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ANNEX 27

**ANNEX**

**SWEDEN**

*to the*

**EU Anti-Corruption Report**

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## *SWEDEN*

### **1. INTRODUCTION – MAIN FEATURES AND TRENDS**

#### *Anti-corruption framework*

**Strategic approach.** Sweden has no national anti-corruption strategy but has carried out several risk assessment studies and reports on corruption. These assessments have covered, among other aspects, risks of corruption in Sweden's local government sector, risks of corruption in public procurement and risks of corruption in the Swedish central authorities.<sup>1</sup> The government has recently created a group, 'the value delegation', which will work to maintain public confidence in the civil service by promoting a culture that prevents corruption.<sup>2</sup>

**Legal framework.** Sweden has a well-developed system of legislation, law enforcement and judicial authorities to deal with corruption. Swedish criminal legislation covers all forms of corruption offences contained in the Council of Europe Criminal Law Convention on Corruption<sup>3</sup> and the Additional Protocol.<sup>4</sup> A new anti-corruption law entered into force in 2012. The new law covers a broader range of public officials and private individuals than the previous legislation. It also introduced two new offences: trading in influence and negligent financing of bribery.<sup>5</sup> More general rules and principles of conduct, including provision on conflicts of interest, are set out in several legislative documents such as the Constitution, the Administrative Act (1986:223), and the Act on Public Employment (1994:260). In 2006 the Swedish Association of Local Authorities and Regions published guidelines on conflicts of interests and corruption for public employees working in municipalities, counties and regions. These guidelines were updated in 2012.<sup>6</sup> The six principles in the 'Shared Values for Civil Servants' are based on laws and regulations and provide guidelines on how government agencies and employees should conduct their work.<sup>7</sup>

**Institutional framework.** The public administration is generally regarded as efficient, providing comprehensive services of a high quality to both citizens and enterprises. The low levels of perceived and experienced corruption in Sweden are linked to the long tradition of

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- 1 Examples on risk assessments recently carried out by Sweden are: Bergh, A. et al (2013) Allmän nytta eller egen vinning? En ESO-rapport om korruption på svenska. Stockholm: Regeringskansliet, ESO-rapport 2013:2: <http://eso.expertgrupp.se/rapporter/20132-allman-nytta-eller-egen-vinning/>; Riksrevisionen (2013) Statliga myndigheters skydd mot korruption. Stockholm: Riksdagstryckeriet, RiR 2013:2: [http://www.riksrevisionen.se/PageFiles/16836/RiR\\_2013\\_2\\_Anpassad\\_Myndigheters%20korruption.pdf](http://www.riksrevisionen.se/PageFiles/16836/RiR_2013_2_Anpassad_Myndigheters%20korruption.pdf); Statskontoret (2012) Köpta relationer – om korruption i det kommunala Sverige. Stockholm: Statskontoret, 2012:20: <http://www.statskontoret.se/upload/Publikationer/2012/201220.pdf>.
  - 2 <http://www.regeringen.se/sb/d/119/a/213443>.
  - 3 Council of Europe Criminal Law Convention on Corruption (ETS 173). Sweden has made a reservation concerning this Convention in respect of Article 17 (jurisdiction). Group of States against corruption (GRECO) third evaluation round report on Sweden on incriminations (2009), p. 3: [http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3\(2008\)4\\_Sweden\\_One\\_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3(2008)4_Sweden_One_EN.pdf).
  - 4 ETS 191.
  - 5 The law introduced two new offences and re-organised all the bribery-related offences by placing them in five sections within Chapter 10 of the Swedish Penal Code: passive bribery (Section (a)); active bribery (Section (b)); gross bribery (Section c)); trading in influence (Section (d); and negligent financing of bribery (Section 5(e)). The bill is available from: <http://www.regeringen.se/sb/d/108/a/184838>.
  - 6 Om mutor och jäv. Vägledning för anställda inom kommuner, landsting och regioner. Reviderad 2012-09-01. <http://webbutik.skl.se/bilder/artiklar/pdf/5275.pdf?issuosl=ignore>.
  - 7 The six guiding principles are: democracy; legality; objectivity, impartiality, and equal treatment; free formation of opinions and freedom of expression; respect; efficiency and service. An introduction to Shared Values for Civil Servants, Government Ethics – a good administrative culture: <http://www.his.se/Global/Antalld/Shared%20Values%20for%20Civil%20Servants.pdf>.

