Groupe d'Etats contre la corruption
Group of States against corruption

COUNCIL OF EUROPE CONSEIL DE L'EUROPE

DIRECTORATE GENERAL I – LEGAL AFFAIRS
DEPARTMENT OF CRIME PROBLEMS

Strasbourg, 30 September 2004

Public
Greco Eval II Rep (2004) 3E

Second Evaluation Round

Evaluation Report on Norway

Adopted by GRECO
at its 20th Plenary Meeting
(Strasbourg, 27-30 September 2004)

Secrétariat du GRECO
Conseil de l'Europe
F-67075 Strasbourg Cedex

www.greco.coe.int
☎ +33 3 88 41 20 00

GRECO Secretariat
Council of Europe
Fax +33 3 88 41 39 55

I. INTRODUCTION

1. Norway was the eleventh GRECO member to be examined in the second Evaluation round. The GRECO evaluation team (hereafter referred to as the "GET") was composed of Mr Ardian DVORANI, Director General of the Codification Department, Ministry of Justice (Albania); Mr Arno NEUKIRCHEN, Senior Public Prosecutor, Ministry of Justice of Nordrhein-Westfalen Land (Germany) and Mr Henry MATTHEWS, Professional Officer, Office of the Director of Public Prosecutions (Ireland). This GET, accompanied by a members of the Council of Europe Secretariat, visited Oslo from 27 to 30 April 2004. Prior to the visit the GET experts were provided with a very comprehensive reply to the Evaluation questionnaire (document GRECO Eval II (2004) 5E) as well as copies of relevant legislation.

2. The GET met with officials from the following governmental organisations: Ministry of Justice (Legal department, Police department and Civil department, Anti-Corruption and Money Laundering Project, the Brønnøysund Register); Ministry of Finance (Tax Directorate, Financial Supervisory Authority); Ministry of Labour and Government Administration; Ministry of Trade and Industry; Ministry of Foreign Affairs and NORAD (Norwegian Agency for Development Cooperation); Ministry of Local Government and Regional Development; Municipality of Oslo; Norwegian Association of Local and Regional Authorities; Ministry of Defence; Auditor General; National Authority for Investigation and Prosecution of Economic and Environmental Crime (ØKOKRIM); the Police Directorate; the Oslo Police District; the Parliamentary Ombudsman; the Director of Public Prosecutions; Courts. Moreover, the GET met with members of the following non-governmental institutions: Norwegian Institute of Public Accountants; University of Oslo; Norwegian Confederation of Business and Industry; Norwegian Confederation of Trade Unions; Newspapers.

3. It is recalled that GRECO agreed, at its 10th Plenary meeting (July 2002), that the 2nd Evaluation Round would run from 1st January 2003 to 30 June 2005 and that, in accordance with Article 10.3 of its Statute, the evaluation procedure would deal with the following themes:

   - **Theme I - Proceeds of corruption:** Guiding Principles 4 (seizure and confiscation of proceeds of corruption) and 19 (connections between corruption and money laundering/organised crime), as completed, for members having ratified the Criminal Law Convention on Corruption (ETS 173), by Articles 19 paragraph 3, 13 and 23 of the Convention;
   - **Theme II - Public administration and corruption:** Guiding Principles 9 (public administration) and 10 (public officials);
   - **Theme III - Legal persons and corruption:** Guiding Principles 5 (legal persons) and 8 (fiscal legislation), as completed, for members having ratified the Criminal Law Convention on Corruption (ETS 173), by Articles 14, 18 and 19, paragraph 2 of the Convention.

   Norway has ratified the Criminal Law Convention on Corruption on 2 March 2004.

4. The present report was prepared on the basis of the replies to the questionnaire and the information provided during the on-site visit. The main objective of the present report is to evaluate the effectiveness of measures adopted by the Norwegian authorities in order to comply with the requirements deriving from the provisions indicated in paragraph 3. The report contains first a description of the situation, followed by a critical analysis. The conclusions include a list of recommendations adopted by GRECO and addressed to Norway in order to improve its level of compliance with the provisions under consideration.

II. THEME I – PROCEEDS OF CORRUPTION

Confiscation and Deprivation of Instrumentalities of Crime

5. In Norway, the purpose of confiscation is to remove from an offender the proceeds of the crime he committed (Sections 34-38 of the Penal Code - hereafter PC). Decision on confiscation is taken by court in connection with the conviction for the criminal offence. However, the Prosecution Authority may also issue a confiscation order that, if not accepted by the person under investigation, may be used as indictment during the court proceedings. The overriding principle in confiscation is that there must be a causal relation to the criminal offence, which is for the investigative agencies to prove. However, the burden of proof may be reversed under certain conditions, i.e. establishing the "extended confiscation", such as specified in Section 34a PC. If a value cannot be directly ascribed, Section 34 PC provides for the court to decide, on a balance of probabilities, the value of confiscation. A further presumption is that the gain accrues to the offender unless "he shows it to be probable that it has accrued to another person". Whether confiscation is treated as a mandatory court exercise depends on the nature of the offence. In this regard, three basic principles are applicable:

   1) Any gains accruing from crime "shall be confiscated" (subject to judicial discretion if making the order "would clearly be unreasonable");
   2) The extended confiscation regime pursuant to section 34a PC "may be" engaged if there is a conviction involving the possibility of a "considerable gain" and the offence/attempted offence carries 6 or more years imprisonment, or 2 years (in the latter, if during the preceding 5 years the offender has been convicted "for an act of such a nature that considerable gain may accrue from it")[1];
   3) Optional confiscation applies to goods (including intangible "rights and claims") that have been the subject of, or produced by a criminal act, and "goods that have been used or intended to be used in a criminal act" (Section 35 PC).

