



**UNODC**

United Nations Office on Drugs and Crime

## **Country Review Report of Norway**

Review by Sweden and Kuwait of the implementation by Norway of articles 15 – 42 of Chapter III. “Criminalization and law enforcement” and articles 44 – 50 of Chapter IV. “International cooperation” of the United Nations Convention against Corruption for the review cycle 2010 - 2015

## **Introduction**

1. The Conference of the States Parties to the United Nations Convention against Corruption (hereinafter, UNCAC or the Convention) was established pursuant to article 63 of the Convention to, inter alia, promote and review the implementation of the Convention.
2. In accordance with article 63, paragraph 7, of the Convention, the Conference established at its third session, held in Doha from 9 to 13 November 2009, the Mechanism for the Review of Implementation of the Convention. The Mechanism was established also pursuant to article 4, paragraph 1, of the Convention, which states that States parties shall carry out their obligations under the Convention in a manner consistent with the principles of sovereign equality and territorial integrity of States and of non-intervention in the domestic affairs of other States.
3. The Review Mechanism is an intergovernmental process whose overall goal is to assist States parties in implementing the Convention.
4. The review process is based on the terms of reference of the Review Mechanism.

## **II. Process**

5. The following review of the implementation by Norway of the Convention is based on the completed response to the comprehensive self-assessment checklist received from Norway, and any supplementary information provided in accordance with paragraph 27 of the terms of reference of the Review Mechanism and the outcome of the constructive dialogue between Norway and the governmental experts from Kuwait and Sweden, by means of telephone conferences and e-mail exchanges and involving Dr. Omar Al-Masoud and Brigadier Faraj Al-Zubi from Kuwait, as well as Ms. Anne Due, Ms. Elin Carbell Brunner, Mr. Per Hedvall and Mr. Johan Lindmark from Sweden. The staff members from the Secretariat were Ms. Tanja Santucci and Mr. Badr El Banna.
6. A country visit, agreed to by Norway, was conducted in Oslo, Norway from 13 to 15 May 2013. During the on-site visit, meetings were held with representatives from the Ministry of Justice and Public Security (Section for European and International Affairs, Central authority for MLA and extradition at the Civil Affairs Department, Legislation Department, Correctional Services Department), the Ministry of Foreign Affairs, the Ministry of Labour, the judicial authority, the Office of the Director of Public Prosecution, the National Authority for Investigation and Prosecution of Economic and Environmental Crime (ØKOKRIM), the Financial Intelligence Unit (FIU), the National Police Directorate, the Oslo Police District, the National Criminal Investigation Service, as well as representatives from civil society, the private sector and the media.

## **III. Executive summary**

### ***1. Introduction***

### ***1.1. Overview of the legal and institutional framework against corruption of Norway in the context of implementation of the United Nations Convention against Corruption***

7. *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.*
8. *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.*
9. *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.*
10. *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.*
11. *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 (arts. 15, 16, 18, 21)***

12. *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.*
13. *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.*
14. *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.*

15. *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.*
16. *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 (arts. 23, 24)*

17. *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 (arts. 17, 19, 20, 22)*

18. *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.*
19. *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.*
20. *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 (art. 25)*

21. *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".*

22. 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 (art. 26)

23. 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.

24. 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.

25. 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.

26. 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 (art. 27)

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.

28. 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.

29. 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.

30. 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 (arts. 30, 37)

31. 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.
32. 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.
33. 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.
34. 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.
35. 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.
36. 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.
37. 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 (arts. 32, 33)

38. 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.
39. 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.*

40. *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 (arts. 31, 40)*

41. *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.*
42. *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).*
43. *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.*
44. *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 (arts. 29, 41)*

45. *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.*
46. *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 (art. 42)*

47. *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 (arts. 34, 35)

48. *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.*
49. *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.*
50. *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 (arts. 36, 38, 39)

51. *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.*
52. *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.*
53. *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.*
54. *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.*
55. *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**

56. *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**

57. *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**

58. *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 (art. 44)

59. *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.*

- 60. 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.*
- 61. 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.*
- 62. 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.*
- 63. 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.*
- 64. 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.*
- 65. 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.*
- 66. 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.*
- 67. 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 (arts. 45, 47)*

- 68. 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.*

*69. 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 (art. 46)*

*70. 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.*

*71. 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.*

*72. 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.*

*73. 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.*

*74. 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.*

*75. 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 (arts. 48, 49, 50)*

76. *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.*
77. *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.*
78. *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.*
79. *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.*
80. *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.*
81. *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**

82. *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.*

## **IV. Implementation of the Convention**

### **A. Ratification of the Convention**

83. Norway signed the Convention on 9 December 2003 (C.N.1424.2003.TREATIES-36) and ratified it on 29 June 2006 (C.N.504.2006.TREATIES-21). The Convention entered into force for Norway on 29 July 2006.
84. Norway made the following declarations to the United Nations on 21 September 2006 (C.N.788.2006.TREATIES-29):

“Article 6 (3)

In Norway the authorities that may assist other States Parties in developing and implementing specific measures for the prevention of corruption are:  
The Royal Ministry of Justice and the Police, P.O. Box 8005 Dep, N-0030 Oslo  
The Royal Ministry of Finance, P.O. Box Dep, N-0030 Oslo

Article 46 (13)

The Norwegian authority responsible for receiving requests for mutual legal assistance in accordance with article 46 (13) is:  
The Royal Ministry of Justice and the Police, P.O. Box 8005 Dep, N-0030 Oslo

Article 46 (14)

Norway will accept requests in English, Danish and Swedish in addition to Norwegian.”

85. The relationship between national and international law is dualistic in the Norwegian legal system. Treaties are not self-executing and have to be implemented into Norwegian legislation to be given equal legal status as national legislation.
86. However, according to the Norwegian authorities, due to the presumption doctrine the Norwegian law is presumed to be in accordance with Norway's international law obligations, even non-implemented or inadequately implemented. Hence, international treaties and conventions are an important source of law. If more than one interpretation of a Norwegian provision is possible, of which only one is in accordance with international law, the alternative that conforms to international law shall be applied.
87. There is no single piece of legislation in Norway that implements the Convention in its entirety into domestic law. The implementing legislation includes, for example, the General Civil Penal Code (hereinafter, Penal Code or PC), the Criminal Procedure Act<sup>1</sup>, the Extradition Act and the Act relating to Working Environment, Working Hours and Employment Protection of 2007 (hereinafter, Working Environment Act).
88. Prior to ratification, the Ministry of Justice and Public Security made an assessment of whether the situation in Norway was in compliance with the obligations under the Convention. This assessment was subject to an extensive public hearing, including inter alia the following institutions: the Supreme Court, the Appeal Courts, the Director of Public Prosecutions, the Police Directorate, the National Authority for Investigation and Prosecution of Economic and Environmental Crime, Transparency International Norway, and the Norwegian Bar Association.
89. In the view of the Ministry of Justice and Public Security, some limited legal amendments to the laws and regulations were necessary to fully comply with the requirements of the Convention. The proposed amendments were generally supported by the institutions taking part in the public hearing. The amendments were related to money laundering, (UNCAC article 23) and asset recovery (UNCAC article 54). Apart from the amendments concerning the money laundering offence, the Government found that no further amendments were necessary to implements chapters III and IV of the Convention.
90. The bribery offences in the Penal Code, introduced in July 2003, were considered to be fully in compliance with the requirements of the Convention.
91. After the public hearing - and taking duly into consideration the comments submitted - the Government submitted a White Paper to Parliament on 7 April 2006 (Ot.prp. nr. 53 (2005-2006)) proposing necessary amendments to the Penal Code. Simultaneously, the Ministry of Foreign Affairs submitted a proposal to Parliament to ratify the United Nations Convention Against Corruption.
92. The Parliament adopted the proposed changes to the Penal Code, mainly the criminalization of self-laundering and the conspiracy to commit a money laundering offence and to the chapter of the Extradition Act pertaining to mutual legal assistance. After making the necessary legal amendments, the Parliament approved the Government's proposal to ratify the Convention.

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<sup>1</sup> <http://www.ub.uio.no/ujur/ulovdata/lov-19810522-025-eng.pdf>

## **B. Legal, political and institutional system of Norway**

93. Norway is a unitary constitutional monarchy with a parliamentary system of government. Power is separated between the legislative, executive and judicial branches of government, as defined by the constitution. The judiciary and prosecution service are legally independent.
94. Norway is a civil law country. The judiciary is independent and consists of the Supreme Court, appellate courts and city/district courts.
95. The preparatory works and case law are significant sources of law in the Norwegian legal system. According to established legal tradition, explanations in the preparatory works are regarded as a reliable source of clarification of legal texts, very much in the same way as case law. This method makes it possible to give clarifications beyond what is possible in the legislation itself. In this context, and especially when a new legal provision is under consideration, the courts, including the Supreme Court, will seek guidance in the preparatory works, as these are also an expression of the legislator's will. Contrary to the tradition in other legal systems, the preparatory works are seen as an authoritative legal source of Norwegian law. Norwegian authorities clarified during the country visit that although courts are not bound to apply the preparatory works, they are bound to take those works into consideration.
96. As for other important aspects of the provisions on corruption in particular, such as the equal status of bribery in both the public and the private sector, this can, strictly speaking, be drawn from the general wording of the provisions and the absence of any specification of sector or reference to public servants. But the preliminary works serve to confirm and underline the intended wide-ranging applicability of the provision.
97. Relevant institutions in the fight against corruption in Norway include inter alia: the Director of Public Prosecutions, the Police Directorate, and the National Authority for Investigation and Prosecution of Economic and Environmental Crime (ØKOKRIM). The judiciary, civil society and the media also play an active role in the fight against corruption in Norway.