openness and transparency of Swedish society and institutions and strong respect for the rule of law.<sup>8</sup> The National Anti-Corruption Unit of the Office of the Prosecutor General was established in 2002 after recommendations made by Group of States against Corruption (GRECO). It focuses on collecting information on corruption and developing methods of combating corruption, both at central and at the local/regional levels of governance. The National Anti-Corruption Unit has reported that, between 2003 and 2009, 280 pre-investigations led to 90 convictions.<sup>9</sup> In January 2012, the National Anti-Corruption Police Unit was created to support the National Anti-Corruption Unit in corruption investigations, including foreign bribery.<sup>10</sup>

### *Opinion polling*

**Perception surveys.** The Special Eurobarometer 2013 places Sweden among the countries with the least corruption in the EU. According to the Special Eurobarometer on Corruption, 40 % of Swedish respondents believe that corruption is widespread in their country (EU average: 76 %) and 12 % feel personally affected by corruption in their daily life (EU average: 26 %).

**Experience of corruption.** Fewer than 1 % were asked or expected to pay a bribe over the last 12 months (EU average: 4 %),<sup>11</sup> but as many as 18% of respondents reported they personally know someone who takes or has taken a bribe (EU average: 12 %).

**Business surveys.** According to a Eurobarometer survey, 36 % of responding Swedish managers<sup>12</sup> believe that favouritism and corruption hamper business competition in Sweden (EU average: 73 %). 12 % of Swedish businesses state that corruption is a problem for their company when doing business (EU average: 43%).<sup>13</sup> Sweden consistently scores among the top in competitiveness indices, ranking first among EU Member States in the Europe 2020 index and 6<sup>th</sup> worldwide in the World Competitiveness Index 2013-14.

In the area of public procurement, according to the 2013 Eurobarometer business survey on corruption,<sup>14</sup> 22 % of respondents consider that corruption is widespread in public procurement managed by national authorities and 33 % in public procurement managed by local authorities (EU average: 56 % and 60 %).

### *Background issues*

**Private sector.** Sweden has transposed the provisions of Framework Decision 2003/568/JHA regarding the definition of active and passive corruption in the private sector as well as liability applicable to natural and legal persons.<sup>15</sup> The OECD Working Group on Bribery reports that Sweden's tax administration is making significant efforts to detect and report foreign bribery offences and Sweden has assisted several countries with their foreign bribery investigations. Nonetheless, the OECD stresses that Sweden needs to make greater efforts to

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8 Since the beginning of the 18th century, Sweden has applied the general principle that everyone has the right to look into, print and publish any official document. GRECO First Evaluation Round in 2000. [http://www.coe.int/t/dghl/monitoring/greco/evaluations/round1/GrecoEval1\(2001\)3\\_Sweden\\_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round1/GrecoEval1(2001)3_Sweden_EN.pdf).

9 GRECO Third Evaluation Round Theme I.

[http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3\(2008\)4\\_Sweden\\_One\\_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3(2008)4_Sweden_One_EN.pdf)

10 <http://polisen.se/Om-polisen/Organisation/Specialkompetenser/Korruptionsgruppen/>

11 2013 Special Eurobarometer 397.

12 2013 Flash Eurobarometer 374.

13 2013 Flash Eurobarometer 374.

14 2013 Flash Eurobarometer 374.

15 COM(2011) 309 final, Second Implementation report of FD 2003/568/2003 of 6 June 2011: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0309:FIN:EN:PDF>.

actively enforce its anti-bribery legislation governing foreign bribery and increase the awareness of the Swedish public on foreign bribery enforcement.

**Conflicts of interest and asset disclosure.** The Parliament Act includes provisions that apply to conflicts of interest<sup>16</sup> and since 2008 makes it mandatory for Members of Parliament (MP) to declare their assets. It is the MPs own responsibility to determine whether s/he faces a conflict of interest and to decide whether to participate in a chamber or committee meeting.<sup>17</sup> GRECO has raised concern that the current system governed by MPs' self-restraint does not guarantee a satisfactory level of transparency. In the view of GRECO, the MPs should publicly declare actual and potential conflicts of interest in order to enable the public to monitor when and how the interests of MPs might influence the decision-making process. GRECO has also suggested developing the current asset declarations system and including quantitative information of the assets, such as the approximate value or number of shares and income.<sup>18</sup>

