



NORWAY: FOLLOW-UP TO THE PHASE 3 REPORT & RECOMMENDATIONS

July 2013

This report, submitted by Norway, provides information on the progress made by Norway in implementing the recommendations of its Phase 3 report. The OECD Working Group on Bribery's summary of and conclusions to the report were adopted on 15 July 2013.

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

This document and any map included herein are without prejudice to the status of or sovereignty over any territory, to the delimitation of international frontiers and boundaries and to the name of any territory, city or area.

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SUMMARY AND CONCLUSIONS BY THE WORKING GROUP ON BRIBERY

Summary of findings

1. In June 2013, Norway presented its written follow-up report to the Working Group on Bribery (the Working Group), outlining its responses to the recommendations and follow-up issues identified by the Working Group at the time of Norway's Phase 3 evaluation in June 2011. Norway has taken significant steps to implement a number of recommendations, with five out of eight recommendations fully implemented, two partially implemented and one not implemented

2. In terms of enforcement since June 2011, the *Consulting Company Case* mentioned in the Phase 3 report resulted, in the Court of Appeal, in sanctions for two natural persons and the legal person. Of three natural persons prosecuted, one was acquitted, one was sentenced to 6 months imprisonment (of which 2 months conditional), and one was sentenced to 60 days conditional imprisonment. The legal person was sentenced to a NOK 4 million (USD 700 000) fine by the Court of Appeal but was subsequently acquitted by the Supreme Court.¹ In addition, Norway indicated that two further investigations had been opened into possible foreign bribery offences by Norwegian companies. Norway has also significantly increased the resources available at Økokrim for fighting foreign bribery. The Working Group therefore considers that recommendation 1 has been fully implemented.

3. Regarding the application in practice of confiscation measures in foreign bribery cases, the Working Group welcomed the significant efforts undertaken by Norway to raise awareness and provide guidance to police and prosecutorial authorities on the issue, through a circular issued in 2013 by the Director of Public Prosecutions, as well as a comprehensive "Guide to Effective Confiscation" produced by Økokrim. The Working Group was also reassured to hear that confiscation is being given significant attention in the two foreign bribery investigations currently underway. However, given that confiscation measures have yet to be applied in practice, the Working Group considered that recommendation 2 could only be considered partially implemented.

4. Norway has also taken other steps to improve enforcement of the foreign bribery offence. In the area of mutual legal assistance, Økokrim has developed a registration system which tracks the types of offences for which mutual legal assistance is sought, the country of origin of requests, as well as the progress of requests (*recommendation 3*). In respect of debarment sanctions which may be imposed by public agencies, Norway stated its commitment to consider establishing a central point of access for its agencies, such as a national debarment register, once the EU Directives on Public Procurement have been finalised (*recommendation 6*).

5. With respect to enhancing detection through accounting and auditing measures, Norway indicated that, after careful consideration, it was still of the view that the current anti-money laundering reporting requirements for auditors were sufficient to allow for adequate reporting, including of foreign bribery (*recommendation 4b*). Norway has taken steps to establish a Working Group to discuss possible amendments to the Auditing Act, including the possibility of requiring auditors to report to management circumstances that may trigger the liability of the legal person, as recommended by the Working Group on Bribery (*recommendation 4a*).

¹ The Supreme Court hearing and decision took place after discussion of Norway's written follow-up report by the Working Group. This decision could therefore not be considered by the Working Group during its discussions and assessment of Norway's implementation of its Phase 3 recommendations.

6. In the area of awareness-raising, Norway has continued to actively engage with the private sector. In particular, efforts have been pursued since 2011 to encourage companies, and especially SMEs, to adopt internal controls, ethics and compliance measures to prevent and detect foreign bribery (*recommendation 5a*). Since 1 June 2013, Norway requires by law large companies to report on their efforts to integrate corporate social responsibility in their business strategies, including in the area of anti-corruption (*recommendation 5b*).

Conclusions of the Working Group on Bribery

7. Based on these findings, the Working Group concludes that Norway has fully implemented recommendations 1, 3, 4b, 5a, and 5b; recommendations 2 and 6 are partially implemented; and recommendation 4a is not implemented. The Working Group will continue to monitor follow-up issues 7a to d as case law develops. Norway is invited to report back orally in one year (i.e. by June 2014) on recommendations 2, 4a and 6.

