accordance with principles of its domestic law, to ensure that entities or persons who have suffered damage as a result of an act of corruption have the right to initiate legal proceedings against those responsible for that damage in order to obtain compensation.

(a) Summary of information relevant to reviewing the implementation of the article

349. Sweden confirmed that it has fully implemented this provision of the Convention.

350. The Swedish Tort Liability Act contain rules about compensation for loss or damage. The possibilities to demand compensation for damages in a criminal case is regulated in chapter 22 in the Code of Judicial Procedures. A person convicted of e.g. bribery could therefore, in the same court proceedings, be obliged to pay damages to a person who has suffered damages as a result of that crime.

The Swedish Code of Judicial Procedure

Chapter 22, Section 1

A action against the suspect or accused or a third person for a private claim in consequence of an offence may be conducted in conjunction with the prosecution of the offence. When the private claim is not entertained in conjunction with the prosecution, an action shall be instituted in the manner prescribed for civil actions.

Chapter 22, Section 2

When a private claim is based upon an offence subject to public prosecution, the prosecutor, upon request of the aggrieved person, shall also prepare and present the aggrieved persons action in conjunction with the prosecution, provided that no major inconvenience will result and that the claim is not manifestly devoid of merit. If the aggrieved person desires to have his claim entertained together with the prosecution, he shall notify the investigation leader or the prosecutor of the claim and state the

circumstances upon which it is based. During the inquiry of an offence, if the investigation leader or the prosecutor finds that a private claim may be based upon the offence, he shall, if possible, notify the aggrieved person in sufficient time prior to the institution of the prosecution.

Paragraphs 1 and 2 shall apply also when the claim has been transferred to another person.

(b) Observations on the implementation of the article

351. The reviewing experts conclude that Sweden has fully implemented Art. 35 UNCAC.

Article 36 Specialized authorities

Each State Party shall, in accordance with the fundamental principles of its legal system, ensure the existence of a body or bodies or persons specialized in combating corruption through law enforcement. Such body or bodies or persons shall be granted the necessary independence, in accordance with the fundamental principles of the legal system of the State Party, to be able to carry out their functions effectively and without any undue influence. Such persons or staff of such body or bodies should have the appropriate training and resources to carry out their tasks.

(a) Summary of information relevant to reviewing the implementation of the article

352. Sweden confirmed that it has fully implemented this provision of the Convention.

353. There is no specialized anti-corruption agency in Sweden but a number of institutions or units with mandates related to the fight against corruption.

354. Within the Swedish office of the public prosecutor there is a special division working exclusively on corruption (the National Anti-Corruption Unit, **NACU**), established in 2003. They are assisted by a special police unit, the National Anti-Corruption Police Unit (**NACPU**), which also specializes in corruption-related cases. The NACPU was established in 2012 to further increase the efficiency and the expertise in the handling of corruption related cases.

355. In corruption-related cases, according to chapter 23 of the Code of Judicial Procedure, a prosecutor instead of a police staff is conducting the investigation because of the complex nature of these cases and the special training that these prosecutors have. The NACU has nine prosecutors and only deals with corruption cases. They are all very senior prosecutors, and seven of them have extensive experience and education in economic or financial crime (accounting law, tax law, etc.) It also has three senior auditors with extensive experience from e.g. the Swedish Tax Agency of auditing accounts and conducting financial investigations. NACU handles all bribery cases and serious corruption cases. The prosecutors can issue search warrants.

356. Training for prosecutors is offered by the Swedish Prosecution Authority and the Swedish Economic Crime Authority, although such training is not mandatory. The Judicial Academy arranges specialist training in economic crimes for judges. The training consists of four parts. The first part focus on accounting offences and evasion of tax. The second part deals with taxes and tax crimes and the third part focus on securities trading

and financial instruments. The fourth and last part deals with how economic crimes are dealt with in court. In total the training consists of eleven days of training.

357. The Judicial Academy offers training for all professional judges. The training aims to put each judge in the best position to meet the high quality requirements of the judicial function. The Judicial Academy arranges specialist training for judges in economic crimes. The training consists of four parts. The first part focuses on accounting offences and tax evasion. The second part deals with taxes and tax crimes and the third part focus on securities trading and financial instruments. The fourth and final part looks at how economic crimes are dealt with in court. The training consists of eleven days in total.

358. The National Anti-Corruption Police Unit (NACPU) has 23 employees, 15 inspectors, 4 civilian investigators, 3 financial specialists and a head of group. In addition, resources are available at FIPO (the Financial Intelligence Unit at the National Financial Intelligence Service), IT and the Criminal Intelligence Unit.

359. In autumn 2012, the NACPU received training with a special focus on foreign bribery, led by the National Anti-Corruption Unit. Two employees and two prosecutors have taken part in a training programme in Washington organised by the SEC and the US Department of Justice and focusing on foreign bribery. The group has sent participants to CEPOL courses: *Investigating Corruption* and *JIT*; the group has been represented at a seminar organised by ERA (Europäische Rechtsakademie) – *Making the fight against corruption in the EU more effective*; the group has taken part in the EACT Working Group ‘Prevention’. Study visits have been made to OLAF and Europol. The group takes part in seminars organized by the Quality of Government Institute (QoG), which among other things presents research findings on corruption in Europe, and seminars arranged by Transparency International.

360. The independence of NACU and NACPU is guaranteed because the Constitution prohibits the government from interfering with the exercise of authority. The Government can only steer authorities through laws, resources and guidelines. The prosecution is not attached to MoJ. The Prosecutor General is appointed by the government for life. Often it is a former judge. He appoints the prosecutors in the NACU.

361. Sweden has a police-type FIU which is part of the National Bureau of Criminal Investigations.

(b) Observations on the implementation of the article

362. The reviewing experts conclude that Sweden has fully implemented Art. 36 UNCAC.

(c) Successes and good practices

363. The establishment of specialised Anti-Corruption Units both within the prosecution service and the police was considered a good practice.

Article 37 Cooperation with law enforcement authorities

Paragraphs 1 and 2

1. Each State Party shall take appropriate measures to encourage persons who participate or who have participated in the commission of an offence established in accordance with this Convention to supply information useful to competent authorities for investigative and evidentiary purposes and to provide factual, specific help to competent authorities that may contribute to depriving offenders of the proceeds of crime and to recovering such proceeds.

2. Each State Party shall consider providing for the possibility, in appropriate cases, of mitigating punishment of an accused person who provides substantial cooperation in the investigation or prosecution of an offence established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

364. Sweden confirmed that it has fully implemented these provisions of the Convention.

365. In determining the appropriate punishment the court has the possibility to render a milder sentence if the accused had had a possibility to prevent or eliminate damage and if he/she has used it. Sweden does not however apply plea bargaining system and it is not possible for a person to get a milder sentence by assisting in obtaining evidence in relation to other offenders (so called “crown witnesses”). The Prosecutor has no discretion to offer lesser sentence, although the prosecution will argue mitigating circumstances.

366. The country under review provided the following laws:

Chapter 29, Section 5, PC

In determining the appropriate punishment, the court shall, besides the penal value of the crime, give reasonable consideration to:

2. whether the accused to the best of his ability has attempted to prevent, remedy or limit the harmful consequences of the crime,
3. whether the accused gave himself up
8. whether there exists any other circumstance that calls for a lesser punishment than that warranted by the penal value of the crime.

(b) Observations on the implementation of the article

367. The reviewing experts conclude that Sweden has adequately implemented Art. 37(1) and (2) UNCAC.

Paragraph 3

3. Each State Party shall consider providing for the possibility, in accordance with fundamental principles of its domestic law, of granting immunity from prosecution to a person who provides substantial cooperation in the investigation or prosecution of an offence established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

368. Sweden indicated that it has not implemented this provision of the Convention.

369. The granting of immunity would not be in compliance with fundamental principles of the Swedish legal system.

370. The introduction of special rules on the mitigation of sentences for ‘principal witnesses’ has been seen as somewhat alien to Swedish legal traditions. Reasons for this include the fact that it cannot be ruled out that such measures could create a breeding ground for false statements and an increased risk of violence, e.g. at correctional institutions.

(b) Observations on the implementation of the article

371. The reviewing experts conclude that, in accordance with Art. 37(3) UNCAC, Sweden has fulfilled its obligation to consider the introduction of provisions on granting immunity to cooperating offenders, but has decided against it.

Paragraph 4

4. Protection of such persons shall be, mutatis mutandis, as provided for in article 32 of this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

372. Persons who have participated in the commission of an offence and provide the law enforcement authorities with useful information for investigative and evidentiary purposes (collaborators of justice) are equally covered by Section 2 of the Police Act and Section 2 of the Ordinance (2006:519) on special personal safety programmes.

(b) Observations on the implementation of the article

373. The reviewing experts conclude that Sweden has fully implemented Art. 37(4) UNCAC.

Paragraph 5

5. Where a person referred to in paragraph 1 of this article located in one State Party can provide substantial cooperation to the competent authorities of another State Party, the States Parties concerned may consider entering into agreements or arrangements, in accordance with their domestic law, concerning the potential provision by the other State Party of the treatment set forth in paragraphs 2 and 3 of this article.

(a) Summary of information relevant to reviewing the implementation of the article

374. Sweden indicated that it has not implemented this provision of the Convention.

(b) Observations on the implementation of the article

375. The reviewing experts observe that Sweden has not implemented this non-mandatory provision.

Article 38 Cooperation between national authorities

Each State Party shall take such measures as may be necessary to encourage, in accordance with its domestic law, cooperation between, on the one hand, its public authorities, as well as its public officials, and, on the other hand, its authorities responsible for investigating and prosecuting criminal offences. Such cooperation may include:

(a) Informing the latter authorities, on their own initiative, where there are reasonable grounds to believe that any of the offences established in accordance with articles 15, 21 and 23 of this Convention has been committed; or

(b) Providing, upon request, to the latter authorities all necessary information.

(a) Summary of information relevant to reviewing the implementation of the article

376. Sweden confirmed that it has fully implemented these provisions of the Convention.

377. According to the Swedish Police Act, the police has to cooperate with the authorities and public officials. This cooperation includes initiative to report offences mentioned in article 15, 21 and 23 of this Convention.

378. According to Section 3 of the Police Act (1984:387), the Police shall cooperate with the Prosecution authorities. The Police shall also cooperate with other authorities and organizations whose activities concern police activities. Other authorities shall support the Police in its work.

379. The Swedish authorities such as the Swedish Prosecution Authority and the Swedish Police have defined in MoUs what parts of the process of prosecution each authority is responsible for. Also, the descriptions define in what parts of the process the authorities may, or shall, assist one another.

380. The Police Act regulates cooperation not only between authorities responsible for investigating and prosecuting criminal offences but also between the Police Authority and other authorities/public officials.

(b) Observations on the implementation of the article

381. The reviewing experts conclude that Sweden has adequately implemented Art. 38(a) and (b) UNCAC.

Article 39 Cooperation between national authorities and the private sector

Paragraph 1

1. Each State Party shall take such measures as may be necessary to encourage, in accordance with its domestic law, cooperation between national investigating and prosecuting authorities and entities of the private sector, in particular financial institutions, relating to matters involving the commission of offences established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

382. Sweden confirmed that it has fully implemented this provision of the Convention.

383. Sweden has different laws which include cooperation and the obligation to report different kinds of information. There is also a constant dialogue between offence investigating authorities and financial institutions. For example, auditors have an obligation to report on suspected bribery in companies that they audit. There are also regulations obliging banks to monitor suspected money laundering etc. and to report such transactions to the police. There are also continuous discussions between the police and the financial institutions on how to prevent such criminal activities.

Banking and Financing Business Act (SFS 2004:297)

Chapter 1, para 11

A credit institution is required to disclose information about individuals' relationships to the institution if it is requested (in the course of an investigation) by investigators or if requested (in a case concerning legal assistance by another state or an international court) by a prosecutor.

384. Requirements and obligations of cooperation and reporting of different kinds of information may be found in several laws. For instance, the financial institutions' obligations to cooperate with national investigating and prosecuting authorities follow from the provisions in several of the acts in the area of corporate law legislation in Sweden. Pursuant to chapter 1 para 11 in the Banking and Financing Business Act (SFS 2004:297), a finance company is required to provide information if it is requested by an investigator or prosecutor (in a criminal case or legal assistance in relation to a criminal case). Corresponding provisions may be found in the Insurance Business Act (SFS 2010:2043) and Securities Market Act (SFS 2007:528). In addition, pursuant to the Act on measures against money laundering and financing of terrorism (SFS 2009:62) the financial institutions (and other obliged entities) are obliged to investigate and report transactions which may be suspected cases of money laundering or financing of terrorism to the national police. If requested by the police, the institutions should without delay provide all relevant and available information in relation to the suspicions. In addition to the requirements that follows from the legislation there is an on-going dialogue between offence investigating authorities and financial institutions. As regards auditors there is an obligation to report on suspected bribery in companies that they audit.

(b) Observations on the implementation of the article

385. The reviewing experts conclude that Sweden has adequately implemented Art. 39(1) UNCAC.

Paragraph 2

2. Each State Party shall consider encouraging its nationals and other persons with a habitual residence in its territory to report to the national investigating and prosecuting authorities the commission of an offence established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

386. Sweden confirmed that it fully implemented this provision of the Convention.

387. The police and other authorities often have specific projects aiming to encourage the public to report on suspected crimes. No specific legislative measures have however been taken apart from those described above on witness protection etc.
388. Concerning projects to encourage and prompt the general public to report suspected offences, the NACPU has not been responsible for any specific project of this kind. The NACPU has a crime prevention mandate, which is being built up. Brochures have been produced and a number of visits have taken place, including to the Swedish Association of Local Authorities and Regions.

(b) Observations on the implementation of the article

389. The reviewing experts conclude that Sweden has adequately implemented Art. 39(2) UNCAC.

Article 40 Bank secrecy

Each State Party shall ensure that, in the case of domestic criminal investigations of offences established in accordance with this Convention, there are appropriate mechanisms available within its domestic legal system to overcome obstacles that may arise out of the application of bank secrecy laws.

(a) Summary of information relevant to reviewing the implementation of the article

390. Sweden confirmed that it has fully implemented this provision of the Convention.
391. The principal rules about bank secrecy are regulated in the Swedish Banking and Financing Business Act, Chapter 1. The chapter contains, among other things, an obligation to give information in special cases such as when required by the police or prosecutor in relation to the investigation of a criminal offence or if asked by a prosecutor on behalf of another state or an international court. The obligation to give information is also regulated in other laws.

The Swedish Banking and Financing Act (2004:297),

Chapter 1, Section 11

A Credit Institution is obliged to provide information on individuals relationship with the Institute, if it is required in an investigation according to the provisions on criminal investigation by the investigation leader or by a prosecutor in case of mutual legal assistance in criminal cases on request by another State or by an international court.

392. Corresponding provisions to the one in Chapter 1 Section 11 of the Banking and Financing Business Act also exist in *inter alia* Chapter 2, Section 20 of the Investment Funds Act (Sw. lagen [2004:46] om investeringsfonder), Chapter 10, Section 18 of the Capital Adequacy and Large Exposures Act (Sw. lagen [2006:1371] om kapitaltäckning och stora exponeringar), Chapter 6, Section 8 of the Financial Conglomerates (Special Supervision) Act (Sw. lagen [2006:531] om särskild tillsyn över finansiella konglomerat), Chapter 1 Section 12 of the Securities Act (Sw. lagen [2007:528] om

värdepappersmarknaden), Chapter 3 Section 14 of the Act on Payment Services (Sw. lagen [2010:751] om betaltjänster) and in Chapter 3 Section 14 of the Act on Electronic Currency (Sw. lagen [2011:755] om elektroniska pengar). In other words, corresponding obligations to provide information needed in criminal investigations exist all over the financial market/sector. No court order is needed to access bank documents. Instead, the prosecutor can order that these documents be made available.

393. It is worth adding that the possibility has been introduced for prosecutors or other heads of preliminary investigations to prohibit financial institutions from informing customers and external parties that certain checks are being carried out. This communication ban may be adopted in cases where credit institutions and other financial companies are obliged to disclose information because of a preliminary investigation or legal assistance in a criminal case. (See for example Chapter 1, Section 13 of the Securities Act and Chapter 1, Section 12 of the Banking and Financing Business Act).

(b) Observations on the implementation of the article

394. The reviewing experts conclude that Sweden has adequately implemented Art. 40 UNCAC.

(c) Successes and good practices

395. The possibility to prohibit financial institutions from informing customers and external parties that certain checks are being carried out can be considered a good practice.

Article 41 Criminal record

Each State Party may adopt such legislative or other measures as may be necessary to take into consideration, under such terms as and for the purpose that it deems appropriate, any previous conviction in another State of an alleged offender for the purpose of using such information in criminal proceedings relating to an offence established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

396. Sweden confirmed that it has fully implemented this provision of the Convention.

397. In the determination of the punishment the court has the possibility to take into consideration any previous conviction, chapter 29, section 4, PC. Different kinds of criminal procedural coercive measures can also be used if the accused has been convicted in another state. According to Framework Decision 2008/675/JHA, EU Member States shall in criminal proceedings observe convictions in other Member States.

398. Convictions in non-EU Member States can, in principle, be taken into consideration.

Chapter 29, Section 4

In determining the appropriate punishment, the court shall, in addition to the penal value of the crime, in an aggravating direction consider whether the accused has been previously guilty of crime, unless such consideration can be given through choice of sanction or sufficiently considered through forfeiture of conditionally granted liberty. In this assessment special consideration shall be given to the extent of any previous criminality, to the time that has elapsed between the crimes, and to whether the previous and the new criminality are similar in nature or whether in both cases that they are of an especially serious nature.

(b) Observations on the implementation of the article

399. The reviewing experts conclude that Sweden has implemented Art. 41 UNCAC.

Article 42 Jurisdiction

Subparagraph 1 (a)

1. Each State Party shall adopt such measures as may be necessary to establish its jurisdiction over the offences established in accordance with this Convention when:

(a) The offence is committed in the territory of that State Party; or

(a) Summary of information relevant to reviewing the implementation of the article

400. Sweden confirmed that it has fully implemented this provision of the Convention.

401. The rules about Swedish jurisdiction in criminal cases are regulated in the Penal Code, chapter 2. If the crime has been committed in Sweden, Sweden courts have the jurisdiction over the offence.

Chapter 2, Section 1

Crimes committed in this Realm shall be adjudged 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 in the Realm.

Chapter 2, Section 4

A crime is deemed to have been committed where the criminal act was perpetrated and also where the crime was completed or, in the case of an attempt, where the intended crime would have been completed.

(b) Observations on the implementation of the article

402. The reviewing experts conclude that Sweden has implemented Art. 42(1)(a) UNCAC.

Subparagraph 1 (b)

1. Each State Party shall adopt such measures as may be necessary to establish its jurisdiction over the offences established in accordance with this Convention when:

(b) The offence is committed on board a vessel that is flying the flag of that State Party or an aircraft that is registered under the laws of that State Party at the time that the offence is committed.

