Directorate for Financial and Enterprise Affairs

NORWAY: PHASE 2

FOLLOW-UP REPORT ON THE IMPLEMENTATION OF THE PHASE 2 RECOMMENDATIONS

APPLICATION OF THE CONVENTION ON COMBATING BRIBERY OF FOREIGN PUBLIC OFFICIALS IN INTERNATIONAL BUSINESS TRANSACTIONS AND THE 1997 REVISED RECOMMENDATION ON COMBATING BRIBERY IN INTERNATIONAL BUSINESS TRANSACTIONS

This report was approved and adopted by the Working Group on Bribery in International Business Transactions on 15 March 2007.

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SUMMARY AND CONCLUSIONS BY THE WORKING GROUP ON BRIBERY

a) Summary of Findings

1. Norway has made an impressive effort to implement the Working Group on Bribery's Recommendations in Phase 2, having satisfactorily implemented all of its Recommendations. Since the approval by the Working Group of the Phase 2 Report on Norway in April 2004, Norway has made particularly significant inroads on the Working Group's Recommendations in three major areas: enforcement, awareness-raising; and measures for detection.

2. Regarding enforcement, since Phase 2, Norway has prosecuted two cases involving the bribery of foreign public officials. In the first case the defendant company and an executive of the company received a penalty notice for a violation of section 276c of the Penal Code ("trading in influence"). Fines of NOK 20 000 000 (EUR 2.4 million) and NOK 200 000 (EUR 24 000) were imposed on the company and the executive respectively. In the second case three defendants were convicted of violating the predecessor to the current Penal Code offences of foreign bribery introduced in July 2003. These defendants were sentenced to imprisonment for periods of between ninety days conditional and 14 months (of which four months were conditional), and were ordered to cover part of the court costs. According to the reasons for judgement, delays in the investigation mitigated the sentences. This case has been appealed and is due to be re-tried in December 2006.

3. Significant measures have been undertaken to enhance the institutional framework for investigating and prosecuting cases of corruption, which should also enhance the enforcement of the Penal Code offences of bribing a foreign public official. For instance the Corruption Team at ØKOKRIM (the Norwegian National Authority for Investigation and Prosecution of Economic and Environmental Crime) has been permanently assigned a police solicitor, and all local police districts have established multidisciplinary economic crime sections, which will be closely monitored by the Ministry of Justice, Police Directorate and Prosecution Service. Other measures include the production of a manual by the ØKOKRIM Corruption Team, for publication in 2007, on the detection, investigation and prosecution of corruption cases. Since Phase 2 there has also been a heightened focus on the confiscation of the proceeds of crime, reflected in a significant increase in the number of confiscation orders, and the publication by the Ministry of Justice of a book on confiscation by a former senior public prosecutor.

4. The Working Group on Bribery noted a number of achievements concerning the Phase 2 Recommendations for increasing awareness-raising of the offences of bribing a foreign public official. The centrepiece of Norway's awareness-raising efforts is a brochure published by the Ministry of Foreign Affairs in 2005 ("It Pays to Say 'No' to Corruption"), which is primarily targeted at the private sector and has also been distributed to all Norwegian diplomatic missions abroad. Norway's official export credit support agencies are including information about the legal consequences of foreign bribery in their various documents for applying for and providing official export credit support, and are developing internal anti-corruption guidelines. Moreover, the Anti-Corruption and Money Laundering Project has played a strong role in raising awareness about foreign bribery, and was the principle body responsible for drafting the Governmental Action Plan Against Economic Crime in 2004, which affirms that Norway will conscientiously follow-up the Working Group on Bribery's Phase 2 Recommendations.

5. Several of the Working Group on Bribery's Phase 2 Recommendations concern the detection of foreign bribery offences through effective reporting to the competent authorities. Norway has so far acted positively on these Recommendations in three principal spheres. First, amendments to the legislation regarding the Office of the Auditor General authorise the Auditor General to report suspicions of criminal offences, including foreign bribery, to the police and cooperate with the competent authorities prior to the completion of the audit and before the matter is reported to the audited entity or supervisory body. Second, the Directorate of Taxes now has one staff member dedicated exclusively to identifying methods for detecting corruption. The Tax authorities have also entered into agreements with the police and prosecuting authorities to enhance cooperation between them and facilitate detection of criminal acts. Third, "Ethical Guidelines for the Public Service" introduced in 2005 provide rules on the internal and external reporting of certain events that occur in the public service, which could in particular circumstances include the bribery of foreign public officials.

6. Furthermore, two important initiatives are in progress for improving the detection and reporting of criminal offences to the competent authorities. In the first, the Ministry of Finance is considering proposing an amendment to the Auditing Act to establish a general duty for auditors to report suspicions of criminal offences, including corruption, to the police. In the second, the Government has proposed a Bill concerning Amendments to the Working Environment Act to improve the system of whistle-blowing protections in various ways, including a shifting of the burden to the employer of proving that retaliation against an employee did not occur in certain circumstances, and providing for the availability of a claim for compensation where retaliation takes place in contravention of the Act.

7. The Working Group on Bribery voiced concern about certain potentially misleading information in the brochure published by the Ministry of Foreign Affairs ("It Pays to Say 'No' to Corruption") describing what constitutes an "improper advantage". In particular, the information does not conform to Commentary 7 on the Convention, which prohibits consideration *inter alia* of the value of the advantage, perceptions of local custom and the tolerance of such payments by the local authorities. The Working Group was concerned that, whilst the brochure does not provide a legal interpretation of the foreign bribery offence, it might mislead some readers. The Norwegian authorities assured the Working Group that the potentially misleading language would be corrected as soon as possible in a forthcoming revision of the brochure, and the Working Group was satisfied with this assurance.

8. Another issue arose in the Working Group concerning the rationale for prosecuting the first case referred to above as a "trading in influence" offence rather than the offence of bribing a foreign public official, in particular given that the sanction of imprisonment under the foreign bribery offence is more severe. The Norwegian authorities explained that the Prosecution Authority did not find it possible to establish that the passive briber was a public official. There were some questions in the Working Group about whether the person bribed could have been considered a foreign public official, and whether extensive cooperation is needed from the foreign public official's country to establish that the person bribed was a foreign public official.

b) Conclusions

9. In conclusion, the Working Group on Bribery is of the opinion that Norway satisfactorily implemented all the Phase 2 Recommendations. With respect to the issues identified for follow-up in Phase 2, the Working Group agreed to continue to follow-up in the regular *tour de table* the application of the new foreign bribery offences as practice evolves to see if the use of the trading in influence offence in a case presented by Norway was a one-time occurrence due to special circumstances.

