

27 November 2013

Original: English

Implementation Review Group

Resumed fourth session

Panama City, 26-27 November 2013

Agenda item 2

Review of implementation of the United Nations

Convention against Corruption

Executive summary: Norway

Note by the Secretariat

The present conference room paper is made available to the Implementation Review Group in accordance with paragraph 36 of the terms of reference of the Mechanism for the Review of the Implementation of the United Nations Convention against Corruption (Conference of the States Parties resolution 3/1, annex). The summary contained herein corresponds to a country review conducted in the second year of the first review cycle.



Executive summary

Norway

1. Introduction: Overview of the legal and institutional framework against corruption of Norway in the context of implementation of the United Nations Convention against Corruption

Norway signed the Convention on 9 December 2003 and ratified it on 29 June 2006. The Convention entered into force for Norway on 29 July 2006.

Norway is a civil law country. The primary sources of Norwegian law are the Constitution, the Acts of Parliament, Royal decrees, European Union and international law, as well as the preparatory works and case law. The national legal framework against corruption includes provisions from the General Civil Penal Code (Penal Code), Criminal Procedure Act and Extradition Act.

The relationship between national and international law is dualistic in the Norwegian legal system, and treaties are not self-executing and have to be implemented into Norwegian legislation. Due to the presumption doctrine, Norwegian law is interpreted in accordance with international law principles and presumed to be in accordance with Norway's international law obligations, even non-implemented or inadequately implemented.

The institutions most relevant to the fight against corruption are the Ministry of Justice and Public Security, the Prosecution Authority, the Police service, the National Authority for Investigation and Prosecution of Economic and Environmental Crime (ØKOKRIM) and the Ministry of Foreign Affairs. Other relevant stakeholders include the judiciary, civil society, the private sector and the media.

Norway is a member of the Council of Europe's Group of States Against Corruption (GRECO), the OECD Working Group on Bribery and the FATF (Financial Action Task Force).

2. Chapter III: Criminalization and Law Enforcement

2.1. Observations on the implementation of the articles under review

Bribery and trading in influence (articles 15, 16, 18, 21)

Norway introduced new Penal Code provisions on bribery and trading in influence on 4 July 2003, namely Sections 276a, 276b and 276c. Sections 276a and 276b (gross corruption) cover both active and passive corruption in the public and private sectors.

Norway's provisions, supplemented by the preparatory works to the 2003 amendments, cover a wide range of offences, which include persons holding political offices, board appointments or honorary offices. It is irrelevant whether the person receives remuneration, has been elected or appointed. Office holders in associations, unions and organizations, as well as members of Parliament, local councils and other elected representatives are covered, as are judges, co-judges and arbitrators. In addition to foreign public officials and officials of public

international organizations, private sector representatives and representatives of non-governmental organizations are also covered.

As regards the object of bribery, Norway's provisions refer to an "improper advantage" which covers the notion of an "undue advantage" in the Convention. As for trading in influence, the advantage must be undue; however, the influence exercised does not have to be illegitimate or improper.

Norway's provisions are not limited to acts intended to alter a public official's course of conduct. Further, Sections 276a and 276b do not state that the bribery must be committed in order to obtain any advantage for oneself or for others.

Although the concept of a "promise" is not explicitly addressed in the Norwegian legislation, promises of an undue advantage are covered under the element of "offer" in Norway's legislation. This is established by case law, the preparatory works and supported by very clear statements from Government officials and judges during the country visit.

Money-laundering, concealment (articles 23, 24)

Section 317 of the Penal Code adequately criminalizes concealment and money-laundering including self-laundering. As for predicate offences to money-laundering, Norway follows an all crimes approach whereby any criminal act under the Penal Code or other legislation could constitute a predicate offence. The predicate offence does not have to be specified so long as it is proven beyond a reasonable doubt that the proceeds derive from a criminal act. Money-laundering provisions apply to predicate offences committed abroad, provided that the predicate offence would have been a criminal offence if committed in Norway. The concealment or continued retention of criminal proceeds is also addressed (Penal Code, Section 317).