## **C. Previous assessments of anti-corruption measures**

98. Norway has been previously evaluated by the Council of Europe, Group of States Against Corruption (GRECO), OECD Working Group on Bribery and the FATF (Financial Action Task Force). Evaluation reports and follow-up reports from OECD are from 1999, 2004, 2007 and 2011. Through GRECO, evaluation and compliance reports are from 2002, 2004, 2006, 2009 and 2011. All these reports are publicly available on the respective websites of these bodies. According to the Norwegian authorities, these evaluation cycles have ensured a continuous assessment of the adequacy of implementation in relation to the Council of Europe and OECD conventions and related instruments, as well as the FATF recommendations.
99. Both the Council of Europe (GRECO) and the OECD Working Group on Bribery have concluded that the Norwegian Penal Code provisions against corruption and trading in influence are in full conformity with the requirements of the respective conventions. Furthermore, both organizations have concluded that Norway has satisfactorily

implemented all recommendations given through their monitoring systems, with the exception of some recommendations concerning transparency of party funding, which, based on the GRECO report, are temporarily partly implemented. It is considered that this does not have any relevance to the chapters under review here.

100. The Financial Action Task Force concluded in its fourth follow-up report of Norway in 2009, that "... Norway has made considerable efforts to strengthen its AML/CFT regime since 2005, including by making legislative amendments, allocating additional budgetary resources, and strengthening supervisory routines and practices." Consequently, the FATF decided to remove Norway from its regular follow up process. Norway is in conformity with all FATF recommendations (prior to the revised 40 recommendations of February 2012) relevant to UNCAC.

101. The reports mentioned above have been important elements in facilitating legal amendments and in formulating policies. The evaluation reports of these bodies contain significant information relevant to the UNCAC.

102. The Government and relevant institutions and agencies involved in the fight against corruption have worked continuously to strengthen enforcement and consider the need for legal amendments as appropriate. Rather few examples and statistics have been presented.

#### **D. Implementation of selected articles**

103. A general remark about the organization of the country visit is that the reviewers commended the interdisciplinary, participatory and transparent nature of the meetings and recognized that the interlocutors were knowledgeable and responsive.

#### **Chapter III. Criminalization and law enforcement**

104. By all accounts, Norway has in place a solid and comprehensive system to combat corruption and has taken legislative and institutional measures to implement the provisions of Chapter III of the Convention.

105. However, as a general recommendation, the reviewers encourage Norway to adapt its information system to allow it to collect data and provide more nuanced and detailed statistics on corruption offences. It was explained that measures are already being taken by the Oslo police in this regard. A similar observation is made under Chapter IV of the Convention below.

106. Norwegian authorities provided the following statistics on reported corruption and gross corruption offences involving both the public and the private sectors. It was explained that no further statistics or breakdown of the numbers was available. However, they noted that for the period 2003-2012, 30 percent of the reported corruption cases involved the public sector and 70 percent were private sector cases. Additional statistics for each UNCAC offence are included below, where available.

<b>Reported corruption and gross corruption complaints</b>					
	<b>2008</b>	<b>2009</b>	<b>2010</b>	<b>2011</b>	<b>2012</b>
Corruption	38	5	10	46	26
Gross corruption	13	17	10	48	29



## Article 15 Bribery of national public officials

### Subparagraph (a)

*Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:*

*(a) The promise, offering or giving, to a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties;*

### (a) Summary of information relevant to reviewing the implementation of the article

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

108. As regards active bribery of national public officials, Section 276a of the Penal Code provides that any person shall be liable to a penalty for corruption who gives or offers anyone an improper advantage in connection with a post office or commission.

#### **Penal Code Section 276a:**

Any person shall be liable to a penalty for corruption who

- a) for himself or other persons, requests or receives an improper advantage or accepts an offer of an improper advantage in connection with a post, office or commission, or
- b) gives or offers anyone an improper advantage in connection with a post, office or commission.

By post, office or commission in the first paragraph is also meant a post, office or commission in a foreign country.

The penalty for corruption shall be fines or imprisonment for a term not exceeding three years. Any person who aids or abets such an offence shall be liable to the same penalty.

#### **Penal Code Section 276b:**

Gross corruption is punishable by imprisonment for a term not exceeding 10 years. Any person who aids or abets such an offence shall be liable to the same penalty. 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.

109. The preliminary works (Odelstingsproposisjon no. 78 (2002-2003)) provide in the comment to Section 276b that the concepts of “post, office or commission” are wide-ranging and embrace any type of employment, office or commission for public or private employers and clients.

110. According to the Norwegian authorities, by corruption in connection with a “post” is meant corruption related both to civil servants as well as public sector and private sector employees (regulated either by the Working Environment Act or the Act relating to Civil Servants). The “office” alternative covers corruption committed by or towards persons holding political offices, board appointments or honorary offices. It is irrelevant whether the beneficiary office holder 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 also covered by this concept, as are judges, co-judges and arbitrators.

111. The Norwegian authorities noted that it is sufficient for the provision to apply that the bribery is committed “in connection with” a beneficiary’s post, office or commission. This wording implies that there must be a connection between the bribe and the beneficiary’s post, office or commission, but the bribe need not be connected to a specific act or omission. By example, the offering of an advantage may be covered even when it is a service in return for an act or omission that has already been committed (succeeding rewards). Moreover, the Norwegian provision is not limited to acts intended to alter a public official’s course of conduct (i.e., the UNCAC purpose “in order that the official act or refrain from acting in the exercise of his or her official duties”). 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, even though this will normally be the case.
112. The preparatory works further explain that “the Ministry wishes to make it quite clear that the proposed amendment is directed at corruption committed by or in relation to persons holding all the posts, offices and commissions affected by the Council of Europe Convention and the Additional Protocol.” As such, Section 276a PC not only covers the categories of persons and functions mentioned in Articles 1 and 4 to 11 of the Convention and Articles 1 to 6 of the Additional Protocol, but also persons working for international nongovernmental organizations, such as Amnesty International or the Red Cross, a category of persons not covered by the Convention or the Additional Protocol.
113. Norwegian authorities referred to a Supreme Court’s decision of 2009 (Rt-2009-130) related to intent to receive an improper advantage. In this case of gross corruption and manipulation of accounts and invoices, the four accused were convicted of corruption charges by a court of appeals and sentenced to two years; one year and three months; eight months and eight months imprisonment, respectively. They appealed to the Supreme Court, claiming that the court of appeals had not applied the law correctly, as the court’s ruling did not consider it necessary to prove the intent to receive an undue advantage to convict for corruption. The Supreme Court upheld the decision of the court of appeals, holding that Section 276a of the Penal Code did not include a condition of an intent to receive an undue advantage. It was pointed out that a preliminary proposal for Section 276a (from 2002) had included such a condition, but that this was removed in a later proposal. The court found support for its conclusion in the preparatory works and concluded that “An active briber can be convicted for corruption also there is no concrete basis to support that he has an intent to receive an improper advantage”.
114. During the country visit, the Norwegian authorities referred to a case where a person had been fined for promising to pay a bank employee NOK 20,000 if the latter agreed to grant him a loan.

**(b) Observations on the implementation of the article**

115. Reference is made to the related observations made in the GRECO third evaluation round (2008). During the country visit, the Norwegian authorities stated that they concur with the observations.

