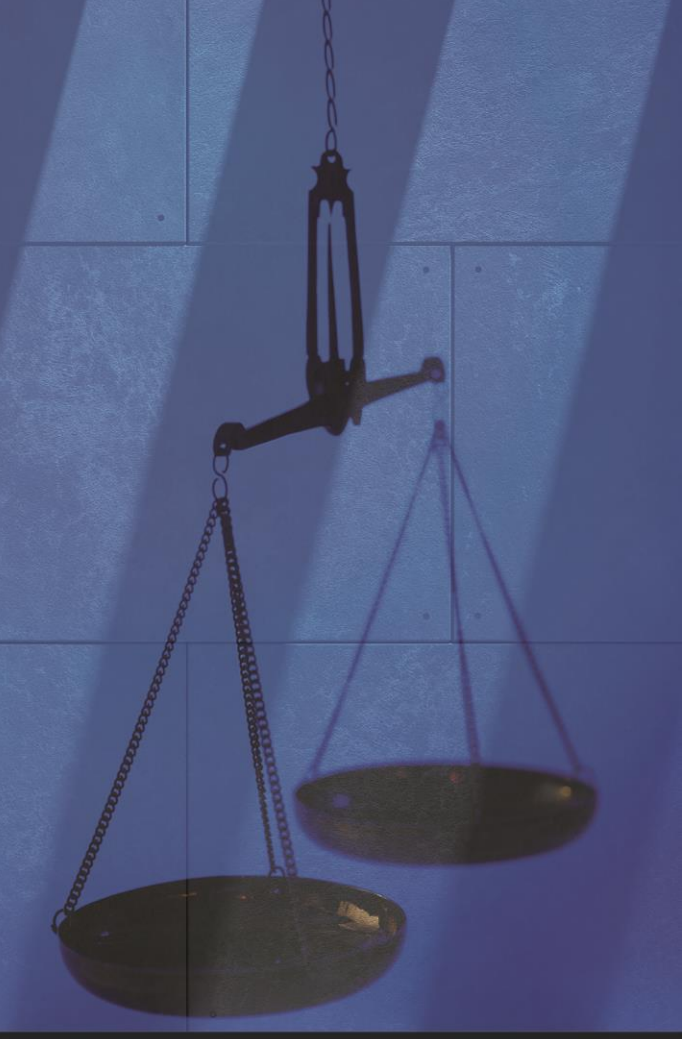

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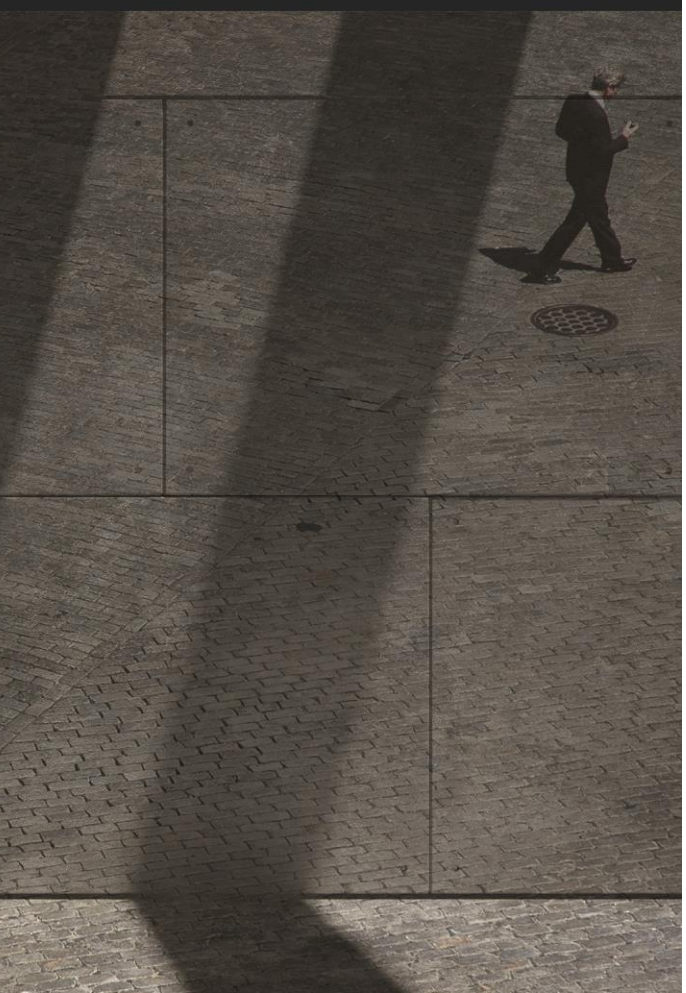

IMPLEMENTING THE OECD ANTI-BRIBERY CONVENTION

PHASE 4 TWO-YEAR FOLLOW-UP REPORT:

Norway

This report, submitted by Norway, provides information on the progress made by Norway in implementing the recommendations of its Phase 4 report. The OECD Working Group on Bribery's summary of and conclusions to the report were adopted on 16 October 2020.

The Phase 4 report evaluated and made 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 44 members of the OECD Working Group on Bribery on 14 June 2018.

Norway – Phase 4
Two-Year Written Follow–Up Report

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Summary and Conclusions by the Working Group

Summary of findings[1]

1. In October 2020, Norway presented its Phase 4 Written Follow-Up Report to the OECD Working Group on Bribery (Working Group). The report outlined Norway's efforts to implement the recommendations and to address the follow-up issues identified during its Phase 4 evaluation in June 2018. In light of the information provided, the Working Group concludes that Norway fully implemented three recommendations, partially implemented two recommendations, and did not implement eight recommendations. Overall, the Working Group considers that Norway has not shown sufficient progress in implementing the Phase 4 recommendations.

2. In Phase 4, the Working Group praised Norway for its overall legal framework to combat foreign bribery but noted that some remaining deficiencies could weaken enforcement. Notably, the Working Group expressed concerns that Norway's Penal Code allowed the prosecution of foreign bribery committed by its nationals only if the act was unlawful or "punishable" in the jurisdiction where it was committed. It was also concerned that limiting sanctions for foreign bribery offences committed abroad to those that would be available in the jurisdiction of the crime, would undermine the otherwise dissuasive nature of Norway's sanctions regime. Norway has successfully introduced amendments only with regard to the first issue.

3. Several other measures to respond to the Working Group's recommendations remain preliminary, including with regard to the calculation of fines and sanctions, the transparency of penalty notices, and the reporting obligations of auditors. The Working Group welcomes these preliminary efforts but notes that it will need to revert to them in future evaluations in order to assess progress, and encourages Norway to complete the work initiated.

4. The Working Group is also encouraged by ongoing institutional reforms in ØKOKRIM – Norway's law enforcement authority for the investigation and prosecution of foreign bribery –, which seems to be pointing to the right direction. The Working Group will continue to follow up these efforts to ensure that they have strengthened in practice Norway's capacity to enforce the foreign bribery offence.

