



PHASE 3 REPORT ON IMPLEMENTING THE OECD ANTI-BRIBERY CONVENTION IN NORWAY

June 2011

This Phase 3 Report on Norway by the OECD Working Group on Bribery evaluates and makes recommendations on 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. It was adopted by the Working Group on 23 June 2011.

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EXECUTIVE SUMMARY

1. The Phase 3 Report on Norway by the OECD Working Group on Bribery evaluates and makes recommendations on Norway's implementation and enforcement of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and related instruments. It focuses on horizontal issues, which concern the Working Group as a whole, particularly enforcement, and also considers country-specific issues arising from progress made since Norway's Phase 2 evaluation in 2004 and Phase 2 follow-up in 2007, or issues raised, for instance, by changes in the domestic legislation or institutional framework of Norway.

2. Enforcement of the foreign bribery offence in Norway has increased steadily since Phase 2, and resulted in a number of prosecutions and sanctions of individuals and companies in foreign bribery-related cases. This is primarily owing to the experienced and well-resourced investigators and prosecutors situated in the specialised Anti-Corruption Teams within Norway's National Authority for Investigation and Prosecution of Economic and Environmental Crime, Økokrim, as well as a general determination by Norway to proactively seek out, investigate and prosecute corruption at all levels, be it domestic or foreign bribery, in the public or private sector.

3. Increased enforcement against companies is notably a result of Norway's efficient legal framework for corporate liability, which does not restrict the liability of legal persons to cases where the natural person is prosecuted or sanctioned, as well as to Økokrim's approach, which has led to systematic investigation, prosecution and sanctions on companies involved in foreign bribery. It is nevertheless worth noting that all foreign bribery cases involving companies have been settled through the use of out-of-court settlements (or "optional penalty writs"), and that the courts have therefore not yet had the opportunity to provide their interpretation of the corporate liability provisions in foreign bribery cases, although one case is currently pending before the courts. More significantly, the Report notes that confiscation measures have not been relied on by the law enforcement authorities to seize and confiscate the proceeds of bribery potentially gained by companies, and the Working Group recommends that full use of confiscation provisions be made, where appropriate.

4. Regarding the detection and reporting of foreign bribery, the Report outlines the efforts made by Norway to encourage the reporting of foreign bribery, in particular through comprehensive and effective whistleblowing legislation; indeed several foreign bribery cases have come about as a result of whistleblower reports. In addition, engagement of Norwegian public officials operating in key government agencies, such as the Tax administration, the Ministry of Foreign Affairs, or Norway's export credit agencies, is likely to enhance the sources of detection of foreign bribery cases. As further concerns public agencies providing public advantages (e.g. export credit, ODA, or public procurement agencies), the Report notes that they are entitled to debar companies convicted of corruption offences, which could prove a powerful deterrent for companies to engage in bribery. In this respect, the Working Group suggests that this debarment mechanism could be made more efficient, for example if a centralised resource existed to allow these agencies to access information on companies sanctioned for foreign bribery.

5. The Report and its recommendations reflect findings of experts from the Czech Republic and Sweden and were adopted by the OECD Working Group on Bribery. The Report is based on the laws, regulations and other materials supplied by Norway, and information obtained by the evaluation team during its three-day on-site visit to Oslo on 1 to 3 February 2011, during which the team met with representatives from Norway's public administration, private sector and civil society. Within two years of the Group's approval of the Report, Norway will submit a written report on its implementation of its Phase 3 recommendations, which will be made publicly available.

A. INTRODUCTION

1. The on-site visit

6. From 1 to 3 February 2011, a team from the OECD Working Group on Bribery in International Business Transactions (the Working Group, made up of the 39 State Parties to the OECD Anti-Bribery Convention) visited Oslo as part of the Phase 3 peer evaluation of the implementation of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (the Anti-Bribery Convention), the 2009 Recommendation for Further Combating the Bribery of Foreign Public Officials in International Business Transactions (the 2009 Anti-Bribery Recommendation) and the 2009 Recommendation of the Council on Tax Measures for Further Combating the Bribery of Foreign Public Officials in International Business Transactions (the 2009 Tax Recommendation). The purpose of the visit was to evaluate the implementation and enforcement by Norway of the Convention and the 2009 Recommendations.

7. The evaluation team was composed of lead examiners from the Czech Republic and Sweden as well as members of the OECD Secretariat.¹ Prior to the visit, Norway responded to the Phase 3 general questionnaire and supplementary questions. It also provided translations of relevant legislation, documents and case law. During the visit, the evaluation team met with representatives of the Norwegian public and private sectors and civil society.² The on-site visit was generally well attended, and the evaluation team was grateful in particular for the time taken by a number of officials from the Ministry of Justice (MOJ), and Økokrim to meet with the examiners. The evaluation team expresses its appreciation of Norway's cooperation throughout the evaluation process and is grateful to all the participants at the on-site visit for their cooperation and openness during the discussions, and in particular to the police officers and prosecutors involved in recent foreign bribery cases and who dedicated a significant amount of time sharing their experience with the evaluation team. Their contributions and openness reflect the overall positive achievements Norway has made in the fight against foreign bribery over the past five years.

2. Outline of the report

8. This report is structured in two parts. Part B examines Norway's efforts to implement and enforce the Convention and the 2009 Recommendations, having regard to Working Group-wide issues for evaluation in Phase 3. It pays particular attention to enforcement efforts and results, as well as country specific issues arising from progress made by Norway on weaknesses identified in Phase 2, or issues raised by changes in the domestic legislation or institutional framework of Norway. Part C sets out the Working Group's recommendations and issues for follow-up.

¹ The Czech Republic was represented by Mr. Tomas Hudecek, Legal Expert at the International Cooperation Department in the Czech Ministry of Justice. Sweden was represented by Mr. Alf Johansson, Chief Public Prosecutor at the National Anti-Corruption Unit of the Swedish Prosecution Authority; and Ms. Birgitta Nygren, Ambassador at the Swedish Ministry for Foreign Affairs. The OECD Secretariat was represented by Ms. France Chain, Co-ordinator of the Phase 3 Evaluation of Norway, Senior Legal Analyst, Anti-Corruption Division; and Ms. Melissa Khemani, Legal Analyst, Anti-Corruption Division.

² See Annex 3 for a list of participants.

3. Economic Background

9. Norway is a country of less than 5 million inhabitants with one of the highest per capita incomes in the world. An important share of the country's employment is in manufacturing and construction (17%) and in services (78%).³ Norway was less impacted by the financial crises compared to many other OECD countries and also experienced a shallower recession, which came after one of the strongest periods of economic growth over the last 50 years. The turnaround in oil prices, the specialisation of Norwegian exports in oil and gas, with rising gas exports and the high albeit declining levels of oil exports, helped mitigate some of the impact of the collapse in world trade in 2009.

10. In 2010, exports of goods and services accounted for 42% almost half of Norway's gross domestic product (GDP), half of which comprised of crude oil and natural gas (19% of GDP). Manufacturing goods comprised 26% of total exports. Machinery and other equipment and basic metals comprised respectively 32% and 23% of the manufacturing goods exports. Imports of goods and services amounted to about 28% of GDP, with a significant share of goods imports in machinery and other equipment (33%), chemical and mineral products (10%) and basic metals (9%). Denmark, France, Germany, the Netherlands, Sweden, the United Kingdom and the United States accounted for most of Norway's export destination countries in 2009-2010.⁴

11. At the end of 2009, Norwegian direct investment abroad amounted to NOK 946 billion (approximately EUR 120 billion). With oil production in a secular decline, a significant part (29%) of Norway's direct investment abroad is related to the extraction of crude petroleum and natural gas and related services. Real estate comprised about 25%. Other important sectors were water transport (6%) and air transport (10%).⁵ The geographical breakdown of both inward and outward direct investment shows that EU countries and the United States are predominant. 63% of all Norwegian direct investment abroad took place in EU countries, 8% in the United States and 10% in Singapore. Belgium took the lead as the destination country for outward investment, receiving 15% of Norwegian direct investment. Other important countries were Sweden and the Netherlands, with respectively 13% and 9% each.⁶

12. The Norwegian state has extensive direct ownership of Norwegian enterprises. The state's direct ownership ranges from holdings in Norway's biggest listed companies to small wholly-owned companies with purely sectoral policy objectives.⁷ Major Norwegian companies in which the state has ownership include Statoil and Telenor. Statoil is Norway's largest oil and gas company and is listed as the 13th largest oil and gas company in the world and ranked as 36th amongst the world's largest companies.⁸ Statoil operates international fields in a number of countries, including Algeria, Angola, Azerbaijan, Brazil, Canada, China, Cuba, Egypt, India, Indonesia, Iran, Iraq, Libya, Nigeria, Russia and Venezuela.⁹ Telenor is the sixth largest mobile phone operator in the world, with global operations in Scandinavia, Central and

³ Statistics Norway (2010 figures).

⁴ (2008 figures), Statistics Norway, Exports by Trade Area / Country of Destination (2010).

⁵ Statistics Norway, Norwegian Outward Direct Investment (2009).

⁶ Statistics Norway, Direct Investment Stocks and Income (2009).

⁷ Norwegian Ministry of Trade and Industry, *The Government's Ownership Policy*, p. 8, available at: http://www.eierberetningen.no/2009/asset/ownership_policy_2008.pdf

⁸ See Fortune 500 Global (2009): <http://money.cnn.com/magazines/fortune/global500/2009/snapshots/6406.html>

⁹ Statoil International Exploration and Production, available at: www.statoil.com

Eastern Europe, and Asia.¹⁰ Other major companies in which the Norwegian state has ownership include Norsk Hydro, Aker Holdings and Yara International.¹¹

13. In addition, the Norwegian Government Pension Fund Global (formerly known as the Petroleum Fund) holds foreign assets equivalent to almost 125% of GDP and is managed by a specialised branch within the Central Bank. At the end of 2010, the Fund had approximately 60% - 40% asset split among equity and bonds respectively. The revenues are substantial and are derived from the Norwegian Government's total income from petroleum activities and the return on the Fund's investments.¹² As of March 2011, the total value of the Fund was more than NOK 3000 billion (approximately EUR 385 billion).¹³ (Further details on the Norwegian Government Pension Fund Global are discussed under section 11.d of this Report).

4. Cases involving the bribery of foreign public officials

14. Since the entry into force of its 2003 foreign bribery legislation, Norway has investigated and prosecuted three cases involving bribery of foreign public officials in international business transactions over the past seven years.¹⁴

15. A first case ("the Oil Company case") had been initiated at the time of the Phase 2 evaluation of Norway in 2004. Økokrim issued penalty notices to a large state-owned oil company, and a senior executive of the company. On 28 June 2004, Økokrim issued penalty notices to the oil company and the company's former executive Vice President. The Vice President had negotiated an agreement with a company registered in an off-shore jurisdiction, according to which the latter was to perform various consulting services for the oil company for an 11 year period. The oil company was to pay a total fee of USD 15.2 million for these alleged services. Payments were made to a foreign bank account in the name of a third company. In September 2003, following exposure by a Norwegian newspaper, the agreement was terminated. The real purpose of the agreement was to channel funds to a foreign citizen in return for his or others influencing individuals who were involved in decision-making relevant to the company's commercial activities in the foreign jurisdiction, including administrative acts concerning the awarding of contracts in the oil and gas sector. The advantage to be conferred according to the agreement was improper, notably because of the amount of the remuneration, and because the true purpose of the agreement was concealed. This consultancy contract was entered into in breach of the oil company's internal guidelines. The penalty notice stated that the senior executive failed to arrange for the termination of the agreement as soon as possible after the entering into force of the new Norwegian corruption legislation on 4 July 2003. The penalty notices describe the offences as a breach of the trading of influence statute (section 276c of the General Civil Penal Code) (see also section B.1.d. of the Report on the use of the trading in influence offence). The company's fine was in the amount of NOK 20 million (EUR 2.4

¹⁰ Telenor Group, *Global Presence*, available at: <http://telenor.com/en/global-presence/>

¹¹ For a full list of companies where the Norwegian state as ownership, see: http://www.eierberetningen.no/2009/asset/ownership_policy_2008.pdf

¹² See: Norwegian Government Pension Fund, available at: <http://www.regjeringen.no/en/dep/fin/Selected-topics/the-government-pension-fund.html>

¹³ Norges Bank Investment Management, "Fifth Best Year in the Fund's Management", 18 March 2011, available at: <http://www.nbim.no/en/press-and-publications/News-List/736/femte-beste-resultat-i-fondets-historie/>

¹⁴ Prior to the entry into force of its foreign bribery legislation, Norway had prosecuted instances of bribery of foreign public officials as breach of trust offences. See [Norway's Phase 2 Report](#) at paragraphs 65 and 66 for further details.

million; USD 3 million), and the vice president's NOK 200 000 (EUR 24 000). Both fines were accepted.¹⁵ As the oil company was listed on the New York Stock Exchange, it was also fined, in a deferred prosecution agreement, USD 10.5 million by the Department of Justice (out of which the USD 3 million already paid to Norway was deducted); the Securities and Exchange Commission further required the company to disgorge USD 10.5 million.

16. The second case concerns bribery by a research and consulting company ("the Research Company case"). Økokrim charged a senior executive of that company with serious corruption, and issued a penalty notice to the company in connection with a consulting contract signed with a foreign company in 2002. Økokrim launched an investigation on the company in 2005, following an internal whistleblower report. Økokrim believed that the contract was in breach of criminal law, section 276b (aggravated bribery). The company's fine was in the amount of NOK 2 million, which was accepted. In May 2007, the senior executive was acquitted by the Court of First Instance, who found there was insufficient evidence to convict.

17. The last case, which was still underway at the time of this report, concerns an engineering and consulting company ("the Consulting Company case"). In 2003, the consulting company and two foreign companies entered into a contract with a local agency in a foreign country to upgrade the city's water and sewage system. One of the conditions for being awarded the contract was that a percentage of the total contract value would be paid to a group of the local agency officials. The prosecuting authority believes that a total of approximately USD 200 000 was paid in bribes. Økokrim has indicted three employees of the company for contravention of sections 276a. and b. of the General Civil Penal Code (GCPC). Økokrim served a penalty notice on the company in the amount of NOK 4 million, which the company refused to accept.¹⁶ The trial against the company and three individuals commenced at Oslo District Court in May 2011, with the court's decision expected in mid-July 2011.

18. In addition to these three, another case ("the Boat Certificate" case) concerned bribery of foreign public officials, but outside an international business transaction context. Four individuals were sanctioned for their involvement in the bribery of foreign public officials in order to obtain a sailing certificate.¹⁷ This case was brought under the pre-2003 foreign bribery provisions.

19. Norwegian law enforcement authorities further reported during the on-site visit on two investigations underway. One was about to be initiated at the time of the on-site visit; following the on-site visit, Norway indicated that it had to be discontinued due to inability to substantiate the evidence. Another investigation was stalled while additional information from authorities abroad was expected. In April 2011, Økokrim opened two additional investigations into allegations of foreign bribery in India and Libya by a Norwegian fertiliser company.

¹⁵ See in particular [Norway's Written Follow-Up Report to Phase 2](#), at page 24.

¹⁶ See [Økokrim's Annual Report 2009](#) at p. 13.

¹⁷ See [Norway's Written Follow-Up Report to Phase 2](#), at page 24 for further details on this case.

B. IMPLEMENTATION AND APPLICATION BY NORWAY OF THE CONVENTION AND THE 2009 RECOMMENDATIONS

20. This part of the report considers Norway's approach to certain issues identified by the Working Group on Bribery as cross-cutting issues for all Parties subject to Phase 3. Where applicable, this report addresses issues arising from progress made by Norway on weaknesses or issues for follow-up identified in Phase 2, as well as, where applicable, issues raised by changes in the domestic legislation or institutional framework of Norway. The Phase 2 recommendations made by the Working Group on Bribery to Norway in 2004 are set out as Annex 1 to this report. In 2007, when Norway provided its written follow-up to the Working Group on implementation of its Phase 2 recommendations, the Working Group concluded that Norway had satisfactorily implemented all its Phase 2 recommendations.¹⁸

1. Foreign bribery offence

21. Norway's basic foreign bribery offence is provided under section 276a of the Norwegian General Civil Penal Code (GCPC). The GCPC also provides for an aggravated bribery offence ('gross corruption') under section 276b.¹⁹ As amendments to the bribery offences under the GCPC were introduced shortly before the time of Norway's Phase 2 evaluation, and in the absence of definitive case law at the time, the Working Group decided in Phase 2 to follow up on the application of the foreign bribery offence in practice as litigation develops, in particular the notion of the "impropriety of the advantage".²⁰

a) *Impropriety of the advantage*

22. The Working Group identified in Phase 2 the term "impropriety" of the advantage under section 276a of the GCPC as an issue to follow-up as case law developed. This is because there is latitude for interpretation of what may be deemed improper or not and thus whether the application of the offence in practice would comply with Article 1.1 of the Convention in covering "any undue pecuniary or other advantage." As further noted in the Phase 2 Report, the preparatory works of the GCPC explain and set out criteria for deciding whether an advantage is improper or not.²¹ These include: the purpose of the advantage, the openness between the employee and his/her principal (i.e. whether or not the principal is aware of the advantage received or offered), the internal rules or contract applying to the passive side, and the posts or positions of the parties concerned. Since Phase 2, cases have developed where the indictments have taken into account factors such as the hidden nature of the advantage, that the advantage was given in breach of internal guidelines, the value of the advantage and the defendant's position, in determining that the advantages were improper.²² In the case of the Research Company case, the advantage was deemed improper due to, *inter alia*, the recipient's employment/office, the size of the remuneration and because the benefits were disguised as payments for consulting services.