116. Sections 276a, 276b and 276c PC neither distinguish between public and private sector offences, nor between corruption (or trading in influence offences) committed by persons holding a post, office or commission in a foreign jurisdiction and offences committed by persons holding such positions in Norway itself. The corruption and trading in influence provisions themselves are phrased in general terms, but are supplemented by the preparatory works to the 2003 amendments, which are considered as a secondary source of legislation.
117. Concerning the subject of the bribery offence – the range of offenders – Section 276a PC (on ‘ordinary’ corruption) does not contain an exhaustive list of functions, but instead refers to acts of corruption committed “in connection with a post, office or commission”. Even though the preparatory works state that “it was not strictly necessary to include such a specification”, the second part of Section 276a PC explicitly provides that this is also meant to include posts, offices and commissions in a foreign country. In this regard it is immaterial whether the post, office or commission is in/with a foreign administration or company or with an international organization in a foreign jurisdiction.
118. As regards the object of bribery or the ‘improper advantage’ (‘utilbørlig fordel’ in Norwegian) in Section 276a PC, bearing also in mind that Section 276c PC on trading in influence contains a similar term, the preparatory works indicate that “an advantage may only constitute grounds for punishment if it is improper”. The notion of impropriety is thus the central factor in assessing whether a particular conduct can be regarded as bribery (or trading in influence). The preparatory works also contain an extensive explanation of what is to be considered an ‘improper’ advantage – indicating, inter alia, that the advantage does not have to have an independent material value and may only be of value for the person receiving it. Recognizing furthermore that “the threshold for impropriety may vary from sphere to sphere, from enterprise to enterprise and from agency to agency”, the preparatory works contain a non-exhaustive list of criteria to be taken into account when assessing whether an advantage is improper or not, such as:
- the posts or positions of the parties concerned and the relationship between them,
  - the purpose of the advantage, the openness in the relationship between the employee and his/her employer (i.e. if the employer was made aware of the advantage) and
  - the internal rules, applicable contract or normal practice within the sphere of life or activity concerned.

The review team was thus of the view that the notion of ‘undue advantage’ in the Convention is adequately covered by the term ‘improper advantage’ in Section 276a PC.

119. An issue of concern to the review team is the absence of the term ‘promise’ and ‘acceptance of a promise’ from Section 276a PC (and Section 276c PC on trading in influence). The Norwegian authorities referred to the preparatory works, which clearly state that the term ‘promise’ was deliberately omitted from Section 276a PC (and Section 276c PC), because “The Ministry cannot see that the alternative ‘promises’ would have any independent significance in a Norwegian penal provision against corruption in addition to the alternative ‘offers’” and accordingly proposed that the concept of promise be omitted from the Act. Norwegian authorities also referred to the “presumption doctrine” previously mentioned and explained that in the Nordic tradition, legal texts are drafted as concisely as possible. In this context, the review team noted, in particular, the case cited by the Norwegian authorities under paragraph 114 above involving a promise of

bribery, in which Section 276a PC had been applied. The review team is thus of the view that, although the concept of a “promise” is not explicitly addressed in the Norwegian legislation, cases of a “promise” are covered by the Norwegian Penal Code, Section 276a (and 276c) under the element of “offer”. This is established by case law, the preparatory works and supported by very clear statements from Government officials and judges during the country visit. Nonetheless, 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.

120. The relevant provisions contained in the Penal Code do not expressly provide for the indirect commission of bribery offences, but the preparatory works provide that it is “irrelevant whether the active party uses another person ... to carry out the corrupt act”.

121. As regards the beneficiaries of the bribe, both the provision on passive bribery in Section 276a PC, subsection a, and on passive trading in influence in Section 276c, subsection a, mention explicitly that the undue advantage can be ‘for himself or other person’. This phrase is absent from the subsections on active bribery in Section 276a PC and active trading in influence in Section 276c, but according to the Norwegian authorities would be covered by the term ‘anyone’ in the two sections.

## **Article 15 Bribery of national public officials**

### **Subparagraph (b)**

*Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:*

*(b) The solicitation or acceptance by a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

122. Section 276a of the Penal Code (quoted in full under UNCAC article 15(a) above) provides that: “Any person shall be liable to a penalty for corruption who for himself or other persons, requests or receives an improper advantage, or accepts an offer of an improper advantage in connection with a post office or commission”.

123. Norway has provided several cases where civil servants in the public sector had been convicted of passive bribery.

The one case that has received the most attention from the media was the so-called Waterworks-case, in which the CEO of a local public waterworks was convicted of several cases of passive bribery, in total amounting to approx. NOK 10,000,000. He was also convicted of insurance fraud and several cases of misappropriation of funds, and sentenced to 7 years and six months in prison (2010).

In 2008 the property manager of a local public entity administering the development and management of school buildings was sentenced to 7 years in prison for passive bribery

amounting to approx. NOK 6,500,000 and misappropriation of funds amounting to approx. NOK 100,000,000.

In 2010 a municipal case handler was convicted of passive bribery amounting to NOK 160,000 paid to him with the intent to influence his handling of building applications, to 1 year and 3 months in prison.

In 2011 a police officer was convicted of passive bribery amounting to NOK 50,000, paid to him from a prisoner with the intent of him getting help from the police officer with unjustified leave of absence.

In 2012 a project manager in of a local public entity administering the development and management of school buildings was sentenced to 5 years in prison for passive bribery amounting to NOK 1,500,000 and misappropriation of funds amounting to approx. NOK 8,300,000.

**(b) Observations on the implementation of the article**

124. The observations of the reviewing experts under UNCAC article 15(a) are reiterated.

**Article 16 Bribery of foreign public officials and officials of public international organizations**

**Paragraph 1**

*1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the promise, offering or giving to a foreign public official or an official of a public international organization, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties, in order to obtain or retain business or other undue advantage in relation to the conduct of international business.*

**(a) Summary of information relevant to reviewing the implementation of the article**

125. Reference is made to the information provided under UNCAC article 15 above. Active bribery of foreign public officials and officials of international organizations (whether public or private, in Norway or abroad) is also covered by Sections 276a and 276b of the Penal Code.

126. The preparatory works explain that “the Ministry wishes to make it quite clear that the proposed amendment is directed at corruption committed by or in relation to persons holding all the posts, offices and commissions affected by the Council of Europe Convention and the Additional Protocol.” As such, Section 276a PC goes beyond the requirements of the Convention by also covering persons working for international non-governmental organizations.

127. Norway provided the following case examples.

In October 2012, a Norwegian company was, for the first time, convicted of having bribed foreign public officials. Borgarting Court of Appeal fined the company NOK 4 million for corruption in connection with a construction project in Tanzania. In the period 2003–2006, the company had paid approx. NOK 1 million under the table to public employees in connection with a cooperation agreement with Dar Es Salaam Water and Sewerage Authority (DAWASA) in Tanzania. The company was acquitted by the Supreme Court in late June 2013. Although the Supreme Court found that the company was liable for payment of a fine, the court found that the company should be acquitted mainly based on the fact that the investigation had taken more time than necessary and the company had implemented an anti-corruption programme. It was also under debarment by the World Bank.

Two cases were pending at the time of the country visit involving a Norwegian fertilizer company suspected of active bribery in two different countries (Libya and India) and a Norwegian shipping company suspected of active bribery in a third country (Bahrain). In both cases, foreign public officials were not pursued in Norway for passive bribery.

**(b) Observations on the implementation of the article**

128. The observations of the reviewing experts under UNCAC article 15 are reiterated.

**Article 16 Bribery of foreign public officials and officials of public international organizations**

**Paragraph 2**

*2. Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the solicitation or acceptance by a foreign public official or an official of a public international organization, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties.*

**(a) Summary of information relevant to reviewing the implementation of the article**

129. Reference is made to the information provided under UNCAC article 15 above. Section 276a, second paragraph makes it explicitly clear that the term "post, office or commission" also covers active and passive corruption connected to a post, office or commission abroad. In addition to foreign public officials and officials of public international organizations, private sector representatives and representatives of non-governmental organizations are also covered.

130. Norwegian authorities referred to one completed case in 2003 in which an employee of UNICEF was convicted of passive bribery and sentenced to five years and six months of imprisonment. The employee in the case was also a Norwegian citizen, and there have been no cases to date involving passive bribery by persons other than Norwegian citizens.

**(b) Observations on the implementation of the article**

131. The observations of the reviewing experts under UNCAC article 15 are reiterated.

## **Article 17 Embezzlement, misappropriation or other diversion of property by a public official**

*Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally, the embezzlement, misappropriation or other diversion by a public official for his or her benefit or for the benefit of another person or entity, of any property, public or private funds or securities or any other thing of value entrusted to the public official by virtue of his or her position.*

### **(a) Summary of information relevant to reviewing the implementation of the article**

132. Norway cited the following measures.

#### **General Civil Penal Code, Section 255**

"Any person who for the purpose of obtaining for himself or another person an unlawful gain illegally disposes of, mortgages, consumes or otherwise appropriates any chattel which is in his possession, but which wholly or partly belongs to another person, or who unlawfully disposes of money which he has collected for another person or which is otherwise entrusted to him, shall be guilty of embezzlement.

No penalty pursuant to this section shall be imposed for any act that comes under Section 277 and 278.<sup>2</sup>

The penalty for embezzlement is fines or imprisonment for a term not exceeding three years. Any person who aids or abets such an offence shall be liable to the same penalty. "

#### **General Civil Penal Code Section 256**

"The penalty for gross embezzlement is imprisonment for a term not exceeding six years. Any person who aids or abets such an offence shall be liable to the same penalty.