5. In terms of enforcement, the Working Group noted in Phase 4 that Norway has actively enforced its foreign bribery laws. Two years later, the Working Group notes limited progress in Norway's enforcement efforts. Norway did not detect new allegations of foreign bribery since Phase 4. Norway also reports that the two foreign

[1] The evaluation team for this Phase 4 two-year written follow-up evaluation of Norway was composed of lead examiners from **Czech Republic** (Ms. Martina Chrástková, Senior Counsellor, International and Legal Department, Financial Analytical Office, and Ms. Kristína Sedláčková, Lawyer, Anti-Corruption Unit, Ministry of Justice) and **Denmark** (Mr. Flemming Christian Denker, International Anti-Corruption Consultant, and Mr. Kurt Jakob Willaredt, Deputy Chief Prosecutor, Office of the Director of Public Prosecution) as well as members of the **OECD Anti-Corruption Division** (Mr. Apostolos Zampounidis and Ms. Maria Xernou, Legal Analysts). See Phase 4 Procedures, paras 54 et seq. on the role of Lead Examiners and the Secretariat in the context of two-year written follow-up reports.

bribery investigations that were ongoing at the time of the Phase 4 evaluation were closed without an indictment. With respect to the additional foreign bribery allegation recorded in the Matrix[2] since Phase 4, which concerns foreign bribery by a legal person from another Party to the Convention, Norway has opened an investigation of money laundering.

6. The Working Group's summary and conclusions of Norway's implementation of the specific Phase 4 recommendations are presented below.

Regarding the detection of foreign bribery:

- *Recommendation 1 (a) – Not implemented*: In Phase 4, the Working Group recommended that Norway raise awareness of its embassy staff of foreign bribery and of their role in detecting and reporting foreign bribery allegations to the competent authorities. Norway reports that it updated the Guidelines for dealing with suspected financial irregularities in the Foreign Service in December 2018. However, the Guidelines apply to irregularities of funds managed by the Ministry of Foreign Affairs (MOFA) and do not cover allegations of foreign bribery committed by Norwegian nationals. The Working Group welcomes MOFA's announced plan to launch a new online course for embassy staff on corporate social responsibility, where foreign bribery will also be covered, and encourages Norway to continue undertaking similar efforts in a systematic way in the future.
- *Recommendation 1 (b) – Not implemented:* Norway has not taken measures to clarify whether and how a Supervisory Ministry should report foreign bribery allegations involving a state-owned or state-controlled enterprise (SOE), when the SOE in question does not disclose fully and promptly relevant information to law enforcement authorities. The issue could be resolved by relying on the Norwegian public officials' obligation to report criminal activity to law enforcement. However, as noted in Phase 3, the reporting obligation only applies to situations, which "could cause the employer, employee or the surroundings to suffer losses or damages"; this would likely not include foreign bribery.[3] Norway further mentions the Report St. 8 on "The state's direct ownership of companies – Sustainable value creation", which describes the framework in which the state exercises its ownership, including the state's principles for good corporate governance and the state's expectations from companies (published in November 2019). However, the Report does not specifically cover the reporting of foreign bribery allegations by a Supervisory Ministry to law enforcement in the absence of reporting by the SOE.
- *Recommendation 1 (c) – Partially implemented:* Norway has taken some steps to reinforce the FIU's efforts to review suspicious transaction reports (STRs) for matters related to foreign bribery. Serious economic crime, without explicit mention to corruption or foreign bribery, is referenced in the 2020 goals and priorities of the Director of Public Prosecutions, which also apply to the FIU, a practice followed at least since 2017. However, the Working Group found no

[2] The Matrix compiles allegations in the media of foreign bribery committed by individuals and companies from Parties to the Convention. It is updated and circulated to all Parties to the Convention quarterly

[3] Norway Phase 3 Report, para. 102

evidence in Phase 4 that this prioritisation translated into concrete action for the FIU with regard to foreign bribery. After the Phase 4, Norway updated its AML/CTF National Risk Assessment (NRA) to highlight, *inter alia*, foreign bribery and corruption risks for Norwegian companies operating abroad. While the update of the NRA may be helpful in drawing the FIU's attention to foreign bribery when reviewing STRs, the Working Group considers that further efforts (e.g. targeted awareness raising and training for FIU staff) are necessary for the full implementation of this recommendation.

- *Recommendation 1 (d) – Partially implemented:* The Phase 4 Report noted that Norway had made some efforts to enhance the capacity of reporting entities to detect foreign bribery in STRs. The impact of these efforts remains, however, as in Phase 4, unclear. The Working Group welcomes Norway's initiative to keep the FIU indicators on detecting corruption and foreign bribery updated and promote their use by the reporting entities. It notes, however, that the indicators alone have not proved sufficient to increase the detection of foreign bribery since Phase 4. Norway further reports that the FIU has allocated additional resources for the purpose of providing systematic and comprehensive feedback and guidance to reporting entities. However, Norway does not provide evidence that any of these measures have targeted specifically the detection of foreign bribery or corruption.

Regarding the amendments to the Penal Code:

- *Recommendation 2 (a) – Fully implemented:* The Working Group welcomes the enactment of Law 2020-06-19-81 by the Norwegian Parliament in June 2020. The law introduces significant amendments to Norway's Penal Code in response to the Phase 4 Report. According to the amended Penal Code, foreign bribery committed abroad is now exempt from the application of the dual criminality requirement set for the exercise of nationality jurisdiction. Accordingly, Norway may prosecute foreign bribery offences committed by its nationals abroad without regard to whether the act was unlawful or "punishable" in the jurisdiction where it was committed.
- *Recommendation 2 (b) – Not implemented:* In Phase 4, the Working Group recommended that Norway amend the Penal Code's provisions limiting sanctions for foreign bribery offences committed abroad to those that would be available in the jurisdiction where the crime occurred. Norway reports that it has taken no measures to amend Section 5(6) of the Penal Code.

Regarding the enforcement of the foreign bribery offence:

- *Recommendation 3 (a) – Fully implemented:* The Working Group welcomes the recruit of an additional investigator/prosecutor in the ØKOKRIM team dealing exclusively with corruption cases. Norway also reports that, since Phase 4, ØKOKRIM has introduced an institutional reform to allow for more flexibility in the allocation of human resources depending on the needs and caseload of each of its teams. However, the Working Group notes that ØKOKRIM's operational activities have intensified during the past two years and the agency remains under significant public pressure regarding its efficiency. It will thus continue to follow up the situation to ensure that the newly introduced measures

have strengthened in practice ØKOKRIM's capacity to investigate and prosecute foreign bribery.

- *Recommendation 3 (b) – Not implemented:* With respect to the calculation of fines and confiscation, Norway reports that the corresponding Phase 4 recommendation is under consideration. The Ministry of Justice (MoJ) is currently reviewing whether it would be necessary for Norway to amend its legal framework on corporate liability to clarify the method of calculation of corporate fines and confiscation amounts in foreign bribery cases. With regard to confiscation measures specifically, a preliminary report was submitted to the MoJ in September 2020. The Working Group welcomes these initiatives. In the absence of concrete measures to respond to the recommendation, the Working Group will need to revert to the issue in future evaluations.
- *Recommendation 3 (c) – Not implemented:* Norway reports that this recommendation is also under consideration by the MoJ. In the meantime, Norway continues to make public only limited information about penalty notices. The Working Group noted in Phase 4 that more transparency in penalty notices is necessary to strengthen ØKOKRIM's accountability, enhance deterrence, and demonstrate that the sanctions imposed are effective, proportionate and dissuasive. While Norway did not conclude new foreign bribery cases since Phase 4, the absence of a change to Norway's legal framework and ØKOKRIM's practice denote that any future press release about penalty notices in foreign bribery cases will also contain limited information on how fines and confiscation amounts are calculated.
- *Recommendation 3 (d) – Not implemented:* Similar to recommendations 3(b) and 3(c), Norway reports that this recommendation is under consideration by the MoJ. Accordingly, the Working Group will need to revert to the issue in future evaluations.