(a) Summary of information relevant to reviewing the implementation of the article

403. Sweden confirmed that it has fully implemented this provision of the Convention.

404. The rules about Swedish jurisdiction in criminal cases are regulated in the Penal Code, chapter 2. According to section 3 in that chapter, Swedish courts have the jurisdiction over crimes committed on board of Swedish vessels and aircrafts.

Chapter 2

Section 3

Even in cases other than those listed in Section 2 (Section 2 refers to nationality jurisdiction), crimes committed outside the Realm shall be adjudged according to Swedish law and by a Swedish court:

1. if the crime was committed on board a Swedish vessel or aircraft or was committed in the course of duty by the officer in charge or a member of its crew.

Section 5

Prosecution for a crime committed within the Realm on a foreign vessel or aircraft by an alien, who was the officer in charge or member of its crew or otherwise travelled in it, against another alien or a foreign interest shall not be instituted without the authority of the Government or a person designated by the Government.

Prosecution for a crime committed outside the Realm may be instituted only following the authorisation referred to in the first paragraph. However, prosecution may be instituted without such an order if the crime consists of a false or careless statement before an international court or if the crime was committed:

1. on a Swedish vessel or aircraft or by the officer in charge or some member of its crew in the course of duty,

2. by a member of the armed forces in an area in which a detachment of the armed forces was present,

3. in the course of duty outside the Realm by a person employed by a foreign contingent of the Swedish armed forces,

4. in Denmark, Finland, Iceland or Norway or on a vessel or aircraft in regular commerce between places situated in Sweden or one of the said states, or

5. by a Swedish, Danish, Finnish, Icelandic or Norwegian citizen against a Swedish interest. (Law 1993:350).

(b) Observations on the implementation of the article

405. The reviewing experts conclude that Sweden has implemented Art. 42(1)(b) UNCAC.

Subparagraph 2 (a)

2. Subject to article 4 of this Convention, a State Party may also establish its jurisdiction over any such offence when:

(a) The offence is committed against a national of that State Party; or

(a) Summary of information relevant to reviewing the implementation of the article

406. Sweden confirmed that it has not implemented this provision of the Convention.

407. The rules about Swedish jurisdiction in criminal cases are regulated in the Penal Code, chapter 2. There is no general provision giving Swedish courts jurisdiction over crimes committed against Swedish citizens.

(b) Observations on the implementation of the article

408. The reviewing experts conclude that Sweden has not implemented Art. 42(2)(a) UNCAC.

(c) Recommendation

409. Consider expanding the scope of criminal jurisdiction, as prescribed in the national legislation, to cover offences committed against Swedish nationals (passive personality principle).

Subparagraph 2 (b)

2. Subject to article 4 of this Convention, a State Party may also establish its jurisdiction over any such offence when:

(b) The offence is committed by a national of that State Party or a stateless person who has his or her habitual residence in its territory; or

(a) Summary of information relevant to reviewing the implementation of the article

410. Sweden has established its jurisdiction over offences established in accordance with this Convention when such offences are committed by a national of Sweden or a stateless person who has his or her habitual residence in Sweden's territory.

411. The rules about Swedish jurisdiction in criminal cases are regulated in the Penal Code, chapter 2. According to section 2, Swedish courts have jurisdiction over crimes committed by Swedish nationals and stateless people even if the crime was committed outside Sweden, provided that the act was subject to criminality under the law of the place where the crime was committed (dual criminality). For some serious crimes listed in section 3, dual criminality is however not necessary.

Chapter 2, Section 2

Crimes committed outside of the Realm 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 in the Realm 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 the Realm, and the crime under Swedish Law can result in imprisonment for more than six months.

The first, paragraph shall not apply if the act is not subject to criminal responsibility under the law of the place where it was committed or if it was committed within an area

not belonging to any state and, under Swedish law, the punishment for the act cannot be more severe than a fine.

In cases mentioned in this Section, a sanction may not be imposed which is more severe than the severest punishment provided for the crime under the law in the place where it was committed. (Law 1972:812)

(b) Observations on the implementation of the article

412. The reviewing experts conclude that Sweden has implemented Art. 42(2)(b) UNCAC.

Subparagraph 2 (c)

2. Subject to article 4 of this Convention, a State Party may also establish its jurisdiction over any such offence when:

(c) The offence is one of those established in accordance with article 23, paragraph 1 (b) (ii), of this Convention and is committed outside its territory with a view to the commission of an offence established in accordance with article 23, paragraph 1 (a) (i) or (ii) or (b) (i), of this Convention within its territory; or

(a) Summary of information relevant to reviewing the implementation of the article

413. Sweden confirmed that it has fully implemented this provision of the Convention.

414. The rules about Swedish jurisdiction in criminal cases are regulated in the Penal Code, chapter 2. According to section 4, Swedish courts have jurisdiction over criminal attempts committed outside of Sweden if the intended crime would have been completed here. Swedish courts also have jurisdiction over associations with and aiding the commission of a crime taking place abroad in crimes completed in the country.

Chapter 2, Section 4

A crime is deemed to have been committed where the criminal act was perpetrated and also where the crime was completed or, in the case of an attempt, where the intended crime would have been completed.

(b) Observations on the implementation of the article

415. The reviewing experts conclude that Sweden has implemented Art. 42(2)(c) UNCAC.

Subparagraph 2 (d)

2. Subject to article 4 of this Convention, a State Party may also establish its jurisdiction over any such offence when:

(d) The offence is committed against the State Party.

(a) Summary of information relevant to reviewing the implementation of the article

416. Sweden confirmed that it has fully implemented this provision of the Convention.

417. The rules about Swedish jurisdiction in criminal cases are regulated in the Penal Code, chapter 2. According to section 3 (4), Swedish courts have jurisdiction over crimes

committed outside of Swedish territory if the crime committed was a crime against the Swedish nation, a Swedish municipal authority or other assembly or against a Swedish public institution.

Chapter 2, Section 3

Even in cases other than those listed in Section 2 (Section 2 covers nationality jurisdiction), crimes committed outside the Realm shall be adjudged according to Swedish law and by a Swedish court:

4. if the crime committed was a crime against the Swedish nation, a Swedish municipal authority or other assembly, or against a Swedish political institution.

(b) Observations on the implementation of the article

418. The reviewing experts conclude that Sweden has implemented Art. 42(2)(d) UNCAC.

Paragraph 3

3. For the purposes of article 44 of this Convention, each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences established in accordance with this Convention when the alleged offender is present in its territory and it does not extradite such person solely on the ground that he or she is one of its nationals.

(a) Summary of information relevant to reviewing the implementation of the article

419. Sweden confirmed that it fully implemented this provision of the Convention.

420. The rules about Swedish jurisdiction in criminal cases are regulated in the Penal Code, chapter 2. There are no provisions specially linked to denied extradition of Swedish nationals. However, Swedish courts have jurisdiction over crimes committed by Swedish nationals outside Swedish territory provided that the dual criminality requirement is met, see section 2 (text above).

(b) Observations on the implementation of the article

421. The reviewing experts conclude that Sweden has implemented Art. 42(3) UNCAC.

Paragraph 4

4. Each State Party may also take such measures as may be necessary to establish its jurisdiction over the offences established in accordance with this Convention when the alleged offender is present in its territory and it does not extradite him or her.

(a) Summary of information relevant to reviewing the implementation of the article

422. Sweden confirmed that it has fully implemented this provision of the Convention.

423. The rules about Swedish jurisdiction in criminal cases are regulated in the Penal Code, chapter 2. There is no provision specially linked to denied extradition of the alleged offender. However, Swedish courts have jurisdiction over crimes committed by foreign

nationals present in the realm, provided that the crime under Swedish law can result in imprisonment for more than six months and if the dual requirement is met, see section 2.

(b) Observations on the implementation of the article

424. The reviewing experts conclude that Sweden has implemented Art. 42(4) UNCAC.

Paragraph 5

5. If a State Party exercising its jurisdiction under paragraph 1 or 2 of this article has been notified, or has otherwise learned, that any other States Parties are conducting an investigation, prosecution or judicial proceeding in respect of the same conduct, the competent authorities of those States Parties shall, as appropriate, consult one another with a view to coordinating their actions.

(a) Summary of information relevant to reviewing the implementation of the article

425. Sweden confirmed that it has fully implemented this provision of the Convention.

426. The rules about Swedish jurisdiction in criminal cases are regulated in the Penal Code, chapter 2. Sections 5 and 5 a contain provisions governing the situation where the offender has already been convicted in another country, which under some circumstances prevent further judicial proceedings. Such consultation as described in subparagraph 5 often takes place both for evidentiary etc. purposes and for the purpose of avoiding multiple proceedings, if possible.

Chapter 2, Section 5

Prosecution for a crime committed within the Realm on a foreign vessel or aircraft by an alien, who was the officer in charge or member of its crew or otherwise travelled in it, against another alien or a foreign interest shall not be instituted without the authority of the Government or a person designated by the Government. Prosecution for a crime committed outside the Realm may be instituted only following the authorisation referred to in the first paragraph. However, prosecution may be instituted without such an order if the crime consists of a false or careless statement before an international court or if the crime was committed:

1. on a Swedish vessel or aircraft or by the officer in charge or some member of the crew in the course of duty,
2. by a member of the armed forces in an area in which a detachment of the armed forces was present,
3. in the course of duty outside the Realm by a person employed by a foreign contingent of the Swedish armed forces,
4. in the course of duty outside the Realm by a police officer, customs officer, or an officer of the coast guard who perform cross border actions according to an international agreement which Sweden has acceded.
5. in Denmark, Finland, Iceland or Norway on a vessel or aircraft in regular commerce between places situated in Sweden or one of the said states, or
6. by a Swedish, Danish, Finnish, Icelandic or Norwegian citizen against a Swedish interest.

Chapter 2, Section 5a

If the question of responsibility for an act has been determined by a judgement which has entered into legal force pronounced in a foreign state which has acceded one of the

agreements mentioned in the fourth paragraph, the accused may not be prosecuted for the same act in this Realm,

1. if he has been acquitted,
2. if he has been declared guilty of the crime without a sanction being imposed,
3. if the sanction imposed has been enforced in its entirety or enforcement is in process,
4. if the sanction imposed has lapsed under the law of the foreign state.

The first paragraph shall not apply to a crime under Section 1 or Section 3, points 4, 6 and 7 unless legal proceedings in the foreign state were instituted at the request of a Swedish authority.

If the question of responsibility for an act has been determined by a judgment pronounced by a foreign state and no impediment to legal proceedings exists by reason of what has been previously stated in this Section, the act may be prosecuted in the Realm only by order of the Government or a person authorized by the Government.

The agreements referred to in the first paragraph are the following

1. the European Convention of 28 May 1970 on the International Validity of Criminal Judgments,
2. the European Convention of 15 May 1972 on the Transfer of Proceedings in Criminal Matters,
3. the Convention of 26 July 1995 on the Protection of the Financial Interests of the European Communities to the extent the act is covered by the agreement,
4. the Protocol of 27 July 1995 on the Protection of the Financial Interests of the European Communities to the extent the act is covered by the agreement,
5. the Convention of 19 June 1997 on the Fight against Corruption against public officials in the European Communities' or European Union's Member States take part in to the extent the act is covered by the agreement,
6. the Convention of 19 June 1990 applying the Schengen Agreement of 14 June 1985,
7. the Convention of 25 May 1987 between the Member States of the European Communities on Double Jeopardy, and
8. the second Protocol of 19 June 1997 to the Convention on the Protection of the Financial Interests of the European Communities to the extent the act is covered by the agreement.

If a crime has been committed partly within the Realm and partly within the territory of the Member State where the judgment was pronounced, the first paragraph shall apply if the act is covered by the agreements referred to in the fourth paragraph 3-5 or 8 or if the judgment was pronounced by a state which has acceded an agreement referred to in the fourth paragraph 6 or 7.

(b) Observations on the implementation of the article

427. The reviewing experts conclude that Sweden has implemented Art. 42(5) UNCAC.

Paragraph 6

6. Without prejudice to norms of general international law, this Convention shall not exclude the exercise of any criminal jurisdiction established by a State Party in accordance with its domestic law.

(a) Summary of information relevant to reviewing the implementation of the article

428. Sweden confirmed that it has fully implemented this provision of the Convention.

Chapter 2, Section 7 of the Penal Code

In addition to the provisions of this Chapter on the applicability of Swedish law and the jurisdiction of Swedish courts, limitations resulting from generally recognised fundamental principles of public international law or from special provisions in agreements with foreign powers, shall be observed.

(b) Observations on the implementation of the article

429. The reviewing experts conclude that Sweden has implemented Art. 42(6) UNCAC.

Chapter IV. International cooperation

Article 44 Extradition

Paragraph 1

1. This article shall apply to the offences established in accordance with this Convention where the person who is the subject of the request for extradition is present in the territory of the requested State Party, provided that the offence for which extradition is sought is punishable under the domestic law of both the requesting State Party and the requested State Party.

(a) Summary of information relevant to reviewing the implementation of the article

430. Sweden confirmed that it fully implemented this provision of the Convention.

431. Extradition is regulated by the following legal acts: the Act (1957:668) on Extradition for Criminal Offences, the Act (2011:1165) on Surrender from Sweden According to the Nordic Arrest Warrant and the Act (2003:1156) on Surrender from Sweden According to the European Arrest Warrant.

432. Dual criminality is generally required for extradition to non-Nordic states. However, it is the act itself, not the categorization or denomination of the offence, which determines whether or not the requirement concerning dual criminality, is satisfied. Technical differences between the laws in the requesting and requested states, such as differences in the manner in which each country categorizes or denominates the offence should not pose an impediment to the provision of mutual legal assistance, including extradition.

433. The country under review provided the following laws:

The extradition for criminal offences act (1957:668), section 4, paragraph 1:

Extradition may be granted only if the act for which it is requested corresponds to an offence for which imprisonment for one year or more is prescribed by Swedish law. If the person has been sentenced for the act in the requesting state, he may be extradited only if the sentence is deprivation of liberty for at least four months or other institutional custody for a corresponding period.

Act (2003:1156) on surrender from Sweden according to the European arrest warrant, chapter 2, section 2, paragraph 1:

Surrender may be granted only for an act that constitutes an offence under Swedish law and

1. for which, when the surrender relates to criminal prosecution, a custodial sentence or detention order of one year or more is prescribed under the legislation of the issuing Member State; or
2. for which, when the surrender relates to execution of a custodial sentence or detention order, a sentence or order of at least four months has been imposed.

434. Sweden assessed the effectiveness of the measures adopted to comply with the provision under review: The Swedish legislation on extradition is currently under review. Within the context of this review an assessment of the effectiveness of the legislation is being done. The review is expected to be completed in 2015.

(b) Observations on the implementation of the article

435. The reviewing experts took note of the three-tier legal system on extradition matters: one for Nordic States (whereby the executive authorities are not involved and the cooperation takes place directly between the prosecutorial and judicial authorities); one for EU States (based on the Framework Decision on the European Arrest Warrant surrender procedures); and a third one for other countries.

436. The conditions for granting an extradition request according to the domestic legislation are fairly broad: Extradition to non-Nordic countries may generally be granted only if the act for which it is requested corresponds to an offence for which imprisonment for one year or more is prescribed by Swedish law. If the person has been sentenced for the act in the requesting State, he/she may be extradited only if the sentence is deprivation of liberty for at least four months or other institutional custody for a corresponding period.

437. The reviewing experts conclude that Sweden has implemented Art. 44(1) UNCAC.

(c) Successes and good practices

438. The comprehensive and coherent legal framework on international cooperation in criminal matters, which regulates in a detailed manner all forms of international cooperation used by the Swedish authorities.

Article 44 Extradition

Paragraph 2

2. Notwithstanding the provisions of paragraph 1 of this article, a State Party whose law so permits may grant the extradition of a person for any of the offences covered by this Convention that are not punishable under its own domestic law.

(a) Summary of information relevant to reviewing the implementation of the article

439. Sweden confirmed that it fully implemented this provision of the Convention.

440. Sweden can, pursuant to the Act (2011:1165) on Surrender from Sweden According to the Nordic Arrest Warrant, extradite to the other Nordic countries also in the absence of dual criminality.

441. As a general rule, all that is required for extradition to another Nordic state is that the act is punishable by law in the requesting state. There is therefore no general requirement of dual criminality. The Act (2011:1165) on Surrender from Sweden According to the Nordic Arrest Warrant is a product of close cooperation between the Nordic countries, which have all passed similar legislation. In relation to Denmark and Finland, the Act on Surrender from Sweden According to the European Arrest Warrant (2003:1156) is applicable, if the competent authorities do not agree that, in the specific case, the Act on Surrender from Sweden According to the Nordic Arrest Warrant should be applied. Pursuant to the Act (2003:1156) on surrender from Sweden according to the

European arrest warrant Sweden can surrender to other member states in the European Union under certain conditions.

442. The Swedish authorities provided the following laws:

Act (2003:1156) on surrender from Sweden according to the European arrest warrant, chapter 2, section 2, paragraph 2:

[...] However, if the European arrest warrant states that an act is of the kind specified in the Annex to this Act and that, under the issuing Member State's legislation, a custodial sentence or detention order of three years or more is prescribed, surrender shall be granted even if the act does not constitute an offence under Swedish law.

Act (2011:1165) on Surrender from Sweden According to the Nordic Arrest Warrant, chapter 2, section 2:

A surrender may only be granted for an act for which the legislation of the issuing state prescribes a sanction involving the deprivation of liberty or for which such a sanction has been imposed.

443. Sweden can cooperate with other States without the cooperation being based on an agreement or a convention. Therefore the relevant agreement or convention is not mentioned in the registry with regard to cases of for example mutual legal assistance and extradition. Thus statistics with regard to a single Convention is not available. In general, however, it is noted that the UNCAC has been used in a very limited number of cases.

444. Sweden assessed the effectiveness of the measures adopted to comply with the provision under review: The Swedish legislation on extradition is currently under review. Within the context of this review an assessment of the effectiveness of the legislation is being done.

445. All requests for extradition (except for extradition cases within the Nordic countries) go through the Office of the Prosecutor-General, for which the International Division keeps manual statistics. The requests (including Nordic requests) are also registered in Cåbra, the prosecution authority's case management system. It is not possible to see from Cåbra's statistics the offence leading to the extradition or the convention that is the basis for the extradition.

Extradition statistics

Number of requests (excluding the Nordic countries)	Year		
	2010	2011	2012
Extradition from Sweden to another country	15	15	21
Extradition to Sweden from another country	9	11	10

Internal source reference: International Division's manual statistics

Number of requests (in the Nordic countries)	Year		
	2010	2011	2012
Extradition from Sweden to Nordic country	38	36	38
Extradition to Sweden from Nordic country	7	2	4

Source: Cåbra/Cåsa

Statistics from the Government Offices with regard to the number of decisions on extradition from Sweden to countries other than the Nordic and EU countries. None of the cases regarded corruption.