In deciding whether the embezzlement is gross, particular importance shall be attached to whether the value of the object embezzled is considerable, whether the embezzlement has been committed by a public official or any other person in breach of the special confidence placed in him by virtue of his position or activity, whether false accounting information has been recorded, whether false accounting documents or false annual accounts have been prepared, or whether the offender has knowingly caused material loss or any risk to any person's life or health."

133. Norwegian authorities explained that any property is covered in Section 255, both private and public property, whether owned by a legal person or a natural person. Moreover, Section 256 covers the embezzlement of both private and public funds. However, embezzlement committed by a public official will generally constitute gross embezzlement under the second sentence of Section 256. During the country visit, Norwegian authorities clarified that the prosecutor decides whether to charge gross embezzlement or not, but the final decision is with the Court.

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<sup>2</sup> Section 277. Any person who causes any person loss or exposes him thereto by unlawfully disposing of an object by a juristic act after another person has acquired or in return for full or partial payment has been promised ownership of or the right to use the object, or of a claim that has been transferred to another person, or of a promissory note that has fully or partially been paid, or who aids and abets thereto, shall be liable to fines or imprisonment for a term not exceeding three years or both.

Section 278. Any person who unlawfully disposes of a chattel that is subject to a seller's lien, cf. sections 3-15 and 3-22 of the Mortgages and Pledges Act, and thereby causes the seller loss or exposes him thereto shall be liable to fines or imprisonment for a term not exceeding six months. Under especially aggravating circumstances imprisonment for a term not exceeding three years may be imposed. Any person who causes another person loss or exposes him thereto by unlawfully disposing of a claim or an object which he owns or possesses and on which another person has a lien or other security shall be liable to the same penalty as is prescribed in the first paragraph. Any person who aids and abets any felony mentioned in this section shall be liable to the same penalty.

134. Norwegian authorities provided the following statistics on reported gross embezzlement offences and stated that no further statistics or breakdown of the numbers was available.

<b>Reported gross embezzlement offences</b>					
	<b>2008</b>	<b>2009</b>	<b>2010</b>	<b>2011</b>	<b>2012</b>
Gross embezzlement	171	191	196	154	190

**(b) Observations on the implementation of the article**

135. The article is adequately covered in Norwegian legislation.

**Article 18 Trading in influence**

*Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:*

*(a) The promise, offering or giving to a public official or any other person, directly or indirectly, of an undue advantage in order that the public official or the person abuse his or her real or supposed influence with a view to obtaining from an administration or public authority of the State Party an undue advantage for the original instigator of the act or for any other person;*

*(b) The solicitation or acceptance by a public official or any other person, directly or indirectly, of an undue advantage for himself or herself or for another person in order that the public official or the person abuse his or her real or supposed influence with a view to obtaining from an administration or public authority of the State Party an undue advantage.*

**(a) Summary of information relevant to reviewing the implementation of the article**

136. Norway cited the following measure.

**Penal Code, Section 276c**

"Any person shall be liable to a penalty for trading in influence who

- a) for himself or other persons, requests or receives an improper advantage or accepts an offer of an improper advantage in return for influencing the performance of a post, office or commission, or
- b) gives or offers anyone an improper advantage in return for influencing the performance of a post, office or commission.

By post, office or commission is also meant a post, office or commission in a foreign country.

The penalty for trading in influence shall be fines or imprisonment for a term not exceeding three years. Any person who aids and abets such an offence shall be liable to the same penalty."

137. The conduct in question in UNCAC article 18(b) is covered by Section 276c PC, alternative a (passive trading in influence).

138. Reference is made to the related information regarding Section 276c PC provided under UNCAC article 15 above.

139. Norwegian authorities stated during the county visit that, for Section 276c to be applicable, the advantage must be undue, although the influence exercised does not have to be illegitimate or improper.

140. Section 276c has been applied twice. In June 2004, the National Authority for Investigation and Prosecution of Economic and Environmental Crime (ØKOKRIM)



issued two penalty notices to a Norwegian oil and gas company and one of its senior executives, respectively, for violations of the Penal Code, Section 276c. The company itself was fined NOK 20 million (approx. USD 3 million), while the senior executive was fined NOK 200,000 (approx. USD 35,000). Both fines were accepted.

**(b) Observations on the implementation of the article**

141. The observations of the reviewing experts under UNCAC article 15 are reiterated.

**Article 19 Abuse of Functions**

*Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the abuse of functions or position, that is, the performance of or failure to perform an act, in violation of laws, by a public official in the discharge of his or her functions, for the purpose of obtaining an undue advantage for himself or herself or for another person or entity.*

**(a) Summary of information relevant to reviewing the implementation of the article**

142. The conduct described in article 19 of the Convention is partly covered by the Penal Code provisions on corruption, as described under UNCAC article 15 above. A public official can be punished for corruption if he requests, receives or accepts an offer of an improper advantage in connection with a post, office or commission. Furthermore, a public official can also be punished for attempted corruption. Since seeking to obtain an improper advantage will be covered by the Penal Code provisions against corruption, different forms of abuse of functions and positions that aim at obtaining an improper advantage are covered.

143. Moreover, Chapter 11 in the Penal Code has provisions on felonies in the public service, while Chapter 33 has provisions on misdemeanours in the public service. Chapter 11 contains different provisions on the misuse of office, including Section 111, which penalizes public servants who either 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 contains two provisions, Section 324 on omission crimes, violation of duties and negligence and Section 325 on, inter alia, gross lack of judgement in the course of duty.

144. Norwegian authorities stated that in court practice most Chapter 11 cases are related to the provision on violation of the duty of secrecy, and a more limited number of cases are related to the other provisions. Most of the cases related to violations of the duty of secrecy involve public servants in the police. There are also several cases relating to Sections 324 and 325, mostly involving public servants within the police.

**(b) Observations on the implementation of the article**

145. The article is adequately covered in Norwegian legislation.

## **Article 20 Illicit Enrichment**

*Subject to its constitution and the fundamental principles of its legal system, each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, illicit enrichment, that is, a significant increase in the assets of a public official that he or she cannot reasonably explain in relation to his or her lawful income.*

### **(a) Summary of information relevant to reviewing the implementation of the article**

146. According to Norwegian authorities, article 20 of the UNCAC was considered carefully in the process leading up to the ratification of the Convention. The question was also subject to a broad public hearing. The view of the Ministry of Justice and Public Security was that introducing the concept of illicit enrichment as described in article 20 of the Convention would give rise to difficult questions in relation to the presumption of innocence as laid down in the European Convention on Human Rights, article 6 no. 2. In the view of the Ministry of Justice and Public Security, it was not desirable to propose an offence as described in article 20 of the Convention to Parliament. The Ministry held the view that the purpose of article 20 would be better fulfilled through other measures.
147. Authorities also referred to the public nature of tax statement in Norway, where details of taxpayers' annual income, wealth and tax returns are publicly available online. This information, in addition to measures such as accounting and auditing rules as well as rules on freedom of information, contribute to preventing illicit enrichment and also make it difficult to hide possible attempts at accumulating such gains.
148. In addition, it was considered that the rules on extended confiscation in the Penal Code diminish the need for a provision as outlined in article 20 of the Convention. According to Section 34a of the Penal Code, all assets belonging to a public official can be confiscated if s/he is found guilty of an offence and the requirements of Section 34a are met. Confiscation can take place in such circumstances if the offender is unable to prove that the assets are legally obtained. The Ministry's assessment regarding article 20 is contained in a White Paper to Parliament Ot.prp. nr. 53 (2005-2006) (Implementation of the UN Convention against Corruption).
149. Norwegian authorities noted that there have been several cases where Section 34a PC was applied, typically narcotics cases.
150. However, in one case (the Tordenskjold case), which is yet to be heard by the Norwegian Supreme Court, the funds in three offshore accounts opened in the name of a company were confiscated by reference to Section 34a of the Norwegian Penal Code. The Court of Appeal found that the company in question was under the defendant's control and that the money in fact belonged to the defendant. It also found that only a limited amount of the funds in the bank was based on legal income, that the rest had no connection with the defendant's assessed income, and that the defendant had not proved, on a balance of probabilities, that the remaining funds had been lawfully acquired. Hence, the remaining balance was confiscated. The Supreme Court upheld the decision.

### **(b) Observations on the implementation of the article**

151. Based on the explanation provided by Norwegian authorities, 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.

**(c) Successes and good practices**

152. The public nature of tax statements in addition to the rules on freedom information which help increasing accountability and transparency were positively noted by the reviewing team.

**Article 21 Bribery in the private sector**

*Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally in the course of economic, financial or commercial activities:*

*(a) The promise, offering or giving, directly or indirectly, of an undue advantage to any person who directs or works, in any capacity, for a private sector entity, for the person himself or herself or for another person, in order that he or she, in breach of his or her duties, act or refrain from acting;*

*(b) The solicitation or acceptance, directly or indirectly, of an undue advantage by any person who directs or works, in any capacity, for a private sector entity, for the person himself or herself or for another person, in order that he or she, in breach of his or her duties, act or refrain from acting.*

**(a) Summary of information relevant to reviewing the implementation of the article**

153. Active and passive bribery in both the private and public sector are covered by Sections 276a and 276b, as cited above under UNCAC article 15. Reference is made to the explanations regarding those sections provided there.