Regarding the reporting obligations of external auditors:

- *Recommendation 4 (a) – Not implemented*: Since Phase 3, the Working Group has recommended that Norway expand the reporting obligations under the Auditing Act to require auditors to report any foreign bribery-related misconduct, and not only that of senior management, that may trigger corporate liability. Norway reports that it introduced Bill 37 LS regarding "Changes in the Auditing Act" to the Parliament in December 2019. If adopted, the Bill would abolish Section 5.2 of the Auditing Act, which currently restricts auditors' reporting obligation to misconduct of senior management. The Working Group welcomes the introduction of the Bill and encourages Norway to proceed with its adoption.
- *Recommendation 4 (b) – Not implemented:* Norway provides no evidence that it has considered introducing an explicit requirement for external auditors to report to law enforcement authorities, when appropriate, in Bill 37 LS.

Regarding public advantages:

- *Recommendation 5 – Fully implemented:* The Working Group welcomes the development of new and comprehensive guidelines by the Ministry of Trade,

Industry and Fisheries (MITOF) to support the implementation of Norway's public procurement legislation. The guidelines could help both raise awareness of the new public procurement rules and ensure consistency in their application. Norway is in the process of further updating the guidelines and considering the extension of the use of the Police Certificate of Conduct to legal persons. Norway also reports that it has undertaken efforts to raise awareness of the Police Certificate among potential bidders, as recommended by the Working Group in Phase 4. The Working Group encourages Norway to take further steps to ensure consistency among its rules on public procurement (e.g. the guidelines of the Norwegian Agency for Public and Financial Management could refer to the guidelines by the MITOF).

Dissemination of the Phase 4 Report

- ØKOKRIM issued a press release on its website while the Phase 4 on-site visit was under way. After the adoption of the Phase 4 Report in June 2018, ØKOKRIM tweeted about the report with a link to the OECD website. The Norwegian Government has also issued a press release about the Phase 4 Report together with a statement by the Minister of Justice and Public Security. Norway translated the Phase 4 Report's executive summary and recommendations into Norwegian, as requested by the Phase 4 Procedures.[4] Moreover, Norway reports sharing the Phase 4 Report directly with the relevant ministries responsible for implementing the Phase 4 recommendations.

Conclusion

- Based on these findings, the Working Group concludes that recommendations 2(a), 3(a) and 5 have been fully implemented; recommendations 1(c) and 1(d) have been partially implemented; and recommendations 1(a), 1(b), 2(b), 3(b), 3(c), 3(d), 4(a), and 4(b) have not been implemented. The Working Group invites Norway to provide an oral report on outstanding recommendation 2b) in one year (i.e. by October 2021). It also invites Norway to report back in writing within two years (i.e. by October 2022) on outstanding recommendations 1(c), 2(b), 3(b), 3(c), 3(d) and 4(a), as well as on the status of foreign bribery enforcement. As per the Phase 4 Procedures (para. 60), Norway may ask for additional recommendations to be re-assessed at that time. The Working Group will continue to monitor follow-up issues as case law and practice develop. Norway will also report to the Working Group on its foreign bribery enforcement actions in the context of its annual update.

[4] The Phase 4 Procedures, para. 50, provide that "the evaluated country should make best efforts to publicise and disseminate the report and translated documents, for example, by making a public announcement, organising a press event, and translating the full report into the national language. In particular, the evaluated country should share the report and translated documents with relevant stakeholders, particularly those involved in the evaluation".

Annex: Written Follow-Up Report by Norway

Instructions

This document seeks to obtain information on the progress each participating country has made in implementing the recommendations of its Phase 4 evaluation report. Countries are asked to answer all recommendations as completely as possible. Further details concerning the written follow-up process is in the Phase 4 Evaluation Procedure (paragraphs 51-59).

*Please submit completed answers to the Secretariat on or before **7 April 2020**.*

Name of country: Norway

Date of approval of Phase 4 evaluation report: 14 June 2018

Date of information: 7 April 2020, with additional information provided on 30 June, 15 September and 14 October 2020

PART I: RECOMMENDATIONS FOR ACTION

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

Text of recommendation 1(a): 1. Regarding the detection of foreign bribery, the Working Group recommends that Norway: a. Raise awareness of its embassy staff of foreign bribery and their role in detecting foreign bribery and reporting allegations to the appropriate authorities [2009 Recommendation III.i and iv; IX.ii and Annex I.A]
Action taken as of the date of the follow-up report to implement this recommendation: All employees in the Norwegian Foreign Service, including embassy staff, are required to report any suspected financial irregularities without undue delay to the Foreign Service Control Unit (FSCU), re. our Guidelines for dealing with suspected financial irregularities in the Foreign Service (updated 2018): https://www.regjeringen.no/en/dep/ud/about_mfa/dealing_irregularities/id2638099/. Reporting may also be done anonymously through a whistleblowing channel administered by the FSCU. The Foreign Service Control Unit will report relevant cases to the National

Authority for the Investigation and Prosecution of Economic and Environmental Crime (ØKOKRIM).

Raising awareness of foreign bribery is done in various ways. Before a posting, officials of the Norwegian Foreign Service are trained with relations to matters of anti-corruption and guidelines on how to prevent, detect and report corruption and other financial irregularities. This training is mandatory. In 2018, all employees of the Foreign Service were obliged to complete a mandatory e-course on the same issues. All inspections by the Foreign Service Control Unit of embassies and missions include all-staff seminars on the matter.

Update 30 June 2020

The Foreign Service's training, seminars and online courses for all employees, including embassy staff, are of general character and do not go into foreign bribery specifically. However, the responsible section in the Ministry of Foreign Affairs, Section for Culture and Business Relations, is about to launch a new online course on corporate social responsibility where foreign bribery will be covered. Unfortunately, as the course is currently not yet available, we do not have any material to share.

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

Text of recommendation 1(b):

1. Regarding the detection of foreign bribery, the Working Group recommends that Norway:

b. Clarify whether and how a Supervisory Ministry should report foreign bribery allegations involving an SOE when the SOE in question does not fully and promptly disclose relevant information to law enforcement authorities [2009 Recommendation IX.i and ii)]

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

In recommendation 1b, reference is made to the 2009 Recommendation IX i) og ii). The Ministry of Trade, Industry and Fisheries (the supervisory ministry for most of the state owned companies) assume that the recommendation calls for an assessment and description of whether and how the State as an owner, shall report suspected bribes to relevant law enforcement authorities.

In November 2019, the government presented *Report St. 8 (2019-2020), "The State's direct ownership of companies - Sustainable value creation"*. The full report (in Norwegian) can be found here:

https://www.regjeringen.no/no/dokumenter/meld.-st.-8-20192020/id2678758/.

In this report, the government's ownership policy is explained, including the framework for corporate governance, the State's corporate governance principles, expectations of companies with state ownership, as well as how the State as an owner follows up on the companies. The report mentions that state-owned companies are expected to work to prevent financial crime, such as corruption and money laundering. Reference is made to para 8.5.3 and 10.5 of the report.

Norwegian company law states that the Boards of Directors are responsible for the management of the companies. This is also reflected in the State's ownership principles. This applies in all areas, and implies, among other things, that it is the companies' Boards of Directors that are responsible for the reporting of suspected bribes to law enforcement authorities.

It is very rare/ unlikely that the State as an owner would have information about a company concerning alleged bribes committed by the company that is not publicly available. If the State as an owner was in possession of such information and aware that the company in question would not, or could not (e.g. because the company did not have such information), report this themselves, the State would report the information to the relevant law enforcement authorities.

How this should be done, would have to be considered on a case-by-case basis depending on the concrete circumstances. However, accessible channels for reporting to the authorities – as mentioned in the relevant parts of the 2009 Recommendation – is not a problem in this context.