WRITTEN FOLLOW UP TO PHASE 3 REPORT – NORWAY

Instructions

This document seeks to obtain information on the progress each participating country has made in implementing the recommendations of its Phase 3 Review.

Responses to the questions should reflect the current situation in your country, not any future or desired situation or a situation based on conditions which have not yet been met. For each recommendation, a separate space has been allocated for describing future situations or policy intentions.

The country is also asked to update the information on foreign bribery cases in the table annexed to this document, as well as to provide information on any additional foreign bribery investigations underway or terminated since Phase 3.

Countries are asked to answer all recommendations as completely as possible. Please submit completed answers to the Secretariat on or before 29 April 2013.

Name of country: NORWAY
Date of approval of Phase 3 Report: 23 June 2011
Date of information: 10 May 2013

PART I: RECOMMENDATIONS FOR ACTION

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

Text of recommendation 1:

1. Regarding the investigation and prosecution of foreign bribery, the Working Group recommends that Norway continue its efforts to proactively investigate and prosecute cases of foreign bribery [2009 Recommendation II.].

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

It is the mandate of ØKOKRIM to investigate and prosecute the most complex corruption cases, including those that require investigation abroad. Over the past two years, ØKOKRIM has further strengthened its capacity to investigate corruption cases in general, and has given high priority to cases of foreign bribery in particular.

Two teams at ØKOKRIM are now assigned to investigation and prosecution of domestic and international corruption cases, involving in total approximately 15 investigators in multi-disciplinary teams. Two Chief Public Prosecutors, one Public Prosecutor and three Police Prosecutors are assigned to the teams. This

represents a tripling of the total prosecution resources available in corruption cases since 2011. The strengthening of prosecutorial resources is crucial for the ability to initiate new investigations as well as the capacity to prosecute complex corruption cases before the courts. It also facilitates establishing a robust and flexible enforcement environment, making it easier to further develop tactical investigation skills and efficient and effective working methods in the preparation and execution of trials.

Since 2011, ØKOKRIM investigation has commenced in two foreign bribery cases.

Case 1:

In 2011, ØKOKRIM opened an investigation concerning a company which is a major producer of fertilizers. The company is a large multi-national enterprise registered on the Oslo Stock Exchange. The Company is headquartered in Oslo, and has more than 7.300 employees worldwide. The Norwegian State owns approximately 36% of the shares of the company.

The case was initiated through a notification from the company to ØKOKRIM of possible criminal offences committed in relation to negotiations preceding the company's investments in Libya. The negotiations culminated in a joint venture agreement between the Norwegian company and its Libyan counterpart in 2009.

Following the company's notification in relation to these negotiations, information concerning possible offences relating to the company's negotiations in India in 2006-2008 also surfaced.

In May 2011, ØKOKRIM launched an investigation relating to both the Libya and India issues.

ØKOKRIM searched the premises of the headquarters of the company in Oslo. The company itself made information about this public through a press release. ØKOKRIM has in the investigation that followed, interviewed a significant number of persons in Norway and abroad.

Due to the character and complexity of the case, it has been necessary to request assistance from more than ten jurisdictions. Several jurisdictions have provided very efficient, valuable and extensive assistance to ØKOKRIM under relevant conventions, notably the OECD Anti-Bribery Convention and the Schengen Convention.

The investigation has been resource demanding. Representatives from ØKOKRIM have taken part in a number of interviews abroad in co-operation with national enforcement authorities. Furthermore, foreign enforcement authorities have given significant assistance to ØKOKRIM concerning searches, seizures, production orders for banking records etc.. In particular Swiss, French and U.S. authorities have given considerable assistance of great importance to the investigation.

The investigation has progressed significantly, and is now moving into a final phase.

Case 2:

A Norwegian Shipping company self-reported possible acts of corruption to ØKOKRIM. The report, based on an internal investigation the company itself had initiated, was submitted to ØKOKRIM. The suspicious acts relates to possible bribes made by the Norwegian company in Bahrain, with the aid of an intermediary.

The case forms part of a larger investigation that is going on in several jurisdictions. Co-operation with

other jurisdictions has been a major element in the investigation of the case.

The case is still under investigation by ØKOKRIM.

