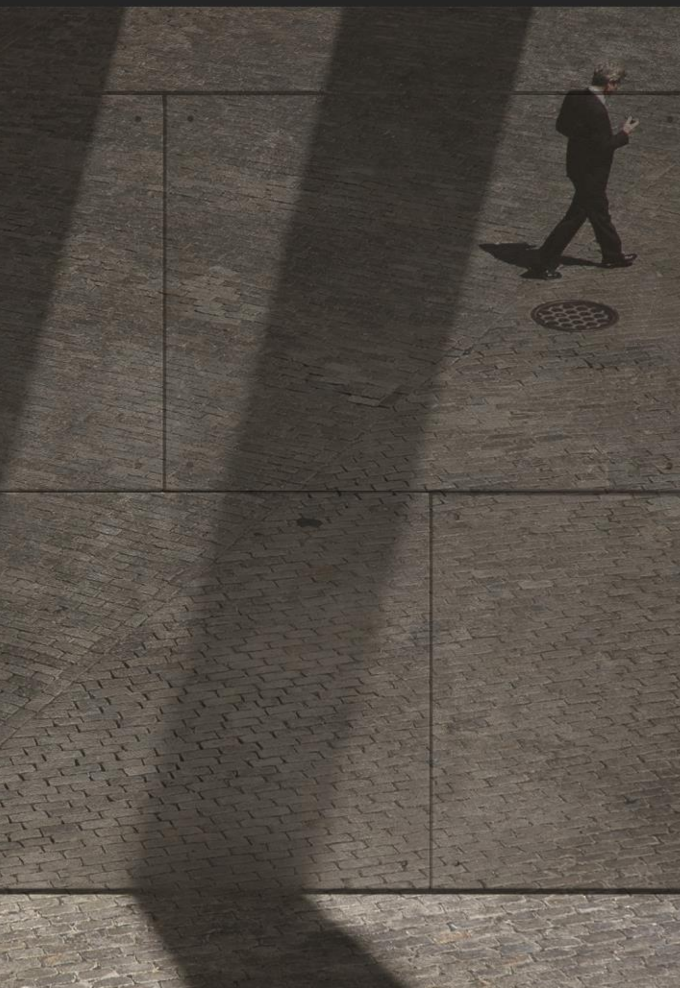

Mise en œuvre de la Convention de l'OCDE sur la lutte contre la corruption

Rapport de suivi écrit de Phase 4: Norvège

Norvège – Phase 4
Rapport de suivi écrit après deux ans

Ce document, soumis par la Norvège, fournit des informations sur les progrès réalisés par la Norvège dans la mise en œuvre des recommandations de son rapport de Phase 4. Le résumé et les conclusions du rapport du Groupe de travail de l'OCDE sur la corruption ont été adoptés le 16 octobre 2020.

La Phase 4 a évalué et formulé des recommandations sur la mise en œuvre par la Norvège de la Convention de l'OCDE sur la lutte contre la corruption d'agents publics étrangers dans les transactions commerciales internationales et de la Recommandation de 2009 du Conseil visant à renforcer la lutte contre la corruption d'agents publics étrangers dans les transactions commerciales internationales. Le rapport de Phase 4 a été adopté par le Groupe de travail de l'OCDE sur la corruption le 14 juin 2018.

Ce document et toute carte qu'il peut comprendre sont sans préjudice du statut de tout territoire, de la souveraineté s'exerçant sur ce dernier, du tracé des frontières et limites internationales, et du nom de tout territoire, ville ou région.