¹⁸ See Annex 1 for the complete Phase 2 recommendations to Norway, and assessment of their implementation by the Working Group on Bribery.

¹⁹ See Annex 2 for the text of sections 276a., 276b., and 276c., of the GCPC.

²⁰ Norway Phase 2 Report, Recommendations of the Working Group and Follow-up, para. 167.

²¹ Norway Phase 2 Report, paras. 84 – 87 for background and further details.

²² Norway Phase 2 Follow-up Report, page 25.

23. Norwegian law enforcement officials met during the on-site visit explained that it is at the courts' discretion to determine the impropriety of the advantage, and that several of such factors are normally taken into account. Criteria taken into account by the courts in practice have included, *inter alia*, the purpose of advantage and whether there was transparency in the offering and acceptance of the advantage. Law enforcement officials also confirmed that the preparatory works provide adequate guidance on the issue, and the latitude for interpretation of the term "improper" does not pose a challenge for prosecution authorities. This view was shared by academics, lawyers and judges also met during the on-site visit, who reaffirmed that in practice, there is no gray area or lack of clarity regarding the impropriety of the advantage. While the value of the advantage is considered as one of the factors to be taken into account in determining its impropriety, the Ministry of Justice confirms that this is only intended to serve as a starting point in drawing the line between gifts and advantages of a lesser or minor value, which are given or accepted as part of commonly accepted activities in the ordinary line of work, and those which exceed such limits and would be regarded as improper. This assessment of the "value of the advantage" is also expressly stated in the preparatory works of the foreign bribery legislation.²³

b) *Bribes paid to third parties and bribery through the use of intermediaries*

24. Section 276a. of the GCPC does not specify whom the advantage is intended to benefit, nor does it explicitly cover the *modus operandi* of bribery through the use of intermediaries. While not highlighted as a specific follow-up issue in Phase 2, the lead examiners noted at the time that they were confident that the explanations provided by Norway that these elements were covered by the offence would be confirmed by case law.²⁴ With regard to third party beneficiaries specifically, the lead examiners advised that Norway should report to the Working Group when case law confirms their position. Since Phase 2, Norwegian law enforcement authorities reported that they have not investigated or prosecuted credible factual allegations of bribery of a foreign public official where all of the advantage was transferred to a third party with the knowledge or agreement of the foreign public official. However, law enforcement authorities reaffirmed during the on-site visit that the foreign bribery offence under Norwegian law would cover third party beneficiaries. It also follows from the preparatory works to the amendments made to GCPC that third party beneficiaries are covered. Reference was also made to a domestic bribery case where the bribe payment was transferred by the bribe-giver to a company wholly owned by the son of the domestic public official. The official was convicted of gross corruption and the son was convicted as an accomplice.²⁵

25. While Norway has not investigated or prosecuted credible factual allegations of foreign bribery where the bribe was paid through the use of an intermediary, law enforcement officials met during the on-site visit again reaffirmed the position taken in Phase 2 – that there would be no significance for criminal liability if the active briber uses another person or entity to carry out the act of bribery itself.

c) *Aggravated bribery*

26. As noted above, section 276b. of the GCPC provides for an aggravated bribery offence ('gross corruption'). The consequences of this distinction essentially have an impact with regard to the statute of limitations, and the investigative tools available to law enforcement authorities. With regard to the latter, cases of aggravated bribery under section 276b. would allow for a broader range of investigative tools, including the interception of telecommunications, which would not be available to law enforcement

²³ Ministry of Justice, excerpts from Proposition No. 78 (2002-2003) to the Odeslting concerning an Act to amend the GCPC provisions against corruption.

²⁴ See Norway Phase 2 Report, paras. 76 – 79.

²⁵ The active briber died before the indictment was issued.

authorities for the investigation of cases of basic bribery under section 276a. (See sections 5.a. and e. below on the statute of limitations and investigative tools for further discussion on these issues.)

27. All of the elements of the basic bribery offence must be present for the aggravated bribery offence to apply. In the Phase 2 Report, Norwegian authorities indicated that “whether an act of corruption is to be considered aggravated or not will depend on an overall evaluation.”²⁶ Section 276b., para. 2 of the GCPC gives indication of the elements that may be taken into account in deciding whether the corruption should be considered aggravated. These include “whether the act has been committed by or in relation to a public official or any other person in breach of the special confidence placed in him by virtue of his position, office or assignment, whether it has resulted in a considerable economic advantage, whether there was any risk of considerable damage of an economic or other nature, or whether false accounting information has been recorded, or false accounting documents or false annual accounts have been prepared.”²⁷ According to Norwegian authorities, the threshold for applying section 276b. is low. With regard to the element “considerable economic advantage”, Norwegian authorities indicate that as a stand-alone criteria, it would be fulfilled where the advantage was approximately NOK 125 000 (approximately EUR 15 000). Norwegian authorities further explain that if the case of bribery concerned a judge or government official (“special confidence”), section 276b. would apply even if the value of the advantage was relatively minor.

28. During the on-site visit, law enforcement officials confirmed that the preparatory works of the GCPC also provide sufficient guidance on the factors to be taken into account in determining whether the aggravated bribery offence (‘gross corruption’) should apply. While the bribe recipient being a foreign public official would be one significant factor taken into account, law enforcement officials could not confirm that all cases of foreign bribery would count as aggravated bribery across the board. However, it is worth noting that since Phase 2, the foreign bribery cases of the Research Company and Consulting Company were treated as aggravated bribery. In this regard, the Bill of Indictment in the case of the Consulting Company case stated that the contravention is “considered aggravated, particularly because the act resulted in considerable economic advantage, and because the act was committed in respect of a public official.”

29. The implications of the distinction between basic and aggravated bribery – namely with regard to the length of the limitations period and the operation of the statute of limitations – were raised by the Working Group in Phase 2 as issues for follow-up. The lead examiners accept the explanations provided by the Norwegian authorities that the threshold for applying section 276b. is low, and the distinction does not appear to have posed problems to date.

d) Trading in influence

30. The Working Group noted in Norway’s Phase 2 Follow-up Report that the trading in influence offence under section 276c of the GCPC was applied in the Oil Company case rather than the offence of foreign bribery. The Working Group agreed to follow up the application of the foreign bribery offence as practice evolves to see if the use of the trading in influence offence was a one-time occurrence or would develop into a trend, notably because the trading in influence offence carries a lower level of sanctions and thus limited investigative tools available for law enforcement authorities (in comparison to aggravated bribery), in addition to a shorter statute of limitations. The Working Group wanted to ascertain, in particular, that the law enforcement authorities had not relied on the trading in influence offence due to difficulties in establishing the status of the bribe recipient as a foreign public official, which could raise concern regarding the definition of “foreign public official” in Norwegian law. During the Phase 3 on-site

²⁶ Norway Phase 2 Report, para. 96.

²⁷ Norwegian General Civil Penal Code (GCPC), section 276b.

visit, Norwegian law enforcement authorities advanced the same explanations provided in the Phase 2 Follow-up Report – that the trading in influence offence was applied in the Oil Company case rather than the foreign bribery offence because of difficulties the Prosecution Authority confronted in establishing that the bribe recipient was a public official. The lead examiners were therefore initially concerned that this could point to a problem with the definition of “public official” under the GCPC. However, upon receiving further explanations from law enforcement authorities, they were satisfied that this was clearly a case of trading in influence, whereby payments were made to a well-connected family member of a former high level public official to use his influence to help the Norwegian oil company win a lucrative oil field development contract. Law enforcement authorities affirmed that there is no trend in applying the trading in influence offence over the foreign bribery offence and further indicated that since Phase 2 and the Oil Company, the trading in influence offence has not been applied in cases of foreign bribery. The lead examiners were satisfied by these explanations, including in view of the fact that, since the Oil Company case, other cases have been prosecuted as foreign bribery offences.

e) Small facilitation payments

31. There is no exception for small facilitation payments under Norwegian law. According to Norway, the law would treat such payments in the same manner as other bribe payments and if a facilitation payment is considered “improper”, then criminal sanctions would apply.²⁸

32. At the time of the Phase 2, the Working Group had recommended that Norway clarify to the business sector, that small facilitation payments are not allowed, a recommendation that the Working Group considered implemented at the time of Norway’s written follow-up report in 2007.²⁹ The message sent out by the Norwegian Ministry of Foreign Affairs in its brochure, *Say No to Corruption – It Pays!*, explicitly states that small facilitation payments constitute a form of corruption and that “all forms of corruption are prohibited by Norwegian law”.³⁰

33. The issue of small facilitation payments also arose during the on-site visit discussions with the private sector and business and industry associations. While it was acknowledged that such payments are prohibited under Norwegian law, representatives of the private sector questioned how realistic such a prohibition is in practice. One representative further noted that an outright prohibition is akin to “sweeping the issue under the carpet” as companies continue to confront demands for such payments that many, particularly SMEs, find difficult to resist. During the on-site visit, law enforcement officials were clearly of the view that small facilitation payments are not allowed under Norwegian law, but noted that they may not be prosecuted in certain specific circumstances, for instance where the bribe is solicited by the foreign

²⁸ See [Norway’s Phase 2 Report](#), at para 86.

²⁹ At the time of the Phase 2, the concern was due to the fact that there is some lack of clarity on this issue in, for example, the preparatory works to section 276a. of the GCPC, which elaborate that “some such payments cannot be characterised as improper” and that “in these situations... it is important to exercise a form of discretion that primarily pays regard to the amount paid and whether the payment involves a breach of the law or of established practice” [Ministry of Justice, excerpts from Proposition No. 78 (2002-2003) to the Odelsting concerning an Act to amend the GCPC provisions against corruption.]. See discussion of this issue in [Norway’s Phase 2 Report](#), at paras 86-88.

³⁰ Norwegian Ministry of Foreign Affairs, “*Say No to Corruption – It Pays! Information for Norwegian Businesses Operating in a Global Market*” (2008) at page 7, available at: <http://www.regjeringen.no/en/dep/ud/dok/veiledninger/2008/neitilkorrupsjon.html?id=499389>

public official.³¹ Norway further clarified that only cases having elements of extortion would fall outside the scope of application of the law.

Commentary

The lead examiners are satisfied with the explanations provided by Norway that the foreign bribery offence covers bribes paid to third parties as well as bribery through the use of intermediaries. The lead examiners are also satisfied that the “impropriety of advantage” does not create any questions or challenges for the application of the foreign bribery offence in practice. The lead examiners further note that no trend has developed in using the trading in influence offence over the foreign bribery offence in cases of foreign bribery and are satisfied that the concerns raised by the Working Group in Norway’s Phase 2 Follow-up Report have not materialised. The lead examiners nevertheless recommend that the application of the foreign bribery offence should continue to be followed-up in practice as litigation further develops.

2. Responsibility of legal persons

34. The liability of legal persons was established in Norway in 1997, under section 48a of the General Civil Penal Code (GCPC).³² Under this section, a company may be liable where “a penal provision is contravened by a person who has acted on behalf of [the company].” In the Phase 2 evaluation of Norway in 2004, and due to the absence of case law at the time, application of the liability of legal persons was identified as a follow-up issue in Phase 2, “to ascertain that the bribery offence is effectively applied to legal persons, either through court decisions or optional fines and confiscation.”³³

a) Application of corporate liability in practice

35. In its 2007 written follow-up report to Phase 2, Norway indicated that, from 1997 to 2002, criminal sanctions had been imposed on legal persons in 1516 cases (for all types of offences, and not specifically corruption).

36. As of the time of this report, the following actions had been sought against legal persons in foreign bribery cases:

- In the 2004 Oil Company case, Økokrim imposed NOK 20 million in penalties (approximately EUR 2.4 million) on the company;
- In the 2007 Research Company case, Økokrim issued a penalty notice against the company in the amount of NOK 2 million (approximately EUR 240 000);

³¹ For instance, the preparatory works to section 276a. of the GCPC [excerpts from Proposition No. 78 (2002-2003) to the Odeslting] indicate that “persons who feel compelled to give a foreign public official a small payment in order to ensure the return of a passport...cannot therefore be punished pursuant to the proposed amendment”, an example that was also referred to by law enforcement representatives during the Phase 3 on-site visit.

³² See Annex 2 for the text of section 48a.

³³ See follow-up issue 13 of [Norway’s Phase 2 Report](#).

- In the ongoing Consulting Company case, Økokrim issued a penalty notice to the company for NOK 4 million (approximately EUR 480 000).^{34 35}

37. Of all the Norwegian cases concerning bribery of a foreign public official, the “*Boat Certificate*” case is the only one where no legal person was prosecuted and fined, as this case did not concern a business transaction but only involved bribery by individuals in order to obtain sailing certificates.

38. As of the time of this report, all finalised foreign bribery cases involving legal persons had been resolved through out-of-court settlements (see section 5.b. below on the use of penalty notices). According to Norway, no foreign bribery cases have been dropped due to difficulties in establishing the liability of the legal person. Thus, in cases to date, law enforcement authorities do not appear to have encountered any problem in applying corporate liability, and have, in fact, systematically investigated and sought remedies against the legal person.

39. It should be noted that, as of the time of this report, the courts have not yet had an opportunity to give their views on the liability of legal persons in foreign bribery cases, due to the large reliance by the law enforcement authorities on out-of-court settlements. However, in the Consulting Company case, the company refused the penalty notice and the case started in the court of first instance in May 2011. The courts have, however, had the opportunity to hear domestic bribery cases. In one such case, concerning corruption related to an inter-municipal waterworks entity, the legal person was acquitted of corruption, but convicted for gross breach of trust and sentenced to a fine of NOK 3 million. Because this case was decided by a jury, which does not need to provide the reasoning for its decisions, it is unclear why the legal person was found not guilty of corruption. Norwegian law enforcement authorities interviewed during the on-site visit suggested that the most probable cause for the acquittal was that the individual (who was deceased at the time of the trial) acting on behalf of the company had behaved so disloyally towards his employer that it would have been unreasonable to hold the company accountable.

b) Acts of the natural person triggering the liability of the legal person

40. Section 48a explicitly provides that proceedings against the natural person are not a pre-condition to proceedings against the legal person. Thus, representatives of Økokrim asserted that the level of authority of the person whose conduct triggered the commission of the foreign bribery offence is irrelevant to triggering the liability of the legal person. In Phase 2, Norwegian panellists were already of the view that, if a natural person couldn’t be identified, this would not prevent investigating and prosecuting the legal person, a view reiterated during the Phase 3 by representatives of Økokrim. Although there are no case examples of such an occurrence in a (foreign) bribery case, there is precedent of a newspaper company being prosecuted for a drug offence, without any individual having been identified.

c) Liability of legal persons for acts committed by intermediaries, including related legal persons

41. As noted above in relation to the foreign bribery offence, all panellists interviewed during the on-site visit, both from law enforcement and the private sector, were in agreement that the Norwegian bribery offence covers bribery through intermediaries. They further agreed that this would also include liability of companies for acts committed by related legal persons, such as their subsidiaries abroad, as these

³⁴ In this case, however, the penalty notice has not been accepted by the company, which has chosen to go to trial.

³⁵ For a summary of these cases, see section A.4. above on cases involving the bribery of foreign public officials.

subsidiaries could be considered as persons acting “on behalf of” the company. This interpretation is not supported by case law as of the time of this report.³⁶

d) Factors to be taken into account in imposing a penalty on a legal person

42. Section 48b provides for certain factors to be taken into account in deciding whether a penalty should be imposed on a company.

43. Nevertheless, some elements under section 48b of the GCPC may warrant further analysis of the functioning of the corporate liability regime in Norway.

44. For instance, section 48b(d) and (e) indicate that consideration should be paid to whether the offence has been committed “in order to promote the interests of the enterprise” and whether “the enterprise has had or could have obtained any advantage by the offence”. In the view of the Norwegian authorities, this does not pose any particular problem, even in cases where, for instance, the advantage went to an affiliate (e.g. a parent company or foreign subsidiary), or in cases where the *quid pro quo* is not provided by the foreign public official or a financial advantage is not shown in the books (e.g. where a company bribes in order to obtain a loss-making contract, when seeking to enter a major new market). Representatives of Økokrim indicated that this would not stop them from investigating and indicting or serving a penalty notice on the company. These types of situations have, however, not arisen to date, and thus remain to be tested before the courts.

45. Section 48b(c), which provides that “consideration shall be paid to [...] whether the enterprise could by guidelines, instruction, training, control or other measures have prevented the offence”, constitutes an incitement to companies to develop internal controls, ethics and compliance programmes or measures that could effectively prevent certain offences, such as foreign bribery, from occurring. As indicated above, in relation to the domestic bribery case concerning a waterworks entity, this might have been a deciding factor for the jury in acquitting the company.