**Whistleblowing.** The laws protecting civil servants regarding the disclosure of information to the media and access to official records are clearly laid down in the Freedom of the Press Act and the Freedom of Expression Act.<sup>19</sup> The law also provides that civil servants have the right to remain anonymous and it may constitute a criminal offence for a representative of an authority to enquire into the identity or for the journalist to reveal it.<sup>20</sup> There is no equivalent protection in the private sector. However, a recent Swedish government official report has proposed new legislation to strengthen whistleblowing protection in the private sector for employees working in publically funded activities and services: health, education and welfare.<sup>21</sup> Furthermore, an independent expert committee of inquiry has been launched to review and propose recommendations to increase protection for employees who blow the whistle on various forms of misconduct, irregularities or offences.<sup>22</sup>

**Transparency of lobbying.** Lobbying is not regulated in Sweden. There is no specific obligation for registration of lobbyists or reporting of contacts between public officials and lobbyists. The provision on trading in influence is applicable to illegal lobbying.

## 2. ISSUES IN FOCUS

### *Financing of political parties*

Political parties at the national level in Sweden receive significant public funding from the State and Parliament.<sup>23</sup> The public funding system provides political parties with the

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16 Chapter 2, section 11 of the Parliament (Riksdag) Act states that 'no one may be present at a meeting of the chamber when a matter is being deliberated which personally concerns her/himself or a close associate.' Chapter 4, section 14 of the Parliament Act states that 'no one may be present at a meeting of a committee when a matter is being deliberated which personally concerns her/himself or a close associate.' GRECO Fourth Evaluation Round. Corruption prevention in respect of members of parliament, judges and prosecutors. 2013, p 15:

[http://www.coe.int/t/dghl/monitoring/greco/evaluations/round4/GrecoEval4\(2013\)1\\_Sweden\\_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round4/GrecoEval4(2013)1_Sweden_EN.pdf).

17 GRECO Fourth Evaluation Round. Corruption prevention in respect of members of parliament, judges and prosecutors. 2013, p 15.: [http://www.coe.int/t/dghl/monitoring/greco/evaluations/round4/GrecoEval4\(2013\)1\\_Sweden\\_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round4/GrecoEval4(2013)1_Sweden_EN.pdf).

18 GRECO Fourth Evaluation Round. Corruption prevention in respect of members of parliament, judges and prosecutors. 2013, p 15.: [http://www.coe.int/t/dghl/monitoring/greco/evaluations/round4/GrecoEval4\(2013\)1\\_Sweden\\_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round4/GrecoEval4(2013)1_Sweden_EN.pdf).

19 SFS 1949:105 and SFS 1991:1469.

20 Andersson, Staffan (2002). Corruption in Sweden: Exploring Danger Zones and Change (PhD dissertation), Umeå University: Department of Political Science (ISBN 91-7305-265-5).

21 Swedish Government Official Report SOU 2013:79. Stärkt meddelarskydd för privatanställda i offentligt finansierad verksamhet <http://www.regeringen.se/content/1/c6/22/92/58/66ada80c.pdf>.

22 Kommittédirektiv 2013:16 'Stärkt skydd för arbetstagare som slår larm' <http://www.regeringen.se/content/1/c6/20/92/42/967aef41.pdf>.

23 Estimations of the total amount of public support to political parties at various levels indicate that 70-80 per cent of all party activities are financed through public means. GRECO Third Evaluation Round in 2009. p 12: [http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3\(2008\)4\\_Sweden\\_Two\\_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3(2008)4_Sweden_Two_EN.pdf).

possibility of pursuing their political activities on a long-term basis without being dependent on other contributions.<sup>24</sup> Depending on the level of public financial support that is linked to election results, certain parties in Parliament rely on private funding up to as much as 50 per cent during an election year, whereas others are funded almost entirely through public funding.<sup>25</sup> In order to provide transparency on political parties' funding, the political parties have developed a voluntary Joint Agreement.<sup>26</sup> The agreement provides, for example, that the parties' sources of income must be made as transparent as possible and that voters have a right to know how the parties and candidates finance their activities and campaigns. Nonetheless, there is no ban on anonymous donations to political parties from private or legal persons and no regulation to make the accounts of political parties accessible to the public. The agreement does not cover all political parties in Parliament and it does not include parties at county and municipal level.