Burden of Proof

6. In case of extended confiscation, the reversal of the burden of proof may occur in serious corruption cases. Extended confiscation can also be imposed if the offender is found guilty of a criminal act of such a nature that considerable gain may accrue from it, and the criminal act is punishable by two years imprisonment or more, and the offender has, during the last five years before the act was committed, been convicted for an act of such a nature that considerable gain may accrue from it. Furthermore, if a crime is committed as part of the activities of an organised criminal group, the maximum penalty is doubled, however not with more than five years, making extended confiscation applicable in cases covered by 276a PC[2]. The effect is that, unless the offender can show "to be probable that such assets have been lawfully acquired", "all capital assets belonging to the offender may be confiscated". As far as confiscation of proceeds of other forms of corruption is concerned, this is possible according to Section 34 PC. Nevertheless,

[1] "Considerable gain" appears to be set at about 75000 NOK (approximately 8,800 euros).

[2] "Gross corruption is punishable by imprisonment for a term not exceeding 10 years. Complicity is punishable in the same manner.
In deciding whether the corruption is gross, special regard shall *inter alia* be paid to whether the act has been committed by or in relation to a public official or any other person in breach of the special confidence placed in him as a consequence of his post, office or commission, whether it has resulted in a considerable economic advantage, whether there was a risk of significant economic or other damage or whether false accounting information has been recorded or false accounting documents or false annual accounts have been prepared."

according to the information provided by the Norwegian authorities, the causal relation between the crime committed and the advantage obtained from it "must be the most important cause".

In rem confiscation

7. *In rem* confiscation is available within the circumstances of Section 37c PC, i.e. where the offender is unknown or has "no known place of abode in the realm", providing that confiscation is reasonable in "view of the case and other circumstances". Moreover, Section 34 states that "Confiscation shall be effected even though the offender can not be punished because he was not accountable (Section 44 and 46 of PC) or did not manifest guilt."

Value confiscation

8. Value confiscation may be applied in the sense of valuing a capital asset, or in the process of establishing a charge over an asset to secure a confiscation order (Section 34 paragraph 3). Conversion of primary proceeds into secondary proceeds is specifically dealt with by Section 34 paragraph 2 and the expenses of obtaining an asset are not deductible ("Expenses incurred are not deductible").

Nature of confiscation

9. Confiscation is not included in the list of penal sanctions contained in Sections 15 and 16 PC and is not defined as a "penalty". Norwegian authorities inform that case law dictates that confiscation should be taken into consideration when deciding the sentence and it is usually imposed together with the penal sanction.

Third parties

10. Sections 34 and 37 PC deal with confiscation of proceeds transferred to third parties and allow confiscation where:

    1. The offender shows "it is probable that (the gain) has accrued to another person", i.e. a third party now has the assets (Section 34 paragraph 4);
    2. The offender acted in commission of the offence on behalf of the third party (Section 36);
    3. The offender has used the instrumentalities of a third party to commit an offence, and the third party knew, or should have understood they were to be used for an offence (Section 36, paragraph 2);
    4. Where the gain or goods are transferred as a gift, or the third party "recipient understood or should have understood" their origin (Section 37a);
    5. Should the extended confiscation regime apply, then the provisions of Section 37 apply to confiscate transferred goods and extend to *inter alia* next of kin, or to an enterprise in which the offender owns a considerable part. The operative standard of proof being the assets derived from an offence committed by the defendant.

Compensation

11. Confiscation may be diverted to compensation, with a time limit of up to one year after a final and enforceable decision on confiscation has been taken pursuant to Section 37d PC.

Interim Measures and Management of seized assets

12. Chapter 16 and 17 of the Criminal Procedure Act (hereafter CPA) sets out the interim seizure and freezing regime providing that payment of confiscation orders may be secured by a freezing order. The ambit of the seizure order, pursuant to Section 203 CPA applies to all objects that are liable to confiscation. Seizure and freezing may remain in effect until a "final and enforceable decision" in the case. These measures are not only corruption specific (Section 276 a-b PC) but extend to trading in influence (Section 276c). Norway's management regime appears limited under Section 213 of the CPA to sale of "seized objects that may soon be damaged", otherwise the position is controlled by instructions in the police districts requiring i.a. cataloguing, marking and storage of items. Seized money are held in a police account.

Investigation on proceeds of crime

13. Serious crime (including corruption) does not systematically generate a system for seizing and freezing assets. However, the practice of the Anti-Corruption Team of the ∅KOKRIM is to follow such a procedure both because it provides evidence and it may reveal property which may later be made the subject of a confiscation order. Whilst there may be limited expertise at the police level in investigating financial crime, the authorities are setting up specialised economic crime units in all 27 police districts. No figures are being kept for the use of interim measures in corruption cases. The orders are made on the basis that the evidence may be significant in the case and that the "possessor is obliged to give statement as witness in the case". A manual ("Confiscation – How to do it") was distributed in January 2004 to all police districts and prosecution authorities.

International Co-operation (for Provisional Measures and Confiscation)

14. There are a number of regimes available for providing legal assistance in corruption cases to a requesting state, with the ∅KOKRIM acting as a channelling agency for the OECD anti-bribery convention, and the Council of Europe Convention on Laundering, search, seizure and confiscation of the proceeds from crime. The four other treaty regimes are the European Convention on Mutual Assistance in Criminal Matters, an agreement between Nordic countries regulating mutual legal assistance, the Schengen Agreement, together with certain provisions of the 2000 EU Convention on Mutual Legal Assistance, and its 2001 protocol developing the Schengen Acquis. The second co-ordination point is the Ministry of Justice for all mutual legal assistance not covered by the OECD Schengen and Nordic Area agreements. When Norway requests legal assistance, the requests are normally channelled by the ∅KOKRIM and the competence of the police and prosecution authorities is regulated by the Criminal Procedure Act. However, requests can also be channelled through the Ministry of Justice. The Norwegian authorities report that to a large extent the same regime applies to International Co-operation on Confiscation.

Statistics

15. Over the last three years confiscation has been used in the following number of cases:

2001: 845; 2002: 628; 2003: 929,
and for corruption cases has been:
2001: 1 case (4,600,000 NOK, approximately 530,000 euros)
2002: 0

2003: 1 case (824,510 NOK, approximately 95,000 euros).