Case mentioned in Phase 3 Report:

As regards developments concerning The Consulting Company Case, cf. Phase 3 Report, paragraph 17, the following developments have taken place:

The case was tried again in the court of appeals in August 2012. The company was sentenced to a fine of NOK 4 million (approx.. 700.000,- USD). One person was acquitted after first being found guilty in the Court of First Instance. The two other defendants in the case accepted sentences for foreign bribery from the Oslo District Court. The sentences were six months imprisonment, of which two months were made conditional, and a 60 days conditional sentence respectively.

The company has appealed the sentence to the Supreme Court, where it is scheduled for a hearing in June 2013.

If no action has been taken to implement recommendation 1, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 2:

2. Regarding the confiscation of the bribe and proceeds of foreign bribery, the Working Group recommends that Norway make full use of the provisions available under the law to confiscate the proceeds of foreign bribery, where appropriate, including when relying on penalty notices to settle cases out of court [Convention, Article 3.3; 2009 Recommendation III. (ii)].

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

Generally, ØKOKRIM's Corruption teams maintain a strong focus on the importance of making full use of the various economic sanctions available in all corruption cases. It is broad agreement over the political spectre that taking the profit out of crime is a very important aim. Confiscation remains an area of high priority for the Ministry of Justice. The importance of the issue is also highlighted in the annual circular of priorities for (2013) issued by the Director of Public Prosecutions. It is underlined that investigative steps aimed at securing and confiscating the proceeds of crime, be given priority in the investigation of serious profit motivated crimes (i.e. foreign bribery). The need for international co-operation is also underlined in the yearly circular for prosecution priorities.

In 2012, ØKOKRIM issued a book called "Guide to effective confiscation" (Veileder til effektiv inndragning, ØKOKRIM's skriftserie nr. 20, 2012). This is a comprehensive and practical guide to the legal framework as well as to the investigative tools and approach to confiscation. The book also has a specific chapter concerning the confiscation of proceeds abroad. The book has been give broad distribution to all police districts and Prosecution offices. Confiscation is being given significant attention in the foreign bribery cases that are currently under investigation.

If no action has been taken to implement recommendation 2, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 3:

3. Regarding international cooperation, the Working Group recommends that Norway develop its information system to allow for the collection of data on MLA requests in foreign bribery cases, including on the origin of such requests, and the timeframe for providing responses, with a view to allowing a better assessment of Norway's practice in providing MLA [Convention, Article 9].

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

In addition to being the Central authority for investigation and prosecution for economic crime, ØKOKRIM is also the designated contact point under the OECD Anti-bribery Convention.

Since 2011, ØKOKRIM has begun registration of incoming requests for MLA. The total number of incoming requests since 2011 is 8. The requests have been dealt with within the following timeframes:

Two requests have been responded to within one month.

Two requests have been responded to within 2 months.

Two requests have been responded to within four months.

One request is responded to within six months.

One is recently received and is still pending.

As a matter of general policy, ØKOKRIM will give priority to incoming MLA requests. It is well recognized from ØKOKRIMs own cases, that timely and adequate responses to MLA requests is crucial for a successful outcome.

If no action has been taken to implement recommendation 3, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Recommendations for ensuring effective prevention and detection of foreign bribery

Text of recommendation 4(a):

4. Regarding accounting and auditing requirements, the Working Group recommends that Norway:
 - a) Expand the reporting obligations under the Auditing Act to require auditors to also report to management circumstances that may trigger the liability of the legal person (and not only the natural persons at senior management level) [2009 Recommendation III. (iv), (v) and X.B.(iii)];

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

If no action has been taken to implement recommendation 4(a), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

The Government is in the process of establishing a working group, to discuss and propose possible amendments to the auditing act. The question of expanding the reporting obligations under the Auditing Act to include an obligation to report to management circumstances that may trigger the liability of the legal person will be incorporated in to the mandate of this group. The Ministry of Finance is proceeding to have the working group established by approximately the end of August 2013.

Text of recommendation 4(b):

4. Regarding accounting and auditing requirements, the Working Group recommends that Norway:
 - b) Consider, beyond the current anti-money laundering reporting requirements on proceeds of criminal acts, requiring external auditors to report suspected acts of foreign bribery to external competent authorities, in particular where management of the company fails to act on internal reports by the auditor, and ensure that auditors making such reports reasonably and in good faith are protected from legal action [2009 Recommendation III(iv), (v), X.B(v)].