After repeated criticism from GRECO,<sup>27</sup> including suggestions from an Expert Committee,<sup>28</sup> in 2014, the Swedish Government presented draft legislation aiming to increase the transparency of financing of political parties and individual candidates participating in elections to Parliament or to the European Parliament.<sup>29</sup> Under the draft legislation, a party or an individual candidate must disclose information annually on their revenues and the information will be published on Kammarkollegiet's website.<sup>30</sup> Political parties will also be obliged to report donations over EUR 2 500,<sup>31</sup> including the identity of the donor and the amount of the donation. The current draft legislation has received some criticism mainly because it will not prohibit political parties from receiving anonymous donations and it will not apply to regional and local levels. The government has announced that a separate parliamentary Expert Committee will investigate these issues.<sup>32</sup> The draft legislation is planned to be adopted in April 2014.

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24 Estimations of the total amount of public support to political parties at various levels indicate that 70-80 per cent of all party activities are financed through public means. GRECO Third Evaluation Round in 2009. p 12: [http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3\(2008\)4\\_Sweden\\_Two\\_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3(2008)4_Sweden_Two_EN.pdf).

25 GRECO Third Evaluation Round in 2009. p 12.: [http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3\(2008\)4\\_Sweden\\_Two\\_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3(2008)4_Sweden_Two_EN.pdf).

26 The agreement is not binding and the agreement does not contain any means, such as sanctions. GRECO Third Evaluation Round in 2009. p 12: [http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3\(2008\)4\\_Sweden\\_Two\\_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3(2008)4_Sweden_Two_EN.pdf).

27 GRECO's Third Evaluation Round from 2009 on political party financing points out that Sweden's system of political party financing does not fulfil the standards provided for in the Recommendation Rec(2003)4 of the Committee of Ministers of the Council of Europe on common rules against corruption in the funding of political parties and electoral campaigns: [http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3\(2008\)4\\_Sweden\\_Two\\_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3(2008)4_Sweden_Two_EN.pdf).

28 Utredningen om offentlighet för partiers och valkandidaters intäkter SOU 2004:22. <http://www.regeringen.se/content/1/c6/01/05/55/6bf31419.pdf>.

29 Promemorior Allmänhetens insyn i partiers och valkandidaters finansiering Ds 2013:31 (3 June 2013): <http://www.regeringen.se/content/1/c6/21/86/59/065771ad.pdf>; Lagrådsremiss. Ökad insyn i partiers och valkandidaters finansiering (19 December 2013) is available from: <http://www.regeringen.se/content/1/c6/23/10/57/f3d6a845.pdf>; Regeringens proposition 2013/14:70 Ökad insyn i partiers och valkandidaters finansiering (14 January 2014) is available from: <http://www.regeringen.se/sb/d/17854/a/232254>.

30 Regeringens proposition 2013/14:70 Ökad insyn i partiers och valkandidaters finansiering (14 January 2014) is available from: <http://www.regeringen.se/sb/d/17854/a/232254>.

31 Halvt prisbasbelopp SEK 22 200. Regeringens proposition 2013/14:70 Ökad insyn i partiers och valkandidaters finansiering (14 January 2014) is available from: <http://www.regeringen.se/sb/d/17854/a/232254>.

32 Regeringens proposition 2013/14:70 Ökad insyn i partiers och valkandidaters finansiering (14 January 2014). p 36, 55: <http://www.regeringen.se/sb/d/17854/a/232254>.

## *Corruption at local level*

A number of public corruption cases have been revealed in municipalities and several studies point out that municipalities and counties are especially vulnerable to corruption.<sup>33</sup>

In 2012, the Swedish Agency for Public Management undertook a study on corruption in Sweden's local government sector.<sup>34</sup> During the period between 2003 and 2010, the National Anti-Corruption Unit at the Swedish Prosecution Authority received 130 complaints of corruption within the Swedish municipalities, out of a total of 723 complaints, and 24 municipal employees have been prosecuted, mainly for bribery offences.<sup>35</sup> The majority of detected and reported instances of corruption in municipalities involved the building and construction industry, the management of facilities and infrastructure and the social care sector. Although cases of corruption have been reported in all counties,<sup>36</sup> corruption seems to be more common in larger cities and suburban municipalities of large cities.<sup>37</sup>

Sweden's 290 municipalities administer a large share of public resources and they are granted relatively strong powers of local self-government to decide autonomously on the allocation of their resources. Since the early 1990s, Swedish municipalities have increasingly converted parts of their public activities and services into municipally-owned companies and private companies.<sup>38</sup> The transfer of public service delivery to municipally and state-owned companies and private companies has had major legal consequences<sup>39</sup> Resources that previously were administered and controlled by public law now fall under civil law.<sup>40</sup> The principle of freedom of access to public records (*offentlighetsprincipen*) applies to Sweden's public institutions and state-owned and municipality owned companies, but not to private companies.<sup>41</sup>