46. What is clear, on the other hand, is that the foreign bribery cases to date have been a decisive incentive for all the companies concerned, as well as for others, to further develop and improve their internal ethical guidelines (see section 7.c. below on Norwegian companies’ internal controls, ethics and compliance programmes).

e) The Civil Liability Act

47. Beyond the provisions in the GCPC, which have been relied on by Økokrim to seek the liability of companies in foreign bribery cases, section 1.6 of the Civil Liability Act, introduced in July 2008, could also serve as a basis to establish the liability of a legal person for acts of foreign bribery in a civil case. Under this provision, “any person who has suffered damage as a consequence of corruption can claim compensation from anybody who by intent or negligence is responsible for the corrupt act(s) or for complicity thereto. Compensation can also be claimed from the employer of the person responsible, if the corrupt act(s) have taken place in connection to the execution of work or functions for the employer, unless the employer can establish that all reasonable precautions to prevent corruption have been taken, and responsibility will not be reasonable after an overall assessment of the circumstances of the case.”³⁷

³⁶ Annex I to the 2009 Anti-Bribery Recommendation provides that “*Member countries should ensure that [...] a legal person cannot avoid responsibility by using intermediaries, including related legal persons, to offer, promise or give a bribe to a foreign public official on its behalf.*”

³⁷ Unofficial translation.

48. Under this provision, a company can only escape liability by showing that all necessary internal compliance measures were in place to prevent the corrupt behaviour from occurring. One private sector representative expressed the view that this provision had had a great impact as an incentive to the business community to develop ethics and compliance programmes. However, it appears that this provision has been rarely, if ever, relied on to date.

Commentary

The lead examiners commend Norway for its approach to corporate liability in recent years, which has led Norwegian law enforcement authorities to systematically investigate and seek remedies from legal persons in all cases to date involving bribery of foreign public officials in international business transactions.

The lead examiners note that the Norwegian system for liability of legal persons does not restrict the liability of legal persons to cases where the natural person is prosecuted or convicted. They also find that the Norwegian approach in this regard appears sufficiently pragmatic and flexible to reflect the wide variety of decision making structures in legal persons. Norway's corporate liability regime is therefore considered to be generally in line with Annex I.B. of the 2009 Anti-Bribery Recommendation.

Given that no foreign bribery cases have reached the courts to date, the lead examiners recommend that this issue be followed-up as case law develops, notably to ascertain how the factors under section 48b are interpreted by the courts in deciding whether to impose a penalty on a legal person.

3. Sanctions

49. In Phase 2, the Working Group recommended that Norway draw attention of the law enforcement and judicial authorities to the importance of making full use of the various economic sanctions available, taking into account the particular circumstances surrounding cases of transnational bribery.³⁸ This Recommendation was considered fully implemented by the Working Group in Norway's Phase 2 Follow-up Report, following information provided by Norway on efforts and measures undertaken in this regard, including exclusion from investment by the Norwegian Government Pension Fund (discussed in further detail below under subsection *b) additional forms of civil and administrative sanctions*).

a) Criminal sanctions

50. There have been no changes affecting the sanctions applicable to the foreign bribery offence since Phase 2. For natural persons, section 276a. of the GCPC provides for "fines or imprisonment for a term not exceeding 3 years" and for aggravated bribery, section 276b. of the GCPC provides for "imprisonment for a term not exceeding 10 years." In addition, the trading in influence offence under section 276c. provides for "fines or imprisonment for a term not exceeding three years." The minimum sanction is 14 days, pursuant to section 17 of the GCPC. Sanctions for legal persons are set out under section 48a. of the GCPC, which provides for a fine with no upper limit. Legal persons may also be subject to prohibitions, deprivation of rights and professional disqualifications. Section 48b. of the GCPC sets out the criteria to be considered in deciding the penalty to be imposed on the legal person (see discussion on *responsibility of legal persons* in section 2 above for details). Økokrim representatives further indicated that the aspect of the financial benefit can be taken into account when determining the size of the penalty.

³⁸ [Norway's Phase 2 Report](#), Recommendation 11.

See also the discussion on *out-of-court settlements* (“optional penalty writs” or “penalty notices”) in section 5.c. below, which are largely relied upon in foreign bribery cases.

51. Sanctions have been imposed in Norwegian foreign bribery cases as follows:

- Oil Company case [2004]: NOK 20 million (approximately EUR 2.4 million) for the legal person and NOK 200 000 (approximately EUR 24 000) imposed through penalty notices.
- “Boat Certificate” case [2005]: Three natural persons were convicted of active bribery and received imprisonment sentences of 1 year and 2 months (of which 4 months conditional); 90 days conditional, and; 120 days (of which 90 days conditional). Confiscation sentences were also issued of NOK 55 000 (approximately EUR 6 600) and NOK 100 000 (approximately EUR 12 000). The three natural persons were also sentenced to each pay NOK 30 000 (EUR 3 600) to cover the costs of the case. This case was the subject of an appeal in December 2007, in which the court reduced the sentences for two of the defendants to imprisonment of eight months (of which 7 months conditional).
- Research Company case [2007]: NOK 2 million (approximately EUR 240 000) was imposed on the legal person through penalty notices. With regard to the natural person, the indicted senior executive was acquitted by the Court of First Instance, who found there was insufficient evidence to convict.
- Consulting Company case [2009]: A penalty notice was issued by Økokrim with a NOK 4 million fine. The penalty notice was not accepted and the trial started in May 2011.

b) Additional forms of civil and administrative sanctions

52. Mandatory exclusion and debarment from public procurement tenders are also provided under sections 20-12 and 11-10 of the Public Contracts Regulation (2006). More specifically, according to sections 20-12 and 11-10 subsection 1(e) of the Regulation, the contracting authorities “shall exclude companies from participation in a public contract if the contractor has knowledge that the candidate has been the subject of a conviction by final court judgment for certain forms of financial crime, i.e. participating in a criminal organisation, corruption, fraud or money laundering.”³⁹ Norwegian authorities confirm that such grounds for exclusion would also apply for acts of foreign bribery. Under sections 20-12 and 11-10, subsections 2(c) and 2 (d) of the Regulation, the contracting authority “may also exclude companies that have been convicted by a judgment which has the force of *res judicata* of any offence concerning professional conduct or that have been found guilty of grave professional misconduct proven by any means which the contracting authority can demonstrate.”⁴⁰ (See also section 11 below on public advantages.)

4. Confiscation of the bribe and the proceeds of bribery

53. Article 3.3 of the Convention requires State Parties to take such measures as may be necessary to provide that the bribe and the proceeds of bribery of a foreign public official (or property of an equivalent value) are subject to seizure and confiscation or that monetary sanctions of comparable effect are applicable. Sections 34 to 37d of the GCPC provide for confiscation; section 34 provides for mandatory

³⁹ Unofficial translation provided by the Norwegian authorities in their responses to the Phase 3 Questionnaire.

⁴⁰ Unofficial translation provided by the Norwegian authorities in their responses to the Phase 3 Questionnaire.

confiscation of the “proceeds of a criminal act” and section 35 provides for the discretionary confiscation of “objects that have been produced by or been the subject of a criminal act” and “objects that have been used or intended for use in a criminal act.” Confiscation of an amount corresponding to the bribe or the proceeds is also available. Sections 34, 37a and 376 of the GCPC further provide for the confiscation from a third party. The Working Group raised the application of sanctions, notably the practice with regard to confiscation of both the instruments and the proceeds of bribery, as an issue for follow-up in Phase 2, in order to determine whether they are sufficiently effective, proportionate and dissuasive to prevent and punish foreign bribery.

54. In the Phase 2 Follow-up Report, Norway noted that confiscation remains an area of high priority for the Ministry of Justice. Norway further indicated in their responses to the Phase 3 Questionnaire that confiscation of the proceeds of crime is “an important element of the policy of Økokrim.” Økokrim officials reported they while there is little experience in the confiscation of bribes and proceeds of bribery in cases falling within the scope of the Convention, they do have extensive experience in the tracing and confiscation abroad of proceeds of crime in economic crime cases more generally, such as in fraud cases. In this regard, Økokrim officials confirmed during the on-site visit that their overall experience in confiscation efforts is quite successful. There is less experience with regard to post-trial confiscation but it was noted by Økokrim -both in the Phase 3 Questionnaire and during the on-site visit - that in some cases, this has been resolved through cooperation with the convicted person. This was recently experienced in a domestic bribery case where the proceeds of bribery were invested in farms in South Africa, and where the convicted person agreed to hand them over upon decision for their confiscation by the Court of Appeal.

55. Despite this experience, and the affirmations by Norwegian authorities that confiscation is highly prioritized, it is noted that confiscation of the proceeds of bribery accruing to the active briber has not been applied as yet in cases of foreign bribery. Furthermore, upon reviewing their cases between 2007 and 2010, law enforcement officials confirmed that there are no examples where confiscation has been applied against legal persons in corruption cases, generally.⁴¹ Concerning foreign bribery cases specifically, confiscation has not been sought by law enforcement authorities in their out-of-court settlements (see section 5.c. below on the use of penalty notices). In two of the cases, this appears to be due to the fact that the bribery-tainted contracts had been concluded prior to the entry into force of the foreign bribery legislation, although bribe payments continued to be made thereafter. The Norwegian authorities explained that it was therefore difficult to evaluate what portion of the proceeds could be subject to confiscation. While the limited number of foreign bribery cases to date is not yet sufficient to draw any definitive conclusion, it is nevertheless worth noting that law enforcement officials have not relied on the provisions available to them under the law to confiscate the proceeds of foreign bribery. Norway, however, holds the view that in the foreign bribery cases where fines have been sought, the sanctions imposed have been effective, proportionate and dissuasive.

Commentary

As consistently noted by the Working Group on Bribery in previous country evaluations, confiscation is an important element of an effective sanctions regime. The lead examiners note that confiscation of the proceeds of the bribery has not been applied as yet in Norway’s cases of foreign bribery. They therefore recommend that law enforcement authorities make full use of the provisions available to confiscate the proceeds of foreign bribery, in accordance with Article 3.3 of the Convention, where appropriate.

⁴¹ However, confiscation has been applied against legal persons in cases of environmental crimes, violation of competition laws and insider trading.

5. Investigation and prosecution of the foreign bribery offence

a) Principles of investigation and prosecution

56. The rules governing the principles of investigation and prosecution in Norway have not changed since Phase 2.

(i) Initiating and terminating cases

57. Investigation and prosecution of offences of bribery of foreign public officials follow the general rules for criminal investigation and prosecution. An investigation can be initiated where there are reasonable grounds to inquire whether a crime has been committed. Section 66 of the Criminal Procedure Act (CPA) lays out the general rule that “the public prosecutor shall decide whether to prosecute in cases of felonies...”⁴² Section 224 specifies that a criminal investigation shall be carried out when there are “reasonable grounds to inquire whether any criminal requiring prosecution by the public authorities subsists.” The Director General of Public Prosecutions issues annually a circular identifying priorities, and serious economic crime (which, inter alia, would include foreign bribery) has been identified therein as a long standing priority.

58. As regards foreign bribery cases, these would be mostly dealt with by Økokrim’s Corruption Team.⁴³ In practice, representatives of Økokrim indicated that they can initiate investigations if they receive information from a reliable source, even if that source is a media article. Some of the Norwegian foreign bribery cases prosecuted to date arose as a result of allegations in the media, while others were initiated as a result of reports from Norwegian or international agencies, or came about as the result of a report by an external auditor. Four cases have led to sanctions for the natural and/or legal persons involved, although it should be noted that one of these foreign bribery cases did not take place in the context of an international business transaction (see section A.4. above for a description of Norwegian cases involving the bribery of foreign public officials).

59. Cases will normally be terminated or suspended by law enforcement authorities where there is insufficient evidence to indict. For instance, Økokrim representatives indicated that one foreign bribery allegation was not pursued as a result of a failure to obtain information through a mutual legal assistance request. Another case was dropped as it proved too difficult to trace the bribe money in certain foreign jurisdictions.

(ii) Investigative tools

60. As concerns investigative tools, no changes have been made since the Phase 2 Report on Norway in 2004. Investigations of cases of basic corruption, which are punishable by up to 3 years’ imprisonment (section 276a of the GCPC), only allow for the use of a basic range of investigative tools. Investigations of cases of aggravated corruption, with penalties of up to 10 years’ imprisonment (section 276b), allow for the use of the full range of available investigative tools. Most notably, interception of telecommunications, which is not available for basic corruption, can be used when investigating cases of alleged aggravated corruption.⁴⁴ Furthermore, broader possibilities are available to law enforcement authorities with respect to

⁴² There are some exceptions where the decision to prosecute rests with the King in Council (e.g. treason; see section 64 of the CPA), the Director General of Public Prosecutions (see section 65 *ibid*), or the police (less serious offences; see section 67 *ibid*), which do not concern the foreign bribery offence.

⁴³ For further explanations on the different law enforcement agencies and their areas of responsibility, see the [Phase 2 Report on Norway](#) at paragraphs 113 et seq.

⁴⁴ Section 216a of the CPA.

arrest and remand in custody,⁴⁵ as well as search and seizure.⁴⁶ Both the Research Company and Consulting Company cases were treated as aggravated bribery, thus allowing for the use of the full range of investigative tools. As noted earlier, the Oil Company case was treated as a trading in influence offence, which only carries a 3 year penalty, and thus only allows for more limited access to investigative tools. This did not however harm the investigation and Økokrim was able to proceed with the penalty notice. Representatives of Økokrim stated during the on-site visit that they did not recall having had to drop a foreign bribery case due to the unavailability of certain investigative tools.

b) *Institutional structure, resources and coordination*

61. One recommendation had been made by the Working Group at the time of the Phase 2 evaluation, asking Norway to ensure that sufficient human and financial resources be made available to law enforcement authorities in charge of investigating and prosecuting foreign bribery. This recommendation was considered implemented at the time of Norway's written follow-up report to Phase 2 in 2007, thanks, notably, to an increase in resources made available to Økokrim, the "National Authority for Investigation and prosecution of Economic and Environmental Crime", and the establishment of multidisciplinary economic crime sections in the local police districts.⁴⁷ Further training has since continued to take place, in particular with the organisation by Økokrim of yearly seminars for the local police districts. Furthermore, in 2010, Økokrim dedicated an extra team to investigate and prosecute bribery cases.

62. Under the Norwegian system, foreign bribery offences may be investigated either by the economic sections in the local police districts, or, more generally, by Økokrim. Økokrim is the National Authority in charge of investigating and prosecuting economic crimes in Norway, including bribery of foreign public officials. It was established in 1989, and is both a police specialist agency and a public prosecutors' office with national authority. The Økokrim Corruption Team was established in 1994. Another law enforcement team was added to it in 2010, with notably two prosecutors and five investigators (police, economic/auditing), to focus on corruption and fraud cases.⁴⁸ During the on-site visit, a representative of the Director of Public Prosecutions explained that Guidelines have been issued to local police and prosecutors districts recommending that serious corruption offences be forwarded to Økokrim. Where a local district retains responsibility for a case, it may nonetheless solicit Økokrim's Assistance Team for help. In practice, the three Norwegian cases to date involving bribery in international business transactions were handled by Økokrim.⁴⁹

c) *Out-of-court settlements: Penalty notices*

63. Penalty notices are also referred to as optional penalty writs. Under the CPA, "if the prosecuting authority finds that a case should be decided by the imposition of a fine or confiscation, or both, the said authority may issue a writ giving an option to this effect (an optional penalty writ)."⁵⁰ Optional penalty writs are regulated under Chapter 20 of the CPA. They may concern natural or legal persons. Penalty

⁴⁵ Section 172 *ibid.*

⁴⁶ Section 194 *ibid.*

⁴⁷ For further description, see [Norway's Written Follow-Up Report to Phase 2](#), at page 20.

⁴⁸ For a description of the institutional structures and functions of the different law enforcement agencies with responsibility over foreign bribery offences, see the [Phase 2 Report on Norway](#) at paragraphs 113 et seq.

⁴⁹ The Boat Certificate case, which did not concern an international business transaction, was handled by the Oslo Police District.

⁵⁰ See section 255 of the CPA.

notices may involve a fine or confiscation (with no upper limit), but not imprisonment sanction (where natural persons are concerned); however, the penalty notice should specify the sentence of imprisonment to be served if the fine and/or confiscation is not paid.⁵¹ Representatives of Økokrim indicated that there are no specific guidelines on the use of penalty notices in foreign bribery cases, or the amount of the fines to be sought under this process. Sanctions sought in foreign bribery cases are based on a thorough assessment of the case, taking into account the factors identified in section 276a to c of the GCPC, and 48b where legal persons are concerned, as well as guidance emanating from court decisions. Økokrim representatives also indicated that the aspect of the financial benefit can be taken into account when determining the size of the penalty. They further explained that while no bargaining process is provided for in the CPA, there is some possibility of informal discussions with the defendants. The penalty notices are made publicly available on Økokrim's website, along with a press release.