WRITTEN FOLLOW-UP TO PHASE 2 REPORTS

Name of country: **Norway**

Date of approval of Phase 2 Report: **12 April 2004**

Date of information:

Part I: Recommendations for Action

Text of recommendation 1:

With respect to awareness raising, the Working Group recommends that Norway:

1. Pursue existing efforts undertaken to raise awareness of the offence of bribery in international business transactions, in particular where small and medium size enterprises are concerned (Revised Recommendation, Article I).

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

As a general remark it should be noted that The Norwegian Government have a zero-tolerance policy as regards corruption. This view is strongly supported by the political parties now represented in parliament

As regards the recommendation more specifically, most major Norwegian companies that operate internationally have developed measures for combating corruption. However, one of the important challenges, which Norway has taken seriously, is that too few small or medium-sized enterprises (SMEs) have introduced systematic anti-corruption measures. The Norwegian Ministry of Foreign Affairs has prepared and distributed a brochure entitled "*It Pays to Say 'No' to Corruption"* as an awareness-raising measure (The brochure is available in English at: http://odin.dep.no/ud/english/doc/handbooks/032081-120006/dok-bn.html.). One important feature of the brochure is that it describes the anti-corruption provisions of the Norwegian Penal Code and the severe penalties they carry. The brochure emphasises that all forms of corruption are prohibited by Norwegian law, regardless of whether the corruption is active or passive, takes place in the public or private sector, or involves natural or legal persons. Moreover, the brochure points out that the anti-corruption provisions in the Penal Code also apply to Norwegian nationals and persons domiciled in Norway who are involved in business activities abroad.

The brochure is meant to be a source of information for the Norwegian administration, as well as for Norwegian companies operating abroad. It has, however, been formulated with the particular aim of helping SMEs to fight corruption. The chapter on drawing up an anti-corruption strategy, for example, both underlines the importance of drawing up such a strategy and sets out the basic

elements that should form a part of it. The brochure have a double purpose with regard to Norwegian companies operating abroad: it describes the relevant penal provisions, and it provides a starting point from which companies can develop their own measures for combating corruption. *It pays to say no to corruption* has been distributed to all Norwegian diplomatic missions.

Norway's diplomatic missions play an important role in the fight against corruption. The Ministry of Foreign Affairs has stressed that all diplomatic missions have a duty to inform Norwegian companies involved in activities abroad about Norwegian anti-corruption legislation and the situation in the country in question, including about any relevant legislation in the host state. The Ministry has instructed all diplomatic personnel to study the brochure and to make it available to Norwegian businesses and others. The brochure has also been distributed directly to Norwegian companies and SMEs that are active in foreign markets. The Ministry has actively promoted the brochure, and has handed it out in relevant forums, to other governmental bodies, businesses, and business and trade associations.

The Inter-ministerial Project Group on Combating Corruption and Money Laundering was established in 2002 on the initiative of the Minister of Justice. A number of awareness-raising events were held in Norway and abroad in the course of this three-year project, which was led by special advisor Eva Joly. The project allocated significant resources to awareness-raising activities aimed at the public and the private sectors. Project representatives held speeches and participated in debates and panel discussions. The project attempted to identify deficiencies or shortcomings in the Norwegian money laundering and anti-corruption regime, and to raise awareness of the character, extent and damaging effect of economic crime, through articles, speeches, and interviews. Quite a number of awareness-raising events were aimed directly at the private sector. At such events, the project group discussed and explained the importance of the Norwegian bribery offence in the context of foreign bribery, its scope of application, and the consequences of the new corruption provisions.

The Inter-Ministerial Project Group participated in a number of activities in which corruption was a main topic. The issue of foreign bribery was addressed in different contexts and forms during the projects three-year operational period. Generally, presentations and discussions of the topic would deal with – depending on the forum and format – *inter alia:*

- The implementing legislation to the OECD-convention
- The importance of the convention as a milestone in the international efforts to curb corruption
- The main requirements of the convention
- As one of the important international instruments (in a broader context) in the fight against corruption and money laundering.

The work of the Inter-ministerial Project Group has now been concluded. This does not, however, mean that Norway is focusing less on the fight against corruption.

In 2004, the Norwegian Government launched an Action Plan for Combating Economic Crime. The plan will be implemented over the course of three years. Its action statement sets out measures aimed at various areas of society, and emphasises Norway's continued focus on fighting

economic crime in all its forms. The Action Plan speaks of the OECD-Convention, the Working Group on Bribery and the evaluation mechanism in general terms, and includes links to the country reports. (See also discussion on this topic under recommendation 4.)

In Norway there is a particular focus on the fight against corruption in the oil and gas sector. Norway continues to take an active part in the Extractive Industries Transparency Initiative (EITI). While the immediate objective of the EITI is to create transparency in revenue streams, such transparency will in turn create a strong disincentive for corruption and bribery. Norway is represented in the EITI International Advisory Group and will host the third EITI plenary meeting in Oslo in October 2006. Through a second contribution to the World Bank Trust Fund that assists the implementation of EITI, Norway's contribution totals 1 million USD.

In 2006 the Confederation of Norwegian Business and Industry published a guide for companies' work policies and practices with regard to gifts, entertainment and various expenses for people who are not company employees. The publication is named "…crossing the line?" This publication stresses the importance of being aware of the new penal code regime against corruption.

- Norad (the Norwegian Agency for Development Co-operation) hosts the Secretariat for the Norwegian Oil for Development Initiative (OfD). OfD aims at assisting developing countries with hydrocarbon potential in their efforts to benefit from petroleum resources in a way that generates economic growth and welfare to the population in general, and is environmentally sustainable. OfD was launched in late 2005 (building upon an existing portfolio, and spans activities in 20+ developing countries). Political and economic governance challenges are a key OfD concern, and (direct and indirect) efforts to fight corruption are singled out for particular attention. OfD supports transparency and accountability in petroleum sector management, both within the context of the Extractive Industries Transparency Initiative (EITI) and beyond. Corruption challenges are and will be increasingly addressed in OfD cooperation with Norwegian and international oil companies, as well as in capacity building at different levels in national petroleum- and other relevant institutions.

Norad has taken an active role in putting corruption on the agenda in our partner countries. Norad has held several work-shops for anti corruption bureaus, with the participation of the judiciary and the police. Numerous public lectures and speeches on corruption and its implications have been held in Norwegian partner countries and in other countries with participants from the governments and private sector. Norad cooperates on anti-corruption efforts with Norwegian research institutions, Norwegian non-governmental organisations and Norwegian trade unions and employers' organisations, often as part of other cooperation on governance, human rights, etc. The Development Cooperation Manual states that in connection with the appraisal of new development programs the risk of corruption must identified and there must be a plan to handle this risk.

