

Strasbourg, 30 September 2004

Public
Greco RC-I (2004) 9E

First Evaluation Round

Compliance Report on Norway

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

I. INTRODUCTION

1. GRECO adopted the First Round Evaluation Report on Norway at its 10th Plenary Meeting (8-12 July 2002). This Report (Greco Eval I Rep (2002) 3E) was made public by GRECO, following authorisation by the authorities of Norway, on 25 July 2002.
2. In accordance with Rule 30.2 of GRECO's Rules of Procedure, the authorities of Norway submitted their Situation Report (RS-report) on the measures taken to follow the recommendations on 23 January 2004.
3. At its 13th Plenary Meeting (24-28 March 2003), GRECO selected, in accordance with Rule 31.1 of its Rules of Procedure, Lithuania and Sweden to provide Rapporteurs for the compliance procedure. The Rapporteurs appointed were Mrs Aušra BERNOTIENE on behalf of Lithuania and Mr Lennart KLACKENBERG on behalf of Sweden. The Rapporteurs were assisted by the GRECO Secretariat in drafting the Compliance Report (RC-Report).
4. The RC-Report was adopted by GRECO, following examination and debate pursuant to Rule 31.7 of the Rules of Procedure, at its 20th Plenary Meeting (27-30 September 2004).
5. Under Article 15 para. 6 of the GRECO Statute and Rule 30.2 of the Rules of Procedure, the objective of the RC-Report is to assess the measures taken by the authorities of Norway and, wherever possible, their effectiveness in order to comply with the recommendations contained in the Evaluation Report.

II. ANALYSIS

6. It was recalled that GRECO in its Evaluation Report addressed 5 recommendations to Norway. Compliance with these recommendations is dealt with below.

Recommendation i.

7. *GRECO recommended to consider the development of targeted statistics and research on the various forms of corruption in Norway.*
8. The authorities of Norway have reported that since July 2003 new provisions on corruption have been introduced into the Penal Code which enable law enforcement bodies to clearly identify regulation that relates to corruption offences and subsequently facilitate the collection of focused statistics. The new provisions are given specific codes in the STRASAK – the central criminal database of the police - which facilitates the identification of corruption cases. Besides that, they have reported that the point of research on various forms of corruption has been considered – as it demanded in recommendation i. – in different ways:
 - In the Governmental Action Plan against Economic Crime, which was made public by the Ministers of Justice and Finance on 9 June 2004, the issue of research has been given attention: in chapter 6, the Government acknowledges the need for research as a tool for better targeting measures against economic crime and initiatives in this respect will be taken.
 - The Ministry of Justice has recently established an analysis unit which will assist the Government in improving the factual basis for political decisions. Their tasks also cover the issue of economic crime.

- The Ministry of Justice and the Ministry of Finance are financially supporting a research project on money laundering initiated by the Norwegian Research Council (Norges forskningsråd).
 - The Ministry of Justice, in collaboration with Statistics Norway (Statistisk Sentralbyrå) are presently conducting a survey regarding companies' exposure to economic crime, including corruption. The interview based project has covered 2,000 Norwegian companies and 91,5 % of them have responded. Statistics Norway is currently in the process of analysing the findings which should be completed by the end of the year. The project should provide useful statistical information, as well as information on the occurrence of various forms of economic crime, including corruption.
9. GRECO took note of the information provided by the authorities of Norway and concludes that recommendation i. has been implemented satisfactorily.

Recommendation ii.

10. *GRECO recommended to review the current mechanisms on the reporting of information on corruption; to clarify the obligation on public servants when and how to report unlawful, improper or unethical behaviour, or behaviour which involves maladministration; and to ensure that all appropriate allegations are reported to the police and prosecution.*
11. The authorities of Norway have reported that they have addressed recommendation ii. in different ways:
- As regards the obligation on public officials to report irregularities and wrongdoings, the Ministry of Labour and Government Administration is currently elaborating the "Ethical Guidelines for the government service". One aspect of this document deals with the detection of malpractice and other irregularities, and when and how to report. The guidelines are scheduled to be finalised in early autumn 2004.
 - A white paper following up on the report from the Government appointed Commission on Freedom of Expression has been submitted to the parliament in April. One of the topics covered is the issue of whistle-blowing. In the white paper, the Ministry of Justice states that it is positive towards implementing legislation that facilitates employees' use of their right to alert the public about serious misconduct within their organisation.
 - The Commission on Revision of the Working Environment Act has proposed statutorily prohibiting reprisals against whistle blowers. The proposed new provision (Section 2-4) reads (unofficial translation):

"It is prohibited to make use of reprisals against employees that in a loyal manner informs about criticisable circumstances in the establishment/undertaking."

The proposed provision is mainly aimed at internal notification and the notification of public authorities, such as for example supervisory authorities and Law enforcement.

- The above mentioned Governmental Action Plan (paragraph 8) states:

"The Government will consider arrangements in the public sector (all levels of public administration) considering the rights and duties as regards the reporting of suspicions of

corruption or other types of punishable or improper conduct within public sector entities. Better mechanisms for keeping and processing such information shall be established, as well as guidelines for when such information shall be submitted to the police”.

- Norway is in the process of ratifying the Civil Law Convention on Corruption. In this connection, specific issues under consideration are the legal position of Norway in relation to Article 9 of the Convention (“Protection of employees”), and the question of possible amendments of the law in order to meet the standards set down by the Convention. In particular, the Ministry of Justice is considering whether statutory regulation is necessary or if the existing non-statutory principles would meet the requirements in question.
12. GRECO took note of the positive measures underway as described by the authorities of Norway. It considered that these measures, once implemented, would comply with recommendation ii.
 13. GRECO concludes that recommendation ii. has been partly implemented.