64. In practice, Økokrim has largely relied on this optional penalty writ process in foreign bribery cases, although these notices have thus far only involved fines and never confiscation (see section 4 above on confiscation of the proceeds of bribery). In the Oil Company and Research Company cases, optional penalty writs (or "penalty fines") were accepted by the companies. In the latter case, the senior executive of the company did not accept the writ and was ultimately acquitted by the Court of First Instance. In the Consulting Company case, the optional penalty writ has been refused by the company and the case commenced in the Court of First Instance in May 2011. The lead examiners questioned Økokrim representatives as to whether they had considered taking at least one of these foreign bribery cases to trial to let the courts set the benchmark on sanctions concerning a new offence. Representatives of Økokrim's explained that economic crime trials are usually very lengthy, and a much bigger burden on law enforcement resources. In addition, offences that carry a penalty of six years imprisonment or more (i.e. aggravated foreign bribery offences under section 276b of the GCPC) are judged by a jury which can make it more difficult for law enforcement to establish the facts in complex cases. Furthermore, representatives of companies sometimes also prefer a swifter conclusion to a case, to minimise the reputational risks to their corporation which prolonged media exposure may cause. Norwegian authorities further specify that the system of penalty notices is well established in Norway, and that the acceptance of a fine has exactly the same legal consequences as a conviction.

d) Jurisdiction

65. Under section 12 of the GCPC, Norway can exercise jurisdiction in a foreign bribery case, where the act has been committed in Norway;⁵² the act has been committed abroad by a Norwegian national or any person domiciled in Norway;⁵³ as well as where the act has been committed abroad by a foreigner.⁵⁴ Thus Norway has extremely broad jurisdiction over foreign bribery offences, and could, in theory, prosecute any person committing a foreign bribery offence, regardless whether the offence was committed in Norway, and regardless whether the person involved is a Norwegian national. In practice, Norway explained that the universal jurisdiction was in fact rarely relied on, and only used in exceptional cases (twice between 1975 and 2004, and never in corruption cases). At any rate, this broad jurisdiction allows Norway to exercise both territorial and nationality jurisdiction over foreign bribery offences.

⁵¹ See also the [Phase 2 Report on Norway](#) at paragraphs 134 et seq for a description of the system of penalty notices.

⁵² Section 12.1 of the GCPC.

⁵³ Section 12.3.a., *ibid.*

⁵⁴ Section 12.4.a., *ibid.*

e) *Statute of limitations*

66. Since the 2003 amendments to the GCPC, the statute of limitations for the basic bribery offence (section 276a of the GCPC) is 5 years, and 10 years for the aggravated bribery offence (section 276b) (see section 1 above for discussion of differences between the basic and aggravated foreign bribery offences). Trading in influence (section 276c), which has been relied on by law enforcement authorities in the foreign bribery Oil Company case, also carries a 5 year statute of limitations.

67. Article 6 of the Anti-Bribery Convention requires that statutes of limitation must be “adequate” for the effective investigation and prosecution of the foreign bribery offence. The Working Group on Bribery has thus far not defined what amounts to an “adequate” statute of limitations, although this has been identified as a horizontal issue for Parties to the Convention.

68. During the on-site visit, representatives of Økokrim explained that the statute of limitations starts to run on the day that the offer, promise or giving of the bribe takes place. As concerns interruptions, “the running of the period of limitation is interrupted by any legal proceeding entailing that the suspect is given the status of a person charged”.⁵⁵ This also applies to legal persons.⁵⁶ Investigative, pre-indictment steps, such as requests for mutual legal assistance, do not interrupt the running of the limitation period.

69. In Phase 2, the Working Group on Bribery had decided to follow-up on the consequences of the distinction between basic and aggravated bribery on the statute of limitations. The concern in Phase 2 was explained as follows: “The difference in statute of limitations can indeed be particularly acute, where the acts of bribery are discovered 5 to 10 years after the acts have ceased. In such case, the offence of basic bribery would be time-barred (section 276a) but not the offence of aggravated bribery (section 276b). In such a situation if the prosecutor indicts the briber for aggravated bribery, but at the trial the judges consider that only basic bribery has been committed, the facts are statute-barred and no conviction is possible. Thus, the law enforcement authorities must assess beforehand whether the case is serious enough to be prosecuted as an aggravated bribery offence or close the case.” Similar problems may also exist in cases where law enforcement needs to rely on the trading in influence offence, which only carries a 5 year statute of limitations.

70. Of the three foreign bribery cases prosecuted since 2003 (the Boat Certificate case is based on the old section 128 of the GCPC), the Research Company and Consulting Company cases (the latter still being underway) concern aggravated foreign bribery offences, providing for a 10 year statute of limitations. The Oil Company case, on the other hand, had to be prosecuted as a trading in influence offence, i.e. with a 5 year statute of limitations. No foreign bribery case has been prosecuted as a section 276a offence (basic bribery) to date.

71. In the context of Norway’s investigations into allegations of foreign bribery, and despite the involvement in those cases of well-resourced and experienced investigators with good investigative tools at their disposal, the Working Group is unsure whether a statute of limitations of five years from the date of the offence for the bringing of basic bribery charges is sufficient for the purpose of foreign bribery investigations. Given the secretive nature of corruption offences, the difficulty to detect such offences, the complexity of foreign bribery cases, and the frequent need to rely on mutual legal assistance, it is unclear whether limiting the ability to bring charges to just five years after the commission of the offence will obstruct the effective enforcement of such cases. The Working Group notes that, in most foreign bribery cases to date, the Norwegian authorities have relied on the aggravated foreign bribery offence, which

⁵⁵ Section 69(1) of the GCPC.

⁵⁶ Section 69(2) of the GCPC provides that “if the running of the period of limitation is interrupted in relation to any person who has acted on behalf of an enterprise, such interruption also applies to the enterprise.”

carries a ten year statute of limitations. Given the low threshold for relying on section 276b,⁵⁷ the Norwegian authorities further believe that most foreign bribery cases would fall into the category of aggravated bribery, and that the legal situation as regards statute of limitations for foreign bribery is adequate. Nevertheless, given the absence of basic bribery cases to date in Norway, it is difficult to reach a conclusion on the adequacy of the statute of limitations applicable to the basic bribery offence.

Commentary

The lead examiners welcome Norway's enforcement efforts which have led to the sanctioning of a number of natural and legal persons for bribery of foreign public officials in international business transactions, with one more company and three individuals having been served with indictment notices and awaiting trial. They recommend that Norway pursue these efforts and continue to proactively investigate and prosecute foreign bribery instances.

The lead examiners also welcome the increase and specialisation in resources made available to Økokrim as well as local police districts to fight economic crime, including foreign bribery. The integrated approach within Økokrim enhances the operational capacity of law enforcement authorities to detect, investigate and prosecute allegations of foreign bribery.

Regarding the use of penalty notices (or optional penalty writs), the lead examiners note that all finalised foreign bribery cases as of the time of this report have been dealt with through this means. They also note that no specific prosecutorial guidelines or guidance from the courts exist with regard to this practice in the context of foreign bribery cases. The lead examiners therefore recommend that the use of penalty notices be followed-up by the Working Group as practice develops. The lead examiners further recommend that law enforcement authorities, when relying on penalty notices, make full use of the possibility of confiscating the proceeds of crime where appropriate.

Concerning the five year statute of limitations applicable to the basic foreign bribery offence, the lead examiners are unsure whether this limitation period is adequate for the effective investigation of foreign bribery cases. The lead examiners recommend that the Working Group follow-up on this topic as case law develops, and that the issue of the adequacy of statutes of limitations be reviewed by the Working Group on a priority basis as a cross-cutting issue across Working Group countries.

6. Money laundering

72. The Phase 2 evaluation of Norway did not give rise to any concern regarding the anti-money laundering framework in Norway, bearing in mind that certain parts of the anti-money laundering legislation had only been very recently introduced at the time of the Phase 2, in 2004. Furthermore, the Financial Action Task Force (FATF), in its 2009 Follow-Up Report on Norway's implementation of the FATF Recommendations indicates that Norway has reached a satisfactory level of compliance with all core Recommendations and key Recommendations relevant to foreign bribery.⁵⁸

73. The main change in anti-money laundering legislation since the Phase 2 concerns the introduction of the offence of self-laundering in June 2006. Until then, the provisions on receiving of criminal proceeds could therefore not be applied in conjunction with criminal law provisions on theft,

⁵⁷ See discussions on basic versus aggravated bribery under section 1.c. above on "Aggravated bribery".

⁵⁸ See [Mutual Evaluation – Fourth Follow-Up Report on Anti-Money Laundering and Combating the Financing of Terrorism by Norway, 26 February 2009](#).

fraud or corruption for instance. New section 317 of the GCPC entered into force on 29 June 2006, with the following amendment introduced: “A person who by conversion or transfer of property or by other means disguises or conceals the whereabouts or origin of the proceeds of a criminal act he has himself committed, the identity of the person or persons with disposition over it, its movements or rights associated with it shall also be guilty of money laundering.” As a consequence, representatives of law enforcement agreed that, theoretically, a company engaging in foreign bribery could be found guilty not only of a foreign bribery offence under section 276 a or b of the GCPC, but, if proceeds were derived from the commission of this offence, could also be found guilty of money laundering its own proceeds. This has not been tested today, either by law enforcement authorities through the use of penalty notices, or before the courts. More generally, Norway indicated in its Phase 3 responses that there have not been to date any money laundering cases where foreign bribery was the predicate offence. Norway further noted that identification of a predicate offence is not necessary to convict for money laundering: the prosecution need only prove that the proceeds are derived from a criminal act.

74. As concerns anti-money laundering reporting rules under the Money Laundering Act, as outlined in the Phase 2 report, the requirements apply to a broad range of financial and non-financial institutions, including banks, pension funds, postal operators, as well as certain professions such as auditors, accountants, currency brokers and lawyers. Reporting entities are required to report any whenever they suspect that “a transaction is associated with the proceeds of crime”, i.e. including foreign bribery.⁵⁹ In practice, Norwegian authorities indicated that none of the foreign bribery cases either finalised or under investigation had been discovered through suspicious transaction reports. They noted, however, that in the domestic bribery case concerning an inter-municipal waterworks entity, some of the proceeds of the bribery were recovered on the basis of information provided through the anti-money laundering reporting system. A suspicious transaction report was also instrumental in uncovering the bribery in the Municipality Case. Norwegian authorities indicated that, generally, suspicious transaction reports are useful in uncovering economic crime.

Commentary

The lead examiners commend Norway on the broad coverage of its anti-money laundering law and practice, including the positive step of explicitly criminalising self-laundering of one's own proceeds of crime. Given the absence of investigations and prosecutions of money laundering based on a predicate offence of bribery, they recommend that the Working Group follow-up on the application of the money laundering offence in such cases.

7. Accounting requirements, external audit, and company compliance and ethics programmes

a) Accounting requirements

75. The Norwegian legislation on accounting requirements was considered in conformity with Article 8 of the Anti-Bribery Convention at the time of the Phase 2, and no recommendations for improvement were made in this area. No major changes have been introduced in books and records requirements since the Phase 2 in 2004.

b) External audit requirements

76. Auditing requirements for Norwegian companies and the rules guaranteeing independence of auditors did not give rise to any particular concern in Phase 2. Since Phase 2, on 1 May 2011, a new law entered into force allowing limited companies with “less than NOK 5 million in running income, total

⁵⁹ Section 7 of the Money Laundering Act.

assets less than NOK 20 million, and an average number of employees not exceeding 10 man labour-years” to vote out of their requirement for external audits. According to an estimate from the Ministry of Finance, approximately 120 000 companies may therefore opt out of external audits under the new rules. The Ministry of Finance further amended the Accounting Regulation in order to introduce a disclosure requirement. Under these new rules, a private limited company shall disclose whether the company has taken the decision that the company’s accounts shall not be audited, and whether the company’s accounts have been prepared by a certified public accountant. Whether a company has opted out of audit will also have to be registered with the Register of Business Enterprises, and thus be publicly available. Furthermore, if a private limited company’s financial statement is set out in violation of the provisions of or pursuant to the Accounting Act or Bookkeeping Act, or in violation of good accounting and bookkeeping practice, the tax authorities may, according to the Act, impose auditing requirements on the company for up to three years.

77. Regarding reporting by auditors of suspected acts of bribery to management,⁶⁰ section 5.2 of the Auditing Act provides, in particular, that the auditor “shall in writing draw the following matters to the attention of the management of entities subject to the statutory audit obligation [...] circumstances that may lead to liability on the part of members of the board, corporate assembly, supervisory board or general manager,” (i.e. including a criminal offence of bribery). It appears that this provision only refers to acts that may trigger the liability of individuals in the company, and not of the company itself.

78. Regarding reporting by auditors outside of the company, external auditors “may inform the police if, in the course of an audit assignment or other services, circumstances emerge that give reason to suspect that a criminal act has been committed.”⁶¹ In terms of requirements to report to law enforcement, external auditors are subject to money laundering reporting obligations. Under the Money Laundering Act, auditors are required to make suspicious transaction reports to law enforcement if they suspect that a transaction is associated with the proceeds of any crime (i.e. including corruption), or with offences covered by section 147a or 147b of the GCPC (i.e.) (i.e. terrorism and financing of terrorism, and not including foreign bribery).⁶² The Working Group on Bribery had recommended in Phase 2 that efforts be undertaken to raise the awareness of auditors to their obligation to report any suspect activity that would indicate an act of bribery, a recommendation that was considered implemented in 2007 on the occasion of Norway’s written follow-up report to Phase 2. Norway reported that courses and training have been made available to auditors by the professional supervisory bodies. In addition, since 1 January 2007, auditors are required to take 14 hours of education on ethical principles governing the profession, as part of their mandatory triennial training.

79. Section X.B.(v) of the 2009 Anti-Bribery Recommendation makes a broader recommendation to countries to consider requiring external auditors to report suspicions of bribery to competent authorities outside the company. Representatives of Norwegian professional associations of auditors expressed the view, during discussions with the evaluation team, that auditors are already subject to broad reporting obligations under the Money Laundering Act. Under this Act, suspicious transaction reports are required only when they concern suspicions of proceeds of crime, but not suspicion that an offence is being committed (other than terrorism). The Norwegian authorities point out that the threshold for suspicion is low, and that the identified transaction need not be linked to an identified criminal act, as outlined in the preparatory works of the Money Laundering Act. Representatives of professional associations further

⁶⁰ Section X.B.(iii) of the 2009 Anti-Bribery Recommendation recommends that countries require external auditors who discover indications of a suspected act of foreign bribery to report this to management and, as appropriate, to corporate monitoring bodies.

⁶¹ See section 6-1 of the Auditing Act.

⁶² See section 7 of the Money Laundering Act.

indicated that they consider the reporting obligation to be very broad, with a very low reporting threshold. Indeed, since the entry into force of the new Money Laundering Act in 2004, the number of suspicious transaction reports from auditors has increased (from 25 in 2004 to 97 in 2009). Nevertheless, in the case of foreign bribery, a company may have paid large amounts of bribes, but may not have received proceeds from the payment of a bribe (e.g. because the proceeds will be incurred later, or not in the form of financial gain appearing in the books and records, or the foreign public official has not provided the quid pro quo, or the company bribes in order to obtain a loss-making contract when seeking to enter a major new market). Thus a general duty incumbent on auditors to report suspicions of corruption could improve avenues for detection of foreign bribery offences.

80. Such a requirement on auditors to report suspicions of offences has been considered by Norway. In 2003 (i.e. before the new Money Laundering Act entered into force in 2004), Økokrim suggested that the Ministry of Finance impose a duty on auditors to report suspected criminal offences to law enforcement. At the time of Norway's written follow-up report in 2007, Norway indicated that the Norwegian Ministry of Finance was considering imposing a general requirement on auditors to report suspicions of criminal offences to law enforcement, in addition to their obligations under the Money Laundering Act.⁶³ Such an obligation would not have been linked to the uncovering of any proceeds of crime, but merely to any suspicion of a criminal act. In its Phase 3 responses, Norway indicated that the Ministry had finally decided not to put forward a proposal of this nature to Parliament, since it was considered that the new reporting obligations imposed on auditors under the then 2004 Money Laundering Act were much more stringent. Furthermore, given the increased number of suspicious transaction reports from auditors since the entry into force of this Act, it was not deemed appropriate to introduce further reporting obligations. Nevertheless, the Working Group believes it may be worth considering further whether a clear requirement on auditors to report suspicions of foreign bribery would be helpful in maximising avenues for detection of such offences. This would contribute to clarifying reporting obligations of auditors with regard to suspected acts of foreign bribery, and getting the profession more implicated in the detection of this crime.

c) *Company internal controls, ethics and compliance programmes or measures*

81. Corporate social responsibility (CSR) is a topic which has been the object of great attention in Norway. Most notably, the Ministry of Foreign Affairs (MFA) produced a White Paper on *Corporate Social Responsibility in a Global Economy*, which has formed the basis for several awareness-raising activities and follow-up work with the private sector. The White Paper is broadly focused, and does not centre exclusively on corruption issues, nevertheless stressing the importance of companies' conduct abroad. Many of the measures relate implicitly to corruption, as corruption lies embedded as one of the basic elements in the definition of CSR underpinning the White Paper. The ones that relate directly to corruption are stated as expectations of the business community to actively combat corruption by means of whistleblowing or notification schemes, internal guidelines and information efforts; and establish mechanisms or schemes for whistle-blowing or notification of unacceptable circumstances. With respect to OECD instruments, the White Paper mentions essentially the *OECD Guidelines for Multinational Enterprises*, although the OECD Anti-Bribery Convention is also mentioned, albeit to a limited extent.⁶⁴ The Government notably expects all companies in which it has ownership to have ethical guidelines in place, and has imposed related requirements to recipients of public grants. This CSR policy has been promoted broadly through seminars, conferences, networking and the KOMpakt, the Consultative Body for Corporate Social Responsibility for CSR, established for consultations with the social partners, academia and civil society.