	2010	2011	2012
Consent to extradition	10	5	11
Denied extradition	8	9	5

(b) Observations on the implementation of the article

446. The reviewing experts were informed that double criminality is generally required for extradition to non-Nordic states. However, it is the act itself, not its legal categorization or denomination, which determines whether or not the requirement of double criminality is met. Sweden can, pursuant to the Act (2011:1165) on Surrender from Sweden According to the Nordic Arrest Warrant, extradite to the other Nordic countries in the absence of dual criminality. As confirmed during the country visit, in the context of surrender to other EU Member States on the basis of a European Arrest Warrant, double criminality is not required for 32 offences punishable by deprivation of liberty of at least three years, including corruption and money-laundering.

447. The reviewing experts also took into account the information provided with regard to the manual way of keeping statistics on extradition issues, as well as the concrete statistical information provided in the context of the national response to the self-assessment checklist. They recommended that the Swedish authorities continue efforts to put in place and render fully operational an information system compiling in a systematic manner information on extradition cases with a view to facilitating the monitoring of such cases and assessing in a more efficient manner the effectiveness of implementation of international cooperation arrangements.

448. Apart from the above recommendation, the reviewing experts conclude that Sweden has implemented Art. 44(2) UNCAC.

Article 44 Extradition

Paragraph 3

3. If the request for extradition includes several separate offences, at least one of which is extraditable under this article and some of which are not extraditable by reason of their period of imprisonment but are related to offences established in accordance with this Convention, the requested State Party may apply this article also in respect of those offences.

(a) Summary of information relevant to reviewing the implementation of the article

449. Sweden confirmed that it fully implemented this provision of the Convention.

450. Sweden provided the following laws:

- The Extradition for Criminal Offences Act (1957:668), section 4, paragraph 2 and 3.
- Act (2003:1156) on surrender from Sweden according to the European arrest warrant, chapter 2, section 2, paragraph 3.

- Act on Surrender from Sweden according to the Nordic Arrest Warrant (2011:1165), chapter 2, section 2, paragraph 2.

The Extradition for Criminal Offences Act, section 4, paragraph 2 and 3:

If extradition to another state is to take place for an act referred to in the first paragraph, extradition to that state may also be simultaneously granted for another act corresponding to an offence according to Swedish law. If the person has been sentenced to a joint sanction in the requesting state for an act referred to in the first paragraph, and for another act corresponding to an offence according to Swedish law, extradition for the acts may be granted, provided the joint sanction is deprivation of liberty for at least four months or other institutional custody for a corresponding period.

Act on surrender from Sweden according to the European arrest warrant, chapter 2, section 2, paragraph 3:

If surrender is granted for an act referred to in the first or second paragraph, surrender may also be granted for another act that, although not of the kind referred to in the first paragraph, points 1 or 2, constitutes an offence under Swedish law.

Act on Surrender from Sweden according to the Nordic Arrest Warrant, chapter 2, section 2, paragraph 2:

If a Nordic arrest warrant relates to several acts, it is sufficient if conditions are in place for a surrender under the first paragraph in the case of one of them.

451. Sweden assessed the effectiveness of the measures adopted to comply with the provision under review: The Swedish legislation on extradition is currently under review. Within the context of this review an assessment of the effectiveness of the legislation is being done.

(b) Observations on the implementation of the article

452. The reviewing experts conclude that Sweden has implemented Art. 44(3) UNCAC.

Article 44 Extradition

Paragraph 4

4. Each of the offences to which this article applies shall be deemed to be included as an extraditable offence in any extradition treaty existing between States Parties. States Parties undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them. A State Party whose law so permits, in case it uses this Convention as the basis for extradition, shall not consider any of the offences established in accordance with this Convention to be a political offence.

(a) Summary of information relevant to reviewing the implementation of the article

453. Sweden confirmed that it fully implemented this provision of the Convention.
454. Extradition may take place irrespective of the existence of an extradition treaty between the parties, provided that the conditions of the Extradition Act are met and the offences are extraditable.

(b) Observations on the implementation of the article

455. The reviewing experts conclude that Sweden has implemented Art. 44(4) UNCAC.

Article 44 Extradition

Paragraph 5

5. If a State Party that makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may consider this Convention the legal basis for extradition in respect of any offence to which this article applies.

(a) Summary of information relevant to reviewing the implementation of the article

456. Sweden considers this Convention as the legal basis for extradition in respect to any offence to which the article under review applies.

457. Sweden may consider this Convention as the legal basis for extradition. However, Sweden does not make extradition conditional on the existence of a treaty.

458. Sweden assessed the effectiveness of the measures adopted to comply with the provision under review: The Swedish legislation on extradition is currently under review. Within the context of this review an assessment of the effectiveness of the legislation is being done.

(b) Observations on the implementation of the article

459. The reviewing experts took into account that extradition may take place irrespective of the existence of an extradition treaty between the parties, provided that the conditions of the Extradition Act are met and the offences are extraditable. Statistics with regard to a single Convention are not available. In general, however, it was reported during the country visit that the UNCAC has been used in a very limited number of cases.

460. The reviewing experts conclude that Sweden has implemented Art. 44(5) UNCAC.

Article 44 Extradition

Subparagraph 6 (a)

6. A State Party that makes extradition conditional on the existence of a treaty shall:

(a) At the time of deposit of its instrument of ratification, acceptance or approval of or accession to this Convention, inform the Secretary-General of the United Nations whether it will take this Convention as the legal basis for cooperation on extradition with other States Parties to this Convention; and

(a) Summary of information relevant to reviewing the implementation of the article

461. Sweden doesn't make extradition conditional on the existence of a treaty.

(b) Observations on the implementation of the article

See above. The reviewing experts conclude that Sweden has implemented Art. 44(6a) UNCAC.

Article 44 Extradition

Subparagraph 6 (b)

6. A State Party that makes extradition conditional on the existence of a treaty shall:

(b) If it does not take this Convention as the legal basis for cooperation on extradition, seek, where appropriate, to conclude treaties on extradition with other States Parties to this Convention in order to implement this article.

(a) Summary of information relevant to reviewing the implementation of the article

462. Sweden confirmed that it fully implemented this provision of the Convention. Sweden does not make extradition conditional on a treaty.

463. Sweden assessed the effectiveness of the measures adopted to comply with the provision under review: The Swedish legislation on extradition is currently under review. Within the context of this review an assessment of the effectiveness of the legislation is being done.

(b) Observations on the implementation of the article

464. See above. See also under article 44, paragraph 17, of UNCAC. The reviewing experts conclude that Sweden has implemented Art. 44(6b) UNCAC.

Article 44 Extradition

Paragraph 7

7. States Parties that do not make extradition conditional on the existence of a treaty shall recognize offences to which this article applies as extraditable offences between themselves.

(a) Summary of information relevant to reviewing the implementation of the article

465. Sweden confirmed that it fully implemented this provision of the Convention.

466. The offences to which this article applies are extraditable offences according to Swedish law.

467. Sweden didn't assess the effectiveness of the measures adopted to comply with the provision under review but doesn't require assistance in conducting such an assessment.

(b) Observations on the implementation of the article

468. The reviewing experts conclude that Sweden has implemented Art. 44(7) UNCAC.

Article 44 Extradition

Paragraph 8

8. Extradition shall be subject to the conditions provided for by the domestic law of the requested State Party or by applicable extradition treaties, including, inter alia, conditions in relation to the minimum penalty requirement for extradition and the grounds upon which the requested State Party may refuse extradition.

(a) Summary of information relevant to reviewing the implementation of the article

469. Sweden confirmed that it fully implemented this provision of the Convention.

470. The country under review provided the following laws:

- The Extradition Act, section 4.
- The Nordic Arrest Warrant, chapter 2, section 2
- The European Arrest Warrant, chapter 2, section 2.

The Extradition Act, section 4:

Extradition may be granted only if the act for which it is requested corresponds to an offence for which imprisonment for one year or more is prescribed by Swedish law. If the person has been sentenced for the act in the requesting state, he may be extradited only if the sentence is deprivation of liberty for at least four months or other institutional custody for a corresponding period.

In addition, sections 6-11 of the Extradition Act stipulate the grounds for refusal of extradition requests.

The Nordic Arrest Warrant, chapter 2, section 2:

A surrender may only be granted for an act for which the legislation of the issuing state prescribes a sanction involving the deprivation of liberty or for which such a sanction has been imposed.

The European Arrest Warrant, chapter 2, section 2:

Surrender may be granted only for an act that constitutes an offence under Swedish law and

1. for which, when the surrender relates to criminal prosecution, a custodial sentence or detention order of one year or more is prescribed under the legislation of the issuing Member State; or
2. for which, when the surrender relates to execution of a custodial sentence or detention order, a sentence or order of at least four months has been imposed.

471. Sweden didn't assess the effectiveness of the measures adopted to comply with the provision under review but doesn't require assistance in conducting such an assessment.

(b) Observations on the implementation of the article

472. The reviewing experts were informed that the grounds for refusal of an extradition request are prescribed in the Act (1957: 668) on Extradition for Criminal

Offences (nature of the offence as military or political one; discriminating treatment in the requesting State; youth, state of health and other personal circumstance of the person sought; lapse of time; *ne bis in idem*; pending criminal proceedings in Sweden).

473. As a main rule, Sweden does not extradite Swedish nationals (The Extradition Act, section 2). Pursuant to the legislation on the Nordic Arrest Warrant and the European Arrest Warrant, Swedish nationals can under certain conditions be surrendered to other Nordic countries and EU Members States.

474. The reviewing experts conclude that Sweden has implemented Art. 44(8) UNCAC.

Article 44 Extradition

Paragraph 9

9. States Parties shall, subject to their domestic law, endeavour to expedite extradition procedures and to simplify evidentiary requirements relating thereto in respect of any offence to which this article applies.

(a) Summary of information relevant to reviewing the implementation of the article

475. Sweden confirmed that it fully implemented this provision of the Convention. The procedures established are regarded as generally well functioning.

476. The procedures have been simplified by the European Arrest Warrant and the Nordic Arrest Warrant. Furthermore there is a shortened procedure when the person sought consent to extradition. One of the main purposes of the review of the Extradition Act is to simplify the procedures regarding extradition.

477. Sweden assessed the effectiveness of the measures adopted to comply with the provision under review: The Swedish legislation on extradition is currently under review. Within the context of this review an assessment of the effectiveness of the legislation is being done.

(b) Observations on the implementation of the article

478. With regard to the time needed for granting an extradition request, the Swedish authorities briefed the reviewing experts on the different timeframes depending on the process followed. In typical proceedings for extradition to third countries, the duration of the process is subject to the exhaustion of the available judicial remedies. A simplified process, whereby the person sought consents to his or her surrender, is completed within four months. The extradition to other Nordic countries is carried out in an expeditious manner. The maximum period for the execution of a European arrest warrant is 90 days.

479. The reviewing experts conclude that Sweden has implemented Art. 44(9) UNCAC.

Article 44 Extradition

Paragraph 10

10. Subject to the provisions of its domestic law and its extradition treaties, the requested State Party may, upon being satisfied that the circumstances so warrant and are urgent and at the request of the requesting State Party, take a person whose extradition is sought and who is present in its territory into custody or take other appropriate measures to ensure his or her presence at extradition proceedings.

(a) Summary of information relevant to reviewing the implementation of the article

480. Sweden confirmed that it fully implemented this provision of the Convention.

481. Sweden provided the following laws:

- The Extradition Act, section 16 and section 23.
- Act on Surrender from Sweden according to the European Arrest Warrant, chapter 4, section 5.
- Act on Surrender from Sweden according to the Nordic Arrest Warrant, chapter 3, section 6.

The Extradition Act, section 16, para. 3-5:

Coercive measures shall be subject to the general rules prescribed for criminal cases. A decision by the court shall apply pending determination of the matter or, if extradition is granted, until extradition has been enforced. However, if the Supreme Court considers that there is an impediment to extradition

according to Sections 1 to 10, the decision shall cease to apply immediately. In the event of an impediment to extradition as referred to in Section 11, first paragraph, the decision shall not apply while the person is arrested or detained, is serving a sentence of imprisonment or otherwise placed in

institutional custody owing to a suspicion of an offence as referred to therein.

Coercive measures may also be imposed after extradition has been granted.

The court's decision on coercive measures may be appealed to the Supreme Court, without any time limit.

Section 23, para. 1:

Any person who is in a foreign state suspected, accused or sentenced for an offence which is extraditable within the meaning of this Act may, at the request of a competent authority in the foreign state or owing to the person being posted as wanted there, immediately be arrested or made subject to

a travel prohibition or a reporting obligation by a prosecutor, in accordance with the rules generally applicable to criminal cases. Seizures of property may also be effected in such cases.

Act on Surrender from Sweden according to the European Arrest Warrant, chapter 4, section 5:

The prosecutor shall arrest the requested person if there is a risk of the requested person absconding or otherwise evading a surrender. An arrest shall also be made if there is a risk that the requested person, by removing evidence or otherwise, will impede the investigation of an act covered by the arrest warrant.

Act on Surrender from Sweden according to the Nordic Arrest Warrant, chapter 3, section 6:

The prosecutor shall arrest the requested person if there is a risk of the requested person absconding or otherwise evading a surrender. An arrest shall also be made if there is a risk

that the requested person, by removing evidence or otherwise, will impede the investigation of an act covered by the Nordic arrest warrant.

482. Sweden assessed the effectiveness of the measures adopted to comply with the provision under review: The Swedish legislation on extradition is currently under review. Within the context of this review an assessment of the effectiveness of the legislation is being done.

(b) Observations on the implementation of the article

483. The reviewing experts conclude that Sweden has implemented Art. 44(10) UNCAC.

Article 44 Extradition

Paragraph 11

11. A State Party in whose territory an alleged offender is found, if it does not extradite such person in respect of an offence to which this article applies solely on the ground that he or she is one of its nationals, shall, at the request of the State Party seeking extradition, be obliged to submit the case without undue delay to its competent authorities for the purpose of prosecution. Those authorities shall take their decision and conduct their proceedings in the same manner as in the case of any other offence of a grave nature under the domestic law of that State Party. The States Parties concerned shall cooperate with each other, in particular on procedural and evidentiary aspects, to ensure the efficiency of such prosecution.

(a) Summary of information relevant to reviewing the implementation of the article

484. Sweden confirmed that it fully implemented this provision of the Convention.
485. If a person is not extradited, solely on the ground that he or she is a Swedish national, the case is at the request of the requesting State, submitted without undue delay to Swedish authorities for the purpose of prosecution.
486. There are no cases concerning corruption offences where Sweden, after rejecting an extradition request on the basis that the person whose extradition is requested is a Swedish citizen, have taken over the proceedings.
487. Sweden didn't assess the effectiveness of the measures adopted to comply with the provision under review but doesn't require assistance in conducting such an assessment.

(b) Observations on the implementation of the article

488. There are no provisions specially linked to the issue of establishing jurisdiction in lieu of extradition of Swedish nationals. However, Swedish courts have jurisdiction over crimes committed by Swedish nationals outside Swedish territory provided that the dual criminality requirement is met (see also under article 42, paragraph 3, of UNCAC).
489. The reviewing experts conclude that Sweden has implemented Art. 44(11) UNCAC.

Article 44 Extradition

Paragraph 12

12. Whenever a State Party is permitted under its domestic law to extradite or otherwise surrender one of its nationals only upon the condition that the person will be returned to that State Party to serve the sentence imposed as a result of the trial or proceedings for which the extradition or surrender of the person was sought and that State Party and the State Party seeking the extradition of the person agree with this option and other terms that they may deem appropriate, such conditional extradition or surrender shall be sufficient to discharge the obligation set forth in paragraph 11 of this article.

(a) Summary of information relevant to reviewing the implementation of the article

490. Sweden confirmed that it fully implemented this provision of the Convention.

491. As a main rule Sweden does not extradite Swedish nationals (The Extradition Act, section 2).

492. Pursuant to the Nordic Arrest Warrant, Swedish nationals can be extradited to other Nordic countries (Norway, Finland, Denmark and Iceland).

493. A provision on conditional extradition or surrender such as referred in the article under review is stated in the Act (2003:1156) on surrender from Sweden according to the European arrest warrant, chapter 3, section 2.

Act (2003:1156) on surrender from Sweden according to the European arrest warrant, chapter 3, section 2, para. 1:

Surrender of a Swedish national for the purpose of conducting a criminal prosecution may, if the requested person demands execution in Sweden of any custodial sentence or detention order imposed after surrender, be approved only if the issuing judicial authority provides guarantees that the requested person will be returned to Sweden for such execution.

494. Sweden assessed the effectiveness of the measures adopted to comply with the provision under review: The Swedish legislation on extradition is currently under review. Within the context of this review an assessment of the effectiveness of the legislation is being done.

(b) Observations on the implementation of the article

495. The reviewing experts took into account that, as a main rule, Sweden does not extradite Swedish nationals (The Extradition Act, section 2). Pursuant to the Nordic Arrest Warrant, Swedish nationals can be extradited to other Nordic countries. A provision on conditional extradition or surrender is stated in the Act (2003:1156) on surrender from Sweden according to the European arrest warrant (chapter 3, section 2).

496. The reviewing experts conclude that Sweden has implemented Art. 44(12) UNCAC.

Article 44 Extradition

Paragraph 13

13. If extradition, sought for purposes of enforcing a sentence, is refused because the person sought is a national of the requested State Party, the requested State Party shall, if its domestic law so permits and in conformity with the requirements of such law, upon application of the requesting State Party, consider the enforcement of the sentence imposed under the domestic law of the requesting State Party or the remainder thereof.

(a) Summary of information relevant to reviewing the implementation of the article

497. Sweden confirmed that it fully implemented this provision of the Convention.

498. Enforcement of foreign penal sanctions can be considered in the context of the Act on Surrender from Sweden according to the European Arrest Warrant and also in the context of the Act on Surrender from Sweden according to the Nordic Arrest Warrant.

499. Sweden is also party to bilateral and multilateral agreements on the transfer of sentenced persons.

500. The country under review provided the following laws:

Act (2003:1156) on surrender from Sweden according to the European arrest warrant, chapter 2, section 6:

When the person whose surrender is requested for execution of a custodial sentence or detention order is a Swedish national, surrender may not be granted if the person concerned demands that the sanction be enforced in Sweden.

Act (2011:1165) on surrender from Sweden according to the Nordic Arrest Warrant, Chapter 2, Section 6:

When the person whose surrender is requested for execution of a custodial sentence or detention order is a Swedish national, surrender may not be granted if the person concerned demands that the sanction be enforced in Sweden.