According to the current municipal law,<sup>42</sup> a municipality or a county contracting out business to private providers 'shall pay regard to the interest of being assured by the agreement that it receives information that enables the general public to secure a clear view of how the business

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- 33 Andersson, S. et al. (2012) *Motståndskraft, Oberoende, Integritet – kan det svenska samhället stå emot korruption?* Stockholm: Transparency International National Integrity System Sverige: [http://files.transparency.org/content/download/215/864/file/2011\\_NIS\\_Sweden\\_SV.pdf](http://files.transparency.org/content/download/215/864/file/2011_NIS_Sweden_SV.pdf); Statskontoret (2012) *Köpta relationer – om korruption i det kommunala Sverige*. Stockholm: Statskontoret, 2012:20 <http://www.statskontoret.se/upload/Publikationer/2012/201220.pdf>; Bergh, A. et al (2013) *Allmän nytta eller egen vinning? En ESO-rapport om korruption på svenska*. Stockholm: Regeringskansliet, ESO-rapport 2013:2: <http://eso.expertgrupp.se/rapporter/20132-allman-nytta-eller-egen-vinning/>.
- 34 Statskontoret (2012) *Köpta relationer – om korruption i det kommunala Sverige*. Stockholm: Statskontoret, 2012:20: <http://www.statskontoret.se/upload/Publikationer/2012/201220.pdf>.
- 35 The total number of complaints directed to municipalities has remained relatively constant over the period. Statskontoret (2012) *Köpta relationer – om korruption i det kommunala Sverige*. Stockholm: Statskontoret, 2012:20. p 11. <http://www.statskontoret.se/upload/Publikationer/2012/201220.pdf>.
- 36 The Swedish National Council for Crime Prevention. (BRÅ). *Den anmälda korruptionen i Sverige. Struktur, riskfaktorer och motåtgärder. Rapport 2013:15. p 22.*: <http://www.bra.se/bra/publikationer/arkiv/publikationer/2013-07-02-den-anmalda-korruptionen-i-sverige.html>.
- 37 Statskontoret (2012) *Köpta relationer – om korruption i det kommunala Sverige*. Stockholm: Statskontoret, 2012:20. p 11: <http://www.statskontoret.se/upload/Publikationer/2012/201220.pdf>.
- 38 Statskontoret (2012) *Vad händer i den offentliga sektorn. En översikt över utvecklingen 2000-2010*. Stockholm: Statskontoret, p 51: [http://www.statskontoret.se/upload/Publikationer/2012/Offentliga-sektorns-utveckling\\_oversikt\\_2011.pdf](http://www.statskontoret.se/upload/Publikationer/2012/Offentliga-sektorns-utveckling_oversikt_2011.pdf).
- 39 Swedish Government Official Report. SOU 2013:53. *Privata utförare - kontroll och insyn*. p 98: <http://www.regeringen.se/sb/d/16889/a/220274>.
- 40 Erlingsson, Gissur Ö., Andreas Bergh & Mats Sjölin (2008). 'Public Corruption in Swedish Municipalities - Trouble Looming on the Horizon?', *Local Government Studies* 34 (5): 595-608: <http://www.tandfonline.com/doi/pdf/10.1080/03003930802413780>.
- 41 Andersson, S. et al. (2012) *Motståndskraft, Oberoende, Integritet – kan det svenska samhället stå emot korruption?* Stockholm: Transparency International National Integrity System Sverige. p 210: [http://files.transparency.org/content/download/215/864/file/2011\\_NIS\\_Sweden\\_SV.pdf](http://files.transparency.org/content/download/215/864/file/2011_NIS_Sweden_SV.pdf).
- 42 *Kommunallagen 1991:900*, 3 kap. 19a§.



is being conducted.’ However, while certain municipalities and counties include provisions of transparency in their contracts with private companies, there is no legal requirement to do so,<sup>43</sup> and other municipalities have forgone this option.<sup>44</sup> Therefore, a recent Swedish Government official report has proposed amendments to the municipal law to make it mandatory for municipalities and counties to provide sufficient information for transparency to be ensured.<sup>45</sup> Increased transparency lower the risk of corruption and, according to the Swedish Government official report, the proposed amendments could help prevent crime.