Over the past 10-12 years, there has been *only one case* where it has been relevant for the Ministry of Trade, Industry and Fisheries to transmit information directly to ØKOKRIM. Against this background, the framework in the ownership policy and the established practice is considered satisfactory and adequate to follow up the risk associated with bribery / corruption in companies with state ownership.

Update 15 September 2020

In November 2019, the government presented Report St. 8 (2019-2020), "The State's direct ownership of companies - Sustainable value creation". The full report can be found in English here:

https://www.regjeringen.no/contentassets/44ee372146f44a3eb70fc0872a5e395c/en-gb/pdfs/stm201920200008000engpdfs.pdf

As mentioned above, Norwegian company law states that the Boards of Directors are responsible for the management of the companies. This is also reflected in the State's ownership principles. This applies in all areas, and implies, among other things, that it is the companies' Boards of Directors that are responsible for the reporting of suspected bribes to law enforcement authorities. The state (and its public officials) is not represented on the Board of Directors.

If the State as an owner was in possession of relevant information and aware that the company in question would not report this themselves, the practice would be that the State

report the information to the relevant law enforcement authorities. Information on how to report a criminal offence is easily available for example at ØKOKRIM's website. If clarification on the process should be necessary, it is possible to consult the head of the relevant teams at ØKOKRIM.

Against this background, the framework and established practice in the ownership policy and the publicly available channels of ØKOKRIM, is considered to be satisfactory and adequate in order to follow up the risk associated with bribery / corruption in companies with state ownership in Norway.

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

Text of recommendation 1(c):

1. Regarding the detection of foreign bribery, the Working Group recommends that Norway:

c. Reinforce the FIU's efforts to review STRs for matters potentially related to foreign bribery [Convention Article 7; 2009 Recommendation III.i]

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

In the national guidelines for fight against crime, serious financial crime, including corruption, has been given high priority for many years. As an example the Director of Public Prosecutions issues guidelines every year where serious economic crime is stressed as one of the areas the prosecuting authority should prioritise:

https://www.riksadvokaten.no/document/riksadvokatens-mal-og-prioriteringer-for-2020/

In its casework, the FIU has therefore prioritized projects and analyses related to bribery and corruption.

Both the automatic and manual review of the STRs focus on capturing these types of cases. Regarding matters related to foreign public officials, the FIU has had, among other cases, cases where intelligence products have been produced for the Norwegian Police Security Service.

Update 14 October 2020

The Norwegian AML/CFT authorities, including the FIU apply a risk-based approach. The risks are defined in the National Risk Assessment (NRA) and subsequently in the National Strategy for combatting AML and CFT. Foreign bribery is specifically mentioned in the NRA 2018 in relation to the corruption. Norway will publish a new NRA in the near future.

It should also be mentioned that the FIU is connected to the EU Commissions, FIU.net. This is a computer network that enables the exchange of information and cooperation between the FIUs in the European Union. This is a very useful tool for exchange of information concerning among other areas, foreign bribery and corruption. By being part of this network and hence the cooperation that it enables, the FIU is in a better position to both receive and disseminate information in relation to foreign crime.

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

Text of recommendation 1(d):

1. Regarding the detection of foreign bribery, the Working Group recommends that Norway:

d. Enhance the feedback and guidance provided by the FIU in order to help reporting entities better identify suspicious transactions that potentially could be tied to foreign bribery [Convention Article 7; 2009 Recommendation III.i]

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

In cooperation with The National cross-sectoral analysis and intelligence centre, NTAES, the Norwegian FIU has prepared indicator lists for suspicious transactions, for use by reporting entities under the Money Laundering Act, including financial institutions, payment institutions, real estate agents, etc. The indicator lists contain criteria that can be used to capture bribery and corruption, both nationally and internationally.

The lists are distributed to the different reporting entities. They are updated regularly. The FIU is currently responsible for distributing the indicator lists. A separate guidance for suspicious transactions potentially related to foreign bribery has not been prepared.

The FIU has also, together with the reporting entities, discussed, evaluated and supported the reporting agents' use of various screening solutions, used to capture transactions and suspicious circumstances related to this type of crime. In some cases, the FIU is also contacted directly by the reporting entities and will then provide guidance on specific cases and issues.

To conclude, the FIU is continuously working on enhancing the feedback and guidance to the reporting entities, including on how to detect suspicious transactions that could be linked to corruption and bribery.

Update 14 October 2020

Providing feedback and guidance to the reporting entities is an important part of the work of the FIU. The FIU has staff that is designated for these tasks. Currently there has also been allocated additional resources to the FIU to increase their efforts in this regard. The compliance officers are in contact with the private sector through the homepage of the

FIU; meetings with reporting entities and other stakeholders in the private sector; compliance hot-line; conferences; newsletters among other mechanisms. The FIU provides both national and international indicators to the reporting entities, and thus assist them in their work of detecting suspicious transactions related to all types of profit generating crime, including foreign bribery. The feedback and guidance is not only conducted on an ad hoc basis, but is part of a systematic and comprehensive approach. The supervisory authorities are important partner agencies in these efforts. The FIU and the supervisory authorities cooperate with the private sector to help improve STR reporting and by providing assistance and guidance on how to detect more complex transactions as related to for instance foreign bribery.

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

Text of recommendation 2(a):

2. Regarding the amendments to the Penal Code that came into force in 2015, the Working Group recommends that Norway:

a. Amend the Penal Code to ensure that it can prosecute foreign bribery offences committed by its nationals abroad without regard to whether the act was unlawful or "punishable" in the jurisdiction where it was committed [Convention Article 1, 2009 Recommendation, III.ii and V]

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

The legal department of the Ministry of Justice and Public Security has prepared a draft bill on amendments to the Penal Code, etc. (follow-up after the enactment of the new Penal Code), which follows up on the bill that was sent on public consultation during the period 25 May to 10 September 2018. The draft proposal was been sent to the Parliament (Stortinget) 3 April 2020, in order for the proposal to be considered by the Parliament in the spring session.

In the draft proposal, the MoJ maintains the proposals for amendments to section 5 of the Penal Code that clarifies that the Norwegian Penal code can be applied to cases of corruption and trading in influence (section 387- 389 in the Penal code) committed abroad to a broader extent than the current legislation allows.

An overview of the proposal and the handling of the case in the Parliament can be found here;

https://www.stortinget.no/no/Saker-og-publikasjoner/Saker/Sak/?p=79326

(Prop 66L (2019-2020) chapter 14 is about jurisdiction.)

If the bill is passed, the Norwegian Penal Code will apply to acts of corruption and trading in influence abroad, if one of the following conditions is met:

- the action was performed by a person who has Norwegian citizenship, resides in Norway or stays in Norway
- the action was taken by a person who, since the time of the action, has become a Norwegian citizen or has resided in Norway
- the action was taken by a person who, since the action, became a national or resident in another Nordic country and who resides in Norway
- the action was taken on behalf of a company registered in Norway, regardless of whether the person who performed the action is affiliated with Norway
- the action was taken on behalf of a foreign company which, after the action, has transferred its entire business to an enterprise registered in Norway

When these conditions are met, there is no requirement of the act being unlawful or "punishable" in the jurisdiction where it was committed.

We will keep the WGB updated on the progress of passing the bill, and notify the Secretariat if the situation is changed before the June plenary.

Update 30 June 2020

The amendments to the Penal code were adopted by law 2020-06-19-81 (attached), in force from 1 July 2020. The amendments are as follows:

Section 5, first paragraph, letter (c) (10) to new (12) shall read:

10.is considered a terror or terror-related act pursuant to Chapter 18 of the Penal Code, or is affected by sections 145 or 146,
11.is regarded as a solicitation of a criminal act pursuant to section 183 of the Penal Code or embedded presentation of a hateful statement pursuant to section 185 of the Penal Code, or
12.is regarded as corruption or trading in influence according to sections 387 to 389.