501. Sweden assessed the effectiveness of the measures adopted to comply with the provision under review: The Swedish legislation on extradition is currently under review. Within the context of this review an assessment of the effectiveness of the legislation is being done.

(b) Observations on the implementation of the article

502. The reviewing experts took into account that, as a main rule, Sweden does not extradite Swedish nationals (The Extradition Act, section 2). Enforcement of a foreign penal judgment against a national who is not extradited can be considered in the context of the Act on Surrender from Sweden according to the European Arrest Warrant (chapter 2, section 6) and the Act on Surrender from Sweden according to the Nordic Arrest Warrant (Chapter 2, Section 6).

503. The reviewing experts conclude that Sweden has implemented Art. 44(13) UNCAC.

Article 44 Extradition

Paragraph 14

14. Any person regarding whom proceedings are being carried out in connection with any of the offences to which this article applies shall be guaranteed fair treatment at all stages of the proceedings, including enjoyment of all the rights and guarantees provided by the domestic law of the State Party in the territory of which that person is present.

(a) Summary of information relevant to reviewing the implementation of the article

504. Sweden confirmed that it fully implemented this provision of the Convention.

505. These are rights guaranteed in the Constitution and in the Code of Judicial Procedure.

506. Sweden didn't assess the effectiveness of the measures adopted to comply with the provision under review and doesn't require assistance in conducting such an assessment.

(b) Observations on the implementation of the article

507. The reviewing experts conclude that Sweden has implemented Art. 44(14) UNCAC.

Article 44 Extradition

Paragraph 15

15. Nothing in this Convention shall be interpreted as imposing an obligation to extradite if the requested State Party has substantial grounds for believing that the request has been made for the purpose of prosecuting or punishing a person on account of that person's sex, race, religion, nationality, ethnic origin or political opinions or that compliance with the request would cause prejudice to that person's position for any one of these reasons.

(a) Summary of information relevant to reviewing the implementation of the article

508. Sweden confirmed that it fully implemented this provision of the Convention.

509. Sweden provided the following laws:

- The Extradition Act, section 7.
- The Nordic Arrest Warrant, chapter 2, section 4, paragraph 1.
- The European Arrest Warrant, chapter 2, section 4, paragraph 2.

The Extradition Act, section 7:

A person may not be extradited if, on account of his origin, belonging to a particular social group, his religious or political views, or otherwise on account of political circumstances, he would run the risk of being subjected in the foreign state to persecution which is directed against his life or liberty or is

otherwise of a harsh nature, or if he does not enjoy protection against being sent to a state in which he would run such a risk.

The Nordic Arrest Warrant, chapter 2, section 4, paragraph 1:

Surrender may not be granted if it would contravene the European Convention for the Protection of Human Rights and Fundamental Freedoms, or the supplementary Protocols to the Convention applying as law in Sweden.

The European Arrest Warrant, chapter 2, section 4, paragraph 2:

Surrender may not be granted if it would contravene the European Convention for the Protection of Human Rights and Fundamental Freedoms, or the supplementary Protocols to the Convention applying as law in Sweden.

510. Sweden assessed the effectiveness of the measures adopted to comply with the provision under review: The Swedish legislation on extradition is currently under review. Within the context of this review an assessment of the effectiveness of the legislation is being done.

(b) Observations on the implementation of the article

511. The reviewing experts conclude that Sweden has implemented Art. 44(15) UNCAC.

Article 44 Extradition

Paragraph 16

16. States Parties may not refuse a request for extradition on the sole ground that the offence is also considered to involve fiscal matters.

(a) Summary of information relevant to reviewing the implementation of the article

512. Sweden confirmed that it fully implemented this provision of the Convention.
513. This is not a valid ground for refusal in the Swedish act on Extradition.
514. Sweden assessed the effectiveness of the measures adopted to comply with the provision under review: The Swedish legislation on extradition is currently under review. Within the context of this review an assessment of the effectiveness of the legislation is being done.

(b) Observations on the implementation of the article

515. The reviewing experts took into account that the grounds for refusal of an extradition request are prescribed in the Act (1957: 668) on Extradition for Criminal Offences. The nature of the crime as an offence involving fiscal matters is not included among the grounds for refusal.
516. The reviewing experts conclude that Sweden has implemented Art. 44(16) UNCAC.

Article 44 Extradition

Paragraph 17

17. Before refusing extradition, the requested State Party shall, where appropriate, consult with the requesting State Party to provide it with ample opportunity to present its opinions and to provide information relevant to its allegation.

(a) Summary of information relevant to reviewing the implementation of the article

517. Sweden confirmed that it fully implemented this provision of the Convention.

518. The procedure constitutes part of the general policy and is in conformity with internationally recognized practice.

519. Sweden assessed the effectiveness of the measures adopted to comply with the provision under review: The Swedish legislation on extradition is currently under review. Within the context of this review an assessment of the effectiveness of the legislation is being done.

(b) Observations on the implementation of the article

520. The reviewing experts conclude that Sweden has implemented Art. 44(17) UNCAC.

Article 44 Extradition

Paragraph 18

18. States Parties shall seek to conclude bilateral and multilateral agreements or arrangements to carry out or to enhance the effectiveness of extradition.

(a) Summary of information relevant to reviewing the implementation of the article

521. Sweden confirmed that it fully implemented this provision of the Convention.

522. Sweden has bilateral agreements with the United States, Canada and Australia and has ratified multilateral agreements relating to extradition (the 1957 European Convention on Extradition and its two additional protocols (1975 and 1978); the United Nations Drug Trafficking Convention (1988); UNTOC and UNCAC).

523. Sweden didn't assess the effectiveness of the measures adopted to comply with the provision under review and doesn't require assistance in conducting such an assessment.

(b) Observations on the implementation of the article

524. The reviewing experts conclude that Sweden has implemented Art. 44(18) UNCAC.

Article 45 Transfer of sentenced persons

States Parties may consider entering into bilateral or multilateral agreements or arrangements on the transfer to their territory of persons sentenced to imprisonment or other forms of deprivation of liberty for offences established in accordance with this Convention in order that they may complete their sentences there.

(a) Summary of information relevant to reviewing the implementation of the article

525. Sweden confirmed that it fully implemented this provision of the Convention.

526. Sweden has entered into several agreements on the transfer of sentenced persons and the regulation created on the basis of these agreements offers the opportunity to transfer enforcement of sentences both from and to Sweden.

527. Sweden is party to the following multilateral agreements concerning transfer of sentenced persons: 1983 European Convention on the Transfer of Sentenced Persons, with 1997 additional protocol. 1970 European Convention on the International Validity of Criminal Judgements.

528. According to the Act on international cooperation in the enforcement of criminal judgements (1972:260), such transfer can take place also without a treaty base.

529. In relation to Nordic states the Act concerning cooperation with Denmark, Finland, Iceland and Norway on the enforcement of criminal sanctions etc. (1963:193) is applied.

530. Sweden has bilateral agreements concerning transfer of sentenced persons with Thailand and Cuba.

531. Sweden assessed the effectiveness of the measures adopted to comply with the provision under review: The Act on international cooperation in the enforcement of criminal judgements (1972:260) is currently under review. The Inquiry report (SOU 2013:21) presented to the Government in the spring this year contains new legislative proposals regarding the Act in question and the implementation of the EU Framework Decisions 2008/909/JHA and 2008/947/JHA on the mutual recognition of judicial decisions on custodial sentences or measures involving deprivation of liberty and on probation decisions and alternative sanctions. The Ministry of Justice is currently considering the Inquiry's proposals.

(b) Observations on the implementation of the article

532. The reviewing experts conclude that Sweden has implemented Art. 45 UNCAC.

Article 46 Mutual legal assistance

Paragraph 1

1. States Parties shall afford one another the widest measure of mutual legal assistance in investigations, prosecutions and judicial proceedings in relation to the offences covered by this Convention.

(a) **Summary of information relevant to reviewing the implementation of the article**

533. Sweden confirmed that it fully implemented this provision of the Convention.
534. Mutual legal assistance in criminal matters is regulated in the Act (2000:562) on international legal assistance in criminal matters. The Act (2003:1174) on certain forms of international cooperation in criminal investigations includes supplementary provisions on legal assistance in some cases.
535. Sweden can generally provide assistance under the Act on international legal assistance in criminal matters, irrespective of the existence of an agreement on MLA with the other party.
536. The country under review provided the following laws:

International Legal Assistance in Criminal Matters Act (2000:562)

The following is hereby enacted.

Chapter 1. Introductory provisions

Section 1

This Act contains provisions concerning legal assistance in criminal cases in Sweden and abroad. This Chapter contains provisions concerning the scope of the Act.

Chapter 2 contains general provisions concerning legal assistance in Sweden. Chapter 3 contains general provisions concerning legal assistance abroad.

Chapter 4 contains special provisions concerning different measures of legal assistance.

Chapter 5 contains provisions concerning conditions regarding limitation on use, immunity, secrecy, sharing of confiscated property between states, reimbursement of costs as well as on implementation and announcement.

Scope

Section 2

Legal assistance under this Act consists of the following measures:

1. examination in connection with preliminary investigation in criminal matters;
2. taking of evidence in court;
3. examination by telephone conference;
4. examination by video conference;
5. provisional attachment, seizure and search of premises and other measures under Chapter 28 of the Code of Judicial Procedure;
6. secret interception of electronic communications and secret surveillance of electronic communications;
7. technical assistance with secret interception of electronic communications and other secret surveillance of electronic communications;
8. permission for cross-border secret interception of electronic communications and secret surveillance of electronic communications;
9. secret camera surveillance;
10. electronic eavesdropping (bugging);
11. transfer of persons deprived of liberty for an examination, etc.; and
12. forensic examination of a deceased person.

The Act does not prevent assistance with another measure than those referred to in the first paragraph if it can be provided without using an investigatory measure or other coercive means.

There are special provisions relating to transfer, extradition and service. There are also special provisions concerning legal assistance in criminal matters for certain international bodies.

Section 5

Legal assistance in accordance with Section 2 shall also be provided

1. in matters which are being dealt with in administrative proceedings or in other proceedings than criminal proceedings in the requesting state or in Sweden,
2. in matters that relate to damages for improper deprivation of liberty, institution of prosecution or improper final judgment, or
3. in matters dealt with in conjunction with a criminal case. The first paragraph, item 1, only applies to the extent that it has been agreed under an international agreement that binds Sweden.

Section 6

Legal assistance in accordance with Section 2 shall also be provided in matters concerning pardon, postponement of sentencing or enforcement of a penalty, conditional release or interruption of enforcement of penalty or the like.

Section 7

This Act contains certain provisions providing that a Swedish prosecutor may request legal assistance abroad. The Act does not prevent a Swedish prosecutor from requesting legal assistance abroad also in other matters to the extent that the other state so allows.

A Swedish court may only request legal assistance abroad in accordance with the provisions in this Act.

537. Sweden can provide assistance under the Act on international legal assistance in criminal matters even though there is no agreement on MLA with the other party. If the request for mutual legal assistance concerns a case that in the requesting State or in Sweden is dealt with in an administrative procedure or in another procedure than a criminal procedure, an international treaty is required as a basis.

538. The following statistics on the number of requests for mutual legal assistance received and sent by the Swedish Prosecution Authority (the numbers in brackets indicate requests sent via the Ministry of Justice) [the numbers in square brackets indicates requests received and sent by the National Anti-Corruption Unit at the Prosecution Authority];

<u>Received</u>		<u>Sent</u>
2010	646 (231) [2]	419 (167) [0]
2011	724 (294) [36]	397 (174) [3]
2012	684 (278) [6]	478 (162) [11]

539. Sweden didn't assess the effectiveness of the measures adopted to comply with the provision under review and doesn't require assistance in conducting such an assessment.

(b) Observations on the implementation of the article

540. The reviewing experts noted that mutual legal assistance is regulated in the Act (2000:562) on international legal assistance in criminal matters. The Act does not prevent assistance involving other measures if they can be provided without using coercive means. As also reported by the Swedish authorities, the Act (2003:1174) on certain forms of international cooperation in criminal investigations includes supplementary provisions on legal assistance in some cases.

541. Sweden can generally provide assistance under the Act on international legal assistance in criminal matters, irrespective of the existence of an agreement on MLA with the other party. Assistance can also be provided in relation to matters that are being dealt with in administrative proceedings or in other proceedings than criminal proceedings in the requesting State or in Sweden.

542. The reviewing experts further took into account the statistics provided on MLA requests. They recommended that the Swedish authorities continue efforts to put in place and render fully operational an information system compiling in a systematic manner information on MLA cases with a view to facilitating the monitoring of such cases and assessing in a more efficient manner the effectiveness of implementation of international cooperation arrangements.

543. Apart from the above recommendation, the reviewing experts conclude that Sweden has implemented Art. 46(1) UNCAC.

(c) Successes and good practices

544. The fact that assistance can also be provided in relation to matters which are being dealt with in administrative proceedings or in other proceedings than criminal proceedings in the requesting State or in Sweden.

Article 46 Mutual legal assistance

Paragraph 2

2. Mutual legal assistance shall be afforded to the fullest extent possible under relevant laws, treaties, agreements and arrangements of the requested State Party with respect to investigations, prosecutions and judicial proceedings in relation to the offences for which a legal person may be held liable in accordance with article 26 of this Convention in the requesting State Party.

(a) Summary of information relevant to reviewing the implementation of the article

545. Sweden confirmed that it fully implemented this provision of the Convention.

546. In the International Legal Assistance Act it is explicitly prescribed that the Act is applicable also when the request concerns an investigation or a proceeding against a legal person (Chapter 1, section 3).

547. Sweden cited the following applicable measures:

Chapter 1, section 3:

If another state requests legal assistance in Sweden with a measure in legal proceedings relating to the investigation of or prosecution of a natural or legal person for an offence, the assistance requested shall be provided in accordance with the provisions of this Act.

548. Recent examples of the execution of a MLA request involving a legal person were reported by the Swedish authorities: In 2012 Sweden assisted the UK (Serious Fraud Office) in a major corruption case. In 2013, Sweden is to provide legal assistance to the Estonian authorities in a major corruption case (ongoing case at the time of the country visit).

549. Sweden didn't assess the effectiveness of the measures adopted to comply with the provision under review and doesn't require assistance in conducting such an assessment.

(b) Observations on the implementation of the article

550. The reviewing experts conclude that Sweden has implemented Art. 46(2) UNCAC.

Article 46 Mutual legal assistance

Subparagraph 3 (a)

3. Mutual legal assistance to be afforded in accordance with this article may be requested for any of the following purposes:

(a) Taking evidence or statements from persons;

(a) Summary of information relevant to reviewing the implementation of the article

551. Sweden confirmed that it fully implemented this provision of the Convention.

552. The country under review provided the following laws: International Legal Assistance in Criminal Matters Act, Chapter 1, section 2.

553. Please see the text in Paragraph 1 of article 46 answer.

554. Sweden didn't assess the effectiveness of the measures adopted to comply with the provision under review and doesn't require assistance in conducting such an assessment.

(b) Observations on the implementation of the article

555. The reviewing experts conclude that Sweden has implemented Art. 46(3a) UNCAC.

Article 46 Mutual legal assistance

Subparagraph 3 (b)

3. Mutual legal assistance to be afforded in accordance with this article may be requested for any of the following purposes:

(b) Effecting service of judicial documents;

(a) Summary of information relevant to reviewing the implementation of the article

556. Sweden confirmed that it fully implemented this provision of the Convention.

557. Swedish authorities can, upon request, provide assistance with service of judicial documents, served both within and outside the framework of agreements and conventions.

558. Sweden cited the following applicable measures:

Ordinance (1909:24) concerning Service of Documents at the request of a Foreign Authority, section 1:

If an authority in a foreign state makes a request for the assistance of an authority in Sweden with the service of a document and this service is not dealt with by the Ministry of Justice, the Ministry shall send the request to the county administrative board, which has to execute the service in the way set out below.

559. Sweden assessed the effectiveness of the measures adopted to comply with the provision under review: The Swedish legislation on extradition is currently under review. Within the context of this review an assessment of the effectiveness of the legislation is being done.

560. In response to the question what modifications could be proposed to improve the international service of documents, the Swedish authorities reported the following: The Swedish Government has during summer 2013, submitted a bill to the Swedish Parliament. In this bill amendments in the law on service of documents are proposed. The purpose of these amendments together with a new statute on service of documents, is to create a modern and more efficient order for international service of documents. Cases which are currently handled by the Ministry of Justice in its role as Central Authority and receiving organ for the co-operation on service of documents are proposed to be transferred to the County Administrative Board of Stockholm. The County Administrative Board of Stockholm is also proposed to be the new Central Authority for the co-operation on service of documents. The amendments and the new statute are proposed to enter into force on 1 January 2014.

(b) Observations on the implementation of the article

561. The reviewing experts conclude that Sweden has implemented Art. 46(3b) UNCAC.

Article 46 Mutual legal assistance

Subparagraph 3 (c)

3. Mutual legal assistance to be afforded in accordance with this article may be requested for any of the following purposes:

(c) Executing searches and seizures, and freezing;

(a) Summary of information relevant to reviewing the implementation of the article

562. Sweden confirmed that it fully implemented this provision of the Convention.

563. The country under review provided the following laws: International Legal Assistance in Criminal Matters Act, Chapter 1, section 2.

564. Please see the text in Paragraph 1 of article 46 answer.

565. The Swedish Prosecution Authority's National Anti-Corruption Unit deals with MLA in corruption cases. It also acts as the national confiscation agency in charge of executing the MLA requests or assisting the judicial authorities in order to facilitate the execution of these particular MLA requests.

566. Sweden didn't assess the effectiveness of the measures adopted to comply with the provision under review and doesn't require assistance in conducting such an assessment.

(b) Observations on the implementation of the article

567. The reviewing experts conclude that Sweden has implemented Art. 46(3c) UNCAC.

Article 46 Mutual legal assistance

Subparagraph 3 (d)

3. Mutual legal assistance to be afforded in accordance with this article may be requested for any of the following purposes:

(d) Examining objects and sites;

(a) Summary of information relevant to reviewing the implementation of the article

568. Sweden confirmed that it fully implemented this provision of the Convention.

569. The country under review provided the following laws: International Legal Assistance in Criminal Matters Act, Chapter 1, section 2.

570. Please see the text in Paragraph 1 of article 46 answer.

571. Sweden didn't assess the effectiveness of the measures adopted to comply with the provision under review and doesn't require assistance in conducting such an assessment.

(b) Observations on the implementation of the article

572. The reviewing experts conclude that Sweden has implemented Art. 46(3d) UNCAC.

Article 46 Mutual legal assistance

Subparagraph 3 (e)

3. Mutual legal assistance to be afforded in accordance with this article may be requested for any of the following purposes:

(e) Providing information, evidentiary items and expert evaluations;

(a) Summary of information relevant to reviewing the implementation of the article

573. Sweden confirmed that it fully implemented this provision of the Convention.

574. Sweden can, pursuant to the International Legal Assistance Act provide information, evidentiary items and expert evaluations (chapter 1, section 2).