Embezzlement, abuse of functions and illicit enrichment (articles 17, 19, 20, 22)

Sections 255 and 256 of the Penal Code criminalize embezzlement, including gross embezzlement committed by public officials. Any property is covered, both private and public property, whether owned by a legal person or a natural person.

Chapter 11 of the Penal Code, relevant to felonies in the public service, contains provisions on the misuse of office, including Section 111, which penalizes public servants who demand or receive unlawful tax, duty or remuneration for services rendered, Section 121 on violation of the duty of secrecy, Section 123 on misuse of position as to violate any person's right by performing or omitting to perform an official act, and Section 124 on the misuse of office to induce or to attempt to induce any person to do, tolerate or omit to do anything. Chapter 33 relevant to misdemeanours in the public service contains Section 324 on omission crimes, violation of duties and negligence and Section 325 on, inter alia, gross lack of judgment in the course of duty.

Norway has considered the criminalization of illicit enrichment. Moreover, a number of related measures pertaining to the transparency of tax records and freedom of information are in place, contributing to preventing the accumulation of ill-gotten wealth.

Obstruction of justice (article 25)

Section 132a of the Penal Code criminalizes the obstruction of justice by means of violence, threats, damage or “other unlawful conduct”. The latter covers the alternative of “promising, offering or giving of an undue advantage”.

The term “participator in the administration of justice” could include witnesses, experts and others who provide testimony or evidence in a criminal proceeding. Any person who “works or performs a service for the police, the prosecuting authority, the Court or the correctional services” is also covered.

Liability of legal persons (article 26)

Norway recognizes the criminal liability of legal persons in Sections 48a and 48b of the Penal Code. Moreover, it follows from Section 15 of the Penal Code that both fines and loss of the right to carry on business are ordinary criminal penalties, on par with imprisonment.

A natural person does not have to be convicted in order for the legal entity to be punished. Moreover, the criminal liability of legal persons does not preclude the criminal liability of the natural persons who committed the offences.

The range of penalties available against enterprises for any crime, including offences established under UNCAC, are fines and/or deprivation of the right to conduct business, wholly or partly, permanently or for a given period of time.

The prosecuting authority may issue fines without a court order, and the enterprise can either accept or dispute the fine. Only when a fine is disputed by the enterprise does the case go to court. Moreover, as an administrative sanction, a public authority may revoke the licence of a legal person.

Participation and attempt (article 27)

Norwegian penal law does not distinguish between different groups of offenders, such as principals and participators. The provisions in Norway’s Penal Code that implement the UNCAC offences establish criminal liability for participatory acts, either directly by stating that participation is a criminal act, or as a consequence of the description of the criminal acts.

The new Penal Code, enacted but not yet in force, contains a general provision on aiding and abetting, which is intended to further develop the existing law on aiding and abetting.

According to Section 49 of the Penal Code, attempted felonies are criminalized in Norway. All UNCAC offences constitute felonies in Norwegian law, and hence, any related attempts would be punishable.

The preparation for an offence is not criminalized in general, although provisions on conspiracy to commit specific acts, such as money-laundering, constitute a main group of penal provisions applying to certain preparatory acts.

Prosecution, adjudication and sanctions; cooperation with law enforcement authorities (articles 30, 37)

Norway has adopted penalties for UNCAC offences that range from a fine up to ten years' imprisonment, taking into account the gravity of the offence. Immunities do not seem to constitute an impediment to the effective prosecution of such offences.

Norway does not have a system of mandatory prosecution. There is no general law provision regulating how this discretionary authority should be exercised. A decision not to prosecute can be appealed by way of complaint to the immediately superior prosecuting authority.

Regarding procedures on release pending trial or appeal, generally most of the coercive measures described in Part IV of the Criminal Procedure Code are applicable to UNCAC offences. These include, inter alia, arrest and remand into custody, freezing of assets, seizure and surrender, and a ban on visits or presence. Norway's Correctional Service may release a convicted person on parole after two thirds of the sentence is served, according to the Execution of Sentences Act, Section 42.