Section 5, third paragraph, shall read:
Paragraph 1, number 1, 2, 3, 6, 7, 8, except from section 145, 11 and 12 shall apply mutatis mutandis to actions taken by persons other than those covered by the first and second paragraphs, when the person resides in Norway and the act carries a maximum penalty of imprisonment for more than 1 year.

Section 5 fifth paragraph, shall read:
The criminal legislation also applies to acts committed abroad by persons other than those covered by the first to fourth paragraphs if the act carries a maximum penalty of imprisonment for a term of six years or more and is directed at someone who is a Norwegian national or domiciled in Norway – or carries a maximum penalty of imprisonment for a term of three years or more and is committed on behalf of a company mentioned in first part letter c or second part letter c.

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

Text of recommendation 2(b):

2. Regarding the amendments to the Penal Code that came into force in 2015, the Working Group recommends that Norway:

b. Modify the Penal Code's current provisions limiting sanctions for foreign bribery offences committed abroad to those that would be available in the jurisdiction where the crime occurred [Convention Article 3]

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

The provision in section 5, sixth paragraph of the Penal Code, stating that the penalty cannot exceed the highest statutory penalty for the corresponding act in the country in which it was committed, applies only if the act is also punishable at the place of action. This follows from the preparatory work to the Penal code, Ot. prp nr. 90 (2003-2004).

In cases where acts of corruption and trading in influence are not punishable at the place of action, but still can be prosecuted in Norway, the penalties in sections 387–389 of the Penal Code apply.

The reason behind the limitation in the sixth paragraph is that prosecution of acts committed on the territory of other states to some extent can be regarded as an exercise of sovereignty, cf. the preparatory work to the Penal Code, Ot prop 90 (2003–2004) page 404. Here, it is also stated;

> *"What will have a limiting effect in accordance with the draft legislation is the sentencing framework where the act was committed, and not the actual level of punishment. The extent to which this will affect sentencing in Norway must depend on a more specific assessment of reasonableness, as is the case based on the current legislation, cf. partial report V, page 50."*

The legal department of the MoJ is not working on any proposals for amendments to the provision in the sixth paragraph.

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

Text of recommendation 3(a):

3. Regarding the enforcement of the foreign bribery offence, the Working Group recommends that Norway:

a. Ensure that ØKOKRIM continues to make adequate resources available to its corruption teams in order to (i) maintain and further develop the professionalism and expertise that it has acquired in foreign bribery cases and (ii) investigate and prosecute foreign bribery allegations that arise [Convention Article 5; Commentary 27; 2009 Recommendation Annex I.D]

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

In the period following the evaluation report, ØKOKRIM's total investigative and prosecution resources have been strengthened, with an increase in the number of positions around 11 per cent. The resource situation of the teams responsible for corruption cases (The Corruption Team and the Fraud and Corruption Team) has been stable and partly increasing. Compared to the situation in June 2018, the Corruption team has been strengthened by one person-year.

In addition, the organization of the criminal proceedings at ØKOKRIM have undergone some adjustments, with a view to more efficient use of resources and strengthened competence development. To a greater extent than before, the case work is carried out across the established team structures. This organization allows for more flexible allocation of human resources, which, to a greater extent, can be adapted to the needs of the individual case. The experience so far is that this way of working, in addition to retaining the teams' special expertise, makes access to resources more robust and contributes to better use of the organization's overall competence. It also contributes to competence sharing and development across teams.

Corruption cases are generally given high priority at ØKOKRIM. This is in line with both Norway's international obligations and our national guidelines. The high priority given to corruption cases is fundamental both in deciding which cases ØKOKRIM are going to investigate, and when assessing how the investigation should be conducted in each case. The unit's budgets allow for flexibility and allow certain issues to be given special priority based on an individual assessment. This means, among other things, that an investigation can be given additional resources, for example if needed in particularly serious and extensive cases. Such resource allocation may be, for example, relevant in cases of corruption abroad, which will often involve investigation across borders, travel expenses etc.

In addition to its own corruption cases, ØKOKRIM also gives assistance to Norwegian police districts and other countries' authorities. Following the evaluation report in June 2018, ØKOKRIM has answered several letters rogatory concerning corruption. ØKOKRIM has also taken part in a so-called JIT (Joint Investigation Team) and taken over proceedings from another state (Transfer of proceedings) in cases concerning bribery

In summary, we believe that the statement in the evaluation report; *"ØKOKRIM's two anti-corruption teams receive fairly substantial resources for their cases"*, cf. section 77, is still valid. Investigation and prosecution of corruption cases is still a high priority at ØKOKRIM.

Update 30 June 2020

The professional area of the new recruit is investigation and prosecution. ØKOKRIM confirms that the two corruption teams have had sufficient resources to investigate and prosecute cases of foreign bribery since Phase 4.

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

Text of recommendation 3(b):

3. Regarding the enforcement of the foreign bribery offence, the Working Group recommends that Norway:

b. Clarify how fines and confiscation amounts are to be calculated in foreign bribery cases and ensure that these calculations result in dissuasive sanctions for both natural and legal persons [Convention Articles 3(1) and 3(3)]

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

In cases covered by the OECD's anti-bribery convention, fines will be, in practice, only a relevant sanction for legal persons, as natural persons normally will be sanctioned with imprisonment. The Penal Code's sections on liability of legal persons, point to different elements that should be taken into consideration when deciding whether a company should be punished. The same considerations also apply when the fine is to be calculated, see section 53 and 28 of the Penal Code. Other legal sources provide limited guidance.

In May 2018, the Ministry of Justice and Public Security issued a mandate to a specialist on the responsibility of legal persons in order to consider a revision of the rules on corporate responsibility and corruption. The mandate, in Norwegian, can be found here:

https://www.regjeringen.no/contentassets/fba213b980cc4f5d90ea9d45dafc0dc2/endelig-mandat8475392.pdf

In the introduction to the mandate, the following is stated:

"The report shall include an analysis of the rules on the responsibility of legal persons in sections 27 and 28 of the Penal Code, an assessment of whether there is a need for legislative amendments, as well as proposals for any legislative amendments. The aim is to promote the preventive effect of the rules and the implementation of Norway's international obligations within the criminal justice system, while safeguarding basic rule of law principles such as predictability and legal certainty. Within this framework, opportunities for developing responsibility of legal persons as a more flexible means of detecting and preventing offenses committed by companies, should also be considered."

The mandate points to certain issues that should be discussed in the report. One of the issues is of interest to recommendation 3 b):

"g) Calculation of fines

i. Under applicable law, corporations are fined, cf. section 27, third paragraph. In addition, enterprises may be subject to loss of rights and withdrawal. The guidelines for

the optional assessment of whether the enterprise should be punished in section 28 of the Penal Code also apply to the calculation of fines.

ii. Consideration should be given to whether more detailed legislation or guidelines for calculating fines against companies should be introduced, including provisions for calculating the amount of the fine. In this context, consideration will also be given to whether the potential impact of self-reporting and collaboration should be clarified. Consideration should also be given to the extent to which the financial situation of the parent company or of the group of companies should be taken into account in the survey."

Introduction of clearer norms for the calculation of fines could increase both the predictability and the effectiveness of the regulations. As there is reason to believe that it will take some time for new rules on corporate punishment to be in place, ØKOKRIM has been considering whether the unit should prepare its own guidelines for the use of corporate penalties, including related to the calculation of corporate fines. However, ØKOKRIM finds it pertinent to wait for the report before any initiatives will be taken on their part.