575. Please see the text in Paragraph 1 of article 46 answer.

576. Sweden didn't assess the effectiveness of the measures adopted to comply with the provision under review and doesn't require assistance in conducting such an assessment.

(b) Observations on the implementation of the article

577. The reviewing experts conclude that Sweden has implemented Art. 46(3e) UNCAC.

Article 46 Mutual legal assistance

Subparagraph 3 (f)

3. Mutual legal assistance to be afforded in accordance with this article may be requested for any of the following purposes:

(f) Providing originals or certified copies of relevant documents and records, including government, bank, financial, corporate or business records;

(a) Summary of information relevant to reviewing the implementation of the article

578. Sweden confirmed that it fully implemented this provision of the Convention.

579. The country under review provided the following laws: The International Legal Assistance Act, chapter 1, section 2.

580. Please see the text in Paragraph 1 of article 46 answer.

581. There are no special procedures regarding government records that might slow down the execution of the MLA. With some exceptions regulated in the Act on Public Access to Information and Secrecy, there is full disclosure regarding government, bank, financial, corporate or business records.

582. There is no such concept as “State secrets privilege” in Sweden. The issue of secrecy is dealt with by the court in accordance with procedural rules.

583. Sweden didn’t assess the effectiveness of the measures adopted to comply with the provision under review and doesn’t require assistance in conducting such an assessment.

(b) Observations on the implementation of the article

584. The reviewing experts conclude that Sweden has implemented Art. 46(3f) UNCAC.

Article 46 Mutual legal assistance

Subparagraph 3 (g)

3. Mutual legal assistance to be afforded in accordance with this article may be requested for any of the following purposes:

(g) Identifying or tracing proceeds of crime, property, instrumentalities or other things for evidentiary purposes;

(a) Summary of information relevant to reviewing the implementation of the article

585. Sweden confirmed that it fully implemented this provision of the Convention.

586. The country under review provided the following laws: The International Legal Assistance Act, chapter 1, section 2.

587. Please see the text in Paragraph 1 of article 46 answer.

588. Sweden didn’t assess the effectiveness of the measures adopted to comply with the provision under review and doesn’t require assistance in conducting such an assessment.

(b) Observations on the implementation of the article

589. The reviewing experts conclude that Sweden has implemented Art. 46(3g) UNCAC.

Article 46 Mutual legal assistance

Subparagraph 3 (h)

3. Mutual legal assistance to be afforded in accordance with this article may be requested for any of the following purposes:

(h) Facilitating the voluntary appearance of persons in the requesting State Party;

(a) Summary of information relevant to reviewing the implementation of the article

590. Sweden confirmed that it fully implemented this provision of the Convention.

591. The country under review provided the following laws: The International Legal Assistance Act, chapter 1, section 2.

592. Please see the text in Paragraph 1 of article 46 answer.

593. Sweden didn't assess the effectiveness of the measures adopted to comply with the provision under review and doesn't require assistance in conducting such an assessment.

(b) Observations on the implementation of the article

594. The reviewing experts conclude that Sweden has implemented Art. 46(3h) UNCAC.

Article 46 Mutual legal assistance

Subparagraph 3 (i)

3. Mutual legal assistance to be afforded in accordance with this article may be requested for any of the following purposes:

(i) Any other type of assistance that is not contrary to the domestic law of the requested State Party;

(a) Summary of information relevant to reviewing the implementation of the article

595. Sweden confirmed that it fully implemented this provision of the Convention.

596. The country under review provided the following laws: The International Legal Assistance Act, chapter 1, section 2.

597. Please see the text in Paragraph 1 of article 46 answer.

598. Sweden didn't assess the effectiveness of the measures adopted to comply with the provision under review and doesn't require assistance in conducting such an assessment.

(b) Observations on the implementation of the article

599. The reviewing experts conclude that Sweden has implemented Art. 46(3i) UNCAC.

Article 46 Mutual legal assistance

Subparagraph 3 (j)

3. Mutual legal assistance to be afforded in accordance with this article may be requested for any of the following purposes:

(j) Identifying, freezing and tracing proceeds of crime in accordance with the provisions of chapter V of this Convention;

(a) Summary of information relevant to reviewing the implementation of the article

600. Sweden confirmed that it fully implemented this provision of the Convention.

601. The country under review provided the following laws: The International Legal Assistance Act, chapter 1, section 2.

602. Please see the text in Paragraph 1 of article 46 answer.

603. The Swedish Prosecution Authority's National Anti-Corruption Unit deals with MLA in corruption cases. Sweden also has two asset recovery offices (ARO) specialising in such matters, one at the Swedish Economic Crime Authority and one at the Financial Intelligence Unit at the National Financial Intelligence Service.

604. As of July 2013, Sweden's Committee on Finance/ARO (Financial Intelligence Unit) will be part of the STAR network. For this reason there has yet to be any information exchange through this channel.

605. In 2013, the National Anti-Corruption Unit helped the Austrian authorities investigate a person's finances (trace proceeds of crime) in a major corruption case in which he was a suspect.

606. Sweden didn't assess the effectiveness of the measures adopted to comply with the provision under review and doesn't require assistance in conducting such an assessment.

(b) Observations on the implementation of the article

607. The reviewing experts conclude that Sweden has implemented Art. 46(3j) UNCAC.

Article 46 Mutual legal assistance

Subparagraph 3 (k)

3. Mutual legal assistance to be afforded in accordance with this article may be requested for any of the following purposes:

(k) The recovery of assets, in accordance with the provisions of chapter V of this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

608. Sweden confirmed that it fully implemented this provision of the Convention.

609. The country under review provided the following laws: The International Legal Assistance Act, chapter 1, section 2.

610. Please see the text in Paragraph 1 of article 46 answer.

611. Sweden didn't assess the effectiveness of the measures adopted to comply with the provision under review and doesn't require assistance in conducting such an assessment.

(b) Observations on the implementation of the article

612. The reviewing experts conclude that Sweden has implemented Art. 46(3k) UNCAC.

Article 46 Mutual legal assistance

Paragraph 4

4. Without prejudice to domestic law, the competent authorities of a State Party may, without prior request, transmit information relating to criminal matters to a competent authority in another State Party where they believe that such information could assist the authority in undertaking or successfully concluding inquiries and criminal proceedings or could result in a request formulated by the latter State Party pursuant to this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

613. Sweden confirmed that it fully implemented this provision of the Convention.

614. Swedish authorities can voluntarily transmit such information to another State Party that is not subject to the limitations of confidentiality.

615. The Swedish prosecutors maintain informal contacts with colleagues in other countries regarding on-going matters (for example through Eurojust och EJM).

616. Sweden has not promoted special procedures with regard to the transmission of information prior to a MLA request. As reported, by regulating special procedures there

would be a risk to limit the possibility to transmit information. What information to be transmitted, at what time to transmit it and which channels that should be used has to be evaluated for each specific case.

617. Sweden didn't assess the effectiveness of the measures adopted to comply with the provision under review and doesn't require assistance in conducting such an assessment.

(b) Observations on the implementation of the article

618. The reviewing experts conclude that Sweden has implemented Art. 46(4) UNCAC.

Article 46 Mutual legal assistance

Paragraph 5

5. The transmission of information pursuant to paragraph 4 of this article shall be without prejudice to inquiries and criminal proceedings in the State of the competent authorities providing the information. The competent authorities receiving the information shall comply with a request that said information remain confidential, even temporarily, or with restrictions on its use. However, this shall not prevent the receiving State Party from disclosing in its proceedings information that is exculpatory to an accused person. In such a case, the receiving State Party shall notify the transmitting State Party prior to the disclosure and, if so requested, consult with the transmitting State Party. If, in an exceptional case, advance notice is not possible, the receiving State Party shall inform the transmitting State Party of the disclosure without delay.

(a) Summary of information relevant to reviewing the implementation of the article

619. Sweden confirmed that it fully implemented this provision of the Convention.
620. Regarding confidentiality issues, Sweden provided the following laws: The International Legal Assistance Act, chapter 5, section 1 and the Public Access to Information and Secrecy Act (2009:400), chapter 18, section 17.

The International Legal Assistance Act, chapter 5, section 1:

If a Swedish authority has received information or evidence from another state in accordance with an international agreement that is binding on Sweden and which contains conditions that restrict the possibility to use the information or evidence in connection with the investigation of an offence or in legal proceedings by reason of an offence, Swedish authorities shall comply with the conditions notwithstanding what is otherwise prescribed by statute or other enactment.

The Public Access to Information and Secrecy Act, chapter 18, section 17:

Secrecy applies to information in an activity that refers to legal cooperation at the request of another state or an international court, in respect of information that relates to an investigation under the provisions on preliminary investigations in criminal matters or a matter concerning investigatory measures, if it can be assumed that it was a precondition for the request by the other state or the international court that the information would not be disclosed.

Corresponding secrecy applies in a police authority, a prosecution authority, the Swedish National Police Board, the Swedish Customs Service and the Swedish Coast Guard for information in a matter referred to in Section 3, points 1 and 6 of the Schengen Information System Act (2000:344).

For information in an official document this secrecy applies for not more than forty years.

621. Sweden didn't assess the effectiveness of the measures adopted to comply with the provision under review and doesn't require assistance in conducting such an assessment.

(b) Observations on the implementation of the article

622. The reviewing experts conclude that Sweden has implemented Art. 46(5) UNCAC.

Article 46 Mutual legal assistance

Paragraph 6

6. The provisions of this article shall not affect the obligations under any other treaty, bilateral or multilateral, that governs or will govern, in whole or in part, mutual legal assistance.

(a) Summary of information relevant to reviewing the implementation of the article

623. Sweden confirmed that it fully implemented this provision of the Convention.

624. The provisions of article 46 does not affect the obligation under other treaties that governs or will govern MLA.

625. Sweden didn't assess the effectiveness of the measures adopted to comply with the provision under review and doesn't require assistance in conducting such an assessment.

(b) Observations on the implementation of the article

626. The reviewing experts conclude that Sweden has implemented Art. 46(6) UNCAC.

Article 46 Mutual legal assistance

Paragraph 7

7. Paragraphs 9 to 29 of this article shall apply to requests made pursuant to this article if the States Parties in question are not bound by a treaty of mutual legal assistance. If those States Parties are bound by such a treaty, the corresponding provisions of that treaty shall apply unless the States Parties agree to apply paragraphs 9 to 29 of this article in lieu thereof. States Parties are strongly encouraged to apply those paragraphs if they facilitate cooperation.

(a) Summary of information relevant to reviewing the implementation of the article

627. Sweden has implemented the article under review and is bound by such treaty(ies) of mutual legal assistance:

628. Sweden is party to several multilateral conventions relating to mutual legal assistance, such as the European Convention (1959) on Mutual Assistance in Criminal Matters (including the additional protocol), the European Convention (1990) on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, the United Nations Convention (1988) against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (the Vienna Convention) and the United Nations Convention (2004) against Transnational Organized Crime.

629. Sweden has bilateral agreements on mutual legal assistance with Australia, Canada and USA.

630. Sweden didn't assess the effectiveness of the measures adopted to comply with the provision under review and doesn't require assistance in conducting such an assessment.

(b) Observations on the implementation of the article

631. The reviewing experts conclude that Sweden has implemented Art. 46(7) UNCAC.

Article 46 Mutual legal assistance

Paragraph 8

8. States Parties shall not decline to render mutual legal assistance pursuant to this article on the ground of bank secrecy.

(a) Summary of information relevant to reviewing the implementation of the article

632. Sweden confirmed that it fully implemented this provision of the Convention.

633. Sweden does not decline to give mutual legal assistance based on bank secrecy.

634. Sweden didn't assess the effectiveness of the measures adopted to comply with the provision under review and doesn't require assistance in conducting such an assessment.

(b) Observations on the implementation of the article

635. Although Sweden has both secrecy legislation and a blocking law regarding commercial secrets, it was confirmed during the country visit that the Swedish authorities do not decline MLA requests on the grounds of bank secrecy.

636. The reviewing experts conclude that Sweden has implemented Art. 46(8) UNCAC.

Article 46 Mutual legal assistance

Subparagraph 9 (a)

9. (a) A requested State Party, in responding to a request for assistance pursuant to this article in the absence of dual criminality, shall take into account the purposes of this Convention, as set forth in article 1;

(a) Summary of information relevant to reviewing the implementation of the article

637. Sweden confirmed that it fully implemented this provision of the Convention.

638. Pursuant to the International Legal Assistance Act, chapter 2, section 2 dual criminality is a requirement with regard to certain measures, such as coercive measures, but not with regard to other measures covered by the Act.

Chapter 2. General provisions concerning legal assistance in Sweden.

General prerequisites

Section 2

Legal assistance referred to in Chapter 1, Section 2, first paragraph, items 1-4, 7 and 10, may be provided even if the act to which the request relates does not correspond to an offence according to Swedish law. Legal assistance referred to in Chapter 1, Section 2, first paragraph, items 5, 6, 8, 9 and 11, may only be provided if the act to which the request relates corresponds to an offence according to Swedish law (*dual criminality*), unless otherwise follows from Chapter 4, Section 20 regarding search of premises and seizure.

639. Please see the text in Paragraph 1 of article 46 answer.

640. Sweden didn't assess the effectiveness of the measures adopted to comply with the provision under review and doesn't require assistance in conducting such an assessment.

(b) Observations on the implementation of the article

641. The reviewing experts noted that, pursuant to the International Legal Assistance Act, chapter 2, section 2, double criminality is a requirement with regard to certain measures, such as coercive measures, but not with regard to other measures covered by the Act. The reviewing experts conclude that Sweden has implemented Art. 46(9a) UNCAC.

Article 46 Mutual legal assistance

Subparagraph 9 (b)

9.(b) States Parties may decline to render assistance pursuant to this article on the ground of absence of dual criminality. However, a requested State Party shall, where consistent with the basic concepts of its legal system, render assistance that does not involve coercive action. Such

assistance may be refused when requests involve matters of a de minimis nature or matters for which the cooperation or assistance sought is available under other provisions of this Convention;

(a) Summary of information relevant to reviewing the implementation of the article

642. Sweden confirmed that it fully implemented this provision of the Convention.

643. See comment above.

644. Please see the text in Paragraph 1 of article 46 answer.

(b) Observations on the implementation of the article

645. The reviewing experts conclude that Sweden has implemented Art. 46(9b) UNCAC.

Article 46 Mutual legal assistance

Subparagraph 9 (c)

9. (c) Each State Party may consider adopting such measures as may be necessary to enable it to provide a wider scope of assistance pursuant to this article in the absence of dual criminality.

(a) Summary of information relevant to reviewing the implementation of the article

646. Sweden confirmed that it fully implemented this provision of the Convention.

647. Same comment as in Subparagraph 9 (a) article 46.

(b) Observations on the implementation of the article

648. The reviewing experts conclude that Sweden has implemented Art. 46(9c) UNCAC.

Article 46 Mutual legal assistance

Subparagraph 10 (a)

10. A person who is being detained or is serving a sentence in the territory of one State Party whose presence in another State Party is requested for purposes of identification, testimony or otherwise providing assistance in obtaining evidence for investigations, prosecutions or judicial proceedings in relation to offences covered by this Convention may be transferred if the following conditions are met:

(a) The person freely gives his or her informed consent;

(a) Summary of information relevant to reviewing the implementation of the article

649. Sweden confirmed that it fully implemented this provision of the Convention.

650. The conditions for transfer of a person deprived of liberty are exclusively found in the International Legal Assistance Act. A condition for granting a request concerning transfer of a person deprived of liberty to another state is that the hearing does not relate to the personal criminality of the person whom the request concerns. Further, a request for transfer of a person to another state may be refused if a transfer would mean that the period for the deprivation of liberty is extended or if the attendance of the person deprived of liberty is needed in a criminal matter that is being dealt with in Sweden.

651. Consent is not a requirement in regard to temporary transfer.

652. The country under review provided the following laws:

The International Legal Assistance Act, chapter 4, section 29:

Upon application by another state, for a hearing or confrontation in conjunction with a preliminary investigation or trial there,

1. a person who is deprived of liberty in Sweden may be transferred to the other state, if the hearing relates to something other than the personal criminality of the person deprived of liberty, or
2. a person who is deprived of liberty in the other state may be transferred to Sweden. A request under the first paragraph, item 1, shall indicate the length of time that the person deprived of liberty needs to stay in the other state.

Section 30:

The request is considered by the Government. A request from a state that is a Member of the European Union or from Iceland or Norway is considered by a prosecutor. A request under Section 29, first paragraph, item 1, may be refused if a transfer means that the period for the deprivation of liberty is extended or if the attendance of the person deprived of liberty is needed in a criminal matter that is being dealt with in Sweden. If a request under Section 29, first paragraph, item 1, is granted, the decision shall indicate when the person deprived of liberty shall be returned to Sweden at the latest or, in appropriate cases, be released.

653. Sweden didn't assess the effectiveness of the measures adopted to comply with the provision under review and doesn't require assistance in conducting such an assessment.

(b) Observations on the implementation of the article

654. The reviewing experts conclude that Sweden has implemented Art. 46(10a) UNCAC.

Article 46 Mutual legal assistance

Subparagraph 10 (b)

10. A person who is being detained or is serving a sentence in the territory of one State Party whose presence in another State Party is requested for purposes of identification, testimony or otherwise providing assistance in obtaining evidence for investigations, prosecutions or judicial proceedings in relation to offences covered by this Convention may be transferred if the following conditions are met:

(b) The competent authorities of both States Parties agree, subject to such conditions as those States Parties may deem appropriate.

(a) Summary of information relevant to reviewing the implementation of the article

655. Sweden confirmed that it fully implemented this provision of the Convention.

656. See answer above.

(b) Observations on the implementation of the article

657. The reviewing experts conclude that Sweden has implemented Art. 46(10b) UNCAC.

Article 46 Mutual legal assistance

Subparagraph 11 (a)

11. For the purposes of paragraph 10 of this article:

(a) The State Party to which the person is transferred shall have the authority and obligation to keep the person transferred in custody, unless otherwise requested or authorized by the State Party from which the person was transferred;

(a) Summary of information relevant to reviewing the implementation of the article

658. Sweden confirmed that it fully implemented this provision of the Convention.

659. The country under review provided the following laws: The International Legal Assistance Act, chapter 4, section 34.

Chapter 4, section 34:

A person who is transferred to Sweden shall be taken into custody by a police authority.

If permission has been granted in accordance with Section 30, the police authority may if necessary, take the person being transferred into custody.

660. Sweden didn't assess the effectiveness of the measures adopted to comply with the provision under review and doesn't require assistance in conducting such an assessment.