According to the Penal Code Section 29, any person convicted of a criminal act showing that he or she is unfit for or may misuse any position may be deprived of the position. The loss of rights pursuant to this section is a criminal penalty, on par with imprisonment. With respect to public officials accused of corruption, their disqualification from holding public office or positions in State-owned enterprises is provided for, though decisions on dismissal have been put on hold until completion of the court proceeding.

Disciplinary sanctions can be issued under the Act Relating to Public Officials, Section 14. Both disciplinary and criminal sanctions can be imposed in corruption cases.

Norway has adopted a range of measures to promote the reintegration of convicted offenders into society. These measures appear to be working effectively in practice, based on the information provided.

Section 59 of the Penal Code, which requires the Court to take into account an unreserved confession, facilitates the contact and cooperation between the police, prosecution service and offenders. Norway has not adopted measures to grant immunity from prosecution to cooperating offenders, though such cooperation may be taken into account in practice in deciding whether or not to prosecute offenders. Protective measures are available to informants and others under the witness protection programme.

Protection of witnesses and reporting persons (articles 32, 33)

Norway has a comprehensive witness protection programme in place with protections available nationally and locally to witnesses and their closest friends or family. A wide range of protections can be provided based on individual risk and evidence assessments. Protection measures available under the 2008 witness protection guidelines include fictitious identities and physical safety measures, such as relocation, surveillance, and non-disclosure of identity. Witnesses include

participants in the judicial system and informants. The protections also apply to victims insofar as they are witnesses.

The Criminal Procedure Act provides a range of evidentiary rules to ensure the safety of witnesses and experts, including the possibility for the courts to decide whether the person charged or others should leave the courtroom while a witness is being examined, in camera hearings and anonymous testimony.

In addition to the Constitution, the Working Environment Act of 2007 provides legal protections to employees in both the public and private sectors, where a notification is made to supervisory or other public authorities concerning censurable conditions at the organization. A unified procedure for notification is in place for all public sector entities.

Freezing, seizing and confiscation; bank secrecy (articles 31, 40)

Confiscation is regulated in Chapter 2 of the Penal Code on “Penalties and other sanctions”. Any proceeds of a criminal act shall be confiscated, including assets that take the place of proceeds, profits and other benefits of criminal proceeds. Confiscation also covers property, equipment or other instrumentalities used in or destined for use in offences.

Norway allows for non-conviction based confiscation and for value-based confiscation. It also allows, under certain conditions, for a reversal of the burden of proof (Section 34a of the Penal Code).

The Criminal Procedure Act provides a wide range of investigative measures available for the identification, tracing, freezing or seizure of criminal proceeds and instrumentalities. Beyond the basic investigative tools available in corruption cases punishable by up to three years’ imprisonment, the full range of investigative tools, including wiretapping and communication control can be applied in investigations of aggravated corruption punishable by up to ten years’ imprisonment.

A court order is not required to seize bank and financial records; the prosecuting authority can instruct the bank in these matters. Moreover, the financial intelligence unit (FIU) in ØKOKRIM has the ability to seize and access such records administratively, and to administratively freeze transactions.

Statute of limitations; criminal record (articles 29, 41)

The period of limitations for criminal cases is calculated based on the maximum penalty prescribed for a particular offence, and ranges from two up to 25 years (Sections 67 and 69 of Penal Code). This period is interrupted by any legal proceeding charging a suspect. It is not suspended where the alleged offender has evaded the administration of justice or fled the country. The presence of the offender is not required in order to take the necessary legal steps to interrupt the period of limitation.

Pursuant to Section 61 of Penal Code, previous foreign convictions can be taken into consideration when deciding on the severity of a sentence. According to Norwegian court practice, previous convictions are considered as aggravating circumstances.

Jurisdiction (article 42)

Jurisdiction over UNCAC offences is established in the Penal Code, Section 12. Norway has also adopted additional grounds of criminal jurisdiction, other than those described in article 42 of the Convention.