⁶³ See [Norway's Written Follow-Up Report to Phase 2](#), at page 16.

⁶⁴ See Norwegian Ministry of Foreign Affairs, [Corporate Social Responsibility in a Global Economy](#), at pp. 35, 83.

82. Government officials and private sector representatives were overall not well aware of the OECD Good Practice Guidance on Internal Controls, Ethics and Compliance, annexed to the 2009 Anti-Bribery Recommendation, nor is reference made to it in material published by the Government. It should however be noted that the Good Practice Guidance was adopted by the Working Group on Bribery after publication of the White Paper. Nevertheless, all companies present during the on-site visit have in place ethics and compliance programmes which cover corruption issues, which, *inter alia*, address such aspects as company policies on gifts and entertainment, training and whistleblower protection (see also section 10 below on public awareness and reporting of foreign bribery).

83. As concerns reporting on CSR issues, the Accounting Act of 17 July 1998 requires Norwegian listed companies to report in their annual reports on their performance on non-financial items in the field of environment, healthcare, labour safety, and gender equality. Corruption does not form part of these CSR reporting requirements. A draft amendment to the Act suggests that the scope of non-financial items could be extended to include human rights and anti-corruption efforts. As of the time of this report, the draft amendment was being assessed by the Ministry of Finance. Furthermore, according to section 3-3b of the Accounting Act of 17 July 1998, listed companies are also required to prepare an annual corporate governance report where a description of the internal controls and risk management systems has to be provided. Internal controls relating to the follow-up of anti-corruption policies would be of relevance in such a description in so far as they relate to company expenses.

Commentary

With regard to auditing requirements, the lead examiners note the recently adopted exemption of the auditing requirement for SMEs.

As concerns reporting obligations by auditors, the lead examiners recommend that Norway expand 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), as provided in Section X.C.(iii) of the 2009 Anti-Bribery Recommendation. The lead examiners further recommend that Norway consider, beyond the current anti-money laundering reporting requirements concerning 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.

With regard to company internal controls, ethics and compliance programmes, the lead examiners commend Norway for its work in the area of corporate social responsibility, and note the high awareness of Norwegian companies in this regard. They recommend that Norway pursue these efforts, notably by promoting the OECD Good Practice Guidance on Internal Controls, Ethics and Compliance, in Annex II of the 2009 Anti-Bribery Recommendation, in particular among SMEs, and by encouraging company management to make statements in their annual reports or otherwise publicly disclose their internal controls, ethics and compliance programmes or measures, including those which contribute to preventing and detecting bribery.

8. Tax measures for combating bribery

a) *Non-deductibility of bribes*

84. The non-tax deductibility of bribes is explicitly provided for under Norwegian law. Pursuant to section 6-22 of the Norwegian Tax Act (Act No. 14 of 26 March 1999 on Taxes on Income and Wealth), it is not permissible to deduct from taxable profits bribes and similar payments if they were made “in compensation for an inappropriate service.”⁶⁵ More specifically, Section 6-22 of the Tax Act states that “an expense will not be deductible if the payment is a compensation for an unlawful service in return, or if payment is meant to achieve such service in return. The service in return will be unlawful either when it is inconsistent with general business ethics or administrative customs where it takes place or when it is inconsistent with general business ethics or administrative customs in Norway.”⁶⁶ Since Norway’s Phase 2 evaluation, section 6-22 of the Norwegian Tax Act has been subject to judicial interpretation. In a verdict issued on 19 April 2006, the Norwegian Supreme Court interpreted section 6-22 as being applicable only in situations where the taxpayer (or the taxpayer’s representative) has acted intentionally or negligently. The Norwegian authorities maintain that this current position on bribes and similar payments cause no significant questions or concerns regarding the application of the law. Norwegian tax authorities participating in the on-site visit demonstrated a high level of awareness of the non-tax deductibility of bribes under Norwegian law.

b) *Detection and reporting of suspicions of foreign bribery*

85. Recommendations I(ii) and II of the 2009 Tax Recommendation (and Recommendation VIII(i) of the 2009 Recommendation) address the effective detection and reporting by tax authorities of suspicions of foreign bribery. Since Phase 2, Norway has undertaken significant measures in this regard. The Norwegian Directorate for Taxes’ *Tax Assessment Handbook* includes provisions on corruption offences. In 2010, the Directorate also established a Working Group to provide training sessions for its tax examiners and tax lawyers on the detection of bribery and corruption. This training is based on case experiences as well as the *OECD Bribery Awareness Handbook for Tax Examiners*, the latter of which has been translated into Norwegian and distributed to all employees within the Norwegian tax authorities. Cross-departmental training is also scheduled to take place in 2011 and will also include police and customs officers. Norwegian tax authorities met during the on-site visit mentioned one domestic bribery case that was detected by the tax authorities.

86. As Norway indicated in their Phase 2 Follow-up Report, there is no statutory obligation for public officials to report suspicions of criminal activity, including foreign bribery, to law enforcement authorities. However, sections 3-13 no. 2, letter f under the Tax Assessment Act (Act no. 24 of 13 June 1980) and section 13-2 no. 2 letter f under the Value Added Tax Act (Act no 58 of 19 June 2009) provide a legal basis for a reporting obligation for tax authorities.⁶⁷ While this obligation is not legally binding, tax authorities confirmed during the on-site visit that it is treated and widely viewed as such, particularly where the suspicions concern corruption and money laundering offences. These sections in general set out a number of specific circumstances under which the duty of secrecy normally applied to tax examiners is lifted, including where information is disclosed to the police or public prosecution authorities for use in criminal cases. More specifically, the Act provides that “if a case concerns a contravention of provisions

⁶⁵ See Annex 2 for the full text of section 6-22.

⁶⁶ Note: This is an unofficial English translation provided by the Norwegian authorities for information purposes only. Legal authenticity remains with the official Norwegian version as published in *Norsk Lovtidend*.

⁶⁷ See Annex 2 for the text of sections 3-13 of the Tax Assessment Act (Act no. 24 of 13 June 1980).

outside the administrative area of the Norwegian Tax Administration, information may only be disclosed if there are reasonable grounds for suspecting a contravention might result in a penalty of more than six months' imprisonment."⁶⁸ Thus, any suspicion of a foreign bribery offence would fall in this category. The Tax Assessment Act and the Value Added Tax Act also make provision for tax authorities to give information on request by Økokrim based on a report of a suspicious transaction pursuant to the Money Laundering Act. In addition, section 2.2 of the Ethical Guidelines for the Public Service sets out a general duty to report for public officials, including tax officials. The commentary to section 2.2 provides that corruption and crimes or irregularities should be reported, and as an alternative to internal reporting, public officials could contact law enforcement officials directly.

87. Norwegian tax authorities met during the on-site visit highlighted that the "reasonable grounds" standard under the Tax Assessment Act, which was introduced in 2007, has been a welcome change in the law. Prior to this, the standard of "probable (just) cause" was applied. Tax authorities noted that the introduction of a lower threshold has facilitated the reporting and cooperation with law enforcement authorities by creating an easier and less formal means of communication. Accordingly, there is a good level of cooperation and coordination between the Norwegian tax and law enforcement authorities. Økokrim officials explained during the on-site visit that tax authorities serve as a very good source of detection and channel for reporting, and that they receive regular reports of suspicions of crimes. Formal meetings are also held every two to three months between the Norwegian tax and law enforcement authorities where detection and reporting issues may also be raised. Both law enforcement and tax authorities met on-site described this cooperation very positively.

88. Since Phase 2, an arrangement has also been established between the Norwegian tax authorities and the Norwegian Police Service whereby tax examiners are deployed to police districts and work directly in-house with investigators in all regions. Specialised tax crimes units have been established at the regional level, situated in Norway's largest cities (Oslo, Bergen, Trondheim, Stavanger and Bodø). Tax examiners can also be deployed on an *ad hoc* basis to work with the police on specific cases. However, it was noted during the on-site visit that these tax examiners work mainly on the investigation of tax crimes and not on corruption cases, *per se*. While both tax and customs officials participate in police academy training on economic crimes, specific law enforcement training for tax officials focusing on corruption offences, including foreign bribery, was identified by the Norwegian law enforcement authorities participating in the on-site visit as a potential area that could benefit from further training development.

c) *Guidance to taxpayers*

89. Recommendation I(ii) of the 2009 Tax Recommendation recommends that Parties to the Convention should assess "whether adequate guidance is provided to tax payers and tax authorities as to the type of expenses that are deemed to constitute bribes of foreign public officials." The *Tax Assessment Handbook* ("Lignings-ABC"), which is published on a yearly basis by the Norwegian Directorate for Taxes, contains a specific section on bribery. According to Norwegian authorities, the *Handbook* is widely distributed and used by taxpayers, accountants and other tax advisors. The *Handbook* also addresses the 2006 Supreme Court decision interpreting section 6-22 of the Tax Assessment Act on the non-tax deductibility of bribe payments. Norwegian tax authorities also mentioned during the on-site visit that they have a very good level of cooperation with the Confederation of Norwegian Business and Industry (NHO), who run programmes for their members on corruption offences, which would include raising awareness of the non-tax deductibility of bribes under Norwegian law.

⁶⁸ Note: This is an unofficial English translation provided by the Norwegian authorities for information purposes only. Legal authenticity remains with the official Norwegian version as published in *Norsk Lovtidend*.

d) Bilateral tax treaties and the sharing of information by tax authorities

90. Norway has a tax treaty network of more than 80 tax treaties. Provisions on the exchange of information are included within these treaties and information may be exchanged on the basis of a request, spontaneously or automatically, in accordance with the commentaries to Article 26 of the OECD Model Tax Convention. Norway has also entered into approximately 30 Tax Information Exchange Agreements (TIEA), under which tax authorities may exchange information on request.⁶⁹ Norway prefers to include the optional language in paragraph 12.3 of the Commentary to Article 26 (concerning the sharing of tax information by tax authorities with other law enforcement agencies and judicial authorities on certain high priority matters, ie. to combat bribery if certain conditions are met), but tax authorities indicated that Norway will accept not to include this language if the other State is not in a position to include it due to domestic legal limitations. Norway is also one of the 17 Parties to the Multilateral Convention on Mutual Administrative Assistance in Tax Matters, in which Article 22 also provides for the sharing of tax information if certain conditions are met.

Commentary

The lead examiners commend Norway on the positive steps taken by tax and law enforcement authorities to facilitate the detection and reporting of suspicions of foreign bribery. In this regard, the lead examiners encourage Norway to continue to maintain the very good level of cooperation and coordination between tax and law enforcement authorities. The lead examiners also commend Norway on the training programmes developed for its tax examiners focusing on the detection of corruption offences and by making specific use of the OECD Bribery Awareness Handbook for Tax Examiners. The lead examiners encourage Norway to continue this high level of training for its tax officials to further enhance detection capabilities.

9. International cooperation

91. The central authority for mutual legal assistance (MLA) requests in Norway, both incoming and outgoing, is the Ministry of Justice. Incoming requests are transmitted to the Director of Public Prosecutions, who decides on the competent authorities for handling the request.⁷⁰ As regards foreign bribery cases, Økokrim is the designated channel for MLA requests between Parties to the OECD Anti-Bribery Convention.

92. Norway's general information system does not provide data on the nature of MLA requests, the origin or destination of such requests, on the offences in respect of which these requests are made or received, nor on the amount of time taken to respond or obtain a response to requests.⁷¹

93. In its Phase 3 responses, Norway explained that, although no statistics are available, the Ministry of Justice has a good overview of the area, due to the close cooperation between the Ministry and the Norwegian Police and Prosecution Authorities in relation to MLA requests. The impression of the Ministry

⁶⁹ Except for the TIEA with Aruba, which also provides for the spontaneous exchange of information.

⁷⁰ Within the Schengen area and cooperation, to which Norway is a Party, MLA may as a main rule be communicated directly between the competent judicial authorities (see article 53 of the Schengen Convention). Norway indicated that Norwegian judicial authorities are encouraged to use this direct communication to the greatest extent possible.

⁷¹ This was also noted by the Financial Action task force in its 2009 mutual evaluation report on Norway. See [Mutual Evaluation – Fourth Follow-Up Report on Anti-Money Laundering and Combating the Financing of Terrorism by Norway, 26 February 2009](#) at p. 24.

is that in general, the system is functioning adequately. Norway further indicated that they had identified three incoming request since Phase 2, in 2004, concerning foreign bribery cases, and specified that, where these occur, they are directed to Økokrim, as the designated channel for handling such requests under the Anti-Bribery Convention. Økokrim, for its part, specified that two requests for MLA out of the three received concerning corruption cases originated from other Parties to the Anti-Bribery Convention. During the on-site visit, representatives of Økokrim further explained that, as concerns outgoing requests, the cooperation received from other countries varies greatly from one jurisdiction to another.

Commentary

The lead examiners are unable to assess in detail Norway's practice of providing MLA in foreign bribery cases, due to (i) the limited number of requests made to Norway, (ii) the absence of a specific system for collecting data, as well as (iii) more generally, the lack of a mechanism by which the evaluation team could obtain information from other Parties to the Convention on their experiences in cooperation by Norway in response to MLA requests. The lead examiners recommend that Norway adapt its information system to allow it to collect data on the origin of MLA requests, and the timeframe for providing responses in foreign bribery cases. The lead examiners further consider that the question of how to assess the practice of Parties in responding to MLA requests is a cross-cutting issue that should be examined by the Working Group.

10. Public awareness and the reporting of foreign bribery

94. A number of recommendations were issued by the Working Group in Norway's Phase 2 evaluation with respect to awareness-raising. More specifically, Recommendations 1 through 4 addressed awareness-raising needs *inter alia* within the business sector (including SMEs), institutions in a position to have privileged contacts with Norwegian enterprises exporting abroad (such as export credit agencies and the Ministry of Foreign Affairs), and coordination of awareness-raising activities. Recommendations 5 through 8 in Phase 2 further addressed concerns with regard to detection of foreign bribery in public institutions, general reporting obligations of public sector employees, reporting obligations of auditors, and the enactment of whistleblower protection legislation. In Norway's Phase 2 Follow-up Report, the Working Group found that all Phase 2 recommendations had been satisfactorily implemented. Based on the discussions held during the Phase 3 on-site visit, it was noted that the Norwegian authorities demonstrated a very self-reflective approach in their efforts to combat corruption. As one official from the Ministry of Foreign Affairs stated, "if you look for corruption, you will find it." Accordingly, a number of government bodies have established internal mechanisms charged with detecting and handling instances of corruption, fraud and other financial irregularities, including the Foreign Service Control Unit at the MFA, as will be discussed in further detail in the ensuing sections.

a) Awareness of the Convention and the offence of foreign bribery

95. Since Phase 2, Norwegian authorities have undertaken a number of awareness-raising and preventive measures to tackle corruption and promote corporate social responsibility. Awareness-raising of the Convention and the foreign bribery offence under Norwegian law has been integrated within this more general context. All public and private sector representatives participating in the on-site visit demonstrated knowledge of the Convention and the foreign bribery offence under Norwegian law. Reference was widely made to a recent Government White Paper issued by the MFA on *Corporate Social Responsibility in a Global Economy*. This paper has formed the basis of much awareness-raising and follow-up work within the Norwegian government and the private sector. The White Paper stresses, *inter alia*, the importance of companies' conduct abroad. Strong reference is made throughout the White Paper to the *OECD Guidelines for Multinational Enterprises*, which includes a chapter on Combating Bribery, Bribe Solicitation and

Extortion; the OECD Anti-Bribery Convention is also mentioned, albeit to a limited extent.⁷² MFA officials reported during the on-site visit that one of the follow-up measures of implementing the White Paper has been the formulation of CSR profiles for countries as a source of information for the private sector. However, these country profiles do not make explicit reference to foreign bribery and that it is a criminal offence in Norway to bribe foreign public officials.

96. In 2008, the MFA also released a revised edition of the brochure, *Say No to Corruption – It Pays!* which emphasises the importance of the Convention and explicitly sets out the foreign bribery provisions under sections 276a. and 276b. of the GCPC. The MFA reports that this brochure is aimed to be a source of information for both the Norwegian administration and the private sector. There was general agreement from the private sector and business organisations that the MFA and Norwegian embassies abroad provide assistance when facing commercial disputes or guidance when companies may face bribe solicitations. One representative from the private sector also mentioned working directly with Norwegian embassies in setting up workshops on corporate social responsibility and related matters. Norway also supports and promotes the Business Anti-Corruption Portal, a comprehensive and practical tool tailored to meet corruption risk management needs of small and medium-sized companies operating in or considering doing business in emerging markets and developing countries.

97. Specific awareness-raising measures have also been undertaken by the Ministry of Trade and Industry (MTI) with regard to state-owned enterprises (SOEs). There are currently 21 companies within the portfolio of the MTI's Ownership Department.⁷³ The *Government Ownership Policy* dedicates several chapters to ethics and combating corruption, which make reference to the *OECD Guidelines for Multinational Enterprises* and the UN Global Compact, but not the OECD Anti-Bribery Convention. Quarterly meetings are held with major SOEs, where discussions focus *inter alia* on anti-corruption and corporate social responsibility. The MTI has also undertaken more general measures to promote openness and ethics in business transactions, investments and operations both domestically and abroad. Innovation Norway also provides guidance for companies on professional standards and ethics and has conducted related communication campaigns and training programmes, although it was noted that they do not focus specifically on foreign bribery.