Money laundering

16. Money laundering is governed by Section 317 PC, covering intentional and negligent money laundering, gross money laundering, and laundering in connection with drugs offences. The sentence ranges from 2 years or a fine for negligent laundering, to 3 years and a fine for intentional laundering, a maximum of 6 years for gross money laundering, and in the case of laundering drugs money up to 21 years imprisonment. The prescribed activities are receiving, obtaining, or assisting in securing proceeds from a criminal offence, keeping, hiding, and transporting to mortgaging or investing proceeds of crime. Norway adopts an all crime approach in its anti-money laundering regime and extends to offences committed abroad. It appears from the replies to the questionnaire that "It is not an offence to launder proceeds from criminal offences committed by the launderer himself (self laundering)" but could be considered as an aggravating circumstance when judging the predicate offence. All the corruption/corruption related offences are predicate offences for the purposes of money laundering.

17. The supply of suspicious transaction reports for money laundering purposes is governed by Section 4 of the Money Laundering Act and includes *inter alia* financial institutions, the Central Bank of Norway, e-money companies, investment firms, management companies for securities funds, insurance companies, pension funds, postal operators, securities registers into credit broking, stock broking, advisory services and letting of deposit boxes. The Money Laundering Act also applies to state authorised and registered public accountants, authorized accountants, estate agents, insurance brokers, project brokers, currency brokers, lawyers (in carefully defined circumstances) auctioneering firms or commission agents when dealing with transactions involving 40,000 NOK (approximately 4,624 euros) or more. The reports are channelled to the FIU, situated at the ∅KOKRIM, who in turn may refer relevant information to the Corruption team. STRs may also be stored in a police register. There are no records of investigations, prosecutions, or convictions made in relation to the predicate offence of corruption.

b. Analysis

18. Norway has a well developed system of legislation, law enforcement and judicial authorities for dealing with economic crime, including the criminalisation of corruption offences and the confiscation of proceeds of corruption. Detailed and specialised structures have been established to deal with organised crime, economic crime, money laundering, corruption etc. such as ØKOKRIM, set up in 1989. Its specialised anti-corruption unit was created in 1994. A number of police districts (mainly the largest) have their own economic crime units, for example the Second Department in the Oslo District Police (Organised Crime Division). For instance, one of the main priorities of the Organised Crime Division is the issue of illegal gain, the investigation and confiscation of criminal assets, and to provide training and assistance to other police districts.

19. The detailed programmes prepared - aiming at further improvement in the organisation and functioning of police structures, cooperation among institutions, and specialisation and training of their staff - demonstrate the importance that the Norwegian authorities are paying to the process of eliminating certain weaknesses in the knowledge and capacities on issues related to economic crime, informal and illegal economy, investigative means and confiscation methods.

20. In the GET's view, in order to prevent, detect, investigate and punish the laundering of illegal gains, more efforts are needed to improve rules, structures and working methods of law

enforcement agencies. In this context, the GET was informed that the number of criminal cases investigated and the value of assets confiscated by the Norwegian authorities have considerably increased in the period 2001-2003. As far as corruption is concerned, at the time of the visit, only four cases were under investigation, of which one was associated with the confiscation of proceeds.

21. The Penal Code (Articles 34-38) provide in a satisfactory manner detailed definitions and criteria regarding confiscation of any gain accruing from a criminal act, extended confiscation, confiscation of goods produced or subject of criminal act etc. Since the GET's visit took place, there were not cases of major corruption associated with the use of extended confiscation. Among other reasons, several representatives of police and judicial authorities indicated that it was difficult to apply the relatively new tools related to the extended confiscation, which was partly due to lack of knowledge and experience in understanding, interpreting and using criteria and asset tracing tools for confiscation. The Norwegian authorities admitted that the training of the ordinary police had been considered inadequate in the area of economic crime generally and that efforts were now being made to improve the situation. Specific courses for the police in relation to economic crime have been run for over 25 years. Since 1994, a two and a half months' course on economic crime has been held at the Police Academy every year except one. Approximately 300 police officers, prosecutors and other specialists attended this training. In addition, efforts are now being made to improve the situation and to ensure that all those engaged in the investigation of economic crime are adequately trained. The police officers and prosecutors with whom the GET spoke expressed satisfaction that deficiencies in training were being eliminated progressively. Nevertheless, the GET is still of the opinion that the Police Academy, law schools, training programmes etc. do not provide sufficiently developed courses on corruption, proceeds of crime, meaning and use of special investigative means and provisions on seizure and confiscation for police officers and prosecutors. Therefore, **the GET recommends to continue developing intensive and comprehensive training to police officers and prosecutors in order to enable them to make better use of legal provisions on detection, seizure and confiscation.**

22. Financial investigation is highly important in corruption cases, both with regard to detection and confiscation. A key element of successful financial investigation is the systematic and professional cooperation of Police, Prosecution service or specialised structures such as ØKOKRIM with Tax and Auditing Authorities, Register Offices etc. in order to identify and generate effectively relevant data regarding income and asset declarations, life style etc. This cooperation could be further strengthened by continued development of rules and practice (see paragraph 58).

III. THEME II – PUBLIC ADMINISTRATION AND CORRUPTION

a. Description of the situation

General structure

23. Norway established the principle of a constitutional monarchy in 1814. Public Administration covers three tiers, and is defined by Section 1 of the Public Administration Act, administrative practice and case law. In descending order, the government administration includes ministries and directorates; secondly, the county council districts; thirdly, the municipalities. The definition extends to those legal persons that, in spite of the fact that they sit outside the public activity

area, are owned by public administration bodies. The public administration standard is applied on the basis of functionality, and the extent of political control.

Legislation on Organisation

24. The overarching basis of public administration is the "principle of legality" which applies to all three tiers equally and ensures that parliamentary statutory authority must be the basis of all decisions taken by public administrations as they affect the rights and obligations of individuals. The foremost pieces of legislation governing the public administration are the Freedom of Information Act (FIA) and the Public Administration Act (PAA), which regulates the execution of powers at Governmental, regional, municipal, and departmental level, together with relationships between the public and private sector. Beneath this, there is a level of non-statutory rules setting conditions for the exercise of discretion and the execution of public administrative tasks. Most public or administrative bodies fall within the scope of the two pieces of legislation mentioned above, particularly when exercising powers to achieve public purposes, including private bodies, as long as they exercise powers as a result of delegation of public powers. On the other hand, public bodies that only make business fall outside the definition of the PAA. The criteria deciding whether the PAA applies to decisions by public administrative bodies are the following: a decision must imply exercising public authority and, generally or individually, decide upon rights or obligations of private persons. Most permissions and orders fall within this definition.