A Special Advisory Note on how to handle suspicion corruption will be launched soon.

The Ministry of Justice website (http://www.dep.no/jd/english/bn.html) contains a description of Norway's international commitments as regards the fight against corruption. The website provides links to international evaluation reports on Norway concerning Corruption and Money

Laundering, including the OECD Phase 1 and Phase 2 reports.

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

Text of recommendation 2:

With respect to awareness raising, the Working Group recommends that Norway:

2. Communicate to the business sector that, under the new legislation, facilitation payments are not allowed (Revised Recommendation, Article I).

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

"It Pays to Say 'No' to Corruption", The Ministry of Foreign Affairs publication mentioned above, clearly states that facilitation payments constitute a form of corruption, and that requiring or making such payments are punishable under the Norwegian Penal Code. The Ministry of Foreign Affairs and the Inter-ministerial Project Group on Combating Corruption and Money Laundering have also conveyed this message to Norwegian companies and business associations in various meetings and seminars.

In 2006 the Confederation of Norwegian Business and Industry published a guide for companies' work policies and practices with regard to gifts, entertainment and various expenses for people who are not company employees. The publication, named "…crossing the line?", explicitly deals with i.a. the issue of facilitation payments. It is stated that "facilitation payments are punishable under Norwegian corruption legislation unless such payments are characterized by coercion or blackmail."

Facilitation payments are covered by the Penal code, section 276a. The new legislative regime concerning facilitation payments has been communicated to the business community also by the Confederation of Norwegian Business and Industry through publications aimed at the business sector. The topic of corruption was given broad coverage in a 2003, 80 page edition of "Horisont", the Confederation's business policy publication. The new legal situation as regards facilitation payments are covered in an in-depth article on the new penal code provisions against corruption.

It should be noted that the preparatory works for sections 276a, 276b and 276c of the Penal Code can be accessed by the public at large at the Ministry of Justice's website and downloaded for free.

It is worth mentioning, that over the last years, the issue of corruption have been given broad media coverage in Norway. In this context the new penal code provisions have also been presented and commented.

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

Text of recommendation 3:

With respect to awareness raising, the Working Group recommends that Norway:

3. Undertake further actions through institutions which are in a position to have privileged contacts with Norwegian enterprises exporting abroad, such as GIEK (the Norwegian export credit agency) or the Ministry of Foreign Affairs, notably through its diplomatic missions abroad (Revised Recommendation, Article I).

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

Both the Norwegian Export Credit Agency (GIEK) and Eksportfinans are active participants in the Norwegian delegation to the Working Party on Export Credits and Credit Guarantees in the OECD where anti-bribery is a prominent topic. GIEK and Eksportfinans have included information about the legal consequences of bribery in their application forms, exporter statements, commitment letters, and loan agreements with applicants and exporters. These agreements may lapse and no longer apply if the guarantee recipient and/or exporter have acted in violation of the prohibitions contained in sections 276a to c of the Norwegian Penal Code. (These provisions prohibit all types of corruption, in both the public and the private sector, including the exercise of undue influence/trading in influence.) Any compensation award is required to include interest and expenses.

In November 2005, Eksportfinans organised a workshop on how to prevent and detect corruption. It was attended by participants from the Ministry of Trade and Industry, GIEK, and Transparency International. GIEK and Eksportfinans are currently drafting new internal guidelines for their anti-corruption activities. Approval of the administrations and boards of GIEK and Eksportfinans are expected shortly. The new guidelines will implement measures that mirror the new anti-bribery measures for officially-supported export credits among the OECD countries. The relevant guarantee documents are also being revised, to ensure conformity with the new measures.

As regards awareness-raising activities by the Ministry of Foreign Affairs, reference is made to the information provided in response to recommendation 1 above. It should be added that the Ministry gives priority to participating in forums where anti-corruption is on the agenda, such as the annual conference of Intsok. (Intsok is a forum for providers of goods and services to the oil and gas industry. These providers include a number of SMEs, as well as the bigger companies.)

The Norwegian Minister of Foreign Affairs plays an active role in emphasizing the importance of fighting corruption in his contacts with the business sector. One example is his participation in an anti-corruption seminar organised by DNV (Det Norske Veritas) for major Norwegian enterprises in March 2006.

The Ministry of Foreign Affairs has taken advantage of the annual meeting of Norwegian ambassadors to raise awareness about corporate social responsibility generally, and anti-corruption in particular, by including an anti-corruption seminar on the programme.

In addition to distributing its anti-corruption brochure to all diplomatic missions, the Ministry has held seminars on the corruption issue for embassies in various regions, including South-Eastern Europe.

The Norwegian Minister of International Development also gives priority to anti-corruption measures, and recently participated in a meeting on anti-corruption organised by the Norwegian-Brazilian Chamber of Commerce, held in Brazil with participants from Norwegian and Brazilian companies.

In September 2005, the Ethical Guidelines for the Public Service (http://odin.dep.no/fad/english/doc/handbooks/071001-990063/dok-bn.html) were published by the Ministry of Government Administration and Reform (see below). These Guidelines are an important tool for raising awareness about legislation against bribery and corruption within the administration at large. The Ministry of Foreign Affairs has sent the Guidelines to all of its missions and departments, focusing particularly on the anti-corruption provisions and the obligation of public officials to report bribery and corruption.

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

Text of recommendation 4:

With respect to awareness raising, the Working Group recommends that Norway:

4. Consider, in this context, establishing a coordinating body to oversee awareness raising activities undertaken by Norwegian public authorities and relating to bribery of foreign public officials (Revised Recommendation, Article I).

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

From 2002 to 2005 The Anticorruption and Money Laundering Project took an active part in raising awareness regarding corruption, including the issue of foreign bribery, among the public at large. The activities of the project group are also described above in more detail. The Project Group contributed significantly to putting the corruption issue on the agenda, and was much used as a point of contact for corruption-related questions.

The Project Group also had the core responsibility for drafting the Governmental Action Plan Against Economic Crime, issued by the Minister of Justice and the Minister of Finance in June 2004. The plan was elaborated in close cooperation with other relevant ministries and also received input from consultations with private sector representatives. The plan was launched at a full day seminar and attracted significant media attention. The plan clearly states that Norway will

actively and loyally follow up the recommendations made by the OECD in the context of the Convention on Combating Bribery of Foreign Officials In International Business Transactions.