154. Norwegian authorities reported that there have been a number of private sector corruption cases in Norway in the last few years. The following recent examples were mentioned:

In Fall 2011, a former consultant in a Norwegian oil company (partly owned by the Norwegian government) was convicted of taking a bribe. The sentence was three and a half years in prison. In addition, he was sentenced to pay back the money he had received, approximately NOK 5.8 million. Two others were sentenced to four and three years in prison for having bribed the consultant. The corruption in this case covers more than NOK 7 million, which the consultant received during 2003-2010. The bribes were paid partly to receive contracts with the company and partly by false invoices to the company. In Fall 2012, courts of appeals confirmed the sentence and convicted one of the persons to a six-month longer sentence.

TROMS-2011-51247 (Tromsø district court, no appeal): A manager at a company importing clothes from China received bribes totalling NOK 2.7 million over a number of years. The company was not aware of the payments, and it was uncovered by the tax authorities. The manager pleaded guilty of gross passive corruption in court, and was

sentenced to one year and five months imprisonment, confiscation of NOK 2.7 million, and penalty tax.

TBERG-2010-134286, LG-2011-40898 (Bergen district court, Gulating court of appeals, appeal to Supreme Court denied): A district manager for a large transportation company made a deal with the owner of a cleaning company to overbill his employer for NOK 2.4 million, thus receiving NOK 325,000 himself. The district manager tried to cover his actions through falsifying invoices, but this was discovered by the company. The district manager was convicted of gross passive corruption, gross fraud, and gross breach of trust. He was sentenced to two years imprisonment and was disqualified from holding a leading position, board membership or ownership in any company for a period of five years. The owner of the cleaning company was convicted of gross active corruption, gross fraud, gross breach of trust and violations of several laws relating to tax and accounting. He was sentenced to three years imprisonment. Both were sentenced to pay NOK 303,000 in compensation to the transport company.

**(b) Observations on the implementation of the article**

155. The article under review is implemented, both in law and in practice. The observations under article 15 above are reiterated.

**Article 22 Embezzlement of property in the private sector**

*Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally in the course of economic, financial or commercial activities, embezzlement by a person who directs or works, in any capacity, in a private sector entity of any property, private funds or securities or any other thing of value entrusted to him or her by virtue of his or her position*

**(a) Summary of information relevant to reviewing the implementation of the article**

156. Reference is made to the information provided under UNCAC article 17 above. Penal Code, Sections 255 and 256 also cover embezzlement in the private sector.

157. Norwegian authorities provided the following case examples:

In November 2013, ØKOKRIM prosecuted a former Chairman in an oil service company for embezzlement of USD 27 million from the company. The company was involved in offshore services in West Africa. The defendant was accused of paying several invoices to companies registered in Panama with bank accounts in Switzerland. ØKOKRIM claimed that his company did not receive any corresponding service in return. The case is currently being heard.

In the so called "Red Cross-case" a man was convicted in March 2013 to six years in prison for misappropriation of funds and bribery. By this judgment the Court of Appeal upheld the sentence from 2004. The case took a long time in the courts due to a new procedural law given by a judgment from the Supreme Court. The "Red Cross-case" was about theft from the Red Cross by using incorrect invoices. This was done in cooperation

with the financial director, who was the brother of the convicted person. The convicted person was also found guilty of paying a bribe to an employee in Red Cross who was a controller in the organization. The convicted person was partly responsible for losses to the Red Cross of NOK 8.7 million.

**Case involving embezzlement of a client's funds** In April 2013, a former lawyer was convicted by a Court of Appeal for, among other economic crimes, embezzlement of money from one of his clients. The embezzlement lasted for years. The Court considered it an aggravating circumstance that the former lawyer had taken his client's money and misused the trust he was given as a lawyer.

**(b) Observations on the implementation of the article**

158. The article under review is implemented, both in law and in practice.

**Article 23 Laundering of proceeds of crime**

**Subparagraphs 1 (a) and 1 (b) (i)**

*1. Each State Party shall adopt, in accordance with fundamental principles of its domestic law, such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:*

*(a) (i) The conversion or transfer of property, knowing that such property is the proceeds of crime, for the purpose of concealing or disguising the illicit origin of the property or of helping any person who is involved in the commission of the predicate offence to evade the legal consequences of his or her action;*

*(a) (ii) The concealment or disguise of the true nature, source, location, disposition, movement or ownership of or rights with respect to property, knowing that such property is the proceeds of crime;*

*(b) Subject to the basic concepts of its legal system:*

*(i) The acquisition, possession or use of property, knowing, at the time of receipt, that such property is the proceeds of crime;*

**(a) Summary of information relevant to reviewing the implementation of the article**

159. Norway cited Section 317 of the Penal Code. The second paragraph of Section 317 was introduced as part of the ratification process of UNCAC and came into force on 29 June 2006.

160. It was explained that subparagraph 1 (a) (ii) of the article under review is covered by paragraphs one and two of Section 317 of the Penal Code.

**Penal Code Section 317**

Any person who receives or obtains for himself or another person any part of the proceeds of a criminal act (receiving), or who aids and abets the securing of such proceeds for another person (money laundering) shall be liable to fines or imprisonment for a term not exceeding three years. Aiding and abetting shall be deemed to include collecting, storing, concealing, transporting, sending, transferring, converting, disposing of,

pledging or mortgaging, or investing the proceeds. Any object, claim or service substituted for the proceeds shall be regarded as equivalent thereto.

A person who by conversion or transfer of property or by other means disguises or conceals the whereabouts or origin of the proceeds of a criminal act he has himself committed, the identity of the person or persons with disposition over it, its movements or rights associated with it shall also be guilty of money laundering.

Such offences as described in the first and second paragraph takes place even though no person may be punished for the act from which the proceeds are derived, by reason of the provisions of sections 44 and 46.

An aggravated offence shall be punishable with imprisonment for a term not exceeding six years. In deciding whether an offence is aggravated, particular importance shall be attached to what kind of criminal act the proceeds are derived from, the value of the proceeds, the amount of any advantage the offender has received or obtained for himself or another person, and whether the offender has habitually been engaged in such offences. If the proceeds are derived from a drug felony, importance shall also be attached to the nature and quantity of the substance with which the proceeds are connected.

If the offence is concerned with the proceeds of a drug felony, imprisonment for a term not exceeding 21 years may be imposed under especially aggravating circumstances.

If the offence is committed through negligence, it shall be punishable by fines or imprisonment for a term not exceeding two years.

No penalty pursuant to this section shall, however, be applicable to any person who receives the proceeds for the ordinary maintenance of himself or another person from a person who is obliged to provide such maintenance, or to any person who receives the proceeds as normal payment for ordinary consumer goods, articles for everyday use or services.

161. Norwegian authorities explained that the list of material acts in Section 317 first paragraph is not exhaustive. In fact, the Norwegian text includes the term “inter alia”, which is omitted in the English translation.
162. As for the mental element of the money laundering offence, reference was made to the general provisions of the Penal Code, Section 14 on intent.
163. Noting that the money laundering offence could be committed through negligence as provided in Section 317 PC above, Norwegian authorities referred during the country visit to a case where a lawyer who was collecting money for his client, was sentenced and convicted of money laundering because he should have known that the money was of an illegal origin.
164. Norwegian authorities explained that money laundering had recently been categorized as a separate offence in the criminal statistics (apart from handling stolen or illegal assets), and thus no statistics on money laundering were available for previous years.
165. During the country visit, representative from the Oslo Police referred to nine ongoing cases of money laundering involving nationals of an African country who transferred illegal funds through a money and value transfer service.
166. Norway referred to the following examples of money laundering cases involving the predicate crime of corruption, from the Supreme Court and courts of appeals:

Rt-2008-1473 (LB-2007-177805) – Supreme court: Corruption and money laundering of over 100 million NOK in a public construction company.

LE-2008-46619 – Court of appeal: Corruption and money laundering of 30-35 million NOK in a public water supply company.

LG-2011-198451 – Court of appeal: Corruption and money laundering (self-laundering) of 6.5 million NOK when on contract with an oil company.

LG-2008-196041 – Court of appeal: Corruption and money laundering of 3-4 million NOK when through a private company.

**(b) Observations on the implementation of the article**

167. The provisions under review are adequately covered in the Norwegian legislation, although no statistics on money laundering were available.