***Good practice: the principle of public access to information***

*The principle of public access to information is a very important and cross-cutting element in Sweden’s political culture, constitution, and legal order.<sup>46</sup> It means that the public and the media – newspapers, radio and television – are entitled to receive information about state and municipal activities. It plays a key role in ensuring high level of transparency and therefore is crucial for effective prevention of corruption.*

*The principle of public access to information is expressed in various ways. Everyone is entitled to read the documents of public authorities (access to official documents); officials and others who work for the state or municipalities are entitled to say what they know to outsiders (freedom of expression for officials and others); officials and others in the service of the state or municipalities are normally entitled to disclose information to newspapers, radio and television for publication or to personally publish information (right to communicate and publish information); the public and the mass media are entitled to attend trials; (access to court hearings); the public and the mass media may attend when the chamber of the Riksdag (the Swedish Parliament), the municipal assembly, county council assembly and other such bodies meet (access to meetings of decision-making assemblies).*

*Restrictions to this principle are clearly set out in law and the conditions for document secrecy and the duty of confidentiality are laid down in the Public Access to Information and Secrecy Act, in the Freedom of the Press Act, and in the Fundamental Law on Freedom of Expression to safeguard a limited number of important public and private interests.<sup>47</sup>*

The transfer of responsibility for public services from public authorities to private companies also requires increased use of public procurement procedures. However, the control mechanisms to prevent cronyism and nepotism in connection with the granting of contracts in municipalities appear to be relatively weak.<sup>48</sup> It has been argued that these risks are higher due to, inter alia, less independent and effective municipal auditing<sup>49</sup> and lesser media attention in municipalities in comparison to the national level.<sup>50</sup>

43 See on this issue Swedish Government official report. SOU 2011:43. Offentlig upphandling från eget företag?! – och visa andra frågor (p 587-588: <http://www.regeringen.se/content/1/c6/16/72/89/8e0351ba.pdf>.

44 Swedish Government official report. SOU 2011:43. Offentlig upphandling från eget företag?! – och visa andra frågor (p 587-588): <http://www.regeringen.se/sb/d/14253/a/167289>.

45 Swedish Government official report. SOU 2013:53. Privata utförare - kontroll och insyn. p 243. The document is available from: <http://www.regeringen.se/sb/d/16889/a/220274>.

46 The fundamental rules on public access to official documents are found in one of the constitutional laws - *the Freedom of the Press Act*. Public Access to Information and Secrecy Act, <http://www.government.se/content/1/c6/13/13/97/aa5c1d4c.pdf>.

47 Public Access to Information and Secrecy Act, <http://www.government.se/content/1/c6/13/13/97/aa5c1d4c.pdf>.

48 Statskontoret (2012) Köpta relationer –om korruption i det kommunala Sverige. Stockholm: Statskontoret, 2012:20. p 219-222. <http://www.statskontoret.se/upload/Publikationer/2012/201220.pdf>.

49 The Municipal Audit, the governing body charged with reviewing the municipal activity has been criticized during the last decade for lacking independence. Municipal audits are elected by the Municipal assembly and the auditors are appointed on a party political basis. The appointed auditors have the responsibility to review the municipal activities.

Moreover, to date, there is no specific requirement in the Swedish Local Government Act for municipal auditors to identify risks of corruption or other irregularities.<sup>51</sup> Their main function is to ensure that internal monitoring procedures are reliable. Internal monitoring and control does not provide for verification on the ground (e.g. inspection of renovation and repair work) in order to ensure that the invoices are consistent with the work actually carried out. Monitoring of compliance should be prioritised. These controls could be carried out by auditors, and experts in the area in which the work was carried out (e.g. construction experts).<sup>52</sup>

### ***Foreign bribery***

Sweden has the highest number of multi-national corporations per capita and has increasingly exported to emerging markets; its economy is reliant on exports.<sup>53</sup> This carries risks of foreign bribery, where in particular the effective enforcement of existing legislation seems to be an issue.

Although Sweden has ratified the OECD Anti-Bribery Convention,<sup>54</sup> an OECD evaluation in 2012 raised a number of significant issues regarding Sweden's implementation of the Convention. Specifically, there has only been one successfully prosecuted case involving the bribery of foreign public officials,<sup>55</sup> and Sweden has never held a company liable since the entry into force of the Convention.<sup>56</sup> The OECD examiners wrote that, in view of the many allegations reported by the media involving Swedish companies, the size of the Swedish companies and the sectors of business, including defence, telecommunications, construction and energy, the lack of cases could indicate problems with effectiveness of the criminal justice framework governing the bribery of foreign public officials.<sup>57</sup>

The apparent weakness of enforcement against companies for foreign bribery offences can, at least partly, be attributed to the stringent demands of penal law provisions establishing corporate liability for bribery carried out through foreign subsidiaries, joint ventures and

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Thus, the audit involves scrutinizing members of one's own party, which according to a Report of the Expert Group on Public Economics is ground for criticism of the system's construction. Report of the Expert Group on Public Economics. Revision reviderad – en rapport om en kommunal angelägenhet. 2010:6. <http://eso.expertgrupp.se/rapporter/20106-revisionen-reviderad-en-rapport-om-en-kommunal-angelagenhet/>.

