

Norway

I. Brief Introduction to the Legal System of Norway

Norway's legal system is based on the civil law but is highly influenced by the common law. For instance, Supreme Court decisions are of great importance in the interpretation and development of the law. These decisions are not binding per se, but they will have an influence on similar cases in the future.

The Norwegian legal system is based on the idea of public security through the rule of law. To insure this, principles such as separation of powers, independence of the judiciary, and a strong principle of legality are fundamental.

Norway is a parliamentary democracy. The Constitution is based on the principle of the separation of powers between executive power (government), legislative power (parliament), and judicial power (courts). The Norwegian Parliament is the only legislative power, and laws passed there apply for the whole country.

II. Norway's Anticorruption Laws

Norway ratified the OECD Convention on December 18, 1998. Implementation of the Convention into Norwegian penal law was done by amending the already existing section 128 of the Penal Code to add a paragraph on the active bribery of foreign public servants and servants of public international organizations. The amendment redefined the meaning of the phrase "public officer"¹ to include foreign public servants and servants of public international organizations. The amendment made it a crime² to attempt to induce a foreign public officer unlawfully to perform or to fail to perform an official act. Aiding and abetting such an act was also made illegal.

¹ The meaning of "public officer" within the Norwegian Penal Code is people who, according to election or employment, exercise public authority on behalf of the authorities.

² By fines or prison for up to one year.

In July 2003, the Norwegian Parliament passed new sections in the Norwegian penal code in order to more efficiently fight corruption and also better adapt to Norway's commitment to the OECD Convention. These sections have been given a general form, and they do not distinguish between corruption in the public and in the private sector. It makes it a crime to receive or demand, give or offer, for oneself or others, an improper advantage in relation to employment, duty, or commission. These are general provisions and while they do not apply specifically to bribing foreign officials, they apply to both domestic and foreign transactions. They also apply to employment, duty, or commission abroad. There are no affirmative defenses as long as the essential elements of the offence have been committed. Facilitations payments, which are permitted in some countries, are prohibited in Norway, and any such payment or attempt to make such a payment is a criminal act.

The regulations regarding anticorruption are now embedded in the Norwegian penal code paragraphs 276 a (simple corruption), 276 b (gross corruption), and 276 c (improper influence in trading). In addition, paragraph 48 a provides authority to penalize companies when somebody acting on behalf of the company has violated any of the regulations in the penal code. In this paragraph, "company" also includes a corporation, coalition, sole proprietorship, estate, and a state owned enterprise. Parent companies will basically not be responsible for the acts of subsidiaries.

The most important improvements in the above mentioned new sections are the inclusion of general penal regulations in the private sector and a paragraph regarding improper influence in trading. In addition to this, the new regulations gave a wider scope of investigation methods in cases of suspicion of gross corruption (including communication surveillance).

By passing these new sections, the Norwegian authorities signalled their intention to focus on the fight against corruption; it has been made clearer than before that corruption is both criminal and unwanted behaviour. Moreover, these sections clarify that Norwegian authorities are devoted to fulfilling the obligations made through ratifying the United Nations Convention against Corruption.

Simple corruption and improper influence in trading can be punished by up to three years in prison, while the maximum sentence for gross corruption is ten years. For companies, the most usual punishment is monetary fines, which can be substantial if it is a big company.³

³ For example, in 2004, a major Norwegian oil company accepted a fine of 20,000,000 Norwegian kroner (almost \$3,500,000 by today's exchange rates).

According to its paragraph 12, the above mentioned paragraphs in the Norwegian penal code also apply to acts done by Norwegian citizens abroad and Norwegian residents abroad. Paragraphs 276 a, b and c actually also apply to acts done by foreigner abroad.

III. Assessment

In April 2004, Norway was examined by the Working Group on Bribery. Their Phase 2 report⁴ commended the Norwegian authorities for having raised the level of imprisonment penalty applicable to the bribery offence, thus solving potential problems linked to extradition and statute of limitations. The Working Group made a few specific recommendations which Norway has taken into consideration. The recommendations included:

- Pursue existing efforts undertaken to raise awareness of the offence of bribery in international business transactions;

- Communicate to the business sector that, under the new legislation, facilitation payments are not allowed;

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

- Consider, in this context, establishing a coordinating body to oversee awareness raising activities undertaken by Norwegian public authorities and relating to bribery of foreign public officials;

- Pursue efforts to develop further cooperation between the public institutions which could usefully contribute to the detection of the offence of bribery of foreign public officials and the law enforcement authorities;

- Consider the introduction of a general obligation for staff of public institutions to report suspicions of corruption by Norwegian companies to the competent authorities;

⁴ The Working group examines a country's implementation of the OECD Convention in three separate evaluations called "Phases."