98. During the on-site visit, reference was also made by a representative from the private sector to INTSOK – an independent non-profit foundation that supports the expansion of the Norwegian oil and gas industry's international business activities. INTSOK was established by the Ministry of Foreign Affairs, the Ministry of Petroleum and Energy, the Ministry of Trade and Industry, the Federation of Norwegian Industries, the Norwegian Ship-owners Association, the Norwegian Oil Industry Association and Statoil. There is an extensive international network of regional directors and local oil and gas advisors, and it was noted by the private sector representative that such persons often provide helpful advice to companies on establishing and conducting business abroad, including on potential risks. INTSOK has also formulated an anti-corruption policy document, which expressly prohibits both active and passive bribery.⁷⁴

99. Business and industry organisations have played over the years a significant role in raising awareness of the Convention and the foreign bribery offence under Norwegian law. The Norwegian Confederation of Business and Industry (NHO) has published brochures on corruption, bribery and

⁷² Norwegian Ministry of Foreign Affairs, *Corporate Social Responsibility in a Global Economy*, pp. 35, 83, available at: http://www.regjeringen.no/pages/2203320/PDFS/STM200820090010000EN_PDFS.pdf

⁷³ The 21 companies are: Argentum, Entra, Flytoget, Mestam, SAS, Secora, Aker Holding, Cermaq, DnB NOR, Kongsberg, Nammo, Norsk Hydro, Telenor, Yara, Eksporthans, ECC, Statkraft, Store Norske, Kings Bay Bjørnøen, Norsk Eiendomsinformasjon.

⁷⁴ See also: <http://www.intsok.no>.

corporate social responsibility. These brochures address the corruption offences within the GCPC, including foreign bribery, and set out guidance for companies on means of compliance with the law.⁷⁵ It was noted by various government and private sector representatives during the on-site visit that compliance for SMEs continues to pose a challenge, but that business organisations and other agencies, including Innovation Norway, have undertaken some anti-corruption training programmes focusing on SMEs.

100. The companies participating in the panel discussions demonstrated very strong knowledge of the Convention and the foreign bribery offence under the GCPC. A number of the companies explained that the most powerful source of awareness-raising stemmed from the fact that there have been cases and convictions in Norway for foreign bribery. As one panellist stated, this was a “wake-up call” for companies. All of the companies participating in the on-site visit described the measures put in place to raise awareness of the foreign bribery offence among employees, including the establishment of advisory services when confronted with bribe solicitations. A number of companies also elaborated on the training programmes they have implemented, which include practical “dilemma” trainings. Due diligence mechanisms have also been implemented in the companies participating in the panel discussions, which include enhanced due diligence measures undertaken when engaging with partners and joint ventures. Once again it was noted that while most large Norwegian companies would have similar awareness-raising and preventive measures in place, SMEs struggle in establishing similar measures.

101. Civil society and the media have also been very active in raising awareness of corruption offences in Norway. Transparency International Norway has undertaken surveys on the preventive measures in place to combat corruption with the 25 largest companies listed in the Norwegian Stock Exchange. TI Norway has also published an anti-corruption handbook for the Norwegian business sector which addresses the Convention and the corruption offences under the GCPC. Civil society representatives also expressed the view that while large Norwegian companies would be well-equipped to handle corruption risks abroad, SMEs may continue to face challenges. The media has also played a crucial role in raising awareness of corruption in Norway and further serves as an important source for detection and reporting. The media representative participating in the on-site visit emphasised the independence of the media in Norway and strong rights to information under the Freedom of Information Act.

b) Reporting suspected acts of foreign bribery

102. Norway indicated in its Phase 2 Follow-up Report that there is no obligation in the law for public officials to report suspicions of criminal activity, including foreign bribery, to law enforcement authorities. Section 2.2 of the *Ethical Guidelines for the Public Service* does set out a general duty to report for public officials: “In order to implement measures to avoid or limit losses or damages, public officials are required to report to their employer any circumstances of which she or he is aware that could cause the employer, employee or the surroundings to suffer losses or damages.” The commentary to section 2.2 explicitly provides that corruption and crimes or irregularities should be reported and as an alternative to internal reporting, public officials could contact law enforcement authorities directly. There are no sanctions for failure to report suspicions of corruption under the Ethical Guidelines. However, Norwegian authorities indicate that failure to report can constitute a breach of duties for a public servant and in this regard, be sanctioned as misconduct.

⁷⁵ See in particular: *Crossing the line? An NHO Guide for Companies' Work Policies and Practices with Regard to Gifts, Entertainment and Various Expenses for People who are not Company Employees*, available at: http://www.nho.no/files/crossing_the_line_web_2.pdf and *Standpoint Corruption: What is Corruption? Why Bother? Getting Started?*, available at: http://www.nho.no/files/Standpoint_Corruption2_1.pdf

103. Specific reporting obligations are also imposed on tax officials, as well as officials responsible for the disbursement of public advantages. Section 8 of this Report provides further details on the reporting obligations for the tax authorities, and section 11 provides further details on the reporting obligations in the context of public advantages.

c) Whistleblower protection

104. Since Phase 2, Norway has introduced new measures to protect from discriminatory or disciplinary action employees who report in good faith and on reasonable grounds suspected acts of foreign bribery to competent authorities. The Working Environment Act contains new provisions⁷⁶ that were enacted in 2007 concerning notification of “censurable conditions” at the undertaking (sections 2-4) and protection from retaliation against employees who use their legal right to notify (section 2-5). Norwegian authorities state that reports of “censurable conditions” would cover employees who notify suspected acts of foreign bribery to competent authorities. The Act applies to Norwegian government officials, including those posted abroad, and notably also applies to private sector employees. In this regard, the Act also includes provisions that demand the undertaking to facilitate notification if the circumstances at the undertaking so indicate (section 3-6). Accordingly, companies are required to establish routines and channels for communication for employees who wish to notify of censurable conditions in the companies.

105. The promotion of whistleblower protection is also emphasised in the Government White Paper on *Corporate Social Responsibility in a Global Economy*. As one representative from the MFA noted during the on-site visit, the White Paper sets out government expectations of the private sector, one of which is to “actively combat corruption by means of whistleblowing or notification schemes, internal guidelines and information efforts.”⁷⁷ Representatives from the private sector participating in the on-site visit all confirmed to have reporting channels and whistleblower protection mechanisms in place. A number have established reporting hotlines and/or use external whistleblowing channels managed by outside service providers, such as law firms. The companies elaborated upon the wide use of these reporting channels by employees, though most reports pertain to human resources-related complaints. One example illustrating the effectiveness of the whistleblower protection systems was noted during the on-site visit, when one company explained that the employee who blew the whistle on the suspicions of foreign bribery that subsequently led to the company’s conviction for the offence is still employed with the company. A similar external whistleblowing mechanism is also used by the MFA and Norad, in which reports of suspicions of unlawful behaviour, including corruption, can be made directly to an outside law firm. Reports can be made anonymously and upon receipt, the law firm undertakes a preliminary investigation of suspected irregularities prior to referring cases to the Foreign Service Control Unit within the MFA or the Alert Team in Norad, which are charged with handling such irregularities (see also section 11 a) on official development assistance).

d) The Norwegian Government Pension Fund Global

106. During the on-site visit, a representative from the Council on Ethics for the Norwegian Government Pension Fund Global also discussed the *Ethical Guidelines* applied to the Fund and exclusion from investment by the Fund on grounds of corruption. The Fund’s revenues are derived from the Norwegian Government’s total income from petroleum activities and the return on the Fund’s investments.⁷⁸ As of the end of 2010, the total value of the Fund was NOK 3077 billion (approximately

⁷⁶ See Annex 2 for the text of relevant sections.

⁷⁷ Norwegian Ministry of Foreign Affairs, *Corporate Social Responsibility in a Global Economy*, p. 13, available at: http://www.regjeringen.no/pages/2203320/PDFS/STM200820090010000EN_PDFS.pdf

⁷⁸ See: Norwegian Government Pension Fund, available at: <http://www.regjeringen.no/en/dep/fin/Selected-topics/the-government-pension-fund.html>

EUR 390 billion).⁷⁹ The Fund does not invest in Norwegian companies. According to the *Ethical Guidelines*, the Fund may exclude companies (and thereby sell its shares in the company) if there is an unacceptable risk that the company in question contributes to or is responsible for unethical acts or omissions, such as violations of fundamental humanitarian principles, serious violations of human rights, gross corruption or severe environmental damage.⁸⁰ To date, the Council on Ethics has made one recommendation to exclude a company from the Fund on the basis of gross corruption. This recommendation was however not endorsed; rather, it was decided to place the company under observation for a period of four years to monitor its anti-corruption efforts.

Commentary

The lead examiners commend the efforts and measures Norway has undertaken to raise public awareness and promote the reporting of foreign bribery, and particularly note the comprehensive whistleblower protection in place that covers both public and private sector employees. With regard to awareness-raising efforts, the lead examiners encourage Norway to consider making more explicit reference to the foreign bribery offence under Norwegian law, particularly with regard to the awareness-raising measures undertaken by the Ministry of Foreign Affairs, such as its land profiles database, and by the Ministry of Trade and Industry, for instance in the context of its Government Ownership Policy. Engaging with SMEs is a cross-cutting issue faced by all Parties to the Convention. Norway should pursue additional opportunities to raise awareness with SMEs for the purpose of preventing and detecting foreign bribery. Finally, given the potential difficulties smaller companies may face in combating foreign bribery, the lead examiners encourage Norway to further continue active engagement with Norwegian SMEs.

11. Public advantages

a) Official development assistance

107. Official development assistance (ODA) is mainly administered by the Norwegian Ministry of Foreign Affairs and its missions abroad. Approximately 10% of the administration of ODA is delegated to the Norwegian Agency for Development Cooperation (Norad). The MFA and Norad emphasise that they practice a “zero-tolerance” approach towards corruption, fraud and any other misuse of funds (financial irregularities). This approach is expressly stated in a number of official memos and documents, including the MFA Policy Memo (dated 09.06.2010), the revised Guidelines for Handling Suspicions of Financial Irregularities in the Foreign Service (dated 18.03.2011), Norad’s Guidelines (dated 26.01.2011), texts in annual instructions and grant management letters from the MFA to all embassies and permanent delegations, and in the Grant Scheme Rules for budgetary allocations. The MFA is also in the process of developing guidelines for risk management, including risk for corruption. This means that the grant recipient is obliged to organise its activities in such a way that financial irregularities are effectively prevented, detected, reported and handled through the organizational chain down to the end user. The grant recipient shall immediately notify the MFA or Norad of any suspicion of financial irregularities, including corruption. A standard clause to this effect is also included in agreements and contracts with recipients of Norwegian grants from the MFA and Norad (ODA and non-ODA). During the on-site visit, Norad officials further explained that recipients of grants from Norad shall always be assessed as part of the decision-

⁷⁹ Norges Bank Investment Management, “Fifth Best Year in the Fund’s Management”, 18 March 2011, available at: <http://www.nbim.no/en/press-and-publications/News-List/736/femte-beste-resultat-i-fondets-historie/>

⁸⁰ At the time of this report, approximately 50 companies had been excluded from the Fund, mainly on the bases of environmental damage and violations of humanitarian principles.

making process; assessment criteria include internal controls, ethics and compliance programmes, as well as anti-corruption measures and the capacity of the recipient to carry out the contract. Corruption risk assessments shall also be a part of the decision-making process; applicants for grants are required to perform risk assessments in their applications, which the MFA will assess, as well as follow up with risk analysis during the implementation phase. The MFA and Norad also conduct financial management and anti-corruption training, as well as training on the zero-tolerance policy and practice for employees charged with administering ODA and non-ODA grants, including those situated in Norwegian embassies abroad.

108. All MFA and Norad officials are required to report suspicions of financial irregularities to the Foreign Service Control Unit of the Ministry of Foreign Affairs or the 'Alert Team' in Norad, in accordance with the *Guidelines for Dealing with Suspicions of Financial Irregularities in the Foreign Service* and the *Norad Guidelines*, respectively. The term "financial irregularities" is considered to include corruption, embezzlement, misuse of funds, fraud, theft and favouritism or nepotism. The concept also includes the use of funds in conflict with the objectives and conditions in the agreement, and the inability to satisfactorily account for the use of funds. Financial irregularities may involve intent as well as acts of negligence, such as passivity, failure to act or lack of good judgement in the management of funds. During the on-site visit, MFA officials confirmed that this would also include the reporting of suspicions of foreign bribery. MFA and Norad officials, as well as the general public, may also report directly and anonymously through the external whistleblower reporting channel managed by an external law firm, as mentioned above.

109. If there is a reasonable suspicion of financial irregularities, irrespective of the reason, all transfer of funds - to which the suspicion applies - to a final recipient are to be frozen as a general rule until the case has been investigated.⁸¹ Other sanctions include repayment of funds, civil action, required implementation of measures to improve financial management and control, termination of agreement, measures in accordance with labour legislation, rules and regulations, and criminal prosecution. The MFA and Norad do not keep a register or list of companies which it has debarred from obtaining ODA-funded contracts on such grounds. There is no mandatory obligation to report such suspicions directly to law enforcement authorities; however, the Guidelines expressly state that "criminal prosecution shall always be considered" as one of the reactions to be taken against findings of financial irregularities. During the on-site visit, Norad officials explained that the Director would decide whether suspicions point to civil or criminal offences and would report the latter to law enforcement authorities accordingly. In the MFA, the Secretary General decides such matters. It should be noted that the Consulting Company foreign bribery case originated from a referral by Norad and the World Bank.

110. The MFA and Norad are also actively engaged internationally in corruption prevention and anti-corruption capacity building programmes, including by working with national anti-corruption commissions, supreme audit institutions and good governance programmes, more generally. Both have also been focusing in recent years on emerging issues such as illicit capital flight, money laundering and tax evasion, and the impact on developing countries. In particular, Norad has a special anti-corruption project in place with a dedicated anti-corruption team. The MFA is also actively engaged in promoting a zero tolerance policy towards financial irregularities in the multilateral organisations on a systemic level, as well as in individual financial irregularity cases where Norwegian funds are affected. Norad also works in partnership with the multilateral development banks and other international organisations on anti-corruption issues, and is responsible for the coordination of the recently established Corruption Hunters Network.

⁸¹ Section 5.1, *The Ministry of Foreign Affairs' Zero-Tolerance Policy on Corruption. How can it best be put into practice?*, 9 June 2010.

b) Officially supported export credits

111. The Guarantee Institute for Export Credit (GIEK) and Eksportfinans ASA ('Eksportfinans') are both active participants in the OECD Working Party on Export Credit and Credit Guarantees. (The former provides export credit guarantees whereas the latter provides officially supported export credits). Since Phase 2, both GIEK and Eksportfinans have adopted anti-corruption guidelines that are practiced in accordance with the 2006 OECD Council Recommendation on Bribery and Officially-Supported Export Credits. Both agencies' guidelines include provisions on declarations on corruption, consultation with international debarment lists, grounds for rejection and termination of contracts, and reporting obligations. Contracts for officially-supported export credits can be terminated and/or rejected on the basis of a client or applicant being the subject of allegations or convictions of foreign bribery, either before or after support has been approved, though it was noted on-site that this has not occurred to date.

112. Representatives from GIEK and Eksportfinans participating in the on-site visit explained that while it is encouraged to take into account internal control, ethics and compliance when granting export credits, it is not mandatory. However, when dealing with sensitive countries, enhanced due diligence may be undertaken, which may include a check on internal controls, as well as a cross-check of the information provided in the declaration form against international and regional debarment lists. Representatives from these agencies were also not aware of Annex II of the 2009 Anti-Bribery Recommendation's *Good Practice Guidance on Internal Controls, Ethics and Compliance*.