50 Statskontoret (2012) Köpta relationer – om korruption i det kommunala Sverige. Stockholm: Statskontoret, 2012:20. p 63: <http://www.statskontoret.se/upload/Publikationer/2012/201220.pdf>.

51 Statskontoret (2012) Köpta relationer – om korruption i det kommunala Sverige. Stockholm: Statskontoret, 2012:20: <http://www.statskontoret.se/upload/Publikationer/2012/201220.pdf>.

52 The Swedish National Council for Crime Prevention. (BRÅ). Den anmälda korruptionen i Sverige. Struktur, riskfaktorer och motåtgärder. Rapport 2013:15. p 65: <http://www.bra.se/bra/publikationer/arkiv/publikationer/2013-07-02-den-anmalda-korruptionen-i-sverige.html>.

53 Approximately half of Sweden's GDP is attributed to exports and Sweden's share of world export is 1.2 per cent 2011. Exporting corruption? Country enforcement of the OECD anti-bribery convention, progress report 2012 available from: [http://www.transparency.org/whatwedo/pub/exporting\\_corruption\\_country\\_enforcement\\_of\\_the\\_oecd\\_anti\\_bribery\\_conventio](http://www.transparency.org/whatwedo/pub/exporting_corruption_country_enforcement_of_the_oecd_anti_bribery_conventio).

54 OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and the 2009 Recommendation of the Council for Further Combating Bribery of Foreign Public Officials in International Business Transactions.

55 In 2004, two Swedish nationals were convicted for bribery of World Bank officials in order to received consultancy contract on World Bank-funded projects. The case was reported to Swedish authorities by the World Bank after its own investigation.

56 A District Court recently found two former Swedish executives from a construction equipment subsidiary guilty for violations of international sanctions for having offered kickbacks to the Iraqi regime in connection with the Oil-for-Food Programme in Iraq.

57 OECD (2012) Phase 3 Report on Implementing the OECD Anti-Bribery Convention in Sweden: OECD, p. 10: <http://www.oecd.org/daf/anti-bribery/Swedenphase3reportEN.pdf>.



agents, to the requirement of dual criminality and to the low level of sanctions applicable to legal persons.<sup>58</sup>

Under Swedish law, Swedish prosecutors must demonstrate that an individual paid a bribe in order to establish corporate liability.<sup>59</sup> According to the OECD, the focus on the individual rather than on the corporate entity has led to the termination of several investigations. For example, one Swedish construction company, based on its own internal investigations, dismissed several of its executives in a foreign country because their actions had failed to 'comply with the company's standards of transparency.'<sup>60</sup> Despite the involvement of a Swedish-owned company in a foreign country, Swedish authorities terminated the investigation because the alleged offenders were not Swedish nationals. The Swedish authorities concluded that the suspected misconduct constituted an act of 'domestic bribery' and the investigation was terminated because of a lack of jurisdiction due to the nationality of the offenders. Thus, if a Swedish company pays bribes using a non-Swedish national through a third party agent or a separate legal entity, Swedish companies are not in practice subject to 'corporate fines' by Swedish authorities.<sup>61</sup> The Swedish authorities have reported that the new offence of 'negligent financing of bribery' from 2012 will address the difficulties involving intermediaries. However, for the negligent financing offence to apply, the bribery must be committed by someone representing a Swedish company, and in practice may exclude a foreign subsidiary.<sup>62</sup>

The level of criminal sanctions in foreign bribery cases is an issue of concern. In 2005, Sweden raised the level of 'corporate fines' that may be imposed on legal persons for foreign bribery. The current range of available fines for legal persons is from SEK 5000 to SEK 10 million (EUR 1.1 million). The reputational harm corruption allegations have on corporations within the Swedish society may have a strong deterrent effect. However, given the size and importance of Swedish multinationals in international businesses, the maximum fine may not be 'effective, proportionate and dissuasive.'<sup>63</sup>