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

In accordance with the recommendation, The Ministry of Finance has considered this issue again. No developments in the area suggest that amendments in this respect are appropriate now.

As is pointed out in the Phase 3 Report, this issue has been carefully considered on several earlier occasions, cf. paragraph 80 of the Phase 3 Report.

The Ministry of Finance holds the opinion that the reporting obligations under the Money Laundering Act adequately cover the issue of reporting. The auditor does also have the possibility of reporting to the police circumstances that are perceived to be a possible criminal act, cf. the Auditing Act section 6-1, cf. Phase 3 Report, paragraph 79-80.

If no action has been taken to implement recommendation 4(b), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 5(a):

5. Regarding internal controls, ethics and compliance, the Working Group recommends that Norway pursue the important efforts already engaged in the area of corporate liability, and in particular:
- a) Continue encouraging companies, especially SMEs, to develop internal controls, ethics and compliance systems to prevent and detect foreign bribery [2009 Recommendation X.C.(i), and Annex II, Good Practice Guidance on Internal Controls, Ethics and Compliance]; and

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

In March 2011, the Ministry of Finance and the Tax Directorate hosted the OECD-conference “Tax and Crime – A whole of Government Approach in Fighting Financial Crime” (“Oslo Dialogue”). The conference brought together senior policy makers from different government agencies, including from the anti-corruption and anti-money laundering communities, as well as representatives from the private sector. The conference was opened by the State Secretary of the Ministry of Finance and the Deputy Secretary General of the OECD. The issue of bribery was addressed in a number of sessions, also with OECD participation, in which both private and public sector representatives took part. A major focus of the conference was to explore avenues for enhancing international co-operation in order to more efficiently fight financial crime.

Following this very important event, Norwegian authorities took the initiative to a Nordic conference on “Tax Crimes and other Crimes”. The main focus of this conference was however corruption, and the OECD was also well presented on this occasion. A back-to back workshop decided to establish a Nordic training program that could be adapted to each particular country’s needs. Training sessions are scheduled for August 2013

Norway has been actively involved in the revision of the OECD Bribery Awareness Handbook for Tax Examiners.

Norwegian Tax authorities and the private sector, is currently contemplating a stepped-up cooperation on anti-corruption issues. In this context the Tax authorities are also carefully looking at the OECD standards, including the “Good practice guidance on internal controls, ethics and compliance.

The booklet “Say No to Corruption - it Pays!”, was first issued in 2005. A revised version came in 2008, partly as a result of discussions in the Working Group on Bribery in the context of the Phase 2 Review of Norway. This publication has been broadly distributed. The Ministry of Foreign Affairs have decided to revise this publication, with the aim of having a new version in print by the end of 2013 or early 2014. As a part of the process new technological options for distribution/awareness raising will also be explored. A core purpose of the revision is to incorporate changes and developments in the global and regional anti-corruption standards. The new version of the publication will also explicitly promote the “Good practice guidance on internal controls, ethics and compliance.”

The Business Anti-Corruption Portal, cf. Phase 3 Report paragraph 96, offers a range of information and

tools and is specifically designed for SME'S. The OECD anti-corruption instruments are easily accessible through this portal. Norway has decided to take an initiative to more explicitly cover the OECD anti-Bribery instruments, including the 2009 recommendation and "the good practice guidance on internal controls, ethics and compliance".

In the context of awareness, it should be mentioned that a quite considerable domestic practice has now emerged regarding the interpretation and application of the Penal Code provisions against corruption of 2003. These developments have received significant media attention.

As described in in the Phase 3 Report, the Norwegian Confederation of Business and Industry have developed a number of tools that are helpful to businesses in the prevention and possible detection of corruption. The policy of the NHO has been very clearly communicated since the issuing of the publication. The work of NHO in this area is continuously on-going.

A new guidance document called Corporate Social Responsibility –The Role of the board, was published in 2012. Furthermore, the confederation and Transparency International Norway hosted a workshop on anti-corruption measures in the supply chain. A taskforce was established, and the outcome of the process is a guidance document with recommendations on how to reduce the risk of corruption in the supply chain

The Ministry of Foreign Affairs white paper on Corporate Social Responsibility of 2009 has been subject to continuous follow-up in co-operation with in particular Ministry of Trade and Industry. There has been a broad dialogue with stakeholders.