113. With regard to reporting, GIEK's guidelines state that if reasons for suspicion of corruption arise, GIEK will initiate an extended investigation of the case and if it concludes that reasonable grounds for suspicion of corruption exist, GIEK may consider it necessary or appropriate to inform the Ministry of Trade and Industry or report the case to Økokrim. Eksportfinans' guidelines contain a similar provision. In addition, the ethical guidelines developed by Eksportfinans also provide for a "duty to inform", where employees have an obligation to report activities contrary to laws, regulations or internal guidelines to his or her superior, head of legal section or general counsel or the audit committee. While these reporting obligations in the GIEK and Eksportfinans guidelines are not framed in mandatory language, representatives from both GIEK and Eksportfinans confirmed during the on-site visit that, should the extended investigation conclude that reasonable grounds for suspicion of corruption exist, GIEK and Eksportfinans would report to the Ministry of Trade and Industry and/or Økokrim.

c) Public procurement

114. In its implementation of EC Directives 2004/17/EC and 2004/18/EC, Norway established conditions under the Public Contracts Regulation of 2006 for the mandatory exclusion of tenderers who have been convicted by final court judgment for certain forms of financial crimes, including corruption. More specifically, according to sections 20-12 and 11-10 subsection 1(e) of the Regulation, the contracting authorities "shall exclude companies from participation in a public contract if the contractor has knowledge that the candidate has been the subject of a conviction by final court judgment for certain forms of financial crime, i.e. participating in a criminal organisation, corruption, fraud or money laundering."⁸² Norwegian authorities confirm that such grounds for exclusion would also apply for acts of foreign bribery. Under sections 20-12 and 11-10, subsections 2(c) and 2 (d) of the Regulation, the contracting authority "may also exclude companies that have been convicted by a judgment which has the force of *res*

⁸² Unofficial translation provided by the Norwegian authorities in their responses to the Phase 3 Questionnaire.

judicata of any offence concerning professional conduct or that have been found guilty of grave professional misconduct proven by any means which the contracting authority can demonstrate.⁸³

115. Since Phase 2, the Ministry of Foreign Affairs has also undertaken measures to ensure transparency in public procurement. The MFA is in the process of including procurement principles in grant letters aimed at combating economic crime and ensuring that procurements are based on competition, transparency, verifiability, predictability and equal treatment. In 2009, a Grant Management Unit was also established within the MFA in order to ensure a harmonized grant management system throughout the Ministry. The MFA requires a declaration of good conduct from providers when the procurement value exceeds NOK 100 000 (approximately EUR 12 600), including confirmation that the company has not been convicted of participation in a criminal organisation, corruption, fraud or money laundering. The company must also confirm that it has not been convicted of any criminal offence related to its business conduct and has not, in the pursuit of business, committed any serious breach of professional or ethical standards. The Ministry of Defence applies its own public procurement regulations, which also include standard anti-corruption clauses and declarations in contracts, rules on debarment, and reporting obligations if foreign bribery or corruption more generally is suspected.

116. It was confirmed during the on-site visit that there is no national debarment register or blacklist of excluded companies from bidding on or receiving public advantages. Officials from the public procurement complaints board (KOFA) participating in the on-site visit stated that no forms of enhanced due diligence are undertaken on the companies bidding for the tender and that there is no obligation to investigate whether companies have a criminal record. It was further noted that while there is mandatory exclusion for tenderers who have been convicted of corruption by final court judgment, court judgments in Norway are anonymized, and this requirement would therefore be difficult to verify in practice.

Commentary

The lead examiners commend Norway on the various measures undertaken to prevent, detect and report foreign bribery by Norwegian agencies involved in public advantages, including the consideration given to internal controls, ethics and compliance. In this regard, the lead examiners encourage Norway to raise awareness of the Good Practice Guidance on Internal Controls, Ethics and Compliance, in Annex II of the 2009 Anti-Bribery Recommendation as a tool to further assist agencies in undertaking due diligence.

The lead examiners further note that these public agencies can also debar companies convicted of corruption offences, which can be a significant deterrent for companies to engage in bribery. However, given that court judgments are anonymized in Norway, this may render it difficult for agencies to cross-check information provided in declaration forms. The lead examiners recommend that Norway consider a systemic approach to be undertaken to allow these agencies to easily access information on companies sanctioned for corruption, such as through the establishment of a national debarment register. This could allow these agencies to more effectively and efficiently apply their debarment rules.

⁸³ Unofficial translation provided by the Norwegian authorities in their responses to the Phase 3 Questionnaire.

C. RECOMMENDATIONS AND ISSUES FOR FOLLOW-UP

117. The Working Group on Bribery commends Norway for its visible and significant enforcement efforts, which have steadily increased since Phase 2. These efforts were enabled, in particular, by the specialised and well-resourced law enforcement experts within Økokrim's Anti-Corruption Teams, as well as Norway's proactive approach to investigate and prosecute corruption more generally. The Working Group further commends Norway for its awareness-raising efforts, particularly with regard to the detection and reporting of foreign bribery, and notes that several foreign bribery cases emerged as a result of whistleblower reports. Increased enforcement against companies is also supported by Norway's efficient and effective framework for corporate liability, which has led to the systematic investigation, prosecution and sanctioning of companies involved in foreign bribery. The Working Group notes that confiscation measures have not been relied upon by law enforcement authorities to seize and confiscate the proceeds of bribery potentially gained by the companies.

118. The Phase 2 evaluation report on Norway, adopted in February 2004 included recommendations and issues for follow-up. In March 2007, at the time of Norway's written follow-up report to Phase 2, the Working Group concluded that all Phase 2 recommendations had been satisfactorily implemented.⁸⁴ Thus, this Phase 3 Report has not had to address any remaining recommendations from Norway's Phase 2 evaluation.

119. Against this background, and based on the findings in this Report regarding implementation by Norway of the Convention and the 2009 Recommendation, the Working Group: (1) makes the following recommendations to enhance implementation of the Convention in Part I; and (2) will follow-up the issues identified in Part II. The Working Group invites Norway to submit a written follow-up report on all recommendations and follow-up issues within two years (i.e. in June 2013).

1. Recommendations of the Working Group

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

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.].
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)].
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].

⁸⁴ See Annex 1: Phase 2 Recommendations of the Working Group, and Issues for Follow-up.

Recommendations for ensuring effective prevention and detection of foreign bribery

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)]; and
 - 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)].
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
 - 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].
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)].

2. Follow-up by the Working Group

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;
 - 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;
 - 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
 - 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.

ANNEX 1 PHASE 2 RECOMMENDATIONS TO NORWAY AND ASSESSMENT OF IMPLEMENTATION BY THE WORKING GROUP ON BRIBERY IN 2007

<i>Phase 2 Recommendations – 2004</i> ⁸⁵	<i>Written Follow-Up – 2007</i> ⁸⁶
<i>1) Recommendations for Ensuring Effective Measures for Preventing and Detecting Foreign Bribery</i>	
<p>Text of Recommendation 1:</p> <p>With respect to awareness raising, the Working Group recommends that Norway:</p> <p>Pursue existing efforts undertaken to raise awareness of the offence of bribery in international business transactions, in particular where small and medium size enterprises are concerned (Revised Recommendation, Article I).</p>	<i>Satisfactorily implemented</i>
<p>Text of Recommendation 2:</p> <p>With respect to awareness raising, the Working Group recommends that Norway:</p> <p>Communicate to the business sector that, under the new legislation, facilitation payments are not allowed (Revised Recommendation, Article I).</p>	<i>Satisfactorily implemented</i>
<p>Text of Recommendation 3:</p> <p>With respect to awareness raising, the Working Group recommends that Norway:</p> <p>Undertake further actions through institutions which are in a position to have privileged contacts with Norwegian enterprises exporting abroad, such as GIEK (the Norwegian export credit agency) or the Ministry of Foreign Affairs, notably through its diplomatic missions abroad (Revised Recommendation, Article I).</p>	<i>Satisfactorily implemented</i>
<p>Text of Recommendation 4:</p> <p>With respect to awareness raising, the Working Group recommends that Norway:</p> <p>Consider, in this context, establishing a coordinating body to oversee awareness raising activities undertaken by Norwegian public authorities and relating to bribery of foreign public officials (Revised Recommendation, Article I).</p>	<i>Satisfactorily implemented</i>
<p>Text of Recommendation 5:</p> <p>With respect to detection, the Working Group recommends that Norway:</p> <p>Pursue its efforts to develop further cooperation between the public institutions which could usefully contribute to the detection of the offence of bribery of foreign public officials and the law enforcement authorities (Revised Recommendation, Article I).</p>	<i>Satisfactorily implemented</i>

⁸⁵ This column sets out the recommendations of the Working Group on Bribery to Norway, as adopted in February 2004 in [Norway's Phase 2 Report](#).

⁸⁶ This column sets out the findings of the Working Group on Bribery on [Norway's Written Follow-up Report to Phase 2](#), as adopted by the Working Group in March 2007.

<p>Text of Recommendation 6:</p> <p>With respect to detection, the Working Group recommends that Norway:</p> <p>Consider the introduction of a general obligation for staff of public institutions to report suspicions of corruption by Norwegian companies to the competent authorities (Revised Recommendation, Article I).</p>	<p><i>Satisfactorily implemented</i></p>
<p>Text of Recommendation 7:</p> <p>With respect to detection, the Working Group recommends that Norway:</p> <p>Bearing in mind the vital role of auditors in uncovering and reporting bribery offences, raise awareness concerning the obligation for auditors to report any suspect activity that would indicate an unlawful act of bribery to law enforcement authorities (Convention, Article 8; Revised Recommendation, Article V.B.iv).</p>	<p><i>Satisfactorily implemented</i></p>
<p>Text of Recommendation 8:</p> <p>With respect to detection, the Working Group recommends that Norway:</p> <p>Continue ongoing reflection undertaken by several public bodies in Norway on the issue of whistleblower protection, with a view to introducing measures to ensure adequate protection against sanctions to employees who report suspected cases of bribery of foreign public officials (Revised Recommendation, Article I).</p>	<p><i>Satisfactorily implemented</i></p>
<p>2) Recommendations for Ensuring Effective Prosecution and Sanctioning of Bribery of Foreign Public Officials</p>	
<p>Text of Recommendation 9:</p> <p>With respect to prosecution, the Working Group recommends that Norway:</p> <p>Ensure that sufficient financial and human resources continue to be allocated to Økokrim and economic sections of police districts in order to retain full ability to carry out international investigations in cases of transnational bribery (Convention, Article 5; Revised Recommendation, Article I; Annex to the Revised Recommendation, Paragraph 6).</p>	<p><i>Satisfactorily implemented</i></p>
<p>Text of Recommendation 10:</p> <p>With respect to prosecution, the Working Group recommends that Norway:</p> <p>Given the recently introduced distinction between basic and aggravated bribery, ensure that law enforcement authorities are fully aware of the range of investigative tools available, and have sufficient expertise to make broad use of these, where appropriate; and consider extending the availability of witness protection programmes to foreign bribery cases (Revised Recommendation, Article I).</p>	<p><i>Satisfactorily implemented</i></p>
<p>Text of Recommendation 11:</p> <p>With respect to prosecution, the Working Group recommends that Norway:</p> <p>Draw attention of the law enforcement and judicial authorities to the importance of making full use of the various economic sanctions available on the bribers, taking into account the particular circumstances surrounding cases of transnational bribery (Convention Article 3).</p>	<p><i>Satisfactorily implemented</i></p>

3) *Follow-up by the Working Group*

In light of the recent amendment to the offence of domestic and transnational bribery introduced in Norwegian law, and in the absence of definitive case law concerning bribery of foreign public officials, the Working Group will follow up:

12. The application of the new offence in practice as litigation of the bribery offence develops, in particular the notion of impropriety of the advantage (Convention, Article 1.1);
13. The criminal liability of legal persons, to ascertain that the bribery offence is effectively applied to legal persons, either through court decisions or optional fines and confiscation (Convention, Articles 2 and 4);
14. The consequences of the distinction between basic and aggravated bribery in terms of the length of the limitation period, and in terms of whether different modalities of interruption adequately suspend the operation of the statute of limitation, especially where legal persons are involved (Convention, Articles 1.1, 6);
15. The application of sanctions, notably the practice with regard to confiscation of both the instruments and the proceeds, in order to determine whether they are sufficiently effective, proportionate and dissuasive to prevent and punish the offence of active bribery of foreign public officials (Convention, Article 3).

ANNEX 2 LEGISLATIVE EXTRACTS⁸⁷

RELEVANT EXTRACTS FROM THE GENERAL CIVIL PENAL CODE (GCPC)

Chapter 1 – Applicability of Norwegian criminal law

Section 12. Unless it is otherwise specially provided or accepted in an agreement with a foreign State, Norwegian criminal law shall be applicable to acts committed:

1. in the realm, including
 - a) any installation or construction placed on the Norwegian part of the continental shelf and used for exploration for or exploitation or storage of submarine natural resources,
 - b) constructions for the transport of petroleum resources connected with any installation or construction placed on the Norwegian part of the continental shelf,
 - c) the security zone around such installations and constructions as are mentioned under a and b above,
 - d) any Norwegian vessel (including a Norwegian drilling platform or similar mobile installation) in the open sea, and
 - e) any Norwegian aircraft outside such areas as are subject to the jurisdiction of any State;
2. on any Norwegian vessel or aircraft wherever it may be, by a member of its crew or any other person travelling on the vessel or aircraft; the term vessel here also includes a drilling platform or similar mobile installation;
3. abroad by any Norwegian national or any person domiciled in Norway when the act
 - a) is one of those dealt with in chapters 8, 9, 10, 11, 12, 14, 17, 18, 20, 23, 24, 25, 26 or 33 of this code or sections 135, 141, 142, 144, 169, 192 to 195, 199, 206 to 209, 222 to 225, 227 to 235, 238, 239, 242 to 245, 291, 292, 294 item 2, 317, 326 to 328, 330, last paragraph, 338, 367 to 370, 380, 381 or 423 and in any case when it
 - b) is a felony or misdemeanour against the Norwegian State or Norwegian state authority,
 - c) is also punishable according to the law of the country in which it is committed, or
 - d) is committed in relation to the EFTA Court of Justice and is included among those dealt with in section 163, cf. section 167 and section 165, of the present Act, or sections 205 to 207 of the Courts of Justice Act;
4. abroad, by a foreigner when the act either
 - a) is one of those dealt with in sections 83, 88, 89, 90, 91, 91 a, 93, 94, 98 to 104, 110 to 132, 148, 149, 150, 151 a, 152 first cf. second paragraph, 152 a, 152 b, 153 first to fourth paragraphs, 154, 159, 160, 161, 169, 174 to 178, 182 to 185, 187, 189, 190, 192 to 195, 217, 220, 221, 222 to 225, 227 to 229, 231 to 235, 238, 239, 243, 244, 256, 258, 266 to 269, 271, 276, 291, 292, 324, 325, 328, 415 or 423 of this code or sections 1, 2, 3 or 5 of the Act relating to defence secrets,
 - b) is a felony also punishable according to the law of the country in which it is committed, and the offender is resident in the realm or is staying therein, or
 - c) is committed in relation to the EFTA Court of Justice and is included among those dealt with in section 163, cf. section 167 and section 165, of the present Act, or sections 205 to 207 of the Courts of Justice Act.

In cases in which the criminality of an act depends on or is influenced by any actual or intended effect, the act shall be regarded as committed also where such effect has occurred or is intended to be produced.

Chapter 2 – Penalties and other sanctions

Section 34. Any proceeds of a criminal act shall be confiscated. Such liability may, however, be reduced or remitted in so far as the court is of the opinion that confiscation would clearly be unreasonable. Confiscation may be effected even though the offender cannot be punished because he was not accountable for his acts (sections 44 or 46) or did not manifest guilt.

⁸⁷ These translations are for information purposes only. Legal authenticity remains with the official Norwegian version as published in Norsk Lovtidend.

Any asset that takes the place of the proceeds, profit and other benefits of the proceeds shall be regarded as proceeds. Expenses incurred shall not be deducted. If the amount of the proceeds cannot be established, the court will determine the amount approximately. Instead of any asset an amount equivalent to the value thereof or to part of the said value may be confiscated. It may be stipulated in the sentence that the asset shall serve as security for the amount to be confiscated. Confiscation shall be effected from the person to whom the proceeds have directly accrued by the criminal act. Basically it shall be assumed that the proceeds have accrued to the offender unless he proves on a balance of probabilities that they have accrued to another person.

Section 34 a. Extended confiscation may be effected when the offender is found guilty of a criminal act of such a nature that the proceeds thereof can be considerable, and he has committed a) one or more criminal acts that may collectively be punishable by imprisonment for a term of six years or more, or an attempt at such an act, or b) at least one criminal act punishable by imprisonment for a term of two years or more, or an attempt at such an act, and the offender during the five years immediately preceding the commission of the said act has been punished for an act of such a nature that the proceeds thereof can be considerable.

Any increase of the penalty limits in the event of repetition shall not be taken into account.

In the event of extended confiscation all assets belonging to the offender may be confiscated unless he proves on a balance of probabilities that the said assets have been lawfully acquired. Section 34, third paragraph, shall apply correspondingly. In the event of extended confiscation from the offender the value of all assets belonging to the offender's present or previous spouse may also be confiscated unless

- a) they have been acquired before the marriage was entered into or after the marriage was dissolved,
- b) they have been acquired at least five years before the criminal act that provides a basis for extended confiscation, or
- c) the offender proves on a balance of probabilities that the assets have been acquired otherwise than by the criminal acts he has committed.

When two persons are living together permanently in a marriage-like relationship, this shall be deemed equivalent to marriage.

Section 35. Objects that have been produced by or been the subject of a criminal act may be confiscated if this is considered necessary for the purpose of the provision that prescribes the penalty for the act. Rights and claims are also deemed to be objects. The provision in section 34, first paragraph, third sentence, shall apply correspondingly. The same applies to objects that have been used or intended for use in a criminal act.

Instead of the object an amount equivalent to its value or part of its value may be confiscated. It may be stipulated in the sentence that the object shall serve as security for the amount confiscated.

Instead of confiscating the object the court may impose measures to prevent the object being used for the commission of new offences.

Section 36. Confiscation pursuant to section 35 may be effected from the offender or from the person on whose behalf he has acted. Confiscation of any object mentioned in section 35, second paragraph, or of an amount that is wholly or partly equivalent to its value may also be effected from an owner who has or should have understood that the object was to be used for a criminal act.