Public Integrity

25. Whilst there is no one national anti-corruption policy, a considerable body of initiatives is in place. For example, the ∅KOKRIM has established within its ranks the special anti corruption team who, in addition to their investigative remit, go in for awareness raising activities in the public and private sector. A similar awareness programme is conducted within the Ministry of Justice under a programme entitled "The Anti Corruption and Money Laundering Project " (headed by former French Magistrate Eva Joly), who is revising "The Governmental Action Plan against Economic Crime". Ethical guidelines are being developed for the Ministry of Labour and Government Administration due for publication by the end of 2004. Norwegian authorities report that there is no system for assessing the effectiveness of anti corruption measures vis-à-vis the public administration but they express confidence in the measures outlined above and overall high standards of transparency.

Access to Information

26. In the general sense, widespread information about the public administration is published on the web at various sites together with information distributed by County Council Districts, and municipalities. In the specific sense, access to public administrative information is decided either under the PAA or the FIA. If the applicant is a party to the case or "concerned" then a higher duty of disclosure under Sections 18 and 19 PAA applies, giving the applicant the right to access "all information" in his own case, and removing the effect of the general secrecy rules. There are limitations, i.e. access to a competitors design specifications or preparatory documents decided by a subordinate body (in the latter case the public body may exercise discretion). A lesser regime applies to persons who are not parties to the case, and is based under the FIA, which at Section 2 raises a presumption of disclosure unless the general secrecy rules apply. The effect is that discretion to refuse disclosure is widened and the refusal can be the subject of appeal to administrative bodies.

Administrative Procedures

27. Section 17 PAA establishes the general principle in the field of administrative decision makings according to which the administration, when dealing with an individuals case, is obliged to clarify relevant matters as "thoroughly as possible". Depending on the level of the case, consultation will be scaled up to match the importance of the decision being taken and ranging from basing decisions on documents presented by the parties up to carrying out special and extended consultations with a number of different entities. A structure of appeals begins with an appeal to the deciding institution, to a "higher authority" and ultimately before a court pursuant to Section 435 paragraphs 1 of the Civil Procedure Act. The appellate body can look into the following matters: a) facts, b) *opinio juris*, c) the application of law (substantial as well as procedural law) on facts and d) the exercise of discretionary powers. The first and the higher administrative authority can look into all matters mentioned and make a different decision. No matter whether or not discretionary powers have been exercised in a specific case, the court can always examine whether the administration has misused its powers. The courts are only entitled to declare the decision invalid.

The Ombudsman

28. The post of the Ombudsman derives from the Constitution (Section 75) which provides that the Storting (the Parliament) appoints "a person (..) to supervise the public administration and all the work in its service, to ensure no injustice is done against the individual citizen". The office has about 25 lawyers, and reports to Parliament. The Ombudsman's powers are applicable at all the tiers of the exercise of power in the Public Administration, at Government level, Regional level, municipal level, and within the directorates. The Ombudsman has the power to inspect *inter alia* an administrative agency and is empowered to obtain the information he requires, and announce whether a decision is invalid, unreasonable, or that it conflicts with good administrative practice, issuing a related recommendation. The recommendations have no legal authority, but are generally followed. The Norwegian authorities report that his likely responsibility vis-à-vis corruption would be to counteract "decisions that seem clearly unbalanced and where corruption might have taken place". However, they also stated that there are no such recommendations related to any corruption/corruption related case recorded in the Ombudsman database. Two areas that may be of relevance to corruption are cited as being regulated by the Ombudsman: the FIA on the right of the public to access documentation concerning significant civil service appointments, and the regulation of open and closed meetings in local government, on the presumption that such meetings pursuant to the Local Government Act should be public.

Employment in the State Administration

29. Employment in the state administration is based upon the "principle of qualification", dependant on education, professional experience and personal qualities. There is no standard procedure for screening criminal records in corruption specific posts, except for police and prosecution posts. The Norwegian authorities suggest that it is a matter for employers to ask "probing questions" in cases of public functions particularly susceptible to corruption: where "irreproachable conduct" is laid down by law (or is justified by the nature of the work), they may require employees to produce a copy of their criminal records verifying that there are no relevant convictions. There are no general rules in this regard. At Regional and Municipal level, there are no rules for recruitment and local authorities set up their own regulation within the existing general principles. Furthermore, the PAA can be applied with respect to this (individual) decision on recruitment.

Although, there is no system for rotation of staff either at state, regional or municipal level as anti-corruption specific measure, the issue is under consideration.

Training in ethics

30. Employees become familiar with the basic principles on ethical behaviour of civil servants during their political science or law university courses dealing with the PAA, FIA and other non-statutory rules. The Norwegian authorities underline that there are opportunities for civil servants to follow external training (for example seminars) on ethics, but this is solely based on voluntary involvement. Basic principles are also covered in courses for new employees, which are regularly conducted in the ministries, and in other types of seminars. In all training at managerial level, ethics issues are part of the program.

Conflict of Interest

31. Section 6 PAA, second paragraph, lists a detailed set of circumstances in which a public servant having a prescribed relationship should not act. The law is applicable at Governmental, Regional and Municipal level, and also covers representatives elected by popular vote at regional and municipal level. The duty to disqualify pursuant to the PAA is the officer's own responsibility, and failing to exercise this duty, which can also be raised by others, can impact both on the officer and on the decision he has taken. There exist rules on professional secrecy and unwritten principles of *uberrimae fidei* towards the employer. There is no specific programme governing the public/private sector interface, although the Ministry of Labour and Government Administration and the Government are in the process of finalising guidelines that will cover the changeover of political posts vis-à-vis the administration and private enterprise. Limiting changeover to private sector (except in the example of Oslo, where historically problems had been encountered, and imposes a years prohibition on dealing with a specific enterprise after a council employee has joined it) is not subject of legal regulation, although it is the subject of guidelines due to be published by the end of 2004. A measure of prohibition can be imposed when an administrative employer can insist that a resigning employee, who would otherwise work for a private enterprise with whom he has had dealings, may be moved to a different public post.