- Bearing in mind the vital role of auditors in uncovering and reporting bribery offences, raise awareness concerning the obligation for auditors to report any suspect activity that would indicate an unlawful act of bribery to law enforcement authorities;
- Continue ongoing reflection undertaken by several public bodies in Norway on the issue of whistleblower protection, with a view to introducing measures to ensure adequate protection against sanctions to employees who report suspected cases of bribery of foreign public officials;
- Ensure that sufficient financial and human resources continue to be allocated to Økokrim⁵ and economic sections of police districts in order to retain full ability to carry out international investigations in cases of transnational bribery;
- Given the recently introduced distinction between basic and aggravated bribery, ensure that law enforcement authorities are fully aware of the range of investigative tools available, and have sufficient expertise to make broad use of these, where appropriate; and consider extending the availability of witness protection programs to foreign bribery cases;
- Draw attention of the law enforcement and judicial authorities to the importance of making full use of the various economic sanctions available on the bribers, taking into account the particular circumstances surrounding cases of transnational bribery.

According to the Phase 3 report in June 2011⁶, Norway has made significant progress in its efforts against the bribery of foreign public officials in recent years. Norway was commended by the Working Group for its strong commitment in fighting transnational bribery. Furthermore, the Working Group highlighted additional positive aspects of Norway's recent efforts and recognized the country's determination to proactively root out corruption, through targeted mechanisms and measures to detect and sanction bribery. These include Økokrim's specialized and well-resourced Anti-Corruption Teams; a robust legislative framework; enhanced possibilities of detection through, for instance, effective whistleblowing legislation or tax audits; as well as strong engagement with the private sector in the area of corporate compliance programs.

⁵ The Norwegian National Authority for Investigation and Prosecution of Economic and Environmental Crime (ØKOKRIM) is the central unit for investigation and prosecution of economic and environmental crime, and the main source of specialist skills for the police and the prosecuting authorities in their combat against crime of this kind. ØKOKRIM was established in 1989, and is both a police specialist agency and a public prosecutors' office with national authority.

⁶ Phase 3 report on implementing the OECD anti-bribery convention in Norway, June 2011.

However, the report suggested that more could be done to strengthen enforcement, including focusing on the confiscation from companies of the proceeds of bribery. These specific suggestions included:

- Regarding the investigation and prosecution of foreign bribery, the Working Group recommends that Norway continue its efforts to proactively investigate and prosecute cases of foreign bribery;
- Regarding the confiscation of the bribe and proceeds of foreign bribery, the Working Group recommends that Norway make full use of the provisions available under the law to confiscate the proceeds of foreign bribery, where appropriate, including when relying on penalty notices to settle cases out of court;
- Regarding international cooperation, the Working Group recommends that Norway develop its information system to allow for the collection of data on mutual legal assistance requests in foreign bribery cases, including on the origin of such requests, and the timeframe for providing responses, with a view to allowing a better assessment of Norway's practice in providing such assistance;
- Regarding accounting and auditing requirements, the Working Group recommends that Norway:
 - o Expand the reporting obligations under the Auditing Act to require auditors to also report to management circumstances that may trigger the liability of the legal person (and not only the natural persons at senior management level) and
 - o Consider, beyond the current anti-money laundering reporting requirements on proceeds of criminal acts, requiring external auditors to report suspected acts of foreign bribery to external competent authorities, in particular where management of the company fails to act on internal reports by the auditor, and ensure that auditors making such reports reasonably and in good faith are protected from legal action;
- Regarding internal controls, ethics and compliance, the Working Group recommends that Norway pursue the important efforts already engaged in the area of corporate liability, and in particular:
 - o Continue encouraging companies, especially SMEs, to develop internal controls, ethics and compliance systems to prevent and detect foreign bribery and
 - o Encourage companies to make statements in their annual reports or otherwise publicly disclose their internal controls, ethics and compliance systems for preventing and detecting bribery;
- Regarding public advantages, the Working Group recommends that Norway consider adopting a systematic approach to allow its public agencies to easily access information on companies sanctioned for foreign bribery, such as through the establishment of a national debarment register.

Norway is a member of GRECO and has been evaluated in each of its three assessments. Transparency International ranks Norway #7 on its Corruption Perception Index,

which would indicate that corruption is rare in Norwegian society. Norway is not yet a signatory to the International Anti-Corruption Academy international agreement but is considering acceding to the treaty.

IV. Texts

- A. The Norwegian Penal Code of 1902⁷, sections 12, 128, 276a, 276b, 276c.
<http://www.ub.uio.no/ujur/ulovdata/lov-19020522-010-eng.pdf>.