Consequences of acts of corruption; compensation for damage (articles 34, 35)

Legal arrangements (whether contractual or otherwise) containing provisions that are contrary to the law are considered null and void in Norway, including contracts involving corruption.

In addition, any public management decision may be altered or withdrawn administratively based on corruption under the Act Relating to Procedure in Cases Concerning the Public Administration, by analogy from the contract law doctrine on false premises.

According to the Civil Liability Act, Section 1.6, any person who has suffered damage as a consequence of corruption can claim compensation from the responsible person.

Specialized authorities and inter-agency coordination (articles 36, 38, 39)

All 27 regional police districts have established specialized economic crime teams with dedicated resources. ØKOKRIM, which holds both police and prosecutorial powers, can handle economic crime cases from all police districts. ØKOKRIM has two designated anti-corruption teams, which specialize in the investigation and prosecution of this category of cases.

KRIPOS, the National Criminal Investigation Service, is the police's national centre of expertise in the fight against organized and other serious crimes, including corruption.

The structure of various law enforcement and criminal justice institutions linking the police, including specialized units such as ØKOKRIM and KRIPOS, with the prosecution authorities appears to be working effectively. Adequate training and resources, and sufficient independence of the organizations, appear to be provided for.

Regarding cooperation between national authorities, the Ethical Guidelines for the Public Service establish a duty by public officials to report corruption and other irregularities. Cooperation between tax authorities, the prosecution service and law enforcement, including the FIU, takes place at various levels.

There has been substantive dialogue and cooperation between public institutions and the private sector in the area of economic crime over the last ten years. ØKOKRIM and the FIU cooperate closely with financial institutions, including through common seminars.

2.2. Successes and good practices

Overall, the following successes and good practices in implementing Chapter III of the Convention are highlighted:

- For a money-laundering conviction, it is sufficient to establish the criminal nature of the proceeds, without a need to identify the predicate offence;
- The public nature of tax statements and rules on freedom information help to increase accountability and transparency;
- The absence of a statutory maximum fine for corporations is considered to be conducive to deterrence;
- The measures Norway has taken to promote the reintegration into society of convicted persons;
- In confiscation cases, confiscation may be ordered even if the offender cannot be punished; a reversal of the burden of proof is established; and extended confiscation covers assets belonging to the offender's present or previous spouse, unless proven otherwise;
- The multidisciplinary approach taken by law enforcement authorities such as ØKOKRIM and other specialized units, and the cohesion between investigative and prosecutorial staff; a high level of police education is also observed;
- The government-private sector cooperation in the fight against corruption appears to be active and inclusive.

2.3. Challenges in implementation

The following steps could further strengthen existing anti-corruption measures:

- Norway is encouraged to adapt its information system to allow it to collect data and provide more nuanced and detailed statistics on corruption offences (applicable also to Chapter IV);
- Regarding bribery and trading in influence, although the concept of a "promise" is covered under the element of "offer" in Norway's legislation, should the judiciary not interpret the law accordingly in future cases, Norway may consider taking necessary steps to ensure that cases of "promise" and "acceptance of a promise" are more specifically addressed.

3. Chapter IV: International cooperation

Norway has in place a solid and comprehensive system to combat corruption through international cooperation. However, it was difficult to assess in detail Norway's practice of providing mutual legal assistance in corruption cases, due to the absence of relevant data.

3.1. Observations on the implementation of the articles under review

Extradition (article 44)

Generally, the Norwegian extradition procedure involves both a judicial and an administrative procedure. Requests for extradition received from a foreign State should be forwarded through diplomatic channels unless other channels of communication have been agreed between the States concerned. The request is first formally assessed by the Ministry of Justice and Public Security. If it is clear that the criteria in the Norwegian Extradition Act are not fulfilled, the Ministry will

refuse the request at this stage. If a request is not refused by the Ministry, it is forwarded to the prosecuting authorities, which shall initiate necessary investigations. The prosecuting authorities bring the case before the District Court, and the District Court makes a decision on whether the legal requirements in the Extradition Act are fulfilled. The decision may be appealed to the Court of Appeal and further to the Supreme Court.