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Phase 4 – Rapport de suivi écrit après deux ans

Résumé et conclusions[1]

1. En octobre 2020, la Norvège a présenté son rapport de suivi écrit après deux ans de Phase 4 au Groupe de travail de l'OCDE sur la corruption (« Groupe de travail »). Dans ce rapport, la Norvège met en évidence les efforts qu'elle a déployés pour mettre en œuvre les recommandations de Phase 4 qui lui ont été adressées et pour régler les questions devant donner lieu à un suivi soulevées en juin 2018 lors de son évaluation de Phase 4. À la lumière des informations communiquées, le Groupe de travail conclut que la Norvège a pleinement mis en œuvre trois recommandations, partiellement mis en œuvre deux recommandations et non mis en œuvre huit recommandations. Dans l'ensemble, le Groupe de travail estime que les progrès accomplis par la Norvège pour donner suite aux recommandations qui lui ont été adressées lors de la Phase 4 ne sont pas suffisants.

2. Au cours de la Phase 4, le Groupe de travail avait salué la Norvège pour son cadre juridique de lutte contre la corruption transnationale, tout en notant que certaines lacunes persistantes pouvaient affaiblir son action répressive. Il s'était notamment dit préoccupé par le fait que le code pénal norvégien n'autorisait les poursuites en cas d'acte de corruption transnationale commis par des ressortissants norvégiens que si l'acte en question était illégal ou « punissable » dans le pays ou territoire où il avait été perpétré. Il s'inquiétait en outre que les dispositions prévoyant que les sanctions applicables aux infractions de corruption transnationale commises à l'étranger ne sauraient excéder celles applicables dans le pays où l'infraction a été commise n'amoindrissent le caractère dissuasif du régime de sanctions norvégien. La Norvège n'est parvenue à apporter de modifications que sur le premier point.

3. Elle n'a pas encore complètement instauré plusieurs autres mesures visant à donner suite aux recommandations du Groupe de travail, concernant notamment le calcul du montant des amendes et des autres sanctions pécuniaires, la transparence des avis de sanction et les obligations de signalement incombant aux vérificateurs des comptes. Le Groupe de travail se félicite de ces efforts préliminaires mais note qu'il devra revenir dessus lors de futurs évaluations afin d'examiner les progrès accomplis à cet égard et invite la Norvège à achever les premiers travaux qu'elle a engagés sur ces questions.

4. Le Groupe de travail est également conforté dans ses vues par les réformes institutionnelles en cours au sein d'ØKOKRIM – l'autorité répressive norvégienne chargée des enquêtes et des poursuites en cas de corruption transnationale – qui

[1] L'équipe chargée de l'examen du rapport de suivi écrit présenté après deux ans au titre de l'évaluation de Phase 4 de la Norvège était composée d'examinateurs principaux de la **République tchèque** (Martina Chrástková, conseillère principale, service des affaires internationales et juridiques, bureau de l'analyse financière, et Kristína Sedláčková, juriste, unité anticorruption, ministère de la Justice) et du **Danemark** (Flemming Christian Denker, consultant anticorruption international, et Kurt Jakob Willaredt, adjoint au procureur général, bureau du directeur du parquet) ainsi que de membres de **la Division de lutte contre la corruption de l'OCDE** (Apostolos Zampounidis et Maria Xernou, analystes juridiques). Voir le document Phase 4 : Guide d'évaluation, aux paragraphe 54 et suivants relatifs au rôle des examinateurs principaux et du Secrétariat dans le cadre des rapports de suivi écrits après deux ans.

semblent aller dans le bon sens. Le Groupe de travail continuera de procéder à un suivi des efforts déployés pour assurer que ceux-ci ont renforcé, dans la pratique, la capacité de la Norvège à réprimer l'infraction de corruption transnationale.

5. S'agissant de l'action répressive, le Groupe de travail avait fait observer lors de la Phase 4 que la Norvège avait activement mis en œuvre sa législation sur la corruption transnationale. Deux ans après, le Groupe de travail note toutefois que la Norvège n'a guère progressé depuis sur le plan de son action répressive. Ainsi, elle n'a mis au jour aucune nouvelle allégation de corruption transnationale depuis la Phase 4. La Norvège indique en outre que les deux enquêtes portant sur des faits de corruption transnationale en cours au moment de la Phase 4 avaient été classées sans aucune mise en accusation. Quant à l'autre allégation enregistrée dans la matrice[2] depuis la Phase 4, mettant en cause une personne morale présumée s'être livrée à des actes de corruption transnationale dans un autre pays Partie à la Convention, la Norvège a ouvert une enquête sous le chef d'accusation de blanchiment de capitaux.