(b) Observations on the implementation of the article

661. The reviewing experts conclude that Sweden has implemented Art. 46(11a) UNCAC.

Article 46 Mutual legal assistance

Subparagraph 11 (b)

11. For the purposes of paragraph 10 of this article:

(b) The State Party to which the person is transferred shall without delay implement its obligation to return the person to the custody of the State Party from which the person was

transferred as agreed beforehand, or as otherwise agreed, by the competent authorities of both States Parties;

(a) Summary of information relevant to reviewing the implementation of the article

662. Sweden confirmed that it fully implemented this provision of the Convention.

663. In the preparatory work it is stated that the Swedish system enables the return of the person to the custody of the State Party from which the person was transferred, without delay.

664. Sweden didn't assess the effectiveness of the measures adopted to comply with the provision under review and doesn't require assistance in conducting such an assessment.

(b) Observations on the implementation of the article

665. The reviewing experts conclude that Sweden has implemented Art. 46(11b) UNCAC.

Article 46 Mutual legal assistance

Subparagraph 11 (c)

11. For the purposes of paragraph 10 of this article:

(c) The State Party to which the person is transferred shall not require the State Party from which the person was transferred to initiate extradition proceedings for the return of the person;

(a) Summary of information relevant to reviewing the implementation of the article

666. Sweden confirmed that it fully implemented this provision of the Convention.

667. In the preparatory work it is stated that the return of the temporary transferred person does not have to initiate extradition proceedings.

668. Sweden didn't assess the effectiveness of the measures adopted to comply with the provision under review and doesn't require assistance in conducting such an assessment.

(b) Observations on the implementation of the article

669. The reviewing experts conclude that Sweden has implemented Art. 46(11c) UNCAC.

Article 46 Mutual legal assistance

Subparagraph 11 (d)

11. For the purposes of paragraph 10 of this article:

(d) The person transferred shall receive credit for service of the sentence being served in the State from which he or she was transferred for time spent in the custody of the State Party to which he or she was transferred.

(a) Summary of information relevant to reviewing the implementation of the article

670. Sweden confirmed that it fully implemented this provision of the Convention.

671. The country under review provided the following laws: The Swedish Penal Code, chapter 33, section 5 and 6.

Section 5

If a person sentenced to imprisonment for a fixed term or to closed juvenile care, or if the court orders, in conformity with Chapter 34, Section 1, that such sanction shall cover further crimes, and if the sentenced person has been deprived of liberty through arrest, remand in custody or admission to a forensic psychiatry unit under Section 10 of the Forensic Psychiatric Examinations Act (1991:1137) for at least twenty-four hours by reason of being suspected of a crime that has been tried and subject to sentence, the period of such deprivation of liberty, insofar as enforcement of another sentence has not proceeded simultaneously, shall be considered as time served in prison or in a special youth institution in consequence of the sentence imposed. The court shall state the number of days to be considered as served in its judgement. If the time by which the sentence of imprisonment exceeds the period of deprivation of liberty is small, the court may direct that the term of imprisonment shall be considered to have been served in full as a result of the deprivation of liberty. If a conditional sentence or a sentence of probation is revoked and imprisonment for a fixed period is imposed instead, then insofar as the deduction provided for in the first or third paragraphs has not been made, the provisions of the first paragraph shall also be applicable to:

1. deprivation of liberty preceding the conditional sentence or the sentence to probation,
2. deprivation of liberty preceding a judgement directing that the conditional sentence or sentence to imprisonment shall include further crimes, and to
3. any detention provided for in Chapter 28, Section 6 b or Section 11, third paragraph.

If a person is sentenced to a fine and has been deprived of liberty in the manner described in the first paragraph by reason of being suspected of a crime that has been subject to sentence, the court may direct that the sentence has been enforced in full or in part as a result of the deprivation of liberty. (Law 1998:604)

Section 6

The provisions of Section 5 on taking account of a period of deprivation of liberty as time reckoned for the enforcement of a sentence may also be applied to the extent found to be reasonable to a deprivation of liberty which took place outside the Realm.

672. Sweden didn't assess the effectiveness of the measures adopted to comply with the provision under review and doesn't require assistance in conducting such an assessment.

(b) Observations on the implementation of the article

673. The reviewing experts conclude that Sweden has implemented Art. 46(11d) UNCAC.

Article 46 Mutual legal assistance

Paragraph 12

12. Unless the State Party from which a person is to be transferred in accordance with paragraphs 10 and 11 of this article so agrees, that person, whatever his or her nationality, shall not be prosecuted, detained, punished or subjected to any other restriction of his or her personal liberty in the territory of the State to which that person is transferred in respect of acts, omissions or convictions prior to his or her departure from the territory of the State from which he or she was transferred.

(a) Summary of information relevant to reviewing the implementation of the article

674. Sweden confirmed that it fully implemented this provision of the Convention.

675. The country under review provided the following laws: The International Legal Assistance Act, chapter 5, section 8.

Chapter 5, section 5:

To the extent that it has been agreed under an international agreement that is binding on Sweden, a person who upon summons in accordance with the agreement has entered Sweden in order to be heard or in another way participate in the investigation of an offence may not:

1. be prosecuted or deprived of his or her liberty or in another way subjected to restrictions to liberty by reason of an act, omission or judgment that relates to the time prior to the entry into Sweden and which, as regards a suspect or accused, is not referred to in the request or summons, or
2. without personal consent be ordered to participate in any investigation than that referred to in the request. The first paragraph also applies to administrative or other procedures as referred to in Chapter 1, Sections 5 and 6.

Section 6:

If the person referred to in Section 5 stays in Sweden for more than fifteen days from when notification was obtained from the authority that summonsed the person that attendance is no longer required, the immunity ceases. This also applies if he or she returns to Sweden after having left Sweden.

Section 7:

If the agreement contains a provision that immunity shall be less extensive than stated in Sections 5 and 6, that provision applies instead.

Section 8:

To the extent that it has been agreed under an international agreement that is binding on Sweden, the provisions in Section 5 to 7 concerning immunity apply also to a person deprived of liberty who has been transferred to Sweden in accordance with Chapter 4, Sections 29 or 31.

676. Sweden didn't assess the effectiveness of the measures adopted to comply with the provision under review and doesn't require assistance in conducting such an assessment.

(b) Observations on the implementation of the article

677. The reviewing experts conclude that Sweden has implemented Art. 46(12) UNCAC.

Article 46 Mutual legal assistance

Paragraph 13

13. Each State Party shall designate a central authority that shall have the responsibility and power to receive requests for mutual legal assistance and either to execute them or to transmit them to the competent authorities for execution. Where a State Party has a special region or territory with a separate system of mutual legal assistance, it may designate a distinct central authority that shall have the same function for that region or territory. Central authorities shall ensure the speedy and proper execution or transmission of the requests received. Where the central authority transmits the request to a competent Authority for execution, it shall encourage the speedy and proper execution of the request by the competent authority. The Secretary-General of the United Nations shall be notified of the central authority designated for this purpose at the time each State Party deposits its instrument of ratification, acceptance or approval of or accession to this Convention. Requests for mutual legal assistance and any communication related thereto shall be transmitted to the central authorities designated by the States Parties. This requirement shall be without prejudice to the right of a State Party to require that such requests and communications be addressed to it through diplomatic channels and, in urgent circumstances, where the States Parties agree, through the International Criminal Police Organization, if possible.

(a) Summary of information relevant to reviewing the implementation of the article

678. Sweden established a central authority as described above:

679. The Division for Criminal Cases and International Judicial Cooperation (BIRS) at the Ministry of Justice is the Swedish central authority. 20 persons are currently working at BIRS. 12 of these are working with matters at the central authority.

680. Sweden didn't assess the effectiveness of the measures adopted to comply with the provision under review and doesn't require assistance in conducting such an assessment.

681. Sweden notified the Secretary-General of the United Nations as prescribed above.

682. Sweden allows that requests for mutual legal assistance and any related communications be transmitted to the central authorities designated by States Parties.

683. Sweden does not require that such requests and related communications be addressed to it through diplomatic channels.

684. Sweden agrees that, in urgent circumstances, requests for mutual legal assistance and related communications be addressed to it through the International Criminal Police Organization.

(b) Observations on the implementation of the article

685. The reviewing experts noted that the Division for Criminal Cases and International Judicial Cooperation (BIRS) at the Ministry of Justice is the Swedish central authority to deal with MLA requests. A relevant notification has been submitted to the Secretary-General of the United Nations. Requests for mutual legal assistance and any related communications can be transmitted to the central authorities designated by States Parties. Sweden does not require that such requests be submitted through diplomatic channels. In urgent circumstances, MLA requests and related communications can be communicated through the International Criminal Police Organization.

686. The reviewing experts conclude that Sweden has implemented Art. 46(13) UNCAC.

Article 46 Mutual legal assistance

Paragraph 14

14. Requests shall be made in writing or, where possible, by any means capable of producing a written record, in a language acceptable to the requested State Party, under conditions allowing that State Party to establish authenticity. The Secretary-General of the United Nations shall be notified of the language or languages acceptable to each State Party at the time it deposits its instrument of ratification, acceptance or approval of or accession to this Convention. In urgent circumstances and where agreed by the States Parties, requests may be made orally but shall be confirmed in writing forthwith.

(a) Summary of information relevant to reviewing the implementation of the article

687. Sweden notified the Secretary-General of the United Nations as prescribed above and is in compliance with this provision.

688. The country under review provided the following laws: The International Legal Assistance Act, chapter 2, section 4-5.

Chapter 2, section 4:

A request for legal assistance shall be made in writing by post, messenger or telefax. The request may also, upon agreement in the particular case, be sent in another manner.

Section 5:

A request for legal assistance and enclosed documents shall be written in Swedish, Danish or Norwegian or be accompanied by a translation into one of these languages, unless the instance responsible for executing the request under this Act so allows in the particular case.

689. It is not regulated what languages can be used in informal contacts prior to an official MLA. However in those contacts English is the most frequently used language. Also, for example, French and German have been used. When the formal request for MLA is done other languages than those mentioned in Chapter 2, Section 5 can be used if the executing authority so allows in the particular case.

690. Sweden didn't assess the effectiveness of the measures adopted to comply with the provision under review and doesn't require assistance in conducting such an assessment.

(b) Observations on the implementation of the article

691. The reviewing experts conclude that Sweden has implemented Art. 46(14) UNCAC.

Article 46 Mutual legal assistance

Paragraph 15

15. A request for mutual legal assistance shall contain:

- (a) The identity of the authority making the request;*
- (b) The subject matter and nature of the investigation, prosecution or judicial proceeding to which the request relates and the name and functions of the authority conducting the investigation, prosecution or judicial proceeding;*
- (c) A summary of the relevant facts, except in relation to requests for the purpose of service of judicial documents;*
- (d) A description of the assistance sought and details of any particular procedure that the requesting State Party wishes to be followed;*
- (e) Where possible, the identity, location and nationality of any person concerned; and*
- (f) The purpose for which the evidence, information or action is sought.*

(a) Summary of information relevant to reviewing the implementation of the article

692. Sweden confirmed that it fully implemented this provision of the Convention.

693. Sweden cited the following applicable measures:

694. According to the International Mutual Legal Assistance Act, chapter 2, section 4 a request for legal assistance in Sweden under this Act should contain:

- information about the foreign court or authority that is executing the matter,
- a description of the legal proceedings pending,
- information about the act involved, stating the time and place of the act, together with the provisions that are applicable in the requesting state,
- information about which measure is requested and, when appropriate, in which capacity a person shall be heard,
- name and address of the persons implicated in the matter.

695. Chapter 4, Sections 8, 11, 14 and 29 contain special provisions concerning what a request further should contain regarding certain kinds of measures.

696. If the matter is urgent or if execution is desired within a specific time limit, this, together with the reasons for the urgency or time limit, shall be stated.

697. A request for legal assistance shall be made in writing by post, messenger or telefax. The request may also, upon agreement in the particular case, be sent in another manner.

698. According to chapter 3, section 1 the provisions of chapter 2, section 4, first and third paragraphs, shall be applied when legal assistance is requested abroad unless otherwise follows from an international agreement that is binding on Sweden or from requirements of the receiving state.
699. A template for requests for mutual legal assistance in criminal matters has been shared with the members of the review team.
700. Sweden didn't assess the effectiveness of the measures adopted to comply with the provision under review and doesn't require assistance in conducting such an assessment.

(b) Observations on the implementation of the article

701. The reviewing experts conclude that Sweden has implemented Art. 46(15) UNCAC.

Article 46 Mutual legal assistance

Paragraph 16

16. The requested State Party may request additional information when it appears necessary for the execution of the request in accordance with its domestic law or when it can facilitate such execution.

(a) Summary of information relevant to reviewing the implementation of the article

702. Sweden confirmed that it fully implemented this provision of the Convention.
703. The Division for Criminal Cases and International Judicial Cooperation at the Ministry of Justice may seek additional information from the requesting state so that a legal assistance request can be executed in Sweden.
704. The country under review provided the following laws:

The International Legal Assistance Act, chapter 2, section 9:

If the request does not contain the information necessary for the matter to be executed, the requesting state shall be given an opportunity to supplement the request. If the request can only be granted partially or subject to certain conditions, the requesting state shall be notified about the impediments that exist and be given an opportunity to express its views or to supplement or amend the request.

(b) Observations on the implementation of the article

705. The reviewing experts conclude that Sweden has implemented Art. 46(16) UNCAC.

Article 46 Mutual legal assistance

Paragraph 17

17. A request shall be executed in accordance with the domestic law of the requested State Party and, to the extent not contrary to the domestic law of the requested State Party and where possible, in accordance with the procedures specified in the request.

(a) Summary of information relevant to reviewing the implementation of the article

706. Sweden confirmed that it fully implemented this provision of the Convention.

707. The country under review provided the following laws: The International Legal Assistance Act, chapter 2, section 11.

Chapter 2, section 11:

If the request contains a request of a particular procedure, this shall be applied, if it does not conflict with the fundamental principles of the Swedish legal system.

(b) Observations on the implementation of the article

708. The reviewing experts noted that, according to the International Legal Assistance Act, chapter 2, section 11, if the request contains a request of a particular procedure, this shall be applied, if it does not conflict with the fundamental principles of the Swedish legal system.

709. The reviewing experts conclude that Sweden has implemented Art. 46(17) UNCAC.

Article 46 Mutual legal assistance

Paragraph 18

18. Wherever possible and consistent with fundamental principles of domestic law, when an individual is in the territory of a State Party and has to be heard as a witness or expert by the judicial authorities of another State Party, the first State Party may, at the request of the other, permit the hearing to take place by video conference if it is not possible or desirable for the individual in question to appear in person in the territory of the requesting State Party. States Parties may agree that the hearing shall be conducted by a judicial authority of the requesting State Party and attended by a judicial authority of the requested State Party.

(a) Summary of information relevant to reviewing the implementation of the article

710. Sweden permits hearings of individuals mentioned above to take place by video conference as described above.

711. The International Legal Assistance Act, chapter 4, section 11 contains special provisions concerning what a request for a hearing by telephone conference or video conference shall contain.

Chapter 4, section 11:

A request for legal assistance with a hearing by a video conference in a trial with a person who is in Sweden shall be executed by the district court that has the technical means required for such a hearing. The request shall indicate that the person to be heard consents to a hearing by video conference. When processing the matter at the district court, the matter shall be regarded as a taking of evidence outside a main hearing. The parties shall be notified of the time and place for the taking of evidence but do not need to be summonsed unless he or she shall be heard or otherwise satisfy anything at the taking of evidence. If needed, the court may decide on the assistance of an interpreter.

A request for legal assistance with a hearing by video conference during a preliminary investigation is executed by a prosecutor.

(b) Observations on the implementation of the article

712. The reviewing experts conclude that Sweden has implemented Art. 46(18) UNCAC.

Article 46 Mutual legal assistance**Paragraph 19**

19. The requesting State Party shall not transmit or use information or evidence furnished by the requested State Party for investigations, prosecutions or judicial proceedings other than those stated in the request without the prior consent of the requested State Party. Nothing in this paragraph shall prevent the requesting State Party from disclosing in its proceedings information or evidence that is exculpatory to an accused person. In the latter case, the requesting State Party shall notify the requested State Party prior to the disclosure and, if so requested, consult with the requested State Party. If, in an exceptional case, advance notice is not possible, the requesting State Party shall inform the requested State Party of the disclosure without delay.

(a) Summary of information relevant to reviewing the implementation of the article

713. Sweden confirmed that it fully implemented this provision of the Convention.

714. The country under review provided the following laws: The International Legal Assistance Act, chapter 5, section 1.

Chapter 5, section 1:

If a Swedish authority has received information or evidence from another state in accordance with an international agreement that is binding on Sweden and which contains conditions that restrict the possibility to use the information or evidence in connection with the investigation of an offence or in legal proceedings by reason of an offence, Swedish authorities shall comply with the conditions notwithstanding what is otherwise prescribed by statute or other enactment.

(b) Observations on the implementation of the article

715. The reviewing experts conclude that Sweden has implemented Art. 46(19) UNCAC.

Article 46 Mutual legal assistance

Paragraph 20

20. The requesting State Party may require that the requested State Party keep confidential the fact and substance of the request, except to the extent necessary to execute the request. If the requested State Party cannot comply with the requirement of confidentiality, it shall promptly inform the requesting State Party.

(a) Summary of information relevant to reviewing the implementation of the article

716. Sweden confirmed that it fully implemented this provision of the Convention.

717. The country under review provided the following laws: The Public Access to Information and Secrecy Act (2009:400), chapter 18, section 17.

718. Please see the text in Paragraph 5 of article 46.

719. Sweden didn't assess the effectiveness of the measures adopted to comply with the provision under review and doesn't require assistance in conducting such an assessment.

(b) Observations on the implementation of the article

720. The reviewing experts conclude that Sweden has implemented Art. 46(20) UNCAC.

Article 46 Mutual legal assistance

Subparagraph 21 (a)

21. Mutual legal assistance may be refused:

(a) If the request is not made in conformity with the provisions of this article;

(a) Summary of information relevant to reviewing the implementation of the article

721. Sweden confirmed that it fully implemented this provision of the Convention.

722. The country under review provided the following laws: The International Legal Assistance Act, chapter 2, section 14.

Chapter 2, section 14:

A request for legal assistance shall be refused if execution of the request would violate Sweden's sovereignty, involve a risk to national security or conflict with Swedish general principles of law or other essential interests. A request for legal assistance may also be refused if

1. the act is in the nature of a political offence,
2. the act comprises a military offence, unless the act also corresponds to another

offence under Swedish law that is not a military offence,

3. a judgment or decision on waiver of prosecution concerning the act has been issued in Sweden, or
4. the circumstances are otherwise such that the request should not be granted.

The second paragraph does not apply if a refusal would conflict with an international agreement that applies between Sweden and the requesting state. The second paragraph, item 1, does not apply to a request from a state that is a Member of the European Union or from Norway or Iceland.