**Article 23 Laundering of proceeds of crime**

**Subparagraph 1 (b) (ii)**

*1. Each State Party shall adopt, in accordance with fundamental principles of its domestic law, such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:*

*(b) Subject to the basic concepts of its legal system:*

*(ii) Participation in, association with or conspiracy to commit, attempts to commit and aiding, abetting, facilitating and counselling the commission of any of the offences established in accordance with this article.*

**(a) Summary of information relevant to reviewing the implementation of the article**

168. Norwegian penal law does not distinguish between different groups of offenders, such as principals and participators or participators prior to and during the committing of the offence. A participant will in some cases have violated the description of the act itself and his or her liability will follow from this, or the participant's liability may be warranted through a supplement to the description of the offence stating that aiding and abetting is a criminal act.

169. Section 317 has, as opposed to a number of other sections in the Penal Code, no supplement stating that participating in money laundering is a criminal act, because the act of money laundering is partly described as an act of aiding and abetting (“...who aids and abets the securing for another person”).

170. The new Penal Code, enacted but not yet in force<sup>3</sup>, contains a general provision on aiding and abetting which reads as follows (unofficial translation): “A penal provision also applies to anyone who aids and abets to the offence, unless it is otherwise provided.” The provision is intended to further develop the existing law on aiding and abetting.

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<sup>3</sup> General Civil Penal Code, Act of 22 May 1902 No. 10. as amended, latest by Act of 21 December 2005 No. 131.

171. As for conspiracy, Norway cited Section 318 of the Penal Code. This section was introduced to fulfil the requirements of UNCAC article 23, subparagraph 1 (b) (ii) and came into force on 29 June 2006.

**Section 318 of the Penal Code**

"Any person who conspires with another person to commit an act as referred to in section 317, first or second paragraph, shall be liable to fines or imprisonment not exceeding three years."

172. Attempt is regulated in the general provision on attempt in the Penal Code, Section 49.

**Section 49 of the Penal Code**

"When a felony is not completed, but an act has been done whereby the commission of the felony is intended to begin, this constitutes a punishable attempt.

An attempt to commit a misdemeanour is not punishable."

173. Section 2, first paragraph, first sentence of the Penal Code classifies certain criminal acts as felonies.

**Section 2 of the Penal Code (first sentence)**

"The criminal acts dealt with in the second part of this code are felonies."

174. Section 317 is placed in the Penal Code's second part and is thus a felony, implying that money laundering's attempt is criminalized.

**(b) Observations on the implementation of the article**

175. The provision under review is adequately covered in the Norwegian legislation. However, no examples of implementation were available.

**Article 23 Laundering of proceeds of crime**

**Subparagraph 2**

*2. For purposes of implementing or applying paragraph 1 of this article:*

*(a) Each State Party shall seek to apply paragraph 1 of this article to the widest range of predicate offences;*

*(b) Each State Party shall include as predicate offences at a minimum a comprehensive range of criminal offences established in accordance with this Convention;*

*(c) For the purposes of subparagraph (b) above, predicate offences shall include offences committed both within and outside the jurisdiction of the State Party in question. However, offences committed outside the jurisdiction of a State Party shall constitute predicate offences only when the relevant conduct is a criminal offence under the domestic law of the State where it is committed and would be a criminal offence under the domestic law of the State Party implementing or applying this article had it been committed there;*

**(a) Summary of information relevant to reviewing the implementation of the article**

176. Norway explained that no limitations or thresholds have been placed on the term "criminal act" in Section 317 of the Penal Code. Consequently, any criminal act under the



Penal Code could constitute a predicate offence for purposes of Section 317, as could any criminal act in other legislation (i.e., serious offences and misdemeanours).

177. Moreover, the Norwegian authorities explained that the predicate offence does not have to be specified. It is sufficient to prove beyond a reasonable doubt that the proceeds derive from a criminal act. It is also noted that a person may be liable for money laundering even though no person was punished for the act from which the proceeds were derived, by reason of the provisions of Sections 44 and 46 of the Penal Code.

178. It was explained that Norway has applied its money laundering provision to prosecute the laundering of proceeds that were generated from a predicate offence which occurred in another country. According to Norwegian authorities, and although Section 317 itself is silent in this regard, the preparatory works expressly provide (as quoted below) that if the predicate offence is committed abroad, laundering the proceeds in Norway is a criminal offence, provided that the predicate offence would have been a criminal offence if committed in Norway. It was unclear during the country visit if the case would be the same if the underlying act was not criminalized abroad but would have been a criminal offence if committed in Norway, as there had been no such cases to date.

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*(unofficial translation by the Ministry of Justice and Public Security)*

Laundering of proceeds of crime are often transnational criminal acts. In quite a few cases the act from which the proceeds are generated will be punishable in Norway even though committed abroad, cf. the Penal Code section 12. In these cases it is not dubious we have a criminal act covered by the suggested provision. The solution is less clear if the act would have been punishable if committed in Norway, but is not punishable according to the jurisdiction rules in section 12. Proceeds from such acts should, in the ministry's view, be considered as proceeds generated from a criminal act covered by the suggested provision. The ministry does in particular emphasize the fact that laundering of proceeds of crime is a considerable international problem and, provided that the act according to its description is punishable also in Norway, that it would be accidental and unreasonable if the laundering of the proceeds is left unpunished here only because Norwegian jurisdiction rules do not allow for criminal prosecution of the predicate offence.

The understanding that the provision on laundering of proceeds is also applicable when the predicate act would have been punishable if committed in Norway, but is not punishable in Norway according to the jurisdiction rules in section, is repeated in the proposition on the implementation of the UNCAC: "Also, the provision covers proceeds of crimes committed abroad provided that the act according to its description is punishable also in Norway".

**(b) Observations on the implementation of the article**

179. The provision under review is adequately covered in the Norwegian legislation.

**(c) Successes and good practices**

180. The fact that it is sufficient to establish the criminal nature of the proceeds, without the need to identify the predicate offence, for a money laundering conviction was positively noted by the review team as conducive to the pursuit of money laundering cases.

## **Article 23 Laundering of proceeds of crime**

### **Subparagraph 2 (d)**

*2. For purposes of implementing or applying paragraph 1 of this article:*

*(d) Each State Party shall furnish copies of its laws that give effect to this article and of any subsequent changes to such laws or a description thereof to the Secretary-General of the United Nations;*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

181. Norway reported that it has furnished copies of its laws to the Secretary-General of the United Nations as prescribed above.

#### **(b) Observations on the implementation of the article**

182. Norwegian officials indicated that they would resend the aforementioned information to the Chief, Treaty Section, Office of Legal Affairs, Room M-13002, United Nations, 380 Madison Ave, New York, NY 10017 and copy the Secretary of the Conference of the States Parties to the United Nations Convention against Corruption, Corruption and Economic Crime Branch, United Nations Office on Drugs and Crime, Vienna International Centre, P.O. Box 500, 1400 Vienna, Austria (uncac.cop@unodc.org).

## **Article 23 Laundering of proceeds of crime**

### **Subparagraph 2 (e)**

*2. For purposes of implementing or applying paragraph 1 of this article:*

*(e) If required by fundamental principles of the domestic law of a State Party, it may be provided that the offences set forth in paragraph 1 of this article do not apply to the persons who committed the predicate offence.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

183. Norway's referred to Section 317, paragraph 2 of the Penal Code, which criminalizes self-laundering.

#### **(b) Observations on the implementation of the article**

184. The provision under review is adequately covered in the Norwegian legislation, although no examples of implementation were provided.

## **Article 24 Concealment**

*Without prejudice to the provisions of article 23 of this Convention, each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally after the commission of any of the offences*

*established in accordance with this Convention without having participated in such offences, the concealment or continued retention of property when the person involved knows that such property is the result of any of the offences established in accordance with this Convention.*

**(a) Summary of information relevant to reviewing the implementation of the article**

185. Norway referred to its answer to subparagraph 1 (a) of article 23 above. The requirements of UNCAC article 24 are covered by the Penal Code, Section 317, first paragraph.

**(b) Observations on the implementation of the article**

186. The provision under review is adequately covered in the Norwegian legislation, although no examples of implementation were provided.

## **Article 25 Obstruction of Justice**

### **Subparagraph (a)**

*Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:*

*(a) The use of physical force, threats or intimidation or the promise, offering or giving of an undue advantage to induce false testimony or to interfere in the giving of testimony or the production of evidence in a proceeding in relation to the commission of offences established in accordance with this Convention;*

**(a) Summary of information relevant to reviewing the implementation of the article**

187. As regards the alternative physical force, threats or intimidation, Section 132a of the Penal Code fulfils the requirements of the provision under review.

188. According to Norwegian authorities, the alternative of “promising, offering or giving of an undue advantage” is also covered by the term “other unlawful conduct”.

189. Moreover, the term “participator in the administration of justice” could include witnesses, experts and others who provide testimony or evidence in a criminal proceeding, according to Norwegian authorities.