6. Les principales conclusions du Groupe de travail concernant la mise en œuvre, par la Norvège, des recommandations qui lui avaient été adressées lors de la Phase 4, sont présentées ci-après.

En ce qui concerne la détection de la corruption transnationale :

- *Recommandation 1 (a) – non mise en œuvre* : Durant la Phase 4, le Groupe de travail avait recommandé à la Norvège de mieux sensibiliser le personnel de ses ambassades à la corruption transnationale et à son rôle en matière de détection des actes relevant de cette infraction et de signalement des allégations de corruption transnationale aux autorités compétentes. La Norvège indique qu'elle a mis à jour, en décembre 2018, ses Lignes directrices relatives au traitement des soupçons d'irrégularités financières liés à des agents du service diplomatique. Ces Lignes directrices ne s'appliquent cependant qu'aux irrégularités concernant des financements gérés par le ministère des Affaires étrangères et ne couvrent pas les allégations de corruption transnationale visant des ressortissants norvégiens. Le Groupe de travail se félicite d'apprendre que le ministère des Affaires étrangères a annoncé son projet de lancer une nouvelle session de formation en ligne sur la responsabilité sociale des entreprises à l'intention du personnel des ambassades qui couvrira aussi la corruption transnationale et encourage la Norvège à continuer d'initier systématiquement des actions similaires à l'avenir.
- *Recommandation 1 (b) – non mise en œuvre :* La Norvège n'a pris aucune mesure pour préciser si et comment un ministère de tutelle doit signaler les allégations de corruption transnationale impliquant une entreprise publique lorsque cette dernière ne révèle pas intégralement et sans retard les informations pertinentes aux autorités répressives. La Norvège pourrait régler ce problème en recourant à l'obligation incombant à ses agents publics de signaler toute activité criminelle aux autorités répressives. Toutefois, comme on l'a vu lors de

[2] La matrice est une base de données dans laquelle sont compilées les allégations de corruption transnationale parues dans les médias, commises par des personnes physiques ou morales de pays Parties à la Convention. Elle est mise à jour et communiquée chaque trimestre à tous les pays Parties.

la Phase 3, les agents publics ne sont tenus de signaler que « les situations susceptibles, selon eux, de causer des pertes ou de porter préjudice à leur employeur, à un salarié ou à leur cadre d'activité »[3]. La Norvège mentionne en outre le Rapport n° 8 au Parlement sur l'État actionnaire et la création durable de valeur » (« *The state's direct ownership of companies – Sustainable value creation* ») qui présente le cadre dans lequel l'État exerce sa fonction d'actionnaire, notamment les principes de bonne gouvernance auquel il est tenu et ses attentes vis-à-vis des entreprises publiques (publié en novembre 2019). Cela étant, ce rapport n'aborde pas spécifiquement la question du signalement des faits de corruption transnationale aux autorités répressives par un ministère de tutelle dans les cas où les entreprises publiques ne les dénoncent pas d'elles-mêmes.