EMØK, The Senior Public Officials Group on Economic Crime, established in 2000, has been assigned with the task of overseeing the implementation of the Action Plan. The Group has representatives from The Ministry of Justice, the Ministry of Finance, the Ministry of Trade and Industry, the Ministry of Government Administration and Reform, the Ministry of Labour and Social Inclusion and the National Authority for Investigation and Prosecution of Economic and Environmental Crime (ØKOKRIM). It follows explicitly from the mandate of the group that issues of an international nature shall be coordinated with the Ministry of Foreign Affairs. The Senior Officials Group reports to the Minister of Justice and the Minister of Finance on its activities. In addition the group has engaged in a dialogue with the private sector as regards the threats and challenges in the area of economic crime. The prosecution service has also been engaged in this dialogue.

Concerning the issue of establishing a coordinating body to oversee awareness raising activities relating to foreign bribery specifically, Norwegian authorities are of the view that the existing systems of public hearings, extensive consultation, communication and co-operation between ministries, at this point in time satisfactorily address the need for co-ordination of preventative and awareness raising efforts regarding foreign bribery. At this point in time, the Ministry of Justice does not find it appropriate to establish a specific coordinating body to oversee awareness-raising activities relating to the offence of Bribery of Foreign Public Officials, cf. our response of 26 June 2006. Norway ratified the UN Convention Against Corruption (UNCAC) in June 2006 and the Government considered that Norway was in conformity with *inter alia* articles 5 and 6 of the UNCAC. The question of establishing an organ with specific tasks relating to awareness-raising in the fight against corruption will be considered in the context of follow-up activities to the UN-Convention and Norway's obligations as a Party to the UNCAC. In this context the issue of bribery of foreign public officials is of course highly relevant.

It should be emphasized that media coverage of concrete cases is an important element in raising awareness on the topic of foreign bribery. The foreign bribery cases that have so far been brought before the courts or decided by optional fines have all received massive media attention. Hence, the successful handling of criminal cases in this area is a significant contribution to raising awareness within the business sector and among the public at large.

In addition, as regards preventative tasks against corruption generally, a number of public institutions play important roles, such as:

- The National Authority for Investigation and Prosecution of Economic and Environmental Crime
- The Customs Service
- Norwegian Financial Supervisory Authority
- The Complaints Commission for Public Procurement
- The Parliamentary Ombudsman for Public Administration.

If no action has been taken to implement recommendation 4, 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:

With respect to detection, the Working Group recommends that Norway:

5. Pursue its efforts to develop further cooperation between the public institutions which could usefully contribute to the detection of the offence of bribery of foreign public officials and the law enforcement authorities (Revised Recommendation, Article I).

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

Office of the Auditor General

The Act of 7 May 2004 relating to the Office of The Auditor General states in section 15, fourth paragraph:

> "Notwithstanding the provision in paragraph 1, civil servants of the Office of the Auditor General may, on the decision of the Chairman of the Board, give evidence and submit documentation concerning audit tasks to the police when a criminal investigation is opened. The office of the Auditor General can also make a report to the police if an audit reveals circumstances that give cause to suspect that a criminal offence has been committed. The Office of the Auditor General can also cooperate whenever relevant with other public supervisory authorities. Information may be provided even if the audit has not been completed and without reporting the matter to the audited entity or the supervisory ministry."

This significant new provision statutorily entails the Office of the Auditor General to inform the police and cooperate with relevant supervisory authorities in the event of a suspicion of a criminal offence prior to the completion of the audit and before the matter is reported to the audited entity or the supervisory ministry. The Act of 7 May 2004 is applicable when there is a cause for suspicion of a violation of the Penal Code provisions against corruption.

Following the 2004 amendments of the Auditing Act, meetings have been held between the Auditor General's staff and ØKOKRIM's Corruption team, establishing contact as a basis for cooperation and exchange of information with a view to detect corruption. A number of staff of the Auditor Generals Office has received training in forensic accounting.

Tax Authorities

One of three main strategies for the Norwegian tax authorities is to combat tax crime and take steps to uncover the black economy. Over the last years the number of cases involving serious tax crimes has increased. In addition to detecting tax crimes the tax authorities are also obliged to

give the police information if they suspect a serious crime outside their main responsibility areas, *inter alia* money laundering and corruption.

The Norwegian tax authorities have in the last two years established five specialised tax crime units at the regional level. These units are situated in some of the largest cities in Norway (Oslo, Bergen, Trondheim, Stavanger and Bodø). The main task of these units is to target and strengthen the fight against serious tax crime. However these units are also in a position to assist in the detection of corruption offences.

The tax authorities have over the last year focused on giving all the employees information on the OECD Bribery Awareness Handbook for Tax Examiners on the detection of bribery and how to detect bribery in general. The OECD Handbook is also translated into Norwegian. In 2006/2007 the tax authorities will work more in detail to identify methods that can contribute to detecting corruption (including bribery of foreign public officials in business transactions). The Directorate of Taxes has therefore employed one person who will work specifically in this area. The Directorate of Taxes has pointed out in 2006 the importance for tax inspectors to be aware of corruption/bribery both on internal courses and in steering documents

More generally, the Tax authorities have a well-functioning cooperation with several public authorities, including the police and the Prosecution Authority.

In 2005 the tax authorities entered into a formal cooperation contract with the police and the prosecuting authorities with the main aim of securing the efficient handling of tax cases. This cooperation includes regular meetings both at the regional and central level. The agreement is signed by the Director of Public Prosecution, the Police Commissioner, the Head of ØKOKRIM and the Head of the Directorate of Taxes. One very important aspect is to discuss common general problems. This facilitates discussions of issues outside the Tax area.

Another important official agreement on cooperation between the police and prosecuting authorities and the tax authorities concerns practical cooperation at the operational level. This involves a system of cooperation where a tax inspector – employed at the county tax office – works at the offices of the local police district, assisting in investigating economic crime offences, mainly tax cases.

In November 2003, more specific guidelines were issued for the tax authorities on the reporting of criminal acts to the police, in particular concerning the interpretation of the criterion in the 2002 guidelines for reporting criminal acts where there is "just cause for suspicion".

Competition Authority

The Competition Authority has a well established cooperation with ØKOKRIM, and the two entities have collaborated on a number of cases. The Police District of Oslo has also handled significant cases concerning breaches of the Competition Act.

Ethical Guidelines

The Ethical Guidelines for the Public Service were issued 7. September 2005

(http://odin.dep.no/fad/english/doc/handbooks/071001-990063/dok-bn.html). A description of the content of the guidelines is given below under recommendation 6.

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:

Text of recommendation 6:

With respect to detection, the Working Group recommends that Norway:

6. Consider the introduction of a general obligation for staff of public institutions to report suspicions of corruption by Norwegian companies to the competent authorities (Revised Recommendation, Article I).