#### **Section 132 a Penal Code**

"Any person who by means of violence, threats, damage or other unlawful conduct aimed at a participator in the administration of justice or any of his next-of-kin

a) behaves in such a way as is likely to influence the participator to perform or omit to perform an act, task or service in connection with a criminal or civil case, or

b) retaliates for any act, task or service which the participator has performed in connection with a criminal or civil case

shall be liable to a penalty for obstruction of the administration of justice.

A participator in the administration of justice means any person who

a) has reported a criminal matter or has brought an action in a civil case,

b) has made a statement to the police or to the court,

c) works or performs a service for the police, the prosecuting authority, the court or the correctional services,

d) is a defence counsel, counsel for the aggrieved person or legal representative, or

e) is considering the performance of such an act or the undertaking of such a task or such a service.

Any person who aids or abets such an offence shall be liable to the same penalty.

Obstruction of the administration of justice shall be punishable by imprisonment for a term not exceeding five years. If the act is committed under especially aggravating circumstances, a sentence of imprisonment for a term not exceeding ten years may be imposed. In deciding whether especially aggravating circumstances subsist, particular importance shall be attached to whether the offence has endangered any person's life or health, has been committed on more than one occasion, or by two or more persons jointly, or is of a systematic or organized nature. Grossly negligent obstruction of the administration of justice shall be punishable by imprisonment for a term not exceeding five years."

190. Norway provided the following statistics.

Year	Reported offences relating to Section 132a
2009	193
2010	192
2011	243
2012	228

**(b) Observations on the implementation of the article**

191. The provision under review is adequately covered in the Norwegian legislation.

**Article 25 Obstruction of Justice**

**Subparagraph (b)**

*Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:*

*(b) The use of physical force, threats or intimidation to interfere with the exercise of official duties by a justice or law enforcement official in relation to the commission of offences established in accordance with this Convention. Nothing in this subparagraph shall prejudice the right of States Parties to have legislation that protects other categories of public official.*

**(a) Summary of information relevant to reviewing the implementation of the article**

192. Norway referred to its answer to the previous provision. Any person who “works or performs a service for the police, the prosecuting authority, the court or the correctional services” is covered in accordance with Section 132a, second sentence.

193. Norway provided the following examples:

LA-2008-71305: A man was convicted for obstruction of justice (amongst other things) after threatening to kill a police officer who had arrested him earlier.

LB-2008-138362: A man was convicted for obstruction of justice (amongst other things) after threatening to injure two police officers who were investigating him.

**(b) Observations on the implementation of the article**

194. The provision under review is adequately covered in the Norwegian legislation.

## **Article 26 Liability of legal persons**

### **Paragraphs 1 and 2**

*1. Each State Party shall adopt such measures as may be necessary, consistent with its legal principles, to establish the liability of legal persons for participation in the offences established in accordance with this Convention.*

*2. Subject to the legal principles of the State Party, the liability of legal persons may be criminal, civil or administrative.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

195. Norway referred to the following measures.

##### **The General Civil Penal Code**

###### **Section 48 a**

"When a 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. Enterprise here means 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 court judgement 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."

196. Norwegian authorities clarified that it follows from the general provision in Section 15 of the Penal Code that both fines and loss of the right to carry on business are ordinary criminal penalties, on a par with imprisonment.

##### **The General Civil Penal Code**

###### **Section 15**

"The ordinary penalties are:

- imprisonment,
- preventive detention,
- detention,
- community sentences,
- finances and

loss of such rights as are referred to in section 29 and 33. "

#### **(b) Observations on the implementation of the article**

197. Norway recognizes the criminal liability of legal persons. The provisions are implemented.

## **Article 26 Liability of legal persons**

### **Paragraph 3**

*3. Such liability shall be without prejudice to the criminal liability of the natural persons who have committed the offences.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

198. As provided in Section 48a (second sentence), a natural person does not have to be convicted in order for the legal entity to be punished. Moreover, this section does not prevent the natural persons who have committed the offences from being criminally liable.

#### **(b) Observations on the implementation of the article**

199. The provision under review is adequately covered in the Norwegian legislation, although no examples of implementation were available.

## **Article 26 Liability of legal persons**

### **Paragraph 4**

*4. Each State Party shall, in particular, ensure that legal persons held liable in accordance with this article are subject to effective, proportionate and dissuasive criminal or non-criminal sanctions, including monetary sanctions.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

200. It follows from Section 48a that 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.

201. Norway explained that the concept of criminal liability of enterprises is well integrated into Norwegian legal practice. It has also been used in the context of corruption/trading in influence. Norway provided the following case examples:

One of the biggest Norwegian consulting companies was in 2012 sentenced to a fine amounting to NOK 4 million for corruption committed by employees in Tanzania. Approximately USD 100,000 was paid to various persons connected to Dar Es Salaam Water and Sewerage Authority as payment for a contract being awarded to a joint venture in which the company took part. The 2012 verdict from the Court of Appeal has been appealed to the High Court of Justice and the company was acquitted.

In 2004, an oil company was fined NOK 20 million in a Section 276c trading in influence case in Iran. The fine was accepted by the company and accordingly the case did not go to court.

202. According to Norwegian authorities, 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.

203. Moreover, the penalty to deprive an enterprise of the right to exercise business is considered a very severe reaction, and this penalty has not yet been imposed on any enterprise.

204. Norway clarified that when an enterprise has been given a licence by a public authority to exercise a certain type of business, and the conditions for this licence have been breached, the public authority may revoke the licence. This, however, is considered to be an administrative sanction and not a criminal penalty.

**(b) Observations on the implementation of the article**

205. The provision under review is adequately covered in the Norwegian legislation and examples of implementation were given.

**(c) Successes and good practices**

206. The absence of a statutory maximum fine for corporations was considered to be conducive to deterrence and was positively noted by the reviewing team.

**Article 27 Participation and attempt**

**Paragraph 1**

*1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as a criminal offence, in accordance with its domestic law, participation in any capacity such as an accomplice, assistant or instigator in an offence established in accordance with this Convention.*

**(a) Summary of information relevant to reviewing the implementation of the article**

207. As mentioned above under UNCAC article 23(1)(b)(ii), Norwegian penal law does not distinguish between different groups of offenders, such as principals and participators, or participators prior to and during the commission of the offence. A participant will in some cases have violated the description of the act itself and his or her liability will follow from this, or the participant's liability may be warranted through a supplement to the description of the offence stating that aiding and abetting is a criminal act.

208. The provisions in Norway's Penal Code that implement the UNCAC offences establish criminal liability for participatory acts, either directly or as a consequence of the description of the criminal acts. Specifically, the UNCAC offences are covered by the Penal Code as follows:

- Section 132a (obstruction of justice),
- Sections 276a and 276b (corruption and gross corruption),
- Section 276c (trading in influence),

- Sections 255 and 256 (embezzlement and gross embezzlement),
- Sections 317 (money laundering) and 318 (conspiracy).

Except for Sections 317 and 318, these provisions all have supplements stating that participation is a criminal act. For instance, Section 132a third paragraph states that “any person who aids or abets such an offence shall be liable to the same penalty”. Identical supplements can be found in Section 255, third paragraph, second sentence (applying also to gross embezzlement), Section 276a, third paragraph, second sentence (applying also to gross corruption), and Section 276c, third paragraph, second sentence. As for Section 317, participatory acts are addressed above under UNCAC article 23.

209. The new Penal Code, enacted but not yet in force<sup>4</sup>, contains a general provision on aiding and abetting, which reads as follows (unofficial translation): “A penal provision also applies to anyone who aids and abets to the offence, unless it is otherwise provided.” The provision is intended to further develop the existing law on aiding and abetting.

210. According to Norway, when assessing the legal situation before ratifying the Convention, the Ministry of Justice and Public Security came to the firm conclusion that the legal situation was in conformity with the requirements of the Convention. Reference is made to the previous answers to UNCAC articles 15 to 25.

211. Norwegian authorities referred to the following case examples.

LB-2010-62670-2: a man was convicted of one count of gross corruption (NOK 1,446,543) and three counts of participation to corruption (NOK 33,207) in a case relating to corruption in a public real estate company.

LB-2011-148517: Two employees were found guilty of participation to gross corruption in a case concerning corruption in a project in Tanzania.

**(b) Observations on the implementation of the article**

212. The provision under review is adequately covered in the Norwegian legislation and examples of implementation were given.

**Article 27 Participation and attempt**

**Paragraph 2**

*2. Each State Party may adopt such legislative and other measures as may be necessary to establish as a criminal offence, in accordance with its domestic law, any attempt to commit an offence established in accordance with this Convention.*

**(a) Summary of information relevant to reviewing the implementation of the article**

213. Norway cited the following measure.

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<sup>4</sup> General Civil Penal Code, Act of 22 May 1902 No. 10. as amended, latest by Act of 21 December 2005 No. 131.



#### **Section 49 of the Penal Code**

"When a felony is not completed, but an act has been done whereby the commission of the felony is intended to begin, this constitutes a punishable attempt.

An attempt to commit a misdemeanour is not punishable."