Anticorruption Policy

32. There are a large number of initiatives in Norway that have either a legislative footing or are the subject of guidelines. At the legislative level, the PAA, the Civil Service Act, and the non-statutory norms for public administration practice, the Ombudsman functions, and preventive measures including sanctions under the Penal Code (extending the definition of civil servant to elected officials at county council and municipal level) all contain provisions regulating the execution of tasks in public administration. At the non-legal level, there is a forthcoming report by the Ministry of Labour and Government Administration following up the OECD influenced "The Ethical Infrastructure of the Norwegian Government Administration" (which was submitted in 2002). There is also an ethics awareness-raising programme developed by the Kommunenes Sentralforbund ("The Norwegian Association of Local and Regional Authorities"), which is operating in 90% of the municipalities. The police and the ∅KOKRIM have their own ethical guidelines. There is no general code of ethics for civil servants in Norway. However, a working group is also in the process of elaborating draft Ethical guidelines for the Government Service. A number of municipalities and counties have established ethical guidelines.

Gifts

33. The Civil Servants Act, Section 20, contains a restriction on the acceptance of gifts, commissions, services and other benefits in the service, breach of which can attract disciplinary procedures under Sections 14 and 15, and Section 21. The municipality of Oslo, as well as a number of other municipalities and counties, has specific rules governing receipt of gifts.

Reporting on Corruption

34. Aside from the duty of loyalty by employees to the employer according to which public officials are obliged to report knowledge of serious misconduct to their superior, there is no obligation to report suspected corruption/breaches of duties or codes of ethics imposed by law. The Norwegian authorities report two policy initiatives in which this issue is being considered: the Ministry of Labour and Government Administration on Ethical Guidelines for the Government Service, and the Governmental Action Plan against Economic Crime. As already pointed out in the 1st Round Evaluation Report of GRECO, paragraph 113, there is no specific measure in place concerning protection for employees or public servants who report suspected corruption/breaches of duties or code of ethics. Nevertheless, there is proposed legislation in the form of "The Working Environment Act" due before parliament in 2005 dealing with this matter.

b. Analysis

35. Norway has recognised the dangers of corruption for its own administration and also, and above all, in connection with Norwegian activities abroad, especially in Third World countries. It is to be welcomed that the prevention of corruption plays a key role in Norwegian development aid policy. However, the danger of the integrity of public administration being undermined by corruption is also increasingly being recognised within Norway itself at both central government and county and municipal level. A whole series of initiatives by various government agencies that are designed to prevent corruption and heighten awareness of the threats it involves for public administration were presented to the GET. Against the background of Norway's traditionally low corruption rates, the GET was impressed by the sustained efforts that nevertheless continue to be made to prevent corruption.

36. The GET noted that existing ethical guidelines in individual administrative bodies (i.e. Ministry of Defence, City of Oslo, ØKOKRIM) are to be supplemented with generally applicable ethical principles for public administration, which are being drawn up by the Ministry of Labour and Government Administration and are to be finalised by the end of 2004. The GET was informed by the Norwegian authorities that all ministries and their underlying entities were involved in the drawing-up of those guidelines.

37. Norway has an independent public audit system at both national and municipal level. In future, the checks performed by the Auditor General are increasingly also to involve looking for evidence of corruption. The GET welcomed the Auditor General's intention to play a more active role in combating corruption. To this end, the relevant staff are to receive special training which will also be attended by private-sector auditors. In particular, information is also to be exchanged with ØKOKRIM. Under a legislative amendment that will come into force on 1 July 2004[3], the Auditor General will be able, when conducting his own audits, to pass on information to the police.

[3] After the visit, the Norwegian authorities informed the GET that these amendments entered into force as planned.

38. In Norway, there is general agreement that maximum transparency in government action in general and in decision-making in particular is one of the key weapons against corruption. The GET learned that such transparency already exists to a large extent because of traditional and cultural factors and also because of the relatively small size of the administrative units in most of the country (over half of all municipalities have fewer than 5 000 inhabitants and only eight have more than 50 000 inhabitants). The traditional openness of society that is part of Norwegian culture and also includes the publication of details of the taxes to be paid by individuals is underpinned in law by the Freedom of Information Act (FIA) and the possibility of appealing to the parliamentary ombudsman. Some of the parties met by the GET indicated that there had been tendencies in the public administration to interpret the FIA too strictly. However, the situation in this regard was continuously improving. The GRECO encourages the Norwegian authorities to pursue their efforts with a view to implementing the FIA to the fullest and to be attentive to a possible need to make further improvements in this field.

39. There is no rule that governs the systematic rotation of staff involved in public procurement/awarding of contracts, i.e. the areas where the risk of corruption is particularly high. The authorities of Norway informed the GET that consideration would be given to the concept of rotation of staff in connection with the introduction of new ethical guidelines for the Government Service. **The GET recommends to consider introducing the regular rotation of staff in such areas which entail a particular risk of corruption (awarding of contracts, public procurement, etc.).**

40. The GET noted the absence of specific rules applicable to civil servants of all public administrations moving from the public to the private sector. However, the Government is in the process of elaborating guidelines dealing *inter alia* with civil servants moving to a new position outside the Government Service. Some administrations which have encountered problems in this field (i.e. the municipality of Oslo and the Ministry of Defence) have set up their own ethical regulations concerning relations with the private sector, including aiming at limiting "pantouflage". Representatives of the Norwegian Confederation of Business and Industry and of the Norwegian Confederation of Trade Unions met by the GET during the visit both agreed that it was necessary to regulate the changeover system. Therefore, t**he GET recommends to introduce clear rules/guidelines for situations where public officials move to the private sector ("pantouflage"), in order to avoid conflicts of interests.**

41. Overall, the GET was impressed by the level of development of Norway's anticorruption policy. The efforts made by the Norwegian authorities with a view to increasing the efficiency of anticorruption measures even further and pass Norwegian experience on to others through the Anti Corruption and Money Laundering Project are exemplary

IV. THEME III – LEGAL PERSONS AND CORRUPTION

a. Description of the situation

Definition and establishment of legal persons

42. There are four different types of legal persons: companies, societies, organisations and state enterprises. The establishment of legal persons requires processes and safeguards proportionate to the level of public interaction and investment they are able to undertake.