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

Ethical Guidelines

In September 2005, the Ministry of Government Administration and Reform introduced the Ethical Guidelines for the Public Service (http://odin.dep.no/fad/english/doc/handbooks/071001-990063/dok-bn.html). These important Guidelines apply to the entire public administration. However, individual organisations have been encouraged to review whether they need to supplement the Guidelines in view of their particular circumstances.

The Guidelines have five main chapters: General Provisions, Loyalty, Transparency, Confidence in the Government Service, and Professional Independence and Objectivity. Several provisions are closely linked to the fight against corruption: Accepting or offering gifts or other perquisites, Whistle-blowing and Duty to report. Paragraph 2.2 of the Guidelines states that "[i]n order to implement measures to avoid or limit losses or damages, public officials are required to report to their employer any circumstances of which she or he is aware that could cause the employer, employee or the surroundings to suffer losses or damages". The explanatory notes on this paragraph point out that public officials have a duty to report crimes, irregularities, and credible suspicions of corruption.

The mentioned Guidelines provide clarification to the issue in subparagraph 2.2 "Duty to report" and 3.4 "Whistle-blowing". The reference to the penal code provisions on corruption in the commentaries to subparagraph 2.2 of course also covers foreign bribery. In addition there are relevant guidelines and commentaries in subparagraphs 4.5 and 4.6.

Recommendation 6 (derived from paragraph 35 and 36 of the report and the commentary to paragraph 44 which basically deal with reporting requirements in the context of the ethical guidelines) speaks of giving consideration to "…the introduction of a general obligation for staff of public institutions to report suspicions of corruption by Norwegian companies to the competent authorities." The recommendation itself does not expressly require a statutory regulation of this

general obligation. The Norwegian Authorities have interpreted this recommendation in relation to the above-mentioned sections of the report. This is underlined by the fact that Norway, in the Post Phase 2 Follow-up Oral report in June 2005, addressed this recommendation by a reference to the then ongoing work on The Ethical Guidelines for The Public Service only.

While it is correct that there is no general statutory obligation for public officials to report suspicions of criminal conduct, including foreign bribery, it would be a duty for categories of officials who have tasks relevant to the possibility of unveiling foreign bribery to report suspicions of corruption to the competent authority, *inter alia* police officers, tax and customs officials.

The follow-up of this recommendation should be assessed in conjunction with the reported activities under recommendation 8, which addresses the issue of whistle-blowing. The preparatory works to the draft bill (together with the above mentioned ethical guidelines) provide guidance and clarification as regards the principle of loyalty and its application.

Bill concerning Amendments to Working Environment Act

One of the key elements in the proposed legislation is that notification should be "justifiable", cf. section 2-4, second subparagraph (first sentence). However, according to section 2-4, second subparagraph, third sentence, this criterion does not have to be met when it comes to notification of public authorities. Hence, the possibility of notifying public authorities, including the police, is significantly wider than in the case of external notification. The preparatory works to the draft legislation underlines that this entails that the employee has a clear and undisputable right to notify public authorities of suspicions of any criminal conduct.

It is presumed in the preparatory works that the proposed legislation represents an extension of the right to notify as currently follows from non-statutory rules and section 100 of the Constitution.
(Comment: Generally, the preparatory works are considered very important sources of law in the Norwegian legal system and the courts would be obliged to take them into account when interpreting the law, cf. explanations given in the Phase 2 Report)

In the preparatory works, the Government states *inter alia*:

> "The Ministry is of the opinion that the notification by employees of censurable conditions within an undertaking (public or private) must be facilitated, so that they can be brought to an end and if appropriate, exposed to the public at large. In particular this is important with regard to corruption and other forms of economic crime".

More information on the draft legislation concerning "notification" can be found in our comments to recommendation 8 below.

Diplomatic Missions

Norwegian diplomatic missions are in a unique position compared to other governmental bodies with regard to raising awareness of, and collecting information on, the foreign bribery offence. With this in mind, the Ministry of Foreign Affairs has issued instructions to all diplomatic missions on the duty to report suspicions of corruption. These instructions elaborate on the duty to

report that is imposed under the Ethical Guidelines. All Norwegian diplomatic missions have been instructed to report credible evidence of corruption involving Norwegians or Norwegian companies directly to the Norwegian National Authority for Investigation and Prosecution of Economic and Environmental Crime or to another relevant Norwegian police authority. In cases of suspicions concerning employees at Norwegian diplomatic missions, the missions should report directly to the Ministry.

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

Text of recommendation 7:

With respect to detection, the Working Group recommends that Norway:

7. Bearing in mind the vital role of auditors in uncovering and reporting bribery offences, raise awareness concerning the obligation for auditors to report any suspect activity that would indicate an unlawful act of bribery to law enforcement authorities (Convention, Article 8; Revised Recommendation, Article V.B.iv).

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

As described in the Phase 2 Report, paragraph 61, legislation was underway, obliging accounting and auditing professionals to make suspicious transaction reports regarding transactions that are suspected of being linked to any criminal offence. The Anti-Money Laundering Act came into force on 1. January 2004.

Since then, a total of 128 suspicious transaction reports (STRs) have been submitted from the accounting and auditing sector to the Norwegian financial intelligence unit (FIU). In the view of the FIU the quality of reports are generally good. The profession regularly makes inquiries to the FIU, regarding the scope of the Anti-Money Laundering legislation and practical aspects related to the execution of their obligations.

The FIU regularly (quarterly) issues a Newsletter describing trends and typologies as well as information on when and how to report. The professional bodies of the auditing and accounting professions are on the mailing list for this publication. Representatives of the profession are also participating in the FIUs biannual two-day seminar.

Furthermore, the Ministry of Finance is now considering – in addition to the obligations under the Money Laundering Act – to propose a general duty for auditors in the Auditing Act to report suspicions of criminal offences to the police. This will include suspicion of corruption.

From 1 January 2007 auditors in Norway are required to include at least 14 hours education covering ethical principles governing auditors' professional tasks and duties in their tri-annual mandatory post-qualifying education.

The Norwegian Institute of Public Accountants offers several courses in this area every year. Some of those arranged in 2006 are:

- Fraud and corruption – risk assessment, detection, interview techniques (8 hours)
- Ethics and practical auditing (7 hours)
- Corporate crime and professional auditor ethics

In addition the Institute offer courses in general subjects related to the auditor's profession where fraud and corruption are integrated parts.

If no action has been taken to implement recommendation 7, 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 8:

With respect to detection, the Working Group recommends that Norway:

8. Continue ongoing reflection undertaken by several public bodies in Norway on the issue of whistleblower protection, with a view to introducing measures to ensure adequate protection against sanctions to employees who report suspected cases of bribery of foreign public officials (Revised Recommendation, Article I).