723. Point 4 above should be regarded as a ‘safety valve’ in those cases when none of the other grounds for rejection is applicable but the request should nevertheless not be approved in view of the circumstances of the case. It goes without saying that the provision is to be applied restrictively. In connection with the introduction of new legislation concerning legal assistance, a number of grounds for rejection were removed, including that under Swedish provisions the offence is statute barred or that a judgment for the same offence has been given in another state. In such situations, it may instead be necessary to apply this valve if in a particular case it would be objectionable to approve a request. This ground for rejection has been applied once between 2000 and 2012. The case concerned a person who had been convicted for the same offence in a neighbouring state to the requesting State.

724. “Essential interest” is common language with regard to grounds for refusal of mutual legal assistance. It can be found in, for example, UNCAC and the Council of Europe Convention on Mutual Legal Assistance. There is no definition in the preparatory work to the Swedish legislation and there is no Swedish case law.

725. No MLA request has ever been denied on the ground of “other essential interests”.

726. Sweden didn’t assess the effectiveness of the measures adopted to comply with the provision under review and doesn’t require assistance in conducting such an assessment.

(b) Observations on the implementation of the article

727. The reviewing experts conclude that Sweden has implemented Art. 46(21a). UNCAC.

Article 46 Mutual legal assistance

Subparagraph 21 (b)

21. Mutual legal assistance may be refused:

(b) If the requested State Party considers that execution of the request is likely to prejudice its sovereignty, security, ordre public or other essential interests;

(a) Summary of information relevant to reviewing the implementation of the article

728. Sweden confirmed that it fully implemented this provision of the Convention.

729. See answer above.

(b) Observations on the implementation of the article

730. The reviewing experts conclude that Sweden has implemented Art. 46(21b) UNCAC.

Article 46 Mutual legal assistance

Subparagraph 21 (c)

21. Mutual legal assistance may be refused:

(c) If the authorities of the requested State Party would be prohibited by its domestic law from carrying out the action requested with regard to any similar offence, had it been subject to investigation, prosecution or judicial proceedings under their own jurisdiction;

(a) Summary of information relevant to reviewing the implementation of the article

731. Sweden confirmed that it fully implemented this provision of the Convention.

732. See answer to Subparagraph 21 (a) of article 46.

(b) Observations on the implementation of the article

733. The reviewing experts conclude that Sweden has implemented Art. 46(21c) UNCAC.

Article 46 Mutual legal assistance

Subparagraph 21 (d)

21. Mutual legal assistance may be refused:

(d) If it would be contrary to the legal system of the requested State Party relating to mutual legal assistance for the request to be granted.

(a) Summary of information relevant to reviewing the implementation of the article

734. Sweden confirmed that it fully implemented this provision of the Convention.

735. See answer to Subparagraph 21 (a) of article 46.

(b) Observations on the implementation of the article

736. The reviewing experts conclude that Sweden has implemented Art. 46(21d) UNCAC.

Article 46 Mutual legal assistance

Paragraph 22

22. States Parties may not refuse a request for mutual legal assistance on the sole ground that the offence is also considered to involve fiscal matters.

(a) Summary of information relevant to reviewing the implementation of the article

737. Sweden confirmed that it fully implemented this provision of the Convention.

738. Sweden does not refuse or deny mutual legal assistance requests solely on the ground that the offence involves fiscal matters. These requests are, pursuant to the International Legal Assistance Act, handled like any other requests.

739. Sweden didn't assess the effectiveness of the measures adopted to comply with the provision under review and doesn't require assistance in conducting such an assessment.

(b) Observations on the implementation of the article

740. The reviewing experts noted that the nature of the crime as an offence involving fiscal matters is not included among the grounds for refusal. The reviewing experts conclude that Sweden has implemented Art. 46(22) UNCAC.

Article 46 Mutual legal assistance

Paragraph 23

23. Reasons shall be given for any refusal of mutual legal assistance.

(a) Summary of information relevant to reviewing the implementation of the article

741. Sweden confirmed that it fully implemented this provision of the Convention.

742. The country under review provided the following laws: The International Legal Assistance Act, chapter 2, section 16.

Chapter 2, section 16:

A decision to refuse a request completely or in part shall explain the reasons that determined the outcome.

743. Sweden didn't assess the effectiveness of the measures adopted to comply with the provision under review and doesn't require assistance in conducting such an assessment.

(b) Observations on the implementation of the article

744. The reviewing experts conclude that Sweden has implemented Art. 46(23) UNCAC.

Article 46 Mutual legal assistance

Paragraph 24

24. The requested State Party shall execute the request for mutual legal assistance as soon as possible and shall take as full account as possible of any deadlines suggested by the requesting State Party and for which reasons are given, preferably in the request. The requesting State Party may make reasonable requests for information on the status and progress of measures taken by the requested State Party to satisfy its request. The requested State Party shall respond to reasonable requests by the requesting State Party on the status, and progress in its handling, of the request. The requesting State Party shall promptly inform the requested State Party when the assistance sought is no longer required.

(a) Summary of information relevant to reviewing the implementation of the article

745. Sweden confirmed that it fully implemented this provision of the Convention.

746. The country under review provided the following laws: The International Legal Assistance Act, chapter 2, section 10.

Chapter 2, section 10:

Requests for legal assistance shall be executed promptly. Unless otherwise prescribed by this Act, the same procedure shall be applied as is applied when a corresponding measure is taken in connection with a Swedish preliminary investigation or trial. A court may decide that the matter shall be executed completely or partially in a foreign language, if this is appropriate.

747. According to the Swedish Act on Mutual Legal Assistance Chapter 2, Section 10, a request for mutual legal assistance shall be executed promptly. According to the guiding principles for the Swedish Prosecution Authority, incoming requests shall, as a general, rule be dealt with within two months.

748. The request can be sent by fax or email. If the request is urgent the prosecutor dealing with the case will deal with it with priority.

(b) Observations on the implementation of the article

749. The reviewing experts noted that, according to chapter 2, section 10, MLA requests shall be executed promptly. According to the guiding principles for the Swedish Prosecution Authority, incoming requests shall, as a general rule, be dealt with within two months. The reviewing experts conclude that Sweden has implemented Art. 46(24) UNCAC.

Article 46 Mutual legal assistance

Paragraph 25

25. Mutual legal assistance may be postponed by the requested State Party on the ground that it interferes with an ongoing investigation, prosecution or judicial proceeding.

(a) Summary of information relevant to reviewing the implementation of the article

750. Sweden confirmed that it fully implemented this provision of the Convention.

751. Such a decision may be taken by a prosecutor or a court.

(b) Observations on the implementation of the article

752. The reviewing experts conclude that Sweden has implemented Art. 46(25) UNCAC.

Article 46 Mutual legal assistance

Paragraph 26

26. Before refusing a request pursuant to paragraph 21 of this article or postponing its execution pursuant to paragraph 25 of this article, the requested State Party shall consult with the requesting State Party to consider whether assistance may be granted subject to such terms and conditions as it deems necessary. If the requesting State Party accepts assistance subject to those conditions, it shall comply with the conditions.

(a) Summary of information relevant to reviewing the implementation of the article

753. Sweden confirmed that it fully implemented this provision of the Convention.

754. The country under review provided the following laws: The International Legal Assistance Act, chapter 2, section 8 and 9.

Section 8:

If the foreign authority so requests, the prosecutor or district court that is handling the matter shall acknowledge receipt of the request, unless the measure requested can be taken immediately. If a measure requested cannot be taken within the time limit stated in the request and if it can be assumed that this will impair the proceedings in the requesting state, the prosecutor or the district court that is handling the matter shall, promptly, notify the foreign authority of when it will be possible to take the measure requested.

Section 9:

If the request does not contain the information necessary for the matter to be executed, the requesting state shall be given an opportunity to supplement the request. If the request can only be granted partially or subject to certain conditions, the requesting state shall be notified about the impediments that exist and be given an opportunity to express its views or to supplement or amend the request.

755. Sweden didn't assess the effectiveness of the measures adopted to comply with the provision under review and doesn't require assistance in conducting such an assessment.

(b) Observations on the implementation of the article

756. The reviewing experts conclude that Sweden has implemented Art. 46(26) UNCAC.

Article 46 Mutual legal assistance

Paragraph 27

27. Without prejudice to the application of paragraph 12 of this article, a witness, expert or other person who, at the request of the requesting State Party, consents to give evidence in a proceeding or to assist in an investigation, prosecution or judicial proceeding in the territory of the requesting State Party shall not be prosecuted, detained, punished or subjected to any other restriction of his or her personal liberty in that territory in respect of acts, omissions or convictions prior to his or her departure from the territory of the requested State Party. Such safe conduct shall cease when the witness, expert or other person having had, for a period of fifteen consecutive days or for any period agreed upon by the States Parties from the date on which he or she has been officially informed that his or her presence is no longer required by the judicial authorities, an opportunity of leaving, has nevertheless remained voluntarily in the territory of the requesting State Party or, having left it, has returned of his or her own free will.

(a) Summary of information relevant to reviewing the implementation of the article

757. Sweden confirmed that it fully implemented this provision of the Convention.

758. The country under review provided the following laws: The International Legal Assistance Act, chapter 5, section 5-8.

Chapter 5, section 5:

To the extent that it has been agreed under an international agreement that is binding on Sweden, a person who upon summons in accordance with the agreement has entered Sweden in order to be heard or in another way participate in the investigation of an offence may not:

1. be prosecuted or deprived of his or her liberty or in another way subjected to restrictions to liberty by reason of an act, omission or judgment that relates to the time prior to the entry into Sweden and which, as regards a suspect or accused, is not referred to in the request or summons, or
2. without personal consent be ordered to participate in any investigation than that referred to in the request. The first paragraph also applies to administrative or other procedures as referred to in Chapter 1, Sections 5 and 6.

Section 6:

If the person referred to in Section 5 stays in Sweden for more than fifteen days from when notification was obtained from the authority that summonsed the person that attendance is no longer required, the immunity ceases. This also applies if he or she returns to Sweden after having left Sweden.

Section 7:

If the agreement contains a provision that immunity shall be less extensive than stated in Sections 5 and 6, that provision applies instead.

Section 8:

To the extent that it has been agreed under an international agreement that is binding on Sweden, the provisions in Section 5 to 7 concerning immunity apply also to a person deprived of liberty who has been transferred to Sweden in accordance with Chapter 4, Sections 29 or 31.

759. Sweden didn't assess the effectiveness of the measures adopted to comply with the provision under review and doesn't require assistance in conducting such an assessment.

(b) Observations on the implementation of the article

760. The reviewing experts conclude that Sweden has implemented Art. 46(27) UNCAC.

Article 46 Mutual legal assistance

Paragraph 28

28. The ordinary costs of executing a request shall be borne by the requested State Party, unless otherwise agreed by the States Parties concerned. If expenses of a substantial or extraordinary nature are or will be required to fulfil the request, the States Parties shall consult to determine the terms and conditions under which the request will be executed, as well as the manner in which the costs shall be borne.

(a) Summary of information relevant to reviewing the implementation of the article

761. Sweden confirmed that it fully implemented this provision of the Convention.

762. Sweden cited the following applicable measures: The requirements are met by the provisions in the Ordinance concerning International Legal Assistance in Criminal Matters (2000:704), section 6-8.

Section 6:

Costs arising by reason of a request for legal assistance shall be borne by the Swedish State, unless otherwise prescribed by Sections 7 and 8.

Section 7:

Reimbursement of the following costs shall be sought from the requesting State:

1. participation of an expert in Sweden: remuneration that has been paid to the expert, though not for experts who provide opinions on blood examinations executed when the taking of the evidence was made upon the request of an authority in Denmark, Finland, Iceland or Norway.
2. transfer of a person deprived of liberty in Sweden: costs for transport,
3. hearing by video conference: costs for the servicing of the videolink, remuneration to interpreters and remuneration that has been paid to witnesses and experts, and
4. secret wire tapping: the authority's disbursements for telecommunications operators' costs incurred in executing secret wire tapping.

Section 8:

Reimbursement of extraordinary costs may be sought. If during the handling of the matter it appears that execution of the request will involve extraordinary costs, the prosecutor or court shall in consultation with the foreign authority determine what costs that authority shall bear.

Reimbursement of extraordinary costs shall not be sought when the request is made by a State that has acceded to the European Convention on Mutual Assistance in Criminal Matters of 20 April 1959.

(b) Observations on the implementation of the article

763. The reviewing experts conclude that Sweden has implemented Art. 46(28) UNCAC.

Article 46 Mutual legal assistance

Subparagraph 29 (a)

29. The requested State Party:

(a) Shall provide to the requesting State Party copies of government records, documents or information in its possession that under its domestic law are available to the general public;

(a) Summary of information relevant to reviewing the implementation of the article

764. Sweden confirmed that it fully implemented this provision of the Convention.

765. Any copies of records, documents or information can be requested through mutual legal assistance. Anyone, including foreign authorities, can be asked to be given copies of documents available to the general public without a request for MLA.

766. As reported under article 46(3f), there are no special procedures regarding government records that might slow down the execution of the MLA. With some exceptions regulated in the Act on Public Access to Information and Secrecy (see below), there is full disclosure regarding government, bank, financial, corporate or business records.

767. Official documents may, under certain circumstances, be kept secret under the Public Access to Information and Secrecy Act. Such documents may not be seized (see Chapter 27, Section 2 of the Swedish Code of Judicial Procedure).

The Swedish Code of Judicial Procedure

Chapter 27, Section 2

If it can be assumed that a document contains information that an official or other person may not disclose under testimony under Chapter 36, Section 5, the document may not be seized from the possession of that person or the person who is owed the duty of confidentiality. Nor may from the person of the suspect or his relative, as defined in Chapter 36, Section 3, written communications between the suspect and his relative or between such relative be seized, except if the issue concerns an offence in respect of which a less severe penalty than imprisonment for two years is not prescribed. (SFS 1964:166).

Chapter 36, Section 5

Persons who may not provide information pursuant to either the Public Access to Information and Secrecy Act. (2009:400), Chapter [...], or any provision referred to in any of these statutory provisions, may not be heard as witness concerning that information without the permission by the authority in the activity of which the information has been obtained.

Chapter 27, Section 6

A person subjected to a seizure executed without a court order may request a court determination thereof. The court shall hold a hearing, as provided in Section 5, as promptly as possible and, in the absence of extraordinary impediment, no later than four days after receipt of the request. If the main hearing is scheduled to occur within one week of the receipt of the request, however, the hearing may be postponed until the main hearing unless the court considers that a special hearing should be held.

768. There is no such concept as “State secrets privilege” in Sweden. The issue of secrecy is dealt with by the court in accordance with procedural rules.

769. Sweden didn’t assess the effectiveness of the measures adopted to comply with the provision under review and doesn’t require assistance in conducting such an assessment.

(b) Observations on the implementation of the article

770. The reviewing experts conclude that Sweden has implemented Art. 46(29a) UNCAC.

Article 46 Mutual legal assistance

Subparagraph 29 (b)

29. The requested State Party:

(b) May, at its discretion, provide to the requesting State Party in whole, in part or subject to such conditions as it deems appropriate, copies of any government records, documents or information in its possession that under its domestic law are not available to the general public.

(a) Summary of information relevant to reviewing the implementation of the article

771. Sweden confirmed that it fully implemented this provision of the Convention.

772. See answer above. There is no such concept as “State secrets privilege” in Sweden. The issue of secrecy is dealt with by the court in accordance with procedural rules.

(b) Observations on the implementation of the article

773. The reviewing experts conclude that Sweden has implemented Art. 46(29b) UNCAC.

Article 46 Mutual legal assistance

Paragraph 30

30. States Parties shall consider, as may be necessary, the possibility of concluding bilateral or multilateral agreements or arrangements that would serve the purposes of, give practical effect to or enhance the provisions of this article.

(a) Summary of information relevant to reviewing the implementation of the article

774. Sweden confirmed that it fully implemented this provision of the Convention.

775. Sweden has e.g. ratified the following conventions:

- the European Convention (1959) on Mutual Assistance in Criminal Matters (including its two additional protocols) [note: ratification of the second additional protocol on 1 May 2014],
- the European Convention (1990) on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, - the United Nations Convention (1988) against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (the Vienna Convention),
- the United Nations Convention (2000) against Transnational Organized Crime,
- 2000 EU Convention on Mutual Assistance in Criminal Matters.

776. Sweden has bilateral agreements on mutual legal assistance with Australia, USA and Canada.

777. Sweden didn't assess the effectiveness of the measures adopted to comply with the provision under review and doesn't require assistance in conducting such an assessment.

(b) Observations on the implementation of the article

778. The reviewing experts conclude that Sweden has implemented Art. 46(30) UNCAC.

Article 47 Transfer of criminal proceedings

States Parties shall consider the possibility of transferring to one another proceedings for the prosecution of an offence established in accordance with this Convention in cases where such transfer is considered to be in the interests of the proper administration of justice, in particular in cases where several jurisdictions are involved, with a view to concentrating the prosecution.

(a) Summary of information relevant to reviewing the implementation of the article

779. Sweden confirmed that it fully implemented this provision of the Convention.

780. Sweden cited the following applicable measures:

781. The possibility of transferring proceedings is regulated in the Act (1976:19) on International Co-operation on Transfer of Proceedings. The Act applies in relation to the States which have acceded to the 1972 European Convention on the Transfer of Proceedings in Criminal Matters. If the prosecution is transferred to Sweden under the Act, the transferred crime falls under Swedish jurisdiction (chapter 2, section 3a Penal Code). However, proceedings are often transferred from and to Sweden without any explicit legal basis. Such transfer can take place with or without the support of international agreements Sweden has acceded to, provided that Sweden has jurisdiction of the transferred crime.

782. The Swedish regulation and Swedish practice regarding transfer of proceedings complies with the intentions of article 47. This also means that the authorities have the knowledge and experience of the advantages that flows from transferring proceedings to another State Party in certain cases. The possibility to transfer proceedings is being considered in cases where such a measure is appropriate.

783. The Swedish National Anti-Corruption Police Unit is currently working closely together with Latvia through a Joint Investigation Team. However, as the investigation is still ongoing, any decision regarding the eventual transfer of court proceedings as foreseen by the UNCAC is premature.

784. Sweden didn't assess the effectiveness of the measures adopted to comply with the provision under review and doesn't require assistance in conducting such an assessment.

(b) Observations on the implementation of the article

785. The reviewing experts noted that the possibility of transferring proceedings is regulated in the Act (1976:19) on International Co-operation on Transfer of Proceedings. The Act applies in relation to the States that have acceded to the 1972 European Convention on the Transfer of Proceedings in Criminal Matters. If the prosecution is transferred to Sweden under the Act, the transferred crime falls under Swedish jurisdiction (chapter 2, section 3a Penal Code). However, proceedings are often transferred from and to Sweden without any explicit legal basis. Such transfer can take place with or without the support of international agreements that Sweden has acceded to, provided that national jurisdiction over the concerned crimes exists.