The deadline for the report is postponed to 14 April 2020. It remains to be seen whether it will propose changes that are in accordance with Recommendation 3b) in the evaluation report. We will provide more information on this, once the report is received.

Regarding *confiscation,* the rules in chapter 13 of the Penal Code are considered to be reasonably clear, although it may at times be challenging to determine the amount to be confiscated in corruption cases, especially as it is often difficult to determine the value of the service given in return for the bribe. In such cases, section 67, second paragraph, second sentence, of the Penal Code, stating that *"If the amount of the proceeds cannot be established, the amount shall be determined approximately",* will apply.

The *Penal Code Council* has been asked by the government to consider whether changes in the rules on confiscation of proceeds should be made. Their report is expected in June 2020. The mandate is available here;

https://nettsteder.regjeringen.no/straffelovradet/mandat/

Concerning the last part of the recommendation, *"ensure that these calculations result in dissuasive sanctions for both natural and legal persons",* reference is made to the 2014 Yara case, where a fine of NOK 270 million (app 27 mill euro) was given to the company, as well as confiscation of NOK 25 million (approx. 2,5 mill euro). Since then, there have not been any cases of foreign bribery or other corruption cases that would be comparable. However, ØKOKRIM is very conscious that the calculation of fines and confiscation in corruption cases should reflect the seriousness and potential profit derived from such crime. It is also important that the sanctions are dissuasive and contribute to prevent this kind of crime.

Update 30 June 2020

The report is further delayed, partly due to the covid-19 situation, and will probably not be ready until after the summer holiday. When received, it will be sent on a public consultation.

The report by the Penal Code Council will be presented on 15 September 2020.

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

Text of recommendation 3(c):

3. Regarding the enforcement of the foreign bribery offence, the Working Group recommends that Norway:

c. Publish more extensive information on how fines and confiscation amounts are calculated in concluded foreign bribery cases [Convention Articles 3(1). and 3(3)]

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

In Norway, court proceedings and court decisions are normally open to the public. At the website www.lovdata.no most court decisions are also published. Judgments may also be obtained by addressing the court in question. However, foreign bribery cases against legal person are often concluded by a penalty notice.

The relevant rules for publication of penalty notices are discussed below, under recommendation 3 d), In practice, ØKOKRIM publishes information about all its penalty notices by a press release, where some of the elements that have been taken into particular account in calculating the fine are also mentioned. The press releases can be found at ØKOKRIM's website, see as an example the press release in the Yara case:

https://www.okokrim.no/forelegg-til-yara-paa-295-millioner-kroner.5990608-411472.html

Since ØKOKRIM has not issued any penalty notices (fines) covered by the OECD Anti-Bribery Convention since the publication of the 2018 evaluation report, cf. above, it has not yet been relevant to consider publishing *more extensive* information than previously, as specified in the recommendation.

Regarding the reasoning behind penalty notices in general, the tradition in Norway is that no further reasoning is provided for the calculation of the fine or the confiscation amount in the penalty notice. It is only in a potential subsequent judgment that the calculations are made evident. Changes to this practice will most probably require an amendment to section 256 of the Criminal Procedure Act (on the content of a penalty notice)).

This is also an issue that may be considered in the report on responsibility of legal persons mentioned above. The mandate states;

"i) Publication of penalty notices and decisions to drop cases against legal persons

i. Most criminal cases against legal persons are settled by penalty notices. In accordance with applicable law, penalty notices are not public in the same way as a judgment. The same goes for decisions to drop a case.

ii. It should be considered whether penalty notices and decisions to drop cases against legal persons should be reasoned and published to a greater extent than today and how this can be done. A greater degree of publicity about penalty notices and closure decisions may provide greater predictability regarding the level of fines and the exercise of discretion. It may also provide greater opportunity to review the prosecution's discretion."

Even though it is not expected that the report will contain proposals relevant for publishing information *in already closed cases*, this report will be of importance also when it comes to recommendation 3 c).

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

Text of recommendation 3(d):

3. Regarding the enforcement of the foreign bribery offence, the Working Group recommends that Norway:

d. Make public, where appropriate and in conformity with any applicable laws, as much information as possible about accepted penalty notices.

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

The submissions under recommendation 3c) are also relevant to recommendation 3d), and actions mentioned above will therefore also be relevant here, including the reference to the report on the responsibility of legal persons.

The issuing and possible adoption of a penalty notice, is in principle subject to the duty of confidentiality, cf. Section 23 of the Police Register Act. Certain exceptions apply regarding disclosure of information to the public. In addition, the press may be given access to pending cases when the conditions in the instructions for the prosecuting authority section 16-5, second paragraph, are fulfilled. In closed criminal cases, the press may be given access to the penalty notice in accordance with section 27-2 third paragraph of the Police Register Regulations. An element to be taken into consideration when deciding whether the press should be allowed access to a penalty notice is whether the case is publically known and of interest to the general public. This will often be the case with penalty notices issued to legal persons in foreign bribery cases.

ØKOKRIM practices a high degree of publicity in accordance with the aforementioned regulations. Many of the cases dealt with by ØKOKRIM are of general interest and information about penalty notices are therefore regularly published on their website. In addition, the press is normally given access to both issued and accepted penalty notices upon request.

Section 33 of the Police Register Act provides a basis for access to information for research purposes. Recently, at the request of researchers at the Norwegian School of Economics, the Director of Public Prosecutions decided to give access to five penalty notices issued by ØKOKRIM regarding corruption and trading in influence. This is also assumed to be relevant in relation to recommendation 3 letter d).

Finally, it should be mentioned that the Director of Public Prosecutions has issued guidelines on access to documents in criminal cases for others than the parties to the case, cf. Series 3/2017. This has contributed to a greater degree of publicity in criminal cases. The guidelines clarify both the current legal basis and the relevant considerations that apply. The media often refers to these guidelines when requests for access to documents are made. The guidelines can be found here:

https://www.riksadvokaten.no/document/veileder-om-innsyn-i-straffesaksdokumenter-for-andre-enn-sakens-parter/

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

Text of recommendation 4(a):

4. Regarding the reporting obligations of external auditors, 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) [Phase 3 Recommendation 4.a; 2009 Recommendation III.iv, v and X.B.iii]

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

Reference is made to Proposal 37 LS (2019-2020), a proposal for a new auditing act, that was submitted to the Parliament on 13 December 2019. This proposal addresses both recommendation 4a) and b).

An overview of Parliament's handling of the matter and the relevant documents can be found here:

https://www.stortinget.no/no/Saker-og-publikasjoner/Saker/Sak/?p=78166

The bill can be found here:

https://www.regjeringen.no/no/dokumenter/prop.-37-ls-20192020/id2682333/?ch=29

The Ministry of Finance, who is in charge of the relevant legislation, would like to point out that section 40 in the WGB's evaluation report on Norway, states that the auditor is

obliged, in accordance with *good auditing principles*, to report to the company all matters that could have a material impact on the financial statements. This includes circumstances that may cause the legal person to be held liable.

Section 9-4 third paragraph of the bill in prop. 37 LS (2019-2020) states that the auditor must follow good auditing principles. An important source of good auditing principles is the international auditing standards, including ISA 240, mentioned by the working group.

Furthermore, section 9-5 of the proposal, states that the auditor must communicate all matters that the Board of Directors should be made aware of in order to fulfill its responsibilities and duties, including the company's breaches of the accounting rules and breaches of other legal requirements.

Recommendation 4a) will be complied with by the Bill, which is now being considered by the Storting.

Update 15 September 2020

The bill will be followed up by the Parliament in autumn 2020.