Registration

43. All legal persons have to register with the Central Co-ordinating Register for Legal Entities, which acts as a collection point for the Register of Employers, the Value Added Tax Registration List, the Business Register of Statistics Norway, the Register of Business Enterprises, the County Governors Register of Foundations and the Corporate Taxation Data Register. The Central Co-ordinating Register provides and identifies legal persons by a nine-digit reference number, which is then used in all the registers to help identify businesses and prevent the alteration of information. The Register of Business Enterprises complies within the requirements of the Business Enterprise Registration Act, the purpose of which is to provide a publicly accessible data base which, for example, in the case of a limited company will provide the articles of association, the date of formation of the company, the registered address of the company and the municipality of the business enterprise, the board of directors and deputy board members, the serving chairman - if any - the General Manager (Managing Director) and auditors. Notification to the Register requires certain documentation, for example certified copy of the memorandum of association, an auditors declaration. The Registrar verifies whether submitted notifications and their basis are in accordance with the law and whether they have been formulated in accordance with the law.

44. According to the Norwegian Accounting Act, all limited companies, public limited companies, savings banks, mutual insurance companies and petroleum enterprises are required to submit annual accounts and reports together with the auditors report to the Register of Company Accounts. The register of Company Accounts stores the annual accounts and reports for ten years and makes them available throughout this period. The accuracy of the reports is a matter for the Company board, the Register only verifies that the documents are in the proper legal form. If the annual accounts are submitted to late, the company will be subject to a monetary sanction. If the annual accounts have not been submitted within 6 months after the deadline, the Bankruptcy Court may enforce dissolution of the company. The general rule establishes that there are no restrictions in legal person holding shares in other legal persons, albeit there are restrictions in some specific cases.

Limitations on exercising functions in legal persons

45. There is no automatic disqualification regime for managers, Chief Executives Officers, managing directors, board members of legal persons who are convicted of an offence. The issue is regulated by Section 29 of the Penal Code. Implicit is the necessity for a conviction, following an exercise of court discretion in deciding whether the provision should be applied in the public interest.

Liability of Legal Persons

46. The Penal Code was amended in 1991 to include at Chapter 3a Sections 48a and 48b to include corporate criminal liability of legal persons providing that a penal provision has been contravened by a person acting on behalf of the legal person (whether that person is punishable or not). Section 48a provides that the legal entities can only be punished with a fine, or deprived of the right to carry on business, or business in certain forms. Section 48b provides a series of tests for deciding whether this pecuniary sanction shall be applied including *inter alia* the seriousness of the offence, the preventive effect, what measures the company could have taken to avoid the offence, whether the offence was committed to promote the business of the company, the

advantage or potential advantage obtained, the enterprises economic capacity and whether other sanctions have been imposed[4]. The application of section 48a is discretionary.

47. The Norwegian authorities provided some examples of cases of liability of legal persons, including some cases where significant fines have been imposed to companies involved.

48. Lack of supervision by a natural person within a company may lead to criminal liability where active bribery, trading in influence, and money laundering follow. According to the Norwegian authorities, the assessment of applying liability is based on the company's control and supervisory regime. For example, if a natural person in a leading position facilitates bribery by failing to execute his duties according to company codes and guidelines, the issue is to verify if the company has developed and implemented control measures in its organizational system. If effective control measures are in place, but the systems are being defaulted in a way that the company could not reasonably be expected to reveal, it is likely that criminal liability will not be applied against the company in Norway. It is not necessary to identify or convict a natural person to obtain criminal liability against a legal person. Proceedings against a natural person and a legal person can be taken in parallel, or separately. However, the conviction or acquittal of the natural person will not necessarily bind the legal person.

Statistics

49. The Norwegian authorities have not kept statistics for proceedings against legal persons in corruption cases, but cite a case of using bribes to influence foreign officials. Figures are provided for corporate criminal liability in general over the period from 1991 to 2002 (1516 fines).

Sanctions

50. The Penal sanction that can be imposed on legal persons is fines. Confiscation can also be applied. A legal person can also be deprived of the right to carry on business or may be prohibited from carrying it on in certain forms (see Section 48a in footnote 3). All these sanctions can be applied in relation to bribery, trading in influence and money laundering.

[4] Section 48 a. When a penal provision is contravened by a person who has acted on behalf of an enterprise, the enterprise may be liable to a penalty. This applies even if no individual person may be punished for the contravention.
By enterprise is here meant a company, society or other association, one-man enterprise, foundation, estate or public activity.
The penalty shall be a fine. The enterprise may also by a judgment be deprived of the right to carry on business or may be prohibited from carrying it on in certain forms, cf. section 29.

Section 48 b. In deciding whether a penalty shall be imposed on an enterprise pursuant to section 48 a, and in assessing the penalty vis-à-vis the enterprise, particular consideration shall be paid to
a) the preventive effect of the penalty,
b) the seriousness of the offence,
c) whether the enterprise could by guidelines, instruction, training, control or other measures have prevented the offence,
d) whether the offence has been committed in order to promote the interests of the enterprise,
e) whether the enterprise has had or could have obtained any advantage by the offence,
f) the enterprise's economic capacity,
g) whether other sanctions have as a consequence of the offence been imposed on the enterprise or on any person who has acted on its behalf, including whether a penalty has been imposed on any individual person.