Section 37. A right that is legally secured on an object that is confiscated shall lapse to the extent provided in the sentence in the case of the holder of a right who is himself guilty of the criminal act, or on whose behalf the offender has acted. The provision in section 34, first paragraph, third sentence, shall apply correspondingly. Such provision may also be made in the case of the holder of a right who, when the right was established, understood or should have understood that the object was to be used in a criminal act, or that it could be confiscated.

When an object is sold with the ownership reserved to the seller, the purchaser shall be deemed to be the owner and the seller the holder of a right in applying the provisions of this section.

Section 37 a. When any proceeds or object mentioned in section 34 or 35 is after the commission of the offence transferred from a person from whom confiscation may be effected, what has been transferred or its value may be confiscated from the receiver if the transfer has occurred as a gift or if the receiver understood or should have understood the connection between the criminal act and what has been transferred to him.

If extended confiscation may be effected pursuant to section 34 a and the offender has transferred any asset to one of his next-of-kin, the said asset or its value may be confiscated from the receiver if the prosecuting authority proves on a balance of probabilities that it has been acquired by a criminal act committed by the offender.

If the assets of any person referred to in section 34 a, third paragraph, are wholly or partly taken into account in the event of confiscation from the offender, and the said person meets his or her liability pursuant to this section, the offender's liability shall be correspondingly reduced. If the offender has met his liability pursuant to section 34 a, second paragraph, any further contribution from him will lead to the receiver's liability being correspondingly reduced.

The second paragraph shall apply correspondingly in the event of the transfer of an enterprise if the offender

- a) alone or together with any person referred to in the second paragraph owns a substantial part of the enterprise,
- b) receives a considerable part of the income of the enterprise, or
- c) by virtue of his position as head thereof has substantial influence over it.

The same shall apply to any right which was established in the object after the commission of the offence by any person from whom confiscation may be effected.

Section 37 b. Even if the conditions prescribed in sections 34 to 36 are not fulfilled, an object may be confiscated when because of its nature and other circumstances there is a risk that it will be used for a criminal act. This applies irrespective of who is the owner and irrespective of whether criminal liability can be established against any person. Section 35, final paragraph, shall apply correspondingly.

Section 37 c. When an object that has been seized is required to be confiscated, and the owner is unknown or has no known place of sojourn in the realm, confiscation may be effected in proceedings against the offender or the person who was in possession at the time of seizure if this is considered reasonable according to the nature of the case and other circumstances. The same applies when confiscation is required of the value of an object that has been seized, or that has been exempted from seizure on provision of security. The owner shall as far as possible be notified of the proceedings.

If neither the offender nor the possessor is known or has a known place of sojourn in the realm, the District Court may order confiscation under circumstances similar to those mentioned in the first paragraph, without any person being made a defendant.

These provisions shall apply correspondingly to confiscation of rights pursuant to sections 37 and 37 a, fifth paragraph.

Section 37 d. The proceeds of any confiscation shall accrue to the State treasury unless it is otherwise provided. In its judgment or by a subsequent order made by the District Court that decided the issue of confiscation, the court may decide that the proceeds of any confiscation may be applied to covering any claim for compensation made by the aggrieved person. The Ministry may decide that the proceeds of any confiscation shall be divided between the Norwegian State and one or more other States. In the decision importance shall be attached to, inter alia, what expenses have been incurred in such States and in which countries harmful effects have occurred and the proceeds were acquired. Any division pursuant to this paragraph may not result in any reduction of the covering of the aggrieved person's claim for compensation pursuant to the second paragraph.

When proceeds have been confiscated pursuant to section 34, and the convicted person or someone who is responsible for the harm done has paid compensation to the aggrieved person after the date of adjudication, the court may at the request of the convicted person decide that the amount confiscated shall be reduced correspondingly. The same applies if the convicted person pays tax or duty corresponding to the amount confiscated. Any request pursuant to this paragraph must be submitted to the court not later than one year after the decision concerning confiscation becomes legally enforceable.

Chapter 3a – Criminal liability of enterprises

Section 48 a. When a penal provision is contravened by a person who has acted on behalf of an enterprise, the enterprise may be liable to a penalty. This applies even if no individual person may be punished for the contravention. Enterprise here means a company, society or other association, one-man enterprise, foundation, estate or public activity.

The penalty shall be a fine. The enterprise may also by a court judgment be deprived of the right to carry on business or may be prohibited from carrying it on in certain forms, cf. section 29.

Section 48 b. In deciding whether a penalty shall be imposed on an enterprise pursuant to section 48 a, and in assessing the penalty vis-à-vis the enterprise, particular consideration shall be paid to

- a) the preventive effect of the penalty,
- b) the seriousness of the offence,
- c) whether the enterprise could by guidelines, instruction, training, control or other measures have prevented the offence,
- d) whether the offence has been committed in order to promote the interests of the enterprise,
- e) whether the enterprise has had or could have obtained any advantage by the offence,
- f) the enterprise's economic capacity,
- g) whether other sanctions have as a consequence of the offence been imposed on the enterprise or on any person who has acted on its behalf, including whether a penalty has been imposed on any individual person.

Chapter 26 – Fraud, breach of trust and corruption

Section 276 a. Any person who:

- a) for himself or other persons requests or receives an improper advantage or accepts an offer thereof in connection with a position, office or assignment, or
 - b) gives or offers any person an improper advantage in connection with a position, office or assignment
- shall be liable to a penalty for corruption.

Position, office or assignment in the first paragraph also mean a position, office or assignment in a foreign country. The penalty for corruption shall be fines or imprisonment for a term not exceeding three years. Any person who aids and abets such an offence shall be liable to the same penalty.

Section 276 b. Gross corruption shall be punishable by imprisonment for a term not exceeding 10 years. Any person who aids and abets such an offence shall be liable to the same penalty.

In deciding whether the corruption is gross, importance shall be attached to, inter alia, whether the act has been committed by or in relation to a public official or any other person in breach of the special confidence placed in him by virtue of his position, office or assignment, whether it has resulted in a considerable economic advantage, whether there is any risk of considerable damage of an economic or other nature, or whether false accounting information has been recorded, or false accounting documents or false annual accounts have been prepared.

Section 276 c. Any person who

- a) for himself or other persons requests or received an improper advantage or accepts an offer thereof in return for influencing the conduct of any position, office or assignment, or
- b) gives or offers any person an improper advantage in return for influencing the conduct of a position, office or assignment

shall be liable for trading in influence.

Position, office or assignment in the first paragraph also mean a position, office or assignment in a foreign country. Trading in influence shall be punishable by fines or imprisonment for a term not exceeding three years. Any person who aids and abets such an offence shall be liable to the same penalty.

RELEVANT EXTRACT FROM THE CRIMINAL PROCEDURE ACT (CPA)

Chapter 20 – Optional penalty writ

Section 255. If the prosecuting authority finds that a case should be decided by the imposition of a fine or confiscation, or both, the said authority may issue a writ giving an option to this effect (an optional penalty writ) instead of preferring an indictment t. sanctions referred to in section 2, No.4 , may also be decided by issuing such a writ and may also be imposed together with sanctions specified in the first sentence.

RELEVANT EXTRACT FROM THE MONEY LAUNDERING ACT

Section 7. *Obligation to investigate and report*

If an entity with a reporting obligation suspects that a transaction is associated with the proceeds of crime or with offences covered by section 147a or section 147b of the Penal Code, further investigations shall be made in order to confirm or disprove the suspicion. This obligation also applies to employees of entities with a reporting obligation.

If the investigations fail to disprove the suspicion, the entity with a reporting obligation shall on its own initiative submit data concerning the transaction in question and the matters that have given rise to suspicion to the National Authority for Investigation and Prosecution of Economic and Environmental Crime in Norway (Økokrim). The entity with a reporting obligation and its employees shall, if so required, provide Økokrim with all essential data concerning the transaction and the suspicion.

Customers or third parties shall not be informed that data has been provided to Økokrim.

RELEVANT EXTRACTS FROM THE AUDITING ACT

Section 5-2. *Auditor's duties*

The auditor shall conduct the audit to the best of his judgement, including assessing the risk that the annual accounts may contain incorrect information as a result of irregularities or errors. The auditor shall ensure that he has an adequate basis for assessing whether infringements of laws and regulations of material significance for the annual accounts have taken place.

The auditors shall conduct his business in accordance with good auditing practice.

Entities subject to the statutory audit obligation shall permit auditors to undertake such examinations as an auditor finds necessary, and shall make available to the auditor such information as he requires for the execution of his tasks.

The auditor shall in writing draw the following matters to the attention of the management of entities subject to the statutory audit obligation:

1. deficiencies in regard to the duty to produce a proper and clearly set out record and documentation of accounting information,
2. errors and deficiencies in the organisation and control of its asset management,
3. irregularities and errors that may lead to incorrect information in the annual accounts,
4. circumstances that may lead to liability on the part of members of the board, corporate assembly, supervisory board or general manager,
5. the reason for any signature missing in confirmations given to public authorities in accordance with laws or regulations, and
6. the reason for any withdrawal from an assignment pursuant to section 7-1.

Section 6-1. *Auditor's duty of confidentiality*

Auditors and auditors' colleagues shall treat as confidential any information which comes to their knowledge in the course of their work unless otherwise prescribed by law or unless the person to whom the information relates has given his consent for the duty of confidentiality to be waived. Auditors and auditors' colleagues may not use such information in their own work or in the service or employment of others.

An auditor who reviews another auditor's audit assignment may in connection with this review be provided with information and documentation notwithstanding the other auditor's duty of confidentiality under the first paragraph. The duty of confidentiality under the first paragraph shall apply to a corresponding extent to the auditor who is conducting the review.

The provision of the first paragraph shall not prevent an auditor who is auditing the annual accounts of a subsidiary, an associated company or a joint venture from providing necessary information to the auditor who is auditing the annual accounts of the parent company, a company with significant influence, or partners who control the undertaking.

Notwithstanding the provision of the first paragraph or a confidentiality agreement, an auditor may make a statement, and present documentation regarding an audit assignment or other services, to the police when an investigation has been initiated in a criminal case. Furthermore, an auditor may inform the police if, in the course of an audit assignment or other services, circumstances emerge that give reason to suspect that a criminal act has been committed.

The duty of confidentiality shall remain in effect after the assignment has been concluded.

RELEVANT EXTRACT FROM THE NORWEGIAN TAX ACT

Section 6-22.

An expense will not be deductible if the payment is a compensation for an unlawful service in return, or if the payment is meant to achieve such service in return. The service in return will be unlawful either when it is inconsistent with general business ethics or administrative customs where it takes place or when it is inconsistent with general business ethics or administrative customs in Norway.

RELEVANT EXTRACT FROM THE TAX ASSESSMENT ACT

Section 3-13. *Duty of secrecy.*

1. Persons holding or carrying out or having held or carried out an office, position or assignment relating to the administration of tax assessment shall ensure that third parties do not gain access to or knowledge of information concerning a person's capital or income or other financial, business or personal circumstances with which they became acquainted in the course of their work. Persons taking up offices or positions or taking on assignments shall submit a written declaration that they are acquainted with and will comply with the duty of secrecy.

2. The duty of secrecy pursuant to subsection 1 shall not prevent information being disclosed

- a. to public authorities that may have use for the information in their work on income tax, customs and excise duties, indirect taxes, national insurance benefits, grants or contributions from the public purse,
- b. to public authorities for use in connection with the enforcement of legislation concerning the working environment, mandatory occupational pensions, the accounting obligation and accountants, the audit service or limited liability companies, or to public authorities that audit public entities, and to the Supervisory Council for Legal Practice for the purpose of supervision,
- c. to public authorities for statistical use,
- d. to public authorities where it is necessary to obtain further information,
- e. to publicly appointed commissions of inquiry,
- f. to the police or public prosecution authorities for use in criminal cases. If a criminal case concerns a contravention of provisions outside the administrative area of the Norwegian Tax Administration, information may only be disclosed if there are reasonable grounds for suspecting a contravention that might result in a penalty of more than six months' imprisonment. Information about gross and net income, gross capital and debt may be disclosed for use in sentencing or the awarding of compensation in such criminal cases.
- g. on request to the Norwegian National Authority for Investigation and Prosecution of Economic and Environmental Crime based on a report of a suspicious transaction issued pursuant to the Money Laundering Act.
- h. to others where it follows from statutory provisions that state or clearly assume that the duty of secrecy shall not preclude the provision of information, or
- i. to the execution and enforcement authorities in cases relating to attachment or seizure.
- j. in connection with the exchange of information (coordination) as provided for in the Act relating to the Register of the Reporting Obligations of Enterprises.
- k. to rural police authorities, execution and enforcement officers, police stations with civil administration of justice duties and district courts for use in cases concerning the division of estates, where the request for access concerns tax assessment information about the deceased and no formal decision has been made regarding the form of estate division. The same applies to the spouse and heirs of the deceased (as defined in the Administration of Estates Act section 123 first and second paragraphs) provided that the person concerned can demonstrate that there is a reasonable need for access. When the form of estate division has been chosen, the party or parties representing the estate shall have the right of access.

3. Notwithstanding subsection 1, the Ministry can disclose information

- a. for research purposes in accordance with the Public Administration Act section 13 d,
- b. as testimony or documentary evidence in legal proceedings.

4. If the information is disclosed pursuant to subsection 2 or subsection 3 to a party who is not bound to secrecy under other legislation, the duty of secrecy under subsection 1 shall apply correspondingly to the recipient of the information. The provider of the information shall draw the recipient's attention to this. The information may, however, be used for the purpose for which it was disclosed.

The first paragraph shall apply correspondingly to information given pursuant to section 3-4.

5. The duty of secrecy does not include the contents of tax lists that shall be made available for public inspection pursuant to section 8-8, nor to subsequent changes to them.

6. The duty of secrecy does not preclude disclosure of the personal identity numbers of personal taxpayers or the organisation numbers of non-personal taxpayers, the names, addresses, tax class, stipulated net wealth and net income, income tax and other taxes to financial institutions (cf. the Financial Institutions Act), insurance enterprises (cf. the Act on Insurance Activity) and credit information enterprises. By credit information enterprise is meant an enterprise engaged in providing information to establish creditworthiness and financial solvency. The use of information by such enterprises shall follow the provisions of Act no 31 of 14 April 2000 relating to the processing of personal data. The Ministry may issue regulations supplementing this provision.

7. The duty of secrecy does not apply to information about amounts used to regulate the opening value of shares pursuant to the Taxation Act section 10-34.

8. The duty of secrecy pursuant to subsection 1 shall not preclude the granting to the joint body, pursuant to the Act relating to state contributions to the AFP early retirement scheme section 18, of electronic access to information about the gross earnings of employees involved in a collective early retirement scheme. The duty of secrecy shall apply correspondingly to the recipient of the information.

ANNEX 3 LIST OF PARTICIPANTS IN THE ON-SITE VISIT

Government Ministries and Agencies

- Eksportfinans
- Finanstilsynet (Financial Supervisory Authority)
- GIEK
- KOFA (Norwegian Public Procurement Complaints Board)
- Ministry of Labour
- Innovation Norway
- Ministry of Defence
- Ministry of Finance
- Ministry of Foreign Affairs
- Ministry of Government Administration, Reform and Church Affairs
- Ministry of Justice
- Ministry of Petroleum and Energy
- Ministry of Trade and Industry
- Norad (Norwegian Agency for Development)
- Norfund (Norwegian Investment Fund for Developing Countries)
- Nortrade
- Norwegian Defence Logistics Organisation
- Norwegian Government Pension Fund Global
- SKATTEETATEN (The Directorate of Taxes)
- Skatt Øst (Tax Region East)

Law enforcement authorities and Judiciary

- Økokrim
- Politiet (Norwegian Police)
- Riksadvokaten
- Borgarting Court of Appeal
- Eidsivating Court of Appeal

Private Sector

Private enterprises

- Representatives from six Norwegian companies

Legal profession and academics

- Norwegian Bar Association
- Representatives from two Norwegian law firms
- University of Oslo, Faculty of Law

Civil Society & Media

- Aftenposten
- Landsorganisasjonen (Norwegian Confederation of Trade Unions)
- Christian Michelsens Institutt
- Transparency International Norway

Business associations

- NHO (Confederation of Norwegian Enterprises)
- Norwegian Shipowners Association

Accounting and auditing profession

- Norwegian Association of Authorised Accountants (NARF)
- Revisorforeningen (Norwegian Institute of Public Accountants)

ANNEX 4 LIST OF ABBREVIATIONS, TERMS AND ACRONYMS

CPA	Criminal Procedure Act
CSR	Corporate social responsibility
FATF	Financial Action Task Force
GCPC	General Civil Penal Code
GIEK	Guarantee Institute for Export Credit
KOFA	Public procurement complaints board (in the Ministry of Government Administration and Reform)
MFA	Ministry of Foreign Affairs
MOJ	Ministry of Justice
MLA	Mutual legal assistance
MTI	Ministry of Trade and Industry
NHO	Confederation of Norwegian Business and Industry
NOK	Norwegian Krona
NORAD	Norwegian Agency for Development Cooperation
ODA	Official development assistance
OECD	Organisation for Economic Co-operation and Development
Økokrim	Norwegian National Authority for Investigation and Prosecution of Economic and Environmental Crime
SMEs	Small and medium sized enterprises
SOE	State-owned enterprise
TI	Transparency International
TIEA	Tax Information Exchange Agreements