Provided that it is decided by a final court ruling that the criteria in the Extradition Act are fulfilled, the Ministry of Justice and Public Security will decide whether the request for extradition shall be complied with. Before a decision is taken, the defence counsel is given an opportunity to give comments. The decision of the Ministry may be appealed to the King in Council. However, if the court has found that the criteria for extradition are not fulfilled, extradition is excluded and the Ministry will have to deny the request.

If the requesting State is a party to the Schengen Convention, and the person concerned consents to extradition, a simplified procedure may take place. In this event, it is the public prosecutor who decides whether extradition may take place.

The surrender procedure between the Nordic States, based on the Nordic Arrest Warrant, follows a different regime. According to the Act on the Surrender Procedure due to an Arrest Warrant, the prosecuting authorities decide on an arrest warrant, provided that the person sought consents to the surrender. If the person does not consent, the court will assess whether there are any mandatory grounds for refusal and, subsequently, the prosecuting authorities decide on the surrender. There are strict time limits for the decisions and few grounds for refusal. Simplified evidentiary requirements are applied in all surrender cases between the Nordic States.

Extradition in the absence of dual criminality is presently only possible to other Nordic States. Extradition may take place irrespective of the existence of an extradition treaty, provided the conditions of the Extradition Act are met.

UNCAC offences can be the basis for extradition if the conditions related to dual criminality and the minimum period of imprisonment are satisfied. UNCAC offences, which are punishable by at least one year in Norway, with the exception of illicit enrichment, which is not criminalized, are thus extraditable. Fiscal offences are not included among the grounds for refusal under the Extradition Act or the referenced treaties.

According to the Extradition Act, Section 15, coercive measures such as arrest and remand into custody can be applied to the same extent as in domestic cases. Guarantees of fair treatment are provided in the Constitution and the Criminal Procedure Act and are applicable in extradition proceedings.

The principle *aut dedere aut judicare* is recognized in Norway, but is not regulated by statutory law. Norway does not extradite its citizens, except on certain conditions to other Nordic countries.

Enforcement of foreign penal sanctions can be considered in the context of the Act on Transfer of Sentenced Persons.

Transfer of sentenced persons; transfer of criminal proceedings (articles 45, 47)

The Act on Transfer of Sentenced Persons of 1991 regulates such transfers. Norway is a party to the European Convention on the Transfer of Sentenced Persons of 1983 and its Additional Protocol. It also has bilateral agreements concerning transfer of sentenced persons with Thailand and Romania. UNCAC offences are covered for the purpose of prisoner transfers as far as the offences constitute felonies under the Norwegian criminal legislation.

Requests for the transfer of proceedings from other States will be considered in accordance with the Court Administration Act and the Extradition Act.

Mutual legal assistance (article 46)

Norway does not have a specific statutory law regulating MLA in criminal matters but applies provisions in the Extradition Act, the Court Administration Act and the Regulations relating to International Cooperation in Criminal Matters, which came into force on 1 January 2013. The central authority for MLA is the Ministry of Justice and Public Security, which transmits incoming requests to the competent authorities for execution after a brief formality check. Requests can be forwarded directly to the central authority and do not have to be sent through diplomatic channels. In urgent circumstances requests can also be transmitted through INTERPOL. Norway accepts requests in English, Danish, Swedish and Norwegian.

Norway may in most cases provide assistance irrespective of the existence of a treaty. MLA requests involving coercive measures are subject to the principle of dual criminality, except for the Nordic States. Some additional conditions also apply to requests involving coercive measures from other States than the EU- and Nordic States and parties to the Schengen Convention. A decision from the requesting State on the use of coercive measures is required, unless otherwise prescribed by bilateral or multilateral agreements. MLA not involving coercive measures, however, does not require dual criminality. The same range of coercive measures that are available in domestic criminal proceedings are also available for MLA. Moreover, investigative steps that can be conducted in a domestic criminal case may also be conducted on the basis of an MLA request. MLA requests regarding physical and legal persons are treated equally.