Tax deductibility and fiscal offences

51. The Tax Law (Section 6-22) provides that "An expense will not be deductible if the payment is for an unlawful service in return (…)". The service will be unlawful *inter alia* "when it is inconsistent with general business ethics or administrative customs.". The Norwegian authorities state that bribes or other corruption related expenses are covered but that facilitation payments may not be covered, unless falling within the definition of "improper"(citing the example of money paid to a public official for return of a passport). Facilitation payments will generally be covered as they are regarded to be improper. Exceptions could be envisaged in special circumstances, i.a. giving a bribe in order to get permission to leave a country.

The Tax authorities involvement in the detection and reporting of criminal offences including corruption and money laundering

52. The Tax Assessment Act allows the duty of confidentiality to be overridden in criminal cases : for offences not under the competence of the tax authorities (tax and fiscal crimes), there must be reasonable grounds to suspect an offence which would carry in excess of 6 months imprisonment. In such a case, information can be provided to the police and the prosecution authorities, both on the tax authorities own initiative or upon query of the police or the prosecution service. Corruption and money laundering are covered as offences which, when reasonably suspected, carry a reporting duty to the police. A similar system regulates disclosure by the customs service under the Customs Act. The Directorate of taxes has also elaborated guidelines (bulletin of 5 November 2003) setting up criteria for reporting to the law enforcement authorities, when reasonable grounds of suspicion of a serious criminal offence – beyond the fiscal area –, including corruption, have occurred. Local tax inspectors need a previous approval of their directorate before conveying the information to the law enforcement agencies.

Accounting Rules

53. There are no exemptions from keeping accounts, which include all the institutions listed at section 1 to 2 of the Accounting Act 1998[5]. Accounting rules are given in the Accounting Act of 1998.Alternatively the book-keeping rules in the Accounting Act of 1977 (chapter 2) might be applicable in book-keeping matters. The Accounting Act of 1988 requires in section 2(7) 2 that the accounts listed in subsection 1 are stored for ten years, which includes a detailed list of the accounting records to be stored. The Accounting Act provides that failure to maintain the records listed at 2(7) 2 can result in a fine or three years imprisonment (six years for an aggravated offence) for anyone who wilfully or negligently, or by complicity violates the rules. As regards book keeping, there are three primary areas in addition to the penal provisions in the Accounting Act: Section 286 PC covers essential disregard of provisions relating to book keeping, either wilfully or negligently, falsification of documents, and destruction or disposal of accounts and documentation; Sections 182 and 183 PC provides for sanctions as regards the use of forged or falsified documents; the Ministry of Finance has – in march 2004 – presented a white paper with

[5] Private and public companies, state owned corporations, financial institutions, consumer cooperatives with revenue in excess of NOK 2,000,000, cooperative building associations, housing cooperatives and owner tenant section joint ownership, associations with a financial purpose (for profit organisations), other associations and societies which have assets to the value in excess of 20,000,000(approximately 2,300,000 euros) or more than 20 employees and anyone carrying on a sole proprietorship with total assets exceeding more than NOK 20,000,000 or more than 20 employees. The list is not exhaustive, in that the Accounting Act 1998 section 1-2 subsection 2 provides that anyone under a duty to supply extracts of accounts under the Norwegian Tax Administration Act or a statement of sales in accordance with the Norwegian VAT Act has a statutory obligation to keep accounts of his activities.

a new draft law on book-keeping to the parliament aiming at ensuring i.a. that book keeping documents contain accurate information.

Role of Accountants, Auditors, and legal professionals

54. Both the Money Laundering Act and the Auditors Act provide regimes for disclosure: 1) when a criminal investigation is under way, an auditor may submit a statement and present documentation regarding auditing arrangements or other services to the police Furthermore, an auditor may inform the police if matters arise – in conjunction with an auditing engagement or other services – that gives reasons for suspicion of a criminal offence. 2) under the Money Laundering Act of 20 June 2003, pursuant to Section 4 and 7, accountants and auditors (and those who provide corresponding services in return for remuneration) are obliged to report suspicious transactions to the Norwegian FIU. Suspicions of a criminal act pursuant to sections 147a and 147b of the Penal Code (terrorist financing) shall also be reported.

b. Analysis

55. The register Authority and Source of Information or Brønnøysund Register operates in total 16 interconnected registers, including the Norwegian Bankruptcy register and the Company accounts register, as well as the Register of Business Enterprises. All companies which are registered are given a unique registration number. The registration number is a requirement for establishing eg a bank account in the company name and for being registered in the VAT register. Currently more that 280.000 business enterprises are registered. When a legal person is registered there is no system of verification of the factual information provided to support the application; if the application is made in accordance with the law the legal person will be registered. There have been a number of instances detected by the police and by the Central Coordinating Register over the years where the factual information provided proved to be incorrect. The wilful presentation of false information to support a registration of a legal person, that was then used to conceal or to facilitate a crime, is an offence under Norwegian law and the GET understood from the Norwegian authorities that upon conviction a court would most likely take these facts into account and impose a heavier sentence. The Central Coordinating Register is largely seen as a success and has been examined by representatives of other countries as a model for their own registries.

56. The Anti-Corruption and Money Laundering Project, operating in The Ministry of Justice, has the main responsibility for drafting a new Governmental Action Plan Against Economic Crime. Among the measures contemplated, is the introduction of an obligation to include information in the companies' annual accounts on ingoing and outgoing payments to different countries/regions in the world. Another measure under consideration is the possible introduction of an obligation for all foreign enterprises that do not conduct business in Norway, to register in the Norwegian Business Register, in order to be allowed to open a bank account in Norway. The GET welcomed the aforementioned projects and found them to be very worthwhile.

57. The GET was of the opinion that the provisions relating to the non-deductibility of expenses relating to corruption were satisfactory. Payments in compensation for unlawful services are not deductible; unlawful in this context means inconsistent with general business ethics or administrative customs in Norway or outside Norway where the payment is effected. A legal person engaging in corruption is likely to use accounting methods to disguise such payments and the successful application of these provisions depends to a large extent on the tools available to tax inspectors and their skills in detecting corruption.