786. The reviewing experts conclude that Sweden has implemented Art. 47 UNCAC.

Article 48 Law enforcement cooperation

Subparagraph 1 (a)

1. States Parties shall cooperate closely with one another, consistent with their respective domestic legal and administrative systems, to enhance the effectiveness of law enforcement action to combat the offences covered by this Convention. States Parties shall, in particular, take effective measures:

(a) To enhance and, where necessary, to establish channels of communication between their competent authorities, agencies and services in order to facilitate the secure and rapid exchange of information concerning all aspects of the offences covered by this Convention, including, if the States Parties concerned deem it appropriate, links with other criminal activities;

(a) Summary of information relevant to reviewing the implementation of the article

787. Sweden confirmed that it fully implemented this provision of the Convention.

788. Sweden has channels of communication through i.a. INTERPOL, EUROPOL, The Schengen Information System and EUROJUST.

789. As outlined above under question 224, the National Anti-Corruption Police Unit currently has an ongoing close co-operation with Latvia in a case of alleged serious bribery. The Anti-Corruption Police Unit actively seeks to establish Joint Investigation Teams where appropriate. The Anti-Corruption Police Unit also actively seeks to share information with law enforcement agencies in other countries, as well as with

organizations such as Europol, where appropriate. The unit currently has an ongoing operational co-operation directly with the United Kingdom and Switzerland as well as with Bulgaria through Europol. The latter case concerns, in addition to serious bribery, the alleged forgery of documents.

790. The mandate of the Anti-Corruption Police Unit includes the investigation of corruption offences and crime prevention. The strategic and operational intelligence aspect is handled by the Intelligence Section of the National Bureau of Investigation. The Anti-Corruption Police Unit does not have a database for the sharing of information related to its investigations.

791. Sweden didn't assess the effectiveness of the measures adopted to comply with the provision under review and doesn't require assistance in conducting such an assessment.

(b) Observations on the implementation of the article

792. The reviewing experts conclude that Sweden has implemented Art. 48(1a) UNCAC.

Article 48 Law enforcement cooperation

Subparagraph 1 (b) (i)

1. States Parties shall cooperate closely with one another, consistent with their respective domestic legal and administrative systems, to enhance the effectiveness of law enforcement action to combat the offences covered by this Convention. States Parties shall, in particular, take effective measures:

(b) To cooperate with other States Parties in conducting inquiries with respect to offences covered by this Convention concerning:

(i) The identity, whereabouts and activities of persons suspected of involvement in such offences or the location of other persons concerned;

(a) Summary of information relevant to reviewing the implementation of the article

793. Sweden confirmed that it fully implemented this provision of the Convention.

794. See answer above.

(b) Observations on the implementation of the article

795. The reviewing experts conclude that Sweden has implemented Art. 48(1b)(i) UNCAC.

Article 48 Law enforcement cooperation

Subparagraph 1 (b) (ii)

1. States Parties shall cooperate closely with one another, consistent with their respective domestic legal and administrative systems, to enhance the effectiveness of law enforcement action to combat the offences covered by this Convention. States Parties shall, in particular, take effective measures:

(b) To cooperate with other States Parties in conducting inquiries with respect to offences covered by this Convention concerning:

(ii) The movement of proceeds of crime or property derived from the commission of such offences;

(a) Summary of information relevant to reviewing the implementation of the article

796. Sweden confirmed that it fully implemented this provision of the Convention.

797. The Financial Intelligence Unit (FIU) of the National Bureau of Investigation – Member of the Egmont Group – is a police type FIU and is responsible for handling matters related to money-laundering and the recovery of proceeds of corruption and other crimes. Consequently, the international co-operation in this area is handled by the FIU rather than by the Anti-Corruption Police Unit. There are 33 people working at Sweden's Committee on Finance/ARO (Financial Intelligence Unit). An approximate number of 10000 STRs were reported in 2012. In terms of internal distribution of duties, In the group working against money laundering, one officer is responsible for identifying intelligence issues related to corruption. Another officer in the group working on issues relating to the proceeds of crime is responsible for supporting the National Anti-Corruption Police Unit (NACPU) in connection with corruption investigations. In an ongoing case concerning corruption offences within the Swedish migration authority, the Committee on Finance/ARO (Financial Intelligence Unit) is looking into the possibility of recovering the proceeds of crime within the context of the legal process.

798. Sweden didn't assess the effectiveness of the measures adopted to comply with the provision under review and doesn't require assistance in conducting such an assessment.

(b) Observations on the implementation of the article

799. The reviewing experts took into account the information above. In general, they conclude that Sweden has implemented Art. 48(1b)(ii) UNCAC. However, an issues raised during the country visit was the need for an improved case management system. Therefore, the review team recommended that the Swedish authorities continue efforts to put in place and render fully operational an information system compiling in a systematic manner information on law enforcement cooperation cases, with a view to facilitating the monitoring of such cases and assessing in a more efficient manner the effectiveness of implementation of international cooperation arrangements.

Article 48 Law enforcement cooperation

Subparagraph 1 (b) (iii)

1. States Parties shall cooperate closely with one another, consistent with their respective domestic legal and administrative systems, to enhance the effectiveness of law enforcement action to combat the offences covered by this Convention. States Parties shall, in particular, take effective measures:

(b) To cooperate with other States Parties in conducting inquiries with respect to offences covered by this Convention concerning:

(iii) The movement of property, equipment or other instrumentalities used or intended for use in the commission of such offences;

(a) Summary of information relevant to reviewing the implementation of the article

800. Sweden confirmed that it fully implemented this provision of the Convention.

801. See answer to Subparagraph 1 (a) of article 48.

(b) Observations on the implementation of the article

802. See above.

Article 48 Law enforcement cooperation

Subparagraph 1 (c)

1. States Parties shall cooperate closely with one another, consistent with their respective domestic legal and administrative systems, to enhance the effectiveness of law enforcement action to combat the offences covered by this Convention. States Parties shall, in particular, take effective measures:

(c) To provide, where appropriate, necessary items or quantities of substances for analytical or investigative purposes;

(a) Summary of information relevant to reviewing the implementation of the article

803. Sweden confirmed that it fully implemented this provision of the Convention.

804. See answer to Subparagraph 1 (a) of article 48.

(b) Observations on the implementation of the article

805. See above.

Article 48 Law enforcement cooperation

Subparagraph 1 (d)

1. States Parties shall cooperate closely with one another, consistent with their respective domestic legal and administrative systems, to enhance the effectiveness of law enforcement action to combat the offences covered by this Convention. States Parties shall, in particular, take effective measures:

(d) To exchange, where appropriate, information with other States Parties concerning specific means and methods used to commit offences covered by this Convention, including the use of false identities, forged, altered or false documents and other means of concealing activities;

(a) Summary of information relevant to reviewing the implementation of the article

806. Sweden confirmed that it fully implemented this provision of the Convention.

807. Where possible, the Anti-Corruption Police Unit shares information with other law enforcement agencies on the means and methods used to commit offences covered by the UNCAC. For this purpose, visits are scheduled for this year to Økokrim in Norway and to Europol.

808. Sweden didn't assess the effectiveness of the measures adopted to comply with the provision under review and doesn't require assistance in conducting such an assessment.

(b) Observations on the implementation of the article

809. See above.

Article 48 Law enforcement cooperation

Subparagraph 1 (e)

1. States Parties shall cooperate closely with one another, consistent with their respective domestic legal and administrative systems, to enhance the effectiveness of law enforcement action to combat the offences covered by this Convention. States Parties shall, in particular, take effective measures:

(e) To facilitate effective coordination between their competent authorities, agencies and services and to promote the exchange of personnel and other experts, including, subject to bilateral agreements or arrangements between the States Parties concerned, the posting of liaison officers;

(a) Summary of information relevant to reviewing the implementation of the article

810. Sweden confirmed that it fully implemented this provision of the Convention.

811. See answer to Subparagraph 1 (a) of article 48 and comment above.

(b) Observations on the implementation of the article

812. See above.

Article 48 Law enforcement cooperation

Subparagraph 1 (f)

1. States Parties shall cooperate closely with one another, consistent with their respective domestic legal and administrative systems, to enhance the effectiveness of law enforcement action to combat the offences covered by this Convention. States Parties shall, in particular, take effective measures:

(f) To exchange information and coordinate administrative and other measures taken as appropriate for the purpose of early identification of the offences covered by this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

813. Sweden confirmed that it fully implemented this provision of the Convention.

814. See answer to Subparagraph 1 (a) of article 48

(b) Observations on the implementation of the article

815. See above.

Article 48 Law enforcement cooperation

Paragraph 2

2. With a view to giving effect to this Convention, States Parties shall consider entering into bilateral or multilateral agreements or arrangements on direct cooperation between their law enforcement agencies and, where such agreements or arrangements already exist, amending them. In the absence of such agreements or arrangements between the States Parties concerned, the States Parties may consider this Convention to be the basis for mutual law enforcement cooperation in respect of the offences covered by this Convention. Whenever appropriate, States Parties shall make full use of agreements or arrangements, including international or regional organizations, to enhance the cooperation between their law enforcement agencies.

(a) Summary of information relevant to reviewing the implementation of the article

816. Sweden entered into bilateral or multilateral agreements or arrangements on direct cooperation with law enforcement agencies of other States Parties.

817. See answer to Subparagraph 1 (a) of article 48.

(b) Observations on the implementation of the article

818. See above.

Article 48 Law enforcement cooperation

Paragraph 3

3. States Parties shall endeavour to cooperate within their means to respond to offences covered by this Convention committed through the use of modern technology.

(a) Summary of information relevant to reviewing the implementation of the article

819. Sweden confirmed that it fully implemented this provision of the Convention.

820. According to the Swedish system cooperation is done through the use of modern technology.

821. Sweden didn't assess the effectiveness of the measures adopted to comply with the provision under review and doesn't require assistance in conducting such an assessment.

(b) Observations on the implementation of the article

822. The reviewing experts conclude that Sweden has implemented Art. 48(3) UNCAC.

Article 49 Joint investigations

States Parties shall consider concluding bilateral or multilateral agreements or arrangements whereby, in relation to matters that are the subject of investigations, prosecutions or judicial proceedings in one or more States, the competent authorities concerned may establish joint investigative bodies. In the absence of such agreements or arrangements, joint investigations may be undertaken by agreement on a case-by-case basis. The States Parties involved shall ensure that the sovereignty of the State Party in whose territory such investigation is to take place is fully respected.

(a) Summary of information relevant to reviewing the implementation of the article

823. Sweden concluded bilateral or multilateral agreements that allow for the establishment of joint investigative bodies or has your country undertaken joint investigations on a case-by-case basis as described above.

824. Provisions related to joint investigations are found in the (2003:1174) Act on Joint Investigation Teams for Criminal Investigations. The provisions are based on the system developed within the European Union and applies to joint investigation teams established under the Framework Decision on Joint Investigation Teams and the 2000 Convention on Mutual Legal Assistance in Criminal Matters.

825. In addition, there is an informal and unregulated cooperation, where Swedish police and prosecutors interact with representatives of corresponding authorities in other countries.

Act on Joint Investigation Teams for Criminal Investigations promulgated on 18 December 2003.

In accordance with a decision by the Swedish Parliament, the following is enacted.

Scope Section 1.

This Act applies to joint investigation teams for criminal investigations set up between authorities in Sweden and authorities in one or more Member States of the European Union under Council framework decision 2002/465/RIF of 13 June 2002 on joint investigation teams .

Setting up a joint investigation team Section 2.

A joint investigation team shall be set up for a specific purpose and for a limited period of time.

Section 3.

If a preliminary investigation is in progress in Sweden concerning criminal activity that a joint investigation team shall investigate, it is the prosecutor or authority leading the preliminary investigation that concludes the agreement to set up the joint investigation team.

If a joint investigation team cannot be set up under the first paragraph an agreement to set up a team may be concluded by

1. the Office of the Prosecutor-General or the regional public prosecution office designated by the Office of the Prosecutor-General,
2. the National Police Board or the police authority designated by the National Police Board,
3. the Swedish Customs Service, or
4. the Swedish Coast Guard.

The agreement shall make clear which officials are members of the joint investigation team and the period of time during which the team shall operate.

Investigative measures in Sweden

Section 4.

If a measure has to be taken in Sweden for the work of a joint investigation team and if the measure cannot be taken within the framework of an ongoing Swedish preliminary investigation, a Swedish official who is a member of the team may apply for the measure to be taken. The International Legal Assistance in Criminal Matters Act (2000:562) is applicable to an application of this kind in the same way as if the application had been made by a foreign authority. The application shall be made directly to a prosecutor or court that is competent to deal with the matter under that Act. Conditions for the use of information, etc.

Section 5.

If a Swedish authority has received information through a joint investigation team that has been set up under this Act and if the framework decision contains conditions that limit the possibilities of using this information, the authority shall comply with these conditions irrespective of the provisions of any Act or other Statute.

Section 6.

Conditions may be attached to the transfer of information or evidence from a Swedish authority to a joint investigation team set up under this Act in individual cases, if these conditions are necessary in consideration of the rights of the individual or if they are necessary in the public interest. The conditions referred to in the first paragraph may not be imposed if they are in conflict with the framework decision.

Section 7.

The Swedish authority that has transferred information or evidence and that has imposed conditions under Section 6 may grant exemptions from these conditions at the request of the authority in the other State. This also applies to conditions that follow directly from the framework decision.

Damages Section 8.

If a foreign official carries out tasks in the joint investigation team in Sweden, the Swedish State and not the foreign authority or official shall reimburse damages that arises in connection with the operations of the joint investigation team in Sweden and for which the foreign authority or official would have been liable for damages if Swedish law had been applicable to them. The Swedish State shall, however, not reimburse damages sustained by the foreign authority or official.

Section 9.

Provisions on the obligation of the Swedish State to reimburse damages caused by Swedish officials shall not be applicable to damage caused in another State in connection with the operations of a joint investigation team in that State.

This Act enters into force on 1 January 2004.

826. Sweden has an ongoing JIT with Latvia on corruption offenses, in which Eurojust was also involved. Trial is under way in both countries. Another case reported was a case involving telecommunication companies whereby the Swedish authorities cooperate with counterparts from Uzbekistan. Other JITs reported include cooperation with authorities from the Netherlands and United States of America.

827. JIT Sweden-Latvia: Entered into in February 2012 with the assistance of Eurojust and officially wound up on 28 August 2013.

Background

In June 2011, a request for legal assistance was received from Latvia. The request included questioning a Swedish citizen, here called 'X', who is also resident here. The request was supplemented with a request to freeze property belonging to X. Once X had been questioned, it was clear that he could be suspected of complicity in bribes, and so a Swedish preliminary investigation was initiated and became part of the JIT.

The preliminary investigation was closed by the prosecutor in April 2014. The evidence did not suffice for a prosecution.

828. Sweden didn't assess the effectiveness of the measures adopted to comply with the provision under review and doesn't require assistance in conducting such an assessment.

(b) Observations on the implementation of the article

829. The reviewing experts conclude that Sweden has implemented Art. 49 UNCAC.

Article 50 Special investigative techniques

Paragraph 1

1. In order to combat corruption effectively, each State Party shall, to the extent permitted by the basic principles of its domestic legal system and in accordance with the conditions

prescribed by its domestic law, take such measures as may be necessary, within its means, to allow for the appropriate use by its competent authorities of controlled delivery and, where it deems appropriate, other special investigative techniques, such as electronic or other forms of surveillance and undercover operations, within its territory, and to allow for the admissibility in court of evidence derived therefrom.

(a) Summary of information relevant to reviewing the implementation of the article

830. Sweden confirmed that it fully implemented this provision of the Convention.

831. The Swedish police and Customs has a tradition of using the method of controlled delivery both nationally and in the context of cross-border operations. Controlled delivery is mainly used in criminal investigations of serious drug offences or drug smuggling, but can also be used regarding other offences to gain investigation on who the recipient of a delivery is.

832. The Swedish police can, in their undercover operations, operate under protected identities which consists of fictitious data. The Swedish police are also part of the International Working Group on Police Undercover Activities (IWG).

833. The practice of using protected identities is regulated in the Act (2006:939) on qualified protected identities. Under the conditions specified in the law the Swedish police, and other officials under the Security Service, is given a protected identity that is registered in government records or other documents issued by government agencies. A qualified protected identity can thus tolerate control and can therefore be used in a sustainable way in international operations.

834. Electronic surveillance is used by the Swedish law enforcement authorities to the extent that it can be done without the use of any coercive measures. Controlled deliveries are for example often monitored by electronic surveillance.

835. Sweden has ratified several conventions regarding special investigative techniques and such techniques are being used in practice by the Swedish authorities. International cooperation is also possible and present in practice. There are no barriers to use evidence that has been gained through special investigative techniques in a Swedish trial.

836. Sweden didn't assess the effectiveness of the measures adopted to comply with the provision under review and doesn't require assistance in conducting such an assessment.

(b) Observations on the implementation of the article

837. The reviewing experts conclude that Sweden has implemented Art. 50(1) UNCAC.

Article 50 Special investigative techniques

Paragraph 2

2. For the purpose of investigating the offences covered by this Convention, States Parties are encouraged to conclude, when necessary, appropriate bilateral or multilateral agreements or arrangements for using such special investigative techniques in the context of cooperation at the

international level. Such agreements or arrangements shall be concluded and implemented in full compliance with the principle of sovereign equality of States and shall be carried out strictly in accordance with the terms of those agreements or arrangements.

(a) Summary of information relevant to reviewing the implementation of the article

838. Sweden confirmed that it fully implemented this provision of the Convention.

839. See answer above.

(b) Observations on the implementation of the article

840. The reviewing experts conclude that Sweden has implemented Art. 50(2) UNCAC.

Article 50 Special investigative techniques

Paragraph 3

3. In the absence of an agreement or arrangement as set forth in paragraph 2 of this article, decisions to use such special investigative techniques at the international level shall be made on a case-by-case basis and may, when necessary, take into consideration financial arrangements and understandings with respect to the exercise of jurisdiction by the States Parties concerned.

(a) Summary of information relevant to reviewing the implementation of the article

841. Sweden confirmed that it fully implemented this provision of the Convention.

842. See answer to Paragraph 1 of article 50.

(b) Observations on the implementation of the article

843. The reviewing experts conclude that Sweden has implemented Art. 50(3) UNCAC.

Article 50 Special investigative techniques

Paragraph 4

4. Decisions to use controlled delivery at the international level may, with the consent of the States Parties concerned, include methods such as intercepting and allowing the goods or funds to continue intact or be removed or replaced in whole or in part.

(a) Summary of information relevant to reviewing the implementation of the article

844. Sweden confirmed that it fully implemented this provision of the Convention.

845. See answer to Paragraph 1 of article 50.

(b) Observations on the implementation of the article

846. The reviewing experts conclude that Sweden has implemented Art. 50(4) UNCAC.

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