- *Recommandation 1 (c) – partiellement mise en œuvre :* La Norvège a pris certaines mesures en vue de renforcer les efforts déployés par sa CRF pour examiner les déclarations d'opération suspecte (DOS) dans les affaires liées à des actes de corruption transnationale. La lutte contre les infractions économiques graves, sans mention explicite de la corruption transnationale, fait partie des objectifs et priorités fixés au directeur du parquet pour 2020, ce qui vaut aussi pour la CRF, comme c'est le cas depuis 2017 au moins. Cela étant, lors de la Phase 4, le Groupe de travail n'avait trouvé aucun élément corroborant que cette priorité s'était traduite en action concrète de la part de la CRF en matière de corruption transnationale. Après la Phase 4, la Norvège a mis à jour son dispositif d'évaluation nationale des risques de blanchiment de capitaux et de financement du terrorisme, afin notamment de mettre l'accent sur les risques de corruption transnationale auxquels sont exposées les entreprises norvégiennes exerçant des activités à l'étranger. Si cette mise à jour peut aider à attirer l'attention de la CRF sur la corruption transnationale lors de l'examen des DOS, le Groupe de travail estime que la Norvège doit aller plus loin (par exemple cibler les actions de sensibilisation et de formation du personnel de la CRF sur cette question) pour que cette recommandation soit pleinement mise en œuvre.

- *Recommandation 1 (d) – partiellement mise en œuvre :* Les auteurs du Rapport de Phase 4 avaient relevé que la Norvège s'était efforcée, dans une certaine mesure, de renforcer les capacités des entités déclarantes à détecter des faits de corruption transnationale dans les DOS. Toutefois, l'impact de ces efforts reste flou, comme il l'était au moment de la Phase 4. Le Groupe de travail se félicite d'apprendre que la Norvège a lancé une initiative pour tenir à jour les indicateurs de détection de la corruption transnationale de la CFR et d'en promouvoir l'usage par les entités déclarantes. Il note cependant qu'à eux seuls, ces indicateurs n'ont pas suffi à renforcer la détection de la corruption transnationale depuis la Phase 4. La Norvège précise par ailleurs que la CRF a pris des mesures supplémentaires pour pouvoir faire parvenir systématiquement et exhaustivement ses commentaires aux entités déclarantes. Elle ne fournit cependant aucune donnée confirmant que ces mesures ont spécifiquement ciblé la détection de la corruption transnationale.

[3] Norvège : Rapport de Phase 3, paragraphe 97.

En ce qui concerne les modifications du code pénal :

- *Recommandation 2 (a) –mise en œuvre :* Le Groupe de travail salue la promulgation de la Loi n° 2020-06-19-81 en juin 2020 par le parlement norvégien. Ce texte apporte d'importantes modifications au code pénal norvégien faisant suite au Rapport de Phase 4. En vertu du code pénal modifié, l'exercice de la compétence fondée sur la nationalité n'est plus conditionné à l'application de l'obligation de double incrimination aux actes de corruption transnationale commis dans d'autres pays ou territoires. Dès lors, la Norvège peut poursuivre ses ressortissants qui se sont livrés à des actes de corruption transnationale, que ces actes soient illégaux ou « punissables » ou non dans le pays où ils ont été commis.
- *Recommandation 2 (b) – non mise en œuvre :* Lors de la Phase 4, le Groupe de travail avait recommandé à la Norvège de modifier les dispositions de son code pénal prévoyant que les sanctions frappant les infractions de corruption transnationale commises à l'étranger ne sauraient excéder celles applicables dans le pays où l'infraction a été commise. La Norvège fait savoir qu'elle n'a pris aucune mesure pour modifier l'article 5, alinéa 6, de son code pénal.

En ce qui concerne la répression de l'infraction de corruption transnationale :