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

Text of recommendation 4(b):

4. Regarding the reporting obligations of external auditors, the Working Group recommends that Norway:

b. Consider including an explicit requirement to report to law enforcement authorities, when appropriate, in the draft amendment to the Auditing Act [2009 Recommendation X.B.v)]

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

With regard to Recommendation 4b), the Ministry of Finance points out that the auditor's reporting to relevant authorities has been addressed both in NOU 2017:15 section 12.3 and in Prop. 37 LS (2019-2020) section 12.3. During the public hearing of the NOU it has not been argued that auditors should be subject to a *general* reporting obligation to law enforcement authorities on suspicion of criminal matters.

In accordance with Section 25 of the Money Laundering Act, the auditor has a duty to investigate when he/she discloses circumstances that may indicate that funds are linked to money laundering or terrorist financing. According to section 26 of the Act, the auditor has a duty to report this to ØKOKRIM if, on closer examination, there are circumstances which give grounds for suspicion of money laundering.

Section 25. Duty to conduct examinations

(1) If obliged entities detect circumstances which may indicate that funds are associated with money laundering or terrorist financing, further examinations shall be conducted.
(2) Further examinations shall always be conducted if circumstances are detected which are not consistent with the obliged entity's knowledge of the customer or the purpose and intended nature of the customer relationship, or if a transaction:
a)appears to lack a legitimate purpose;
b)is unusually large or complex;
c)is unusual in view of the customer's known pattern of business or personal transactions;
d)is made to or from a person in a country or area which does not have satisfactory measures to combat money laundering and terrorist financing;
e)is otherwise of an unusual nature.

Section 26. Duty to report. Duty to disclose. Waiver of liability
(1) If, after further examinations, there are circumstances giving grounds for suspicion of money laundering or terrorist financing, obliged entities shall submit information to Økokrim [the FIU] on such circumstances. Obliged entities shall submit any other necessary information at the request of Økokrim, irrespective of whether the obliged entity has submitted information pursuant to the first sentence of its own volition
[…]

How the auditor should specifically deal with the suspicion of money laundering is described in more detail in the FSA's circular 15/2019. The Ministry also refers to Prop. 40 L (2017–2018) section 3.3.7.1 that stating that *"for all practical purposes, reporting agents can assume that all dealings with proceeds from criminal acts are money laundering."* Hence, the threshold for the auditor to conduct investigations and report under the Money Laundering Act, is very low.

In the proposed new Auditor Act, Prop. 37 LS (2019-2020), the auditor is considered "a public trust officer", which means, among other things, that the auditor has an important task in the prevention and detection of financial crime, see section 9-1 of the Bill. In order for the auditor to be able to perform this role, it is important that the client share information with the auditor. The auditor is therefore subject to rules of confidentiality. Rules on confidentiality must be balanced against the rules on reporting to relevant authorities.

If the auditor suspects financial crime, the auditor is obliged to act, for example, by addressing the issue with the company in accordance with the rules in section 9-5 and possibly consider withdrawing according to section 9-6. Good auditing practice also requires that the auditor handle suspected financial crime in a responsible manner. This could for example mean addressing the issue to the relevant authorities. According to section 10-1 second paragraph of the proposed act, reporting of suspicion of a criminal act will not constitute a breach of confidentiality.

The Ministry of Finance therefore considers the auditor to be subject to sufficient rules on reporting to relevant authorities.

Update 15 September 2020

The Ministry of Finance reports that the question of auditors' duty to report criminal offences – including foreign bribery – was considered during the discussions on the bill 37 LS Section 12.3.

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

Text of recommendation 5:

5. Regarding public advantages, the Working Group recommends that Norway raise awareness of the new public procurement rules, including the use of the Police Certificate of Conduct, and seek to ensure that contracting agencies apply the rules relevant for debarment for foreign bribery with the utmost diligence and professionalism [2009 Recommendation XI.i]

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

The new public procurement rules have been in force since 1 January 2017. The Ministry of Trade, Industry and Fisheries is responsible for the legislation on public procurement. The Ministry has issued general guidelines on the procurement legislation, including a chapter on exclusion. The Ministry's guidelines are available here:

https://www.regjeringen.no/no/dokumenter/veileder-offentlige-anskaffelser/id2581234/.

The chapter on exclusion (chapter 36) provides buyers with the necessary background information for applying the exclusion grounds in a correct and careful manner, including in the situation where an economic operator has been involved in bribery. Para 36.9 describes the use of Police Certificates of Conduct.

The Ministry is currently in the process of updating the general guidelines, including the chapter on exclusion. The Minstry also intends to update the guidelines on the rules applicable to the use of the Police Certificates of Conduct, in order to raise awareness of the possibility of requesting Police Certificates of Conduct for businesses, and not just for individuals.

Further, the Norwegian Digitalisation Agency, via their department of public procurement, has issued guidelines on how to fight corruption in public procurement:

https://www.anskaffelser.no/innkjopsledelse/samfunnsansvar/korrupsjon/hvordan-forebygge-korrupsjon

Update 15 September 2020

The Ministry of Trade, Industry and Fisheries reports that the guidelines explicitly mentions the use of police certificates as documentation under section 36.9.2. The text explains which criminal offences the police certificate shall be used to prove the absence

of, and how to proceed in order to get a police certificate. This section was added after the on-site visit by the evaluators in January 2018.

Exclusion and use of police certificates is also regularly being discussed in different training sessions, seminars and lectures arranged by the Norwegian Agency for Public and Financial Management (DFØ – formerly known as the Digitalisation Agency), i.e. when they give lessons on Ethics and Procurement. The agency also contributes with best practice and experience in order to raise awareness on the procurement process. Anskaffelser.no has a link to the ministry's guidelines in relevant sections; where this is not the case, it is not a matter of inconsistency or a risk of inconsistency. When updating their website anskaffelser.no, the Agency will include a link to the guidelines on police certificates. Regarding their own procurement, the agency seeks to use their own guidelines and tools available, in order i.e. also to get experience and optimise the guidelines.

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

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

Regarding Part II, countries are invited to provide information with regard to any follow-up issue identified below <u>where there have been relevant developments since Phase 4</u>. Please describe/include any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate.

6. The Working Group will follow-up on the issues below as case law, practice, and legislation develop:

Text of issue for follow-up 6(a):

a. Steps Norway has taken to enhance the predictability of (i) penalty notices, (ii) mitigating factors, (iii) self-reporting, (iv) the calculation of sanctions; and (v) liability of legal persons for the acts of related and unrelated intermediaries.

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

Reference is made to the answers to recommendation 3 b)-d)

Text of issue for follow-up 6(b):

b. Whether Norway is able to effectively sanction companies that use intermediaries, including subsidiaries, to commit foreign bribery on their behalf.

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

There has been no new cases relevant to this matter.

Text of issue for follow-up 6(c):

c. Further developments in whistleblower protection, both because there is apparently a need for continued progress and because elements of Norway's existing whistleblower protection framework could serve as a model for other countries.

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

The rules on whistleblower protection in chapter 2A of the Working Environment Act have been amended. The new rules have been in force since 1 January 2020.

The amendments are intended to contribute to a clearer and more predictable regulatory framework and to strengthen the situation for the whistle blowers, and make it easier for businesses to handle notifications in a good way.

The most significant changes are the clarification of the terms "critical conditions" and "retaliation" respectively, and that the requirement of "proper procedure" has been replaced by a new provision that describes how employees should proceed when giving notice. Furthermore, a new provision has been adopted on the employer's duty of activity, and clarified that the employer's notification routines must describe the employer's case processing upon receipt, processing and follow-up of notifications.