58. The tax authorities have a variety of tools that can be employed to detect corruption. Under Section 12 (1) of the Tax Administration Act it is an offence, whether intentionally or by gross negligence, to give the tax authorities incorrect or incomplete information or prepare an incorrect document with a view to obtaining tax advantage. These provisions, in various respects, are more far-reaching than the accounting regulations. Regarding the relationship between the tax authorities and the police, especially in respect of the reporting of crime, efforts are being made by the Norwegian authorities to increase awareness and levels of training, notably in relation to economic crime and corruption related offences. This has been communicated by means of internal circulars and economic crime courses for tax inspectors. The GET was also informed that a specialised tax crime unit had been set up from 4 May 2004 for the counties of Oslo and Akershus. The main thrust of the unit however is to target and strengthen the fight against tax and excise related crime; it is also envisaged that the unit will be in a position to assist in the detection of corruption offences. It is too early to assess how effective these measures have been to date. The tax authorities were able to point to some examples of success that they have had in detecting, or assisting the police in detecting or investigating economic crime and, while no specific example in relation to corruption could be mentioned, it is indicative of the potential benefits of this relationship. **The GET recommends to ensure that tax authorities employees who might be in a position to detect corruption during the course of their duties are well aware of their obligation to report serious crime and are given sufficient training and the means to detect corruption.**

59. While the GET believes that Norway's accounting regulations are in conformity with the Criminal Law Convention on Corruption, the Ministry of Finance is carrying out a review of the current accountancy regulations, including in respect of the required contents of invoices. In this connection, Article 14a of the Convention should be recalled. As part of that review, the Ministry of Finance should also consider the regulations relating to omissions to record payments as referred to in Article 14 b of the Convention.

60. The right to report suspicious activity has only been given to auditors some five years ago. An obligation to report transactions associated with the proceeds of any criminal act was introduced by a new Money Laundering Act, in force from 1 January 2004. The number of suspicious transaction reports from auditors is very small. It was pointed out to the GET that, to a large extent, auditors are dependant on information provided by their clients and that it was almost impossible to detect any sophisticated effort to cover up a financial trail. The professional body of Public Accountants expressed its willingness to assist the police in any way possible. *The GET observed that the Norwegian authorities could usefully explore, in dialogue with the professional body of the auditors, what, if any, measures could be taken to improve the situation in relation to reports of suspicions of corruption to the authorities.*

61. Whilst the system is discretionary there would appear to be a comprehensive system in place to impose criminal liability on legal persons in appropriate cases. The fact that the system works is evidenced by the figures given for convictions at paragraph 48 above. That said, to date, there has been no completed prosecution of a legal person for corruption. The GET enquired as to the reason for this. The reason given was that, to date, there has only been a small number of prosecutions for corruption in Norway and an even smaller number where a legal person was involved. An illustration of this is that there are only four cases, as at the date of the visit, at any stage of the investigative or judicial process. The Norwegian authorities provided examples of decisions not to prosecute in such cases where the wrongdoer had the sole controlling interest in the legal person and he had been prosecuted. Others were where the offence had been

committed solely for personal gain and the legal person had or could not have made a gain: they felt that it was simply because appropriate circumstances had not arisen and that there was no barrier to bringing a prosecution against a legal person.

62. As regards legal persons and corruption, the GET noted with satisfaction that there was willingness on the part of the Norwegian authorities to identify deficiencies in their system and to recognise and to act upon them. They would appear to have a body of law, which is sufficient to detect, investigate, prosecute and convict legal persons of corruption. As detailed in paragraphs 48 to 50, the Penal Code establishes liability of legal persons in a case of active and passive bribery, trading in influence and money laundering committed by a natural person acting on behalf of the legal person, as well as in a case where lack of supervision within the legal person makes it possible to commit the respective offences. It is possible to assign liability to a legal person even when the natural person may not be punished for the offence. The sanctions provided for, including fines, seem to be effective, proportionate and dissuasive. The GET was of the view that the provisions of the Law met the standards of Article 19 of the Criminal Law Convention on Corruption. However, the GET was not in a position to assess how the system worked in practice as no prosecution of a legal person in corruption cases had been completed at the time of the visit.

V. CONCLUSIONS

63. Norway has a well developed system of legislation, law enforcement and judicial authorities to deal with economic crime, including criminalisation of corruption and confiscation of proceeds of corruption. Giving a higher degree of specific training for prosecutors and police officers in order to enable them to fully implement provisions on seizure and confiscation of proceeds of corruption could contribute to improving the situation. Norway has recognised the dangers of corruption for its own administration and also, and above all, in connection with Norwegian businesses abroad. However, the danger of the integrity of public administration being undermined by corruption is also increasingly being recognised within Norway itself at both central government and county and municipal level. A series of initiatives by various government agencies that are designed to prevent corruption and heighten awareness of the threats it poses are under consideration. Against the background of Norway's traditionally low corruption rates, the sustained efforts that nevertheless continue to be made to prevent corruption are impressive. As regards legal persons and corruption, the provisions of the Norwegian Law meet the standards of Article 19 of the Convention.

64. In view of the above, the GRECO addresses the following recommendations to Norway:

i. to continue developing intensive and comprehensive training to police officers and prosecutors in order to enable them to make better use of legal provisions on detection, seizure and confiscation (paragraph 21);

ii. to consider introducing the regular rotation of staff in such areas which entail a particular risk of corruption (awarding of contracts, public procurement, etc.) (paragraph 39);

iii. to introduce clear rules/guidelines for situations where public officials move to the private sector ("pantouflage"), in order to avoid conflicts of interests (paragraph 40);

iv. **to ensure that tax authorities employees who might be in a position to detect corruption during the course of their duties are well aware of their obligation to report serious crime and are given sufficient training and the means to detect corruptions (paragraph 58);**

65. Moreover, GRECO invites the Norwegian authorities to take account of the observations made in the analytical part of this report.

66. Finally, in conformity with Rule 30.2 of the Rules of procedure, GRECO invites the Norwegian authorities to present a report on the implementation of the above-mentioned recommendations by 31 March 2006.