- *Recommandation 3 (a) –mise en œuvre :* Le Groupe de travail se félicite d'apprendre qu'un enquêteur/procureur supplémentaire a été recruté au sein de l'équipe d'ØKOKRIM qui est exclusivement chargée des affaires de corruption. La Norvège précise en outre que depuis la Phase 4, ØKOKRIM a adopté une réforme institutionnelle visant à autoriser une allocation plus souple des ressources humaines en fonction des besoins et du nombre d'affaires de chacune de ses équipes. Quoiqu'il en soit, le Groupe de travail fait observer que les activités opérationnelles d'ØKOKRIM se sont intensifiées au cours des deux dernières années et que cet organisme reste soumis à une importante pression du public s'agissant de son efficacité. Le Groupe de travail continuera donc à effectuer un suivi de la situation pour s'assurer que les mesures adoptées depuis peu ont bien renforcé, dans la pratique, les capacités d'enquête et de poursuite d'ØKOKRIM dans les affaires de corruption transnationale.
- *Recommandation 3 (b) – non mise en œuvre :* En ce qui concerne le mode de calcul des amendes et du montant des mesures de confiscation, la Norvège déclare que la recommandation de Phase 4 correspondante est en cours d'examen. Le ministère de la Justice examine actuellement s'il est ou non nécessaire que la Norvège modifie son cadre juridique de responsabilité des personnes morales afin de clarifier le mode de calcul des amendes et du montant des mesures de confiscation dans les affaires de corruption transnationale. En ce qui concerne spécifiquement les mesures de confiscation, un rapport préliminaire a été présenté au ministère de la Justice en septembre 2020. Le Groupe de travail se félicite de prendre connaissance de ces initiatives. En l'absence de mesures concrètes donnant suite à cette recommandation, le Groupe de travail devra toutefois revenir sur cette question lors des futures évaluations.
- *Recommandation 3 (c) – non mise en œuvre :* La Norvège indique le ministère de la Justice examine aussi actuellement cette recommandation. Dans

l'intervalle, elle continue de ne rendre publiques que des informations limitées au sujet des avis de sanction. Lors de la Phase 4, le Groupe de travail avait noté qu'une plus grande transparence était nécessaire, s'agissant des avis de sanction, pour permettre à ØKOKRIM de mieux remplir son obligation de reddition de comptes, accentuerait l'effet dissuasif et démontrerait que les sanctions imposées sont efficaces, proportionnées et dissuasives. Alors que la Norvège n'a mené à son terme aucune nouvelle affaire de corruption transnationale depuis la Phase 4, l'absence de modification de son cadre juridique et d'évolution de la pratique d'ØKOKRIM indique que les futurs communiqués de presse relatifs aux avis de sanction rendus dans les affaires de corruption transnationale ne contiendront que des informations limitées sur le mode de calcul des amendes et du montant des mesures de confiscation.

- *Recommandation 3 (d) – non mise en œuvre :* Comme pour les recommandations 3(b) et 3(c), la Norvège déclare que le ministère de la Justice est en train d'examiner cette recommandation. Par conséquent, le Groupe de travail devra revenir sur cette question lors des futures évaluations.

En ce qui concerne les obligations de signalement incombant aux vérificateurs des comptes extérieurs :

- *Recommandation 4 (a) – non mise en œuvre* : Depuis la Phase 3, le Groupe de travail a recommandé à la Norvège d'élargir l'obligation de signalement prévue par la Loi sur la vérification des comptes, de manière à ce que les vérificateurs soient tenus de signaler tous les agissements répréhensibles relevant de la corruption transnationale (et pas uniquement ceux des membres de la direction de l'entreprise concernée) susceptibles d'engager la responsabilité de la personne morale. La Norvège fait valoir qu'elle a porté devant le parlement le projet de loi 37 LS portant modification de la Loi sur la vérification des comptes en décembre 2019. S'il est adopté, ce projet de loi abrogera l'article 5.2 de la Loi sur la vérification des comptes qui limite actuellement l'obligation incombant aux vérificateurs extérieurs au signalement des agissements répréhensibles commis par des membres de la direction des entreprises. Le Groupe de travail se félicite d'apprendre que ce projet de loi a été présenté et encourage la Norvège à en poursuivre le processus d'adoption.
- *Recommandation 4 (b) – non mise en œuvre* : La Norvège ne fournit aucun élément permettant de penser qu'elle a envisagé d'inscrire dans le projet de loi 37 LS portant modification de la Loi sur la vérification des comptes que les vérificateurs des comptes extérieurs sont explicitement tenus à une obligation de signalement aux autorités répressives.