Chapter 2 A. Whistleblowing

Section 2 A-1. The right to report censurable conditions at the undertaking
(1) An employee has a right to report censurable conditions at the employer's undertaking. Employees hired from temporary-work agencies also have a right to report censurable conditions at the hirer's undertaking.

(2) Censurable conditions means conditions that are in violation of the rule of law, written ethical guidelines for the undertaking or ethical norms to which there is a broad acceptance in society, for example, conditions that may involve:
a) danger to life or health,
b) danger to climate or the environment,
c) corruption or other financial crime,
d) abuse of authority,
e) irresponsible working environment,
f) breach of personal data security.

(3) Statements regarding conditions that only concern the employee's own working conditions are not considered whistleblowing pursuant to this chapter, unless the condition is covered by subsection 2.

Section 2 A-2. Procedure for whistleblowing

(1) An employee can always report internally:

a) to the employer or a representative of the employer,
b) in accordance with the undertaking's whistleblowing procedures,
c) in accordance with the duty to report,
d) via a safety representative, employee representative or lawyer.

(2) An employee can always report externally to a public supervisory authority or other public authority.

(3) An employee may report externally to the media or public in general if:

a) the employee is in acting in good faith concerning the contents of the report,
b) the report relates to censurable conditions that are of public interest, and
c) the employee first reported internally, or has grounds to believe that internal reporting will not be appropriate.

(4) The employer has the burden of proof that whistleblowing has occurred in violation of Sections 2 A-1 and 2 A-2.

Section 2 A-3. The employer's duty to act if whistleblowing occurs

(1) When censurable conditions at the undertaking have been reported, the employer must ensure that the report is adequately investigated within a reasonable period of time.

(2) The employer must particularly ensure that the whistleblower has a fully satisfactory working environment. If necessary, the employer shall ensure that suitable measures are initiated to prevent retaliation.

Section 2 A-4. Prohibition against retaliation

(1) Retaliation against an employee who reports censurable conditions pursuant to Sections 2 A-1 and 2 A-2 is prohibited. With regard to employees hired from temporary-work agencies, the prohibition shall apply to both employers and hirers.

(2) Retaliation means any detrimental action, practice or omission resulting from, or as a reaction to, the employee having reported the censurable conditions, for example:

a) threats, harassment, unfair discrimination, social exclusion or other improper conduct,
b) warning, change in work duties, reassignment or downgrading,
c) suspension, dismissal, summary discharge or disciplinary measures.

(3) Subsection 1 applies correspondingly in the event of retaliation against an employee who signals that the right to report will be used, for example, by providing information.

(4) If an employee presents information that provides grounds to believe that retaliation has taken place, the employer must prove that no such retaliation has in fact taken place.

Section 2 A-5. Damages and compensation for breach of the prohibition against retaliation
(1) In the event of breach of the prohibition against retaliation, an employee may claim damages and compensation without regard to guilt on the part of the employer or hirer.

(2) Damages shall be determined at an amount that is reasonable based on the arrangement between the parties, the nature and severity of the retaliation and the circumstances in general. Compensation shall cover financial loss resulting from the retaliation.

Section 2 A-6. Obligation to prepare procedures for internal whistleblowing
(1) Undertakings that regularly employ five or more employees are obligated to have procedures for internal whistleblowing. Undertakings with fewer employees must also have such procedures if the conditions at the undertaking so warrant.

(2) The procedures must be prepared in connection with the undertaking's systematic health, safety and environmental work, cf. Section 3-1, and in cooperation with the employees and their representatives.

(3) The procedures shall not limit the employees' right to report.

(4) The procedures must be in writing and, at a minimum, include:
a) encouragement to report censurable conditions,
b) procedure for whistleblowing,
c) the employer's process for receiving, processing and following-up reports.

(5) The procedures shall be easily accessible to all employees at the undertaking.

Section 2 A-7. Duty of confidentiality in connection with external whistleblowing to public authority
(1) When supervisory authorities or other public authorities receive an external report concerning censurable conditions, any person who performs work or services for the body receiving such a report shall be obliged to prevent other persons from gaining knowledge of employee names or other information identifying employees.

(2) The duty of confidentiality shall also apply in relation to parties to the case and their representatives. Sections 13 to 13e of the Public Administration Act shall otherwise apply correspondingly.

Text of issue for follow-up 6(d):

d. Norway's continuing enforcement of the foreign bribery offence, especially *vis-a-vis* state-owned enterprises.

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

There have been no new cases relevant to this matter.

Text of issue for follow-up 6(e):

e. Norway's use of investigative tools, particularly with regard to tracing money internationally, forensic audit and the impact of the new rules on enhanced electronic surveillance techniques.

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

ØKOKRIM strives continually to be at the forefront of investigative techniques and make full use of the available tools and methods, and to share experience and best practice across the organisation. This includes the use of enhanced electronic surveillance techniques, and the tracing of flows of crypto-currencies. ØKOKRIM also makes extensive use of the available international cooperation mechanisms.

Text of issue for follow-up 6(f):

f. The application of the money laundering offence based on a predicate offence of foreign bribery as Norway transposes the EU Fourth AML Directive.

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

There have been no new cases relevant to this matter.

Text of issue for follow-up 6(g):

g. Whether the availability of "self-cleaning" measures in Norway's public procurement rules influences the application of corporate liability in future cases.

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

There has been no new cases relevant to this matter.

PART III: FOREIGN BRIBERY AND RELATED ENFORCEMENT ACTIONS SINCE PHASE 4

Foreign bribery and related enforcement actions since Phase 4
Please provide information on:
- The foreign bribery investigations and prosecutions mentioned in paragraph 14 of the Phase 4 Report; and
- The foreign bribery cases in the Matrix extract here attached.
Please update the information contained in these documents and add information on any additional investigations underway or terminated since Phase 4.
Information may be provided below or in a separate document.

Action taken as of the date of the follow-up report:

At the time of the Phase 4 Report, two investigations were identified as still ongoing in paragraph 14; cases identified as ABC and XYZ.

The XYZ case has since been identified in the Matrix. The investigation was opened in 2017, and closed in January 2019 because of insufficient evidence for pursuing the case against the natural persons in Norway. The case against the legal person in Norway would have required corresponding corporate liability for legal persons for corruption offenses in the recipient country, which was not the case at the time of the alleged offences.

The ABC case was opened in early 2018 after a transfer of proceedings from another state, and closed in June 2019. Again, this case was closed due to insufficient evidence against natural persons in Norway, and the absence of corresponding corporate liability for corruption offenses in the recipient country.

Following the amendment to the Penal Code in June 2020, referred to under recommendation 2 a), there no longer is a dual criminality requirement for corporate liability in cases of foreign bribery.

PART IV: DISSEMINATION OF EVALUATION REPORT

Please describe the efforts taken to publicise and disseminate the Phase 4 evaluation report:

The Phase 4 evaluation report was published at the governments website in June 2018, regjeringen.no, followed by a press release;

https://www.regjeringen.no/no/aktuelt/oecd-evaluering-av-norge-under-anti-bestikkelseskonvensjonen/id2605791/

ØKOKRIM published a case about the on-going evaluation at their website during the on-site visit and tweeted about the report with a link to OECDs press release in June 2018.

https://www.okokrim.no/evaluerer-norges-antikorrupsjonsarbeid.6085389-411472.html

Update 15 September 2020

The report was also sent to all relevant ministries, and the summary and recommendations was translated to Norwegian and published together with the report at the OECD website.

http://www.oecd.org/corruption/anti-bribery/Norway-Phase-4-Report-Extracts-NO.pdf