Recommendation iii.

14. *GRECO recommended to extend as far as possible, the use of special investigative means to cases of corruption, in line with the principle of proportionality and existing safeguards.*
15. The authorities of Norway have reported that interception of communications is regulated by law (Section 216a of the Criminal Procedure Act). Undercover operations and controlled deliveries are regulated by guidelines issued by the Director of Public Prosecutions. These special means are applicable in cases of serious corruption¹. Their use is submitted to an authorisation given at the chief state prosecutor level, and is subject to follow up and control. Section 216a enables the courts to authorise the police to intercept telecommunications when there exists “just cause” for suspicion of a criminal act that according to the law can entail a penalty of 10 years’ imprisonment or more. In case-law a practice has been established according to which no problem would arise to authorise the use of special investigative means in cases of corruption which involve a sum of money of at least 10,000 euros or even less if the persons involved occupy positions of particular importance (i.e. judges). Bugging is not allowed under Norwegian Law.
16. GRECO took note of the information provided by the Norwegian authorities and concludes that recommendation iii. has been implemented satisfactorily.

Recommendation iv.

17. *GRECO recommended to review the regulatory framework applicable to the cooperation between the Office of the Auditor General, the police, ØKOKRIM and other relevant law enforcement bodies. The OAG should be allowed to report any suspicions to the police/ØKOKRIM immediately and confidentially upon discovery whilst the audit is continuing.*

¹ Section 276b: 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

18. The authorities of Norway have reported that a draft law, and draft instructions for the OAG, were submitted to Parliament in January 2001. As a direct follow up to the GRECO First Evaluation Report on Norway, the OAG submitted a supplementary proposal to the Parliament concerning its role in preventing and identifying possible criminal conduct. The OAG clearly stated that the entity should have a more active role in the fight against misconduct and corruption, and therefore should have the possibility of communicating findings and suspicions to the police, or to other public bodies exercising control functions. The OAG expressly voiced support for the recommendation made by GRECO. Changes in the State Audit Act were approved by parliament in spring 2004 and are in force as from 1 July 2004. In particular, Section 9, paragraph 4 now reads (unofficial translations):

“The office of the Auditor General shall through audits contribute to the prevention and disclosure of irregularities and errors.”

and Section 15, paragraph 5 :

“Without hindrance of paragraph one, civil servants of the Office of the Auditor General can, on the basis of a decision of the Auditor General, submit statements and provide documentation regarding an audit assignment to the police when a criminal investigation is opened. Furthermore, the Office of the Auditor General can inform the police if they, in connection with an audit come across circumstances that provide a basis for suspicions that a criminal act has been committed. If considered necessary, the Office of the Auditor General can co-operate with other public control/supervisory authorities. Information can be provided even if the audit assignment is not finalised and without notification to the audited entity or the superior Ministry.”

19. GRECO took note of the information provided by the Norwegian authorities. It welcomes the fact that the Auditor General intends playing a more active role in combating corruption. To this end, the relevant staff are to receive special training in courses that will also be attended by private-sector auditors. In particular, information is also to be exchanged with ØKOKRIM. Under the legislative amendment to the State Audit Act, the Auditor General will be able, when conducting his own audits, to pass on information to the police in suspicious cases if that is deemed to be necessary.
20. GRECO concludes that recommendation iv. has been implemented satisfactorily.

Recommendation v.

21. *GRECO recommended to adopt formal written guidelines stressing the importance for Kredittilsynet to report grounded suspicions of criminal offences to the police or prosecuting authorities.*
22. The authorities of Norway have reported that Section 6 of the Act on the Supervision of Credit Institutions, Insurance Companies and Securities Trading etc. (Financial Supervision Act) reads:

“Contravention of provisions applying to institutions that are supervised by Kredittilsynet may be reported to the prosecuting authority or to the public authority within whose jurisdiction the matter specifically falls.

When Kredittilsynet in the course of its work learns of circumstances involving the proceeds of a criminal act, information to this effect shall be forwarded to The National Authority for Investigation and Prosecution of Economic and Environmental Crime, ØKOKRIM.”

Kredittilsynet has, in its line of work, operated under the condition that the assessment of whether cases should be reported under Section 6, paragraph 1, or not, must be based on principles of equal treatment and proportionality. In principle, it is up to the discretion of the Board of Kredittilsynet to decide if complaints should be filed or not. In cases of emergency (e.g. danger of interference with evidence) and in minor cases, the administration can file complaints without consulting the Board. Under paragraph 2, there is an obligation for Kredittilsynet to report information to ØKOKRIM when they, in the course of their work, "... learn(s) of circumstances involving the proceeds of a criminal act." It is not a prerequisite that the underlying criminal offence can be positively identified. This provision encompasses circumstances involving proceeds related to corruption and thereby makes it an obligation to report such circumstances.

23. The authorities of Norway have reported that Kredittilsynet adopted written guidelines in August 2004.
24. GRECO took note of the information provided by the authorities of Norway and concludes that recommendation v. has been implemented satisfactorily.

III. CONCLUSIONS

25. In view of the above, GRECO concludes that Norway has implemented the vast majority of the recommendations of the First Round Evaluation Report. Recommendations i, iii, iv and v have been implemented satisfactorily. Recommendation ii has been partially implemented.
26. GRECO invites the Head of the delegation of Norway to provide additional information by 31 March 2006, on the progress of the implementation of recommendation ii.