36 Norwegian companies are members of the UN Global Compact.

INTSOK, cf. Phase 3 Report on Norway, paragraph 98 – has developed a Code of Conduct and Ethical Guidelines, both documents published on December 5th 2012.

If no action has been taken to implement recommendation 5(a), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 5(b):

5. Regarding internal controls, ethics and compliance, the Working Group recommends that Norway pursue the important efforts already engaged in the area of corporate liability, and in particular:
- b) Encourage companies to make statements in their annual reports or otherwise publicly disclose their internal controls, ethics and compliance systems for preventing and detecting bribery [2009 Recommendation X.C.(iii), and Annex II, Good Practice Guidance on Internal Controls, Ethics and Compliance].

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

In April of 2013, The Norwegian Parliament adopted amendments to the Accounting and Auditing Acts, introducing an obligation for large corporations to report – in their Annual Report – on their efforts to integrate Corporate Social Responsibility in their business strategies, their day-to –day operations and in

relation to those having interests in the corporation. The new section 3-3 of the Accounting Act, explicitly identifies measures to fight corruption as part of the reporting requirement.

The new reporting standard for large companies is related to the White Paper and although the obligation to report is restricted to large corporations, it is again – as in the White Paper – expressly communicated that there is a general expectation that all Norwegian companies remain committed to and follow-up on SCR issues.

As regards openness, it should be mentioned that Norway was verified as full member of the EITI (Extractive Industries Transparency Initiative) in 2011. EITI works towards greater transparency in relation to payments from natural resources. The secretariat of EITI is located in Oslo.

If no action has been taken to implement recommendation 5(b), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 6:

6. Regarding public advantages, the Working Group recommends that Norway consider adopting a systematic approach to allow its public agencies to easily access information on companies sanctioned for foreign bribery, such as through the establishment of a national debarment register [2009 Recommendation XI. (i)].

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

The EU is in the process of revising the directives on Public Procurement. New directives are expected in early autumn of 2013, and will also cover the issue of exclusion from public tenders. Part of the discussion within the EU is whether exclusion should be an absolute requirement, whether or not the public entity is aware of the sanction that has been imposed on the tenderer. These Directives are relevant under the EEA-agreement with the EU and Norway is under the obligation to implement them. Given this situation, The Ministry of Government Administration, Reform and Church Affairs is awaiting the outcome of EU deliberations before making revisions to the Norwegian legal framework in this area. Once the Directive(s) are adopted, work will commence on national implementation. A partly revision of the legal framework before the revision process is finalized is not considered appropriate. The Ministry of Government Administration, Reform and Church Affairs (FAD) will involve the Ministry of Justice and other relevant stakeholders in the process of elaborating new provisions on exclusion from public tenders. Recommendation 6 of the Phase 3 report on Norway will form part of the basis for considering legislative reform in the context of this topic.

If no action has been taken to implement recommendation 6, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

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

Text of issue for follow-up:

7. The Working Group will follow-up the issues below as case law and practice develops:
- a) The application of the foreign bribery offence as litigation further develops to ensure that it covers bribes paid to third parties and bribery through the use of intermediaries, as well as the interpretation of the “impropriety of the advantage” and the application of the trading in influence offence in cases of foreign bribery;

With regard to the issue identified above, describe any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate:

Cf. information under recommendation 1.

Text of issue for follow-up:

7. The Working Group will follow-up the issues below as case law and practice develops:
- b) The responsibility of legal persons in cases of foreign bribery as case law develops, in particular to ascertain how the factors under section 48b of the GCPC are interpreted by the courts in deciding whether to impose a penalty on a legal person;

With regard to the issue identified above, describe any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate:

Cf. information under recommendation 1.

Text of issue for follow-up:

7. The Working Group will follow-up the issues below as case law and practice develops:
- c) The use of penalty notices (or optional penalty writs) in cases of foreign bribery as practice develops, particularly with regard to the development of prosecutorial guidelines or guidance from the courts; and

With regard to the issue identified above, describe any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate:

Cf. information concerning the Consulting Company case.

Text of issue for follow-up:

7. The Working Group will follow-up the issues below as case law and practice develops:
- d) The application of the money laundering offence, given the absence of investigations and prosecutions of money laundering based on a predicate offence of foreign bribery.

With regard to the issue identified above, describe any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate:

There is no case example related to foreign bribery cases.