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

Bill concerning Amendments to Working Environment Act

In June 2006 the government submitted a Proposition to the Parliament [(Odelstingsproposisjon No. 84 (2005-2006)] Concerning an Act relating to amendments to the Working Environment Act (notification).

The Government proposed the following Bill concerning amendments to the Working Environment Act (notification):

To the Act of 17 June 2005 No. 62 relating to working environment, working hours and employment protection, etc. (Working Environment Act) the following amendments shall be made:

Section 2-4 shall read:

Section 2-4 Notification of censurable conditions at the undertaking

(1) An employee has a right to notify concerning censurable conditions at the undertaking.
(2) An employee's procedure in connection with such notification shall be justifiable. An employee has notwithstanding a right to notify in accordance with the duty to notify or the

undertaking's notification routines. The same shall apply to notification to supervisory authorities or other public authorities.
(3) The burden of proof that notification occurred in contravention of this provision shall be on the employer.

One of the key elements in the proposed legislation is that notification should be "justifiable", cf. section 2-4, second subparagraph (first sentence). However, according to section 2-4, second subparagraph, third sentence, this criterion does not have to be met when it comes to notification of public authorities. Hence, the possibility of notifying public authorities, including the police, is significantly wider than in the case of external notification. The preparatory works to the draft legislation underlines that this entails that the employee has a clear and undisputable right to notify public authorities.

A new section 2-5 shall read:

Section 2-5 Protection against retaliation in response to notification

(1) Retaliation against an employee who notifies pursuant to section 2-4 is prohibited. If an employee submits information that give reason to believe that there has been retaliation in contravention of the first sentence, such retaliation shall be deemed to have occurred unless the employer produces evidence showing otherwise.
(2) The first paragraph shall apply correspondingly in the event of retaliation against an employee who makes known that the right to notify pursuant to section 2-4 will be invoked, for example by obtaining information.
(3) Anyone who is subjected to retaliation in contravention of the first or second paragraph may claim compensation regardless of the guilt of the employer. The compensation shall be fixed at the amount the court deems reasonable in view of the circumstances of the parties and other facts of the case. Compensation for financial loss may be claimed pursuant to ordinary rules.

A new section 3-6 shall read:

Section 3-6 Obligation to make provision for notification

The employer shall, in connection with the systematic work on health, environment and safety, prepare routines for internal notification or implement other measures enabling internal notification of censurable conditions at the undertaking pursuant to section 2-4 if the circumstances at the undertaking so indicate.

Section 18-6, first paragraph, shall read:

(1) The Labour Inspection Authority shall issue directives and make such individual decisions as are necessary for the implementation of the provisions of and pursuant to chapter 2 with the exception of sections 2-4 and 2-5, chapters 3 to 8, chapter 10 with the exception of section 10-2, second to fourth paragraph, and section 10-6, tenth paragraph, chapter 11 and sections 14-5 to 14-8, 15-2 and 15-15.

The Act shall enter into force on a date to be decided by the King.

The proposed new legislation is scheduled for debate in parliament in the upcoming parliamentary session.

With this legislative proposal, the Government wants to signal clearly that "whistle-blowing" is a legal act and that it is desirable that employees uses their right to notify. The proposed legislation gives "whistle-blowers" statutory protection against retaliation. The Working Environment Act is applicable both in the public and private sector.

A more detailed description of the background and content of the proposed legislation can be provided if necessary.

Section 100 of the Constitution ("freedom of speech") was amended in September 2004. The new section 100 of the Constitution strengthens the constitutional protection of employees' right to freedom of speech in general. As concerns whistle-blowing specifically, it was proposed to regulate this in the Working Environment Act and a proposal to this effect was forwarded to parliament in 2004. After a debate in parliament, the originally proposed wording was amended, and a new provision on whistle-blowing was adopted, but not put into force, as it was regarded as only "…a step on the way to strengthened protection for whistleblowers…". In the spring of 2005, the Government therefore decided to establish a working group mandated to propose new and more comprehensive legislation in this area. The white paper now before parliament is based on the working groups report and comments received through an extensive public hearing (the report of the working group was sent on a hearing to 175 private and public undertakings including i.a. trade unions and business confederations).

The proposed legislation is regarded by the Government as being in full conformity with article 9 of the Council of Europe Civil Law Convention.

If no action has been taken to implement recommendation 8, 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 9:

With respect to prosecution, the Working Group recommends that Norway:

9. Ensure that sufficient financial and human resources continue to be allocated to ØKOKRIM and economic sections of police districts in order to retain full ability to carry out international investigations in cases of transnational bribery (Convention, Article 5; Revised Recommendation, Article I; Annex to the Revised Recommendation, Paragraph 6).

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

Since the date of approval of the Phase 2 Report, a police solicitor has been permanently assigned to ØKOKRIM's Corruption team. Thus, the team now contains two full-time prosecutors.

As of July 2005, all local police districts have established multidisciplinary economic crime sections.

The importance of ensuring that the economic crime sections have an adequate size, are stable units and are given necessary training and competence to deal with large and complex economic crime cases is underlined in the Governmental Action Plan Against Economic Crime from 2004. The plan stresses the importance of protecting the units from withdrawal of personnel for shorter or longer periods in order to supply needs that may arise in dealing with other categories of crime. The units are required to have specialized police officers as well as legal and economic expertise.

In August 2005, the Ministry of Justice held a two-day seminar for representatives of the newly established economic crime sections. All 27 police districts were represented. A part of the seminar were dedicated to a round table discussion led by the Director of Public Prosecution concentrating on identifying important criteria that should be met in order to create well functioning units. This session strongly underlined the requirements as regards specialized economic crime units as laid down in the Governmental Action Plan Against Economic Crime.

The development of the local economic crime units are followed closely by the Ministry of Justice and The Police Directorate as well as the Prosecution Service. ØKOKRIM have provided significant assistance to a number of police districts in establishing the units.

The Police Directorate will follow up the development of the local units, ensuring that they will be operational at a high an adequate level.

If no action has been taken to implement recommendation 9, 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 10:

With respect to prosecution, the Working Group recommends that Norway:

10. Given the recently introduced distinction between basic and aggravated bribery, ensure that law enforcement authorities are fully aware of the range of investigative tools available, and have sufficient expertise to make broad use of these, where appropriate; and consider extending the availability of witness protection programmes to foreign bribery cases (Revised Recommendation, Article I).