En ce qui concerne les avantages octroyés par les pouvoirs publics :

- *Recommandation 5 – mise en œuvre :* Le Groupe de travail se félicite d'apprendre que le ministère de l'Industrie, du Commerce et de la Pêche élabore de nouvelles lignes directrices détaillées afin de soutenir la mise en œuvre de la législation norvégienne sur la passation des marchés publics. Ces lignes directrices pourraient contribuer à la fois à mieux faire connaître les nouvelles règles de passation des marchés publics et à en assurer une application cohérente. La Norvège est en train d'actualiser encore plus ces lignes directrices et d'étudier la possibilité d'étendre aux personnes morales le recours aux certificats de bonne conduite délivré par la police. La Norvège indique également qu'elle s'est efforcée de mieux informer les soumissionnaires potentiels de l'existence de ces certificats, comme le Groupe de travail le lui avait recommandé au cours de la Phase 4. Le Groupe de travail l'encourage à prendre des mesures supplémentaires pour assurer la cohérence de ses règles de passation des marchés publics (les lignes directrices de l'Agence de la gestion publique et financière pourraient ainsi mentionner celles du ministère de l'Industrie, du Commerce et de la Pêche).

Diffusion du Rapport de Phase 4

- ØKOKRIM avait publié un communiqué de presse sur son site web pour faire savoir que la mission sur place de Phase 4 était en cours. Après l'adoption du rapport de Phase 4 en juin 2018, ØKOKRIM avait publié sur Twitter un message faisant état de cette information, comportant un lien vers le site web de l'OCDE. Le gouvernement norvégien avait aussi publié un communiqué de presse relatif au Rapport de Phase 4, accompagné d'une déclaration du ministre de la Justice et de la Sécurité publique. La Norvège a fait traduire en norvégien le résumé et les recommandations figurant dans le Rapport de Phase 4, conformément aux dispositions contenues dans le Guide d'évaluation : Phase 4[4]. De plus, elle indique qu'elle a communiqué directement le Rapport de Phase 4 aux ministères concernés, chargés de mettre en œuvre les recommandations de Phase 4.

Conclusion

- Sur la base de ces travaux, le Groupe de travail conclut que les recommandations 2(a), 3(a) et 5 ont été pleinement mises en œuvre ; que les recommandations 1(c) et 1(d) ont été partiellement mises en œuvre et que les recommandations 1(a), 1(b), 2(b), 3(b), 3(c), 3(d), 4(a) et 4(b) n'ont pas été mises en œuvre. Le Groupe de travail invite la Norvège à lui présenter dans un an (en octobre 2021) un rapport oral sur la recommandation 2(b), à laquelle elle n'a pas encore donné suite. Il l'invite également à lui faire rapport par écrit dans deux ans (en

[4] Le Guide d'évaluation : Phase 4, prévoit, au paragraphe 50, que « le pays évalué fait tout ce qui est possible pour rendre public et diffuser le rapport et les documents traduits, par exemple au moyen d'une annonce publique, d'une conférence de presse, ou d'une traduction de l'intégralité du rapport dans la langue nationale. En particulier, le pays évalué donne à connaître le rapport et les documents traduits aux parties prenantes pertinentes, notamment celles qui ont participé à l'évaluation ».

octobre 2022) sur les recommandations 1(c), 2(b), 3(b), 3(c), 3(d) dg 4(a) auxquelles elle n'a pas encore donné suite, ainsi que sur la situation de la répression de la corruption transnationale. Comme le prévoit le Guide d'évaluation : Phase 4 (paragraphe 60), la Norvège pourra demander à ce moment-là une réévaluation la suite qu'elle aura donnée à ces recommandations. Le Groupe de Travail continuera d'évaluer les questions devant donner lieu à un suivi à mesure de l'évolution de la jurisprudence et de la pratique. La Norvège présentera également au Groupe de travail un rapport sur ses actions répressives dans le cadre de son point de situation annuel.

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 where there have been relevant developments since Phase 4. 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

www.oecd.org/corruption