Norway can, under certain circumstances and without a formal request, spontaneously transmit information to other countries; this could, inter alia, take place in the context of established police cooperation such as INTERPOL and EUROPOL or through EUROJUST. Relevant information can also be communicated through the FIU.

Dual criminality is a requirement for prisoner transfers also when the prisoner freely consents. A difference in the classification of offences does not affect the dual criminality principle. Norway has had experience with the use of videoconference, both with regard to incoming and outgoing requests.

Norway would comply with a request for confidentiality on the grounds of the Criminal Procedure Act on the basis of a court order. However, this only applies to cases involving offences punishable by a minimum of five years, which would not encompass all corruption-related offences. Nevertheless, the confidentiality provisions appear to be implemented largely through Norway's treaties.

The fact that an MLA request involves fiscal matters is not recognized as a ground for refusal under the Extradition Act. It follows from the Regulation on International Cooperation in Criminal Matters that reasons shall be given if a request for assistance is refused. This regulation also addresses the obligation to consult before postponing or refusing MLA.

Law enforcement cooperation; joint investigations; special investigative techniques (articles 48, 49, 50)

Norwegian law enforcement authorities cooperate through a number of mechanisms and networks, including INTERPOL, EUROPOL and the Egmont Group. ØKOKRIM, in particular, cooperates with foreign counterparts, including on matters related to the recovery of assets at the international level.

Norway's police has engaged in personnel exchanges with other Nordic countries on the basis of Nordic police cooperation arrangements. Police-to-police cooperation is regulated under the Police Act and the Criminal Procedure Act. Norway considers the Convention as the basis for law enforcement cooperation in respect of UNCAC offences.

Norway has a wide range of tools for communication and analysis at the international level. Standard communication channels are used, in addition to secure covert channels like INTERPOL's I24/7 database and the Egmont system.

Regarding joint investigations, Norway takes part, inter alia, in the EUROJUST cooperation system and in Nordic joint investigations. Norway can also conduct joint investigations with non-European and non-Nordic countries.

For UNCAC offences, coercive measures under the Criminal Procedure Act may be taken in conducting special investigative techniques, including: communication control, secret search, video surveillance and technological tracking, as well as concealed video surveillance of public places. However, the majority of these measures require that there is a just cause for suspicion of a serious crime. The availability of other special investigative means, such as controlled delivery, follows from court practice and guidelines issued by the Director General of Public Prosecutions; these must be assessed on a case-by-case basis.

There appear to be no challenges to the admissibility of evidence derived from special investigative techniques, although some restrictions on the use of such techniques are in place.

3.2. Challenges in implementation

Although Norway interprets its legislation in accordance with international treaties, the following steps could further strengthen existing anti-corruption measures:

- In the interest of greater legal certainty, particularly regarding non-treaty partners, Norway may wish to more specifically address the *aut dedere aut judicare* principle in its domestic legislation.
- Norway is encouraged to continue to interpret the "necessary investigation" provision in Section 14(2) of the Extradition Act to establish a duty by the Public Prosecutor to consult with, and obtain additional relevant information from, a requesting State before refusing a request.

- The Extradition Act does not specify that the person transferred shall receive credit for service of the sentence being served in the State from which he or she was transferred for time spent in the custody of the State Party to which he or she was transferred. Although this would be ensured in practice based on the “presumption doctrine”, Norway may wish to monitor the application of these measures in practice and consider taking necessary steps should the judiciary not interpret the law accordingly in future cases.
- In the interest of greater legal certainty for incoming MLA requests and for future cases, Norway may wish to consider providing further legislative or administrative specification regarding the required format and content of the requests.
- In the interest of greater legal certainty, Norway may wish to consider providing further legislative specification regarding limitations on the use of information furnished by the requested State, as described in article 46, paragraph 19 of the Convention.
- Norway may wish to monitor the application of the confidentiality provisions in practice in future cases, especially not involving treaty partners.
- In the interest of greater legal certainty for incoming requests and future cases, Norway may wish to consider providing further legislative specification regarding the rule of specialty for witnesses who are not in custody.