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

Investigative Tools

Within ØKOKRIM's Corruption team, a strong focus is maintained on the use of available investigative tools in cases of corruption.

ØKOKRIM annually conducts two professional seminars on economic crime. Corruption (law and investigation) is among the topics. The target group is police investigators and public prosecutors.

ØKOKRIM (The Corruption Team) are in the process of writing a user manual regarding the uncovering, investigation and prosecution of corruption cases. The manual is planned for publication in 2007.

The seminar for the Economic Crime Units of the Police Districts arranged by the Ministry of Justice in August 2005, addressed the following topics (cf. also description under rec. 9):

- Presentation of the new Penal Code provisions on corruption, § 276a, §276b and § 276c.
- The use investigative methods in corruption cases, with emphasis on concrete case related experiences
- Financial investigation, practical guidance
- Confiscation, the legal situation, procedural and practical aspects.

The Minister of Justice also addressed the participants at this event, encouraging the further development of the local units.

In 2004, former Senior Public Prosecutor Anne-Mette Dyrnes published the book "Confiscation: What Must Be Done". The book was written as part of the work undertaken by the Anti-Money Laundering and Corruption Project. The book is mainly aimed at practitioners and gives a thorough account of the legal situation concerning confiscation as well as concrete and experience based guidance in financial investigation. The book has been distributed by the Ministry of Justice to all police districts and to the Prosecution Authorities.

In 2005, The Police Academy again started the 2 ½ month in-service training in investigation of economic crime (it was not offered in 2004). Corruption is included as one of the topics.
From 2007 this training will be offered as specialist training in a module based system.

Another significant training concept is the Oslo Police District Trainee Project. The trainees are offered a five month in depth training in various aspects of economic crime. In addition to increasing the ability of the participants in uncovering economic crime, an important aim has been to contribute to effectively confiscate the proceeds of crime. In addition the training provides insights into problem-oriented policing. So far 38 police officers/prosecutors and 13 external participants (*inter alia* customs, tax) have taken part. Although not specifically targeted at corruption, this training provides knowledge that is important when combating all forms of economic crime.

Witness Protection

Witness protection programmes are available in corruption cases. Some of the essential criteria for being granted Witness protection under "National Witness Protection Unit" at NCIS are:

- the criminal offence must be of a serious nature

- the witness' statement must be decisive for solving the case.
- violence or threats of violence, reprisals against the witness
- the witness must be willing to cooperate
- witness protection is optional, etc.

The exact content and execution of a witness protection programme is decided on a case-by-case basis.

If no action has been taken to implement recommendation 10, 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 11:

With respect to prosecution, the Working Group recommends that Norway:

11. Draw attention of the law enforcement and judicial authorities to the importance of making full use of the various economic sanctions available on the bribers, taking into account the particular circumstances surrounding cases of transnational bribery (Convention Article 3).

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

Economic Sanctions

ØKOKRIM's Corruption team maintains a strong focus on the importance of making full use of the various economic sanctions available in all corruption cases.

It is broad agreement over the political spectre that taking the profit out of crime is a very important aim.

Over the last four years the number of enforceable decisions regarding confiscation has been stabilized at a significantly higher level than in 2002. The total sums confiscated have also increased and been stabilized at a higher level. Confiscation remains an area of high priority for the Ministry of Justice

Ethical Guidelines for Norwegian Government Pension Fund

A somewhat related issue that might be worth mentioning concerns the Norwegian Government Pension Fund.

The Ethical Guidelines for the Government Pension Fund – Global were established on 19 November 2004. Two ethical precepts for the management of the Government Pension Fund – Global have been identified. First, the fund must be managed with a view to generating a sound return to ensure that future generations benefit from the country's petroleum wealth. Second, the

basic rights of those who are affected by companies in which the fund's assets are invested must be respected. These ethical precepts are followed by means of two types of measures: the exercise of ownership rights and the exclusion of companies from the fund's investment universe.

Norges Bank is responsible for exercising the ownership rights on behalf of the fund. The overall goal for the exercise of these rights is to safeguard the financial interests of the fund within the limitations imposed by the ethical guidelines. The exercise of ownership rights is in the main to be based on the UN's Global Compact initiative and the OECD's Corporate Governance Principles and Guidelines for Multinational Enterprises. In 2004, Norges Bank developed its Principles for Corporate Governance, which are in line with the Ethical Guidelines for the Government Pension Fund – Global.

According to the Guidelines, the Government Pension Fund – Global does not invest in companies that are involved in the production of weapons that through normal use lead to violations of basic humanitarian principles. Companies that engage in such production are to be excluded from the fund's investment universe. Companies will also be excluded if, by investing in them, the fund might incur an unacceptable risk of contributing to unethical acts or omissions, such as violations of fundamental humanitarian principles, serious violations of human rights, gross corruption or severe environmental damage. The question of whether or not investment in a company violates the ethical guidelines must be assessed on a case-by-case basis in light of the company's conduct. The responsibility for excluding companies from the fund's investment universe lays with the Ministry of Finance, which bases its decisions on the recommendations of the Ethical Council for the Government Pension Fund – Global.

If no action has been taken to implement recommendation 11, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Part II: Issues for Follow-up by the Working Group

Text of issue for follow-up:

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

12. The application of the new offence in practice as litigation of the bribery offence develops, in particular the notion of impropriety of the advantage (Convention, Article 1.1).

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:

"Oil Company Case"

Regarding a case under investigation at the time of Phase 2 (discussed in paragraph 67 of the Phase 2 Report) on 28 June 2004, ØKOKRIM issued Penalty notices to an oil company and the company's former executive vice president (international). According to the wording of the Penalty notice, the Vice President had negotiated an agreement with a company registered abroad, according to which the latter was to perform various consulting services for the oil company for an 11 year period. The oil company was to pay a total fee of USD 15.2 million for these services. Payments were made to a foreign bank account in the name of a third company. In September 2003, following exposure by a Norwegian newspaper, the agreement was terminated. The agreement had been initiated by a foreign citizen, as an offer of payment of money in return for his or others influencing individuals who were involved in decision-making relevant to the company's commercial activities in the foreign jurisdiction, including administrative acts concerning the awarding of contracts in the oil and gas sector. The company was to benefit from such influencing. The advantage to be conferred according to the agreement was improper, a.o. because of the amount of the remuneration, and because the true purpose of the agreement was secret. The Penalty notice states that the Vice President failed to arrange for the termination of the agreement as soon as possible after the entering into force of the new corruption legislation 4th July 2003, despite his duty to do so. The two Penalty notices describe the mentioned as a breach of the Trading of influence statute (§ 276 c). The company's fine was of NOK 20 000 000 (EUR 2.4 million)[1], and the vice president's fine was of NOK 200 000 (EUR 24 000). Both fines were accepted.