Moreover, according to Swedish legislation, dual criminality is a necessary condition for jurisdiction on the basis of nationality,<sup>64</sup> including the need to obtain information through mutual legal assistance. The dual criminality requirement means that a given offence has to be a crime under the law of the country in which it has allegedly been committed as well as

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58 Annex I of the 2009 Recommendations provides that liability of legal persons should not be restricted 'to cases where the natural person or persons who perpetrated the offence are prosecuted or convicted'. Moreover, Annex I requires that 'a legal person cannot avoid responsibility by using intermediaries, including related persons, to offer, promise or give a bribe to a foreign public official on its behalf'. OECD (2012) Phase 3 Report on Implementing the OECD Anti-Bribery Convention in Sweden. Paris: OECD, p. 16. <http://www.oecd.org/daf/anti-bribery/Swedenphase3reportEN.pdf>.

59 Under Swedish law, it is not possible to aggregate the (bribery) intent across several individuals within the company to establish *mens rea* (the intention or knowledge of wrongdoing) of the company. OECD (2012) Phase 3 Report on Implementing the OECD Anti-Bribery Convention in Sweden. Paris: OECD, p. 18: <http://www.oecd.org/daf/anti-bribery/Swedenphase3reportEN.pdf>.

60 OECD (2012) Phase 3 Report on Implementing the OECD Anti-Bribery Convention in Sweden. Paris: OECD, <http://www.oecd.org/daf/anti-bribery/Swedenphase3reportEN.pdf>.

61 Since 2005 have no corporate fines been imposed on Swedish legal persons for foreign bribery. OECD (2012) Phase 3 Report on Implementing the OECD Anti-Bribery Convention in Sweden. Paris: OECD, p. 17: <http://www.oecd.org/daf/anti-bribery/Swedenphase3reportEN.pdf>.

62 Phase 3 Report on Implementing the OECD Anti-Bribery Convention in Sweden. Paris: OECD, p. 19: <http://www.oecd.org/daf/anti-bribery/Swedenphase3reportEN.pdf>.

63 Phase 3 Report on Implementing the OECD Anti-Bribery Convention in Sweden. Paris: OECD, p. 21.: <http://www.oecd.org/daf/anti-bribery/Swedenphase3reportEN.pdf>.

64 Dual criminality must be established in order to apply nationality jurisdiction to all offences in the Penal Code, except for certain crimes, such as: hijacking, maritime or aircraft sabotage, airport sabotage, a crime against international law, unlawful dealings with chemical weapons, unlawful dealings with mines or a false or careless statement before an international court. Phase 3 Report on Implementing the OECD Anti-Bribery Convention in Sweden. Paris: OECD, p. 25.: <http://www.oecd.org/daf/anti-bribery/Swedenphase3reportEN.pdf>.

under Swedish law. In order to reduce the risk that Swedish prosecutors fail to act against Swedish companies that committed foreign bribery offences solely on the grounds of jurisdiction, the provision of dual criminality should be reviewed.<sup>65</sup>

### 3. FUTURE STEPS

Sweden is among the least corrupt countries in the EU. It has taken an ambitious approach to fighting corruption, and several anti-corruption initiatives have been carried out during the last years. However, a few areas of concern remain such as corruption risks at local levels and gaps in the Swedish framework for prosecuting and sentencing Swedish corporations on grounds of foreign bribery.

The following points require further attention:

- Further improving the transparency of the **financing of political parties** and of individual candidates in line with GRECO's recommendations; considering that future legislation introduces a general ban on donations from donors whose identity is not known to the party or candidate and extending the scope of that legislation to cover regional and local levels.
- Requiring **municipalities and counties** to secure a sufficient level of transparency in public contracts with private entrepreneurs. Ensuring the independence of municipal audits reviewing municipal activity and that monitoring of compliance at local governance level is prioritised.
- Ensuring that the liability of legal persons for **foreign bribery** is triggered in cases where the offence is committed through lower-level employees, intermediaries, subsidiaries, or third-party agents including non-Swedish nationals. Raising the level of fines for corporations and other legal entities. Consider reviewing the provision of dual criminality.

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65 Exporting Corruption? Country enforcement of the OECD anti-bribery convention, progress report 2012: [http://www.transparency.org/whatwedo/pub/exporting\\_corruption\\_country\\_enforcement\\_of\\_the\\_oecd\\_anti\\_bribery\\_convention](http://www.transparency.org/whatwedo/pub/exporting_corruption_country_enforcement_of_the_oecd_anti_bribery_convention) .