214. Norwegian authorities confirmed that all UNCAC offences constitute felonies in Norwegian law, and hence, any related attempts would be punishable.

215. Section 51 of the Penal Code regulates the penalty range for attempt. The provision reads as follows:

#### **Section 51 of the Penal Code**

"An attempt shall be punished by a milder penalty than a completed felony. The penalty may be reduced to less than the minimum provided for such felony and to a milder form of punishment.

The maximum penalty provided for the completed felony may be applied if the attempt has led to any such result as, if it had been intended by the offender, could have justified the application of so high a penalty."

216. Officials explained that this implies, for instance, that the maximum penalty for an attempt at corruption, Section 276a, is two years and eleven months.

217. With respect to money laundering, "The offence of attempted money laundering even extends to circumstances in which the attempt itself was useless." This was the result of a Supreme Court case (case citation Rt. 2004/598). In that case, it turned out that the money to be laundered (NOK 17 million / EUR 2.1 million / USD 2.7 million), which Nigerian nationals had obtained assistance from Norwegian nationals to secure, did not exist.

218. According to Norway, the doctrine that was applied and confirmed in the above-mentioned case is general and applies to attempts at any offence, including UNCAC offences. This subjective doctrine on attempts is inherent in the wording of Section 49 of the Penal Code, "intended to begin", as it has been elaborated in judicial theory and applied and confirmed by the courts.

#### **(b) Observations on the implementation of the article**

219. The provision under review is adequately covered in the Norwegian legislation and referenced example of implementation.

### **Article 27 Participation and attempt**

#### **Paragraph 3**

*3. Each State Party may adopt such legislative and other measures as may be necessary to establish as a criminal offence, in accordance with its domestic law, the preparation for an offence established in accordance with this Convention.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

220. UNCAC article 27 was given particular consideration in the process of ratifying the Convention and was subject to public hearing. None of the parties invited to submit comments regarding this issue held the view that criminalizing conduct as described in article 27, paragraph 3 (i.e., preparatory acts), was desirable. On the contrary, those that commented specifically on this issue, including the Director of Public Prosecutions, took

the view that such conduct should not be criminalized, specifically referring in this context to Section 49 and 162c of the Penal Code.

221. Traditionally, and still the starting point, Norwegian legislators have been of the opinion that preparation should, as a main rule, not be criminalized. Thus, there is no general rule in the Penal Code on preparation/preparatory acts, as opposed to the general rule on attempt. However, certain preparatory acts are criminalized through separate penal provisions. Provisions on conspiracy to commit specific acts, such as conspiracy to commit money laundering, constitute a main group of penal provisions applying to preparatory acts.

**(b) Observations on the implementation of the article**

222. 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.

**Article 28 Knowledge, intent and purpose as elements of an offence**

*Knowledge, intent or purpose required as an element of an offence established in accordance with this Convention may be inferred from objective factual circumstances.*

**(a) Summary of information relevant to reviewing the implementation of the article**

223. According to Norway, knowledge, intent and purpose required as elements of an offence established in accordance with the Convention can be inferred from objective factual circumstances in Norway. The Norwegian legal situation in this regard is in full conformity with the requirements of the Convention, and the question was carefully considered in the ratification process.

224. While there is no provision of statutory law stating that the mental or subjective elements of guilt may be inferred from objective factual circumstances, Norwegian criminal law is based on a basic and firm non-statutory rule of the court's free assessment of evidence, discussed and elaborated in judicial theory and applied by the courts.

225. In the Supreme Court's judgment published in Rt. 2012 page 1153, discussing, inter alia, the Appeal Court's reasoning for intent, the Supreme Court stated (paragraph 45):

“The accused in this case did not admit intentional bodily harm. When the accused's own explanation on his thoughts at the moment of committing the act cannot found the basis for the courts assessment, the court must draw conclusions on what went on in the accused's mind from the external circumstances. I refer to the preliminary works on the new Penal Code, Odelsting Proposition no. 90 (2003-2004) page 426, cited by the Supreme Court in Rt. 2011 page 1104, paragraphs 18 and 19, reading as follows: ‘Often, the offender acts fast, without having any clear consciousness of all the elements of the description of the act. This is not necessarily preventing the fulfillment of the requirement for intent. Intent does also include the half-clear, blurred intent, cf. official report part V page 119 with further reference to Andenæs, General Criminal Law (1 ed. 1956) page 212. Particularly in cases where the offender does not confess, the assessment

of intent must often be based on external circumstances, testimonies and common experience. But the accused must here, as always, be given the benefit of the doubt.”

**(b) Observations on the implementation of the article**

226. The provision under review is adequately covered in the Norwegian legislation.

**Article 29 Statute of limitations**

*Each State Party shall, where appropriate, establish under its domestic law a long statute of limitations period in which to commence proceedings for any offence established in accordance with this Convention and establish a longer statute of limitations period or provide for the suspension of the statute of limitations where the alleged offender has evaded the administration of justice.*

**(a) Summary of information relevant to reviewing the implementation of the article**

227. Norway cited the following measures.

**Section 67 of the Penal Code**

"The period of limitation is:

Two years when the maximum penalty prescribed is fines or imprisonment for a term not exceeding one year,

five years when the maximum penalty prescribed is imprisonment for a term not exceeding four years,

10 years when the maximum penalty prescribed is imprisonment for a term not exceeding 10 years,

15 years when a penalty for a specified period not exceeding 15 years may be imposed

25 years when imprisonment for a term not exceeding 21 years may be imposed.

Detention is deemed to be equivalent to imprisonment when calculating the limitation period. The fact that fines or loss of civil rights may be imposed in addition to another penalty is of no significance when calculating the limitation period.

If any person has by the same act committed two or more offences which pursuant to the first paragraph should become time-barred at different times, the longest period of limitation shall apply to all offences.

The period of limitation of criminal liability applicable to enterprises shall be calculated on the basis of the penalty limits for individual persons in the penal provision that has been contravened"

**Section 69 of the Penal Code**

The running of the period of limitation is interrupted by any legal proceeding entailing that the suspect is given the status of a person charged. If the charge is made by a statement out of court or by the issuing of a writ giving the option of a fine or confiscation or both, the running of the period of limitation is interrupted by notification to the suspect that he has been charged. To such notification the provision of section 146, second paragraph, of the Courts of Justice Act shall apply correspondingly.

If the running of the period of limitation is interrupted in relation to any person who has acted on behalf of an enterprise, such interruption also applies to the enterprise.

If the prosecution is discontinued and the decision to do so is not reversed by a superior prosecuting authority within the time-limit for such reversal, the period of limitation will continue to run as if the prosecution had not taken place. The same applies if the prosecution is stopped indefinitely. If the prosecution is stopped because the person charged has evaded prosecution, the time spent on prosecution shall not be included in calculating when the period of limitation has expired.

228. Norway noted that there is a separate provision on the cessation of the application of a custodial sentence by the expiry of the period of limitation in Section 71 of the Penal Code, meaning that the imposed sentence cannot be executed after this expiry date.

229. The period of limitation is not suspended where the alleged offender has evaded the administration of justice or fled the country. Due to the rule on how the period of

limitation is interrupted, however, officials explained that such a suspension is unnecessary. According to Section 69, first paragraph, first sentence, of the Penal Code, the period of limitation is interrupted by any legal proceeding entailing that the suspect is given the status of being charged. It is not a requirement that the charge has come to the knowledge of the alleged offender. Thus, the presence of the offender is not required in order to take the necessary legal steps to interrupt the period of limitation.

230. Norwegian authorities stated that there have been no cases in which an UNCAC offence has been barred by the statute of limitations.

**(b) Observations on the implementation of the article**

231. The article under review is adequately covered in the Norwegian legislation.

**Article 30 Prosecution, adjudication and sanctions**

**Paragraph 1**

*1. Each State Party shall make the commission of an offence established in accordance with this Convention liable to sanctions that take into account the gravity of that offence.*

**(a) Summary of information relevant to reviewing the implementation of the article**

232. Norway provided the following table summarizing the applicable penalties for UNCAC offences

<b>Offence</b>	<b>Maximum penalty</b>
Corruption	Fine or up to 3 years imprisonment
Gross corruption	Up to 10 years imprisonment
Embezzlement	3 years imprisonment
Gross embezzlement	6 years imprisonment
Money laundering	3 years imprisonment
Gross Money laundering	6 years imprisonment
Obstruction of justice	5 to 10 years imprisonment

233. According to the Penal Code, Section 276b, in deciding whether 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.

**(b) Observations on the implementation of the article**

234. Norway has adopted penalties for UNCAC offences that take into account the gravity of the offence. The provision under review is adequately covered both in law and in the case examples discussed in this report.

## Article 30 Prosecution, adjudication and sanctions

### Paragraph 2

*2. Each State Party shall take such measures as may be necessary to establish or maintain, in accordance with its legal system and constitutional principles, an appropriate balance between any immunities or jurisdictional privileges accorded