"Boat Certificate" Case

Regarding another case under discussion at the time of Phase 2 and also discussed in paragraph 67 of the Phase 2 Report, the City Court gave its verdict on 1 July 2005. The indictments, which concerned violations of section 128 of the Penal Code, involved the bribery of a foreign public official to issue certificates for having passed an exam that confirms that the owner of the certificate is competent to sail a certain class of vessels. The foreign official was indicted for gross breach of trust. Three of the defendants were convicted for violation of the Penal Code section 128 and for having given false testimony. Section 128 was the implementing legislation to the OECD Convention up to 4 July 2003, when it was substantially amended because of the new Penal Code provisions against corruption, which now covers foreign bribery. Hence, section 128 of the Penal Code is no longer relevant in the context of foreign bribery.

The persons convicted for active bribery, received sentences of one year and two months (of which four months were conditional), ninety days conditional prison and 120 days (of which ninety days were made conditional) respectively. The foreign public official that had issued the certificates received a sentence of one year and four months, of which four months were made conditional, for Gross Breach of Trust, cf. sections 275 and 276 of the Penal Code. Two of the indicted that had received payments, also received confiscation sentences of NOK 55 000 (EUR 6 600) and NOK 100 000 (EUR 12 000) respectively. All defendants were sentenced to pay NOK 30 000 (EUR 3 600) each to cover the costs of the case. According to the reasons for the judgement, delays in the investigation were taken into account in stipulating the sentences.

[1] The conversion from Norwegian Krona to Euros is based on the conversion rate on 9 October 2006.

Due to appeals, the case is to be re-tried in the High court in December this year.

New Case since Phase 2 Examination

The Court of First Instance in Oslo is currently hearing a case in which three persons are indicted for violations of the Penal Code section 276a, cf. section 276b (Gross corruption). According to the indictment, the passive briber received improper advantages of a total value of at least NOK 200 000 (EUR 24 000). The advantages comprised cash payments, bank deposits, a hunting trip and a trip abroad. The indicted person received the advantages because he had a vital role in the decision-making process regarding awarding of contracts related to the department he headed. The cash payments and bank deposits were a service in return for awarding a contract. The advantages were, according to the indictment, improper because they i.a. were hidden for the employer of the indicted, because of their value, they were given in breach of internal guidelines and because of the defendants position.

The indictment also covers the reception of building materials of a total value of NOK approximately 620 000 (EUR 74 400),-. This part of the indictment is subsumed under the Penal Code provisions on Gross Breach of trust, as they allegedly took place before the 2003 provisions were in force. This part of the case is related to the defendant's previous position as head of section in a state-owned company. This part of the case also involves complicity in the violation of the Penal Code provisions on Gross Breach of Trust and alleged fictitious invoicing on the part of the contractor. The contractor – The Norwegian subsidiary of a foreign firm - has already accepted a penalty notice of NOK 5 million (EUR 600 000).

Text of issue for follow-up:

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

13. The criminal liability of legal persons, to ascertain that the bribery offence is effectively applied to legal persons, either through court decisions or optional fines and confiscation (Convention, Articles 2 and 4); 13.

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

Cf. the " Oil Company" case described above.

In 2004 criminal sanctions were imposed on legal persons in 331 cases. The number of cases illustrates that corporate criminal liability is a well established concept in Norwegian Penal law, cf. the Phase 2 Report, paragraph 100 and footnote 52.

Norwegian Penal Law can be applied to criminal acts committed on Norwegian territory or abroad by a Norwegian citizen or a person domiciled in Norway, cf. the Penal Code, section 12. It was

not necessary to identify a natural perpetrator in order to establish jurisdiction in the "Oil Company" case.

Text of issue for follow-up:

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

14. The consequences of the distinction between basic and aggravated bribery in terms of the length of the limitations period, and in terms of whether different modalities of interruption adequately suspend the operation of the statute of limitation, especially where legal persons are involved (Convention, Articles 1.1, 6).

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

Cf. the "Oil Company" case described above.

There is nothing relevant to report on this issue, as there have been no cases where any problems in this regard have been identified.

Text of issue for follow-up:

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

15. The application of sanctions, notably the practice with regard to confiscation of both the instruments and the proceeds, in order to determine whether they are sufficiently effective, proportionate and dissuasive to prevent and punish the offence of active bribery of foreign public officials (Convention, Article 3).

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

Cf. the "Oil Company" case described above and the "Boat Certificate" case.
The new Penal Code provisions significantly raised penalties for corruption offences. However, earlier cases dealt with under the previous legal regime provide an indication of the expected level of sanctions under the new penal code regime against corruption. Below follows a brief description of two relevant cases:

Case 1

This first case concerns corruption in the Norwegian branch of an international humanitarian organisation. In total four persons were indicted for gross breach of trust (corruption).

The head of the Economics Division of the organisation gave construction contracts to a company controlled by himself and his two brothers. In total the organisation received invoices amounting to approximately NOK 17 million (approximately EUR 2.2 million) more than was agreed in the actual contract. The court of first instance found that at least NOK 8.8 million (EUR 1.1 million) were related to fictitious invoices and represented corruption of a very serious and damaging nature. The defendant was sentenced to five years and six months unconditional prison. He was also sentenced to pay NOK 12.4 million (approximately EUR 1.5 million) in compensation to the organisation.

The three other defendants received prison sentences of six years, four years and nine months (of which five months were made conditional) for complicity to corruption. One of the defendants was also sentenced to infinite loss of the right to conduct independent commercial activities, serve as an executive in any undertaking or take a seat at the board in any company. Two of the defendants were sentenced to paying the Norwegian branch of the humanitarian organisation NOK approximately 16 million (approx. EUR 2 million) in compensation. NOK 124 000 (EUR 14 880) were confiscated.

Case 2

In January 2005 a senior engineer of a Norwegian multinational company and two former directors of a contractor company were sentenced to 10 months and 8 months of imprisonment respectively for corruption (under Section 275 of the General Civil Penal Code, cf. Sections 275 and 276). The senior engineer was also sentenced to forfeiture of NOK 400 000 (EUR 48 000). The District Court found that during the period 1997-2001 the chief engineer of the company had received secret cash payments in the amount of approximately NOK 400 000 (EUR 48 000) from employees of the contracting company and that the other two defendants had aided and abetted in the crime. In the opinion of the court these actions constituted a serious breach of trust against the company, exposing it to losses or putting its reputation in jeopardy. The court found that the main purpose of the payments to "grease the chief engineer's palm" in order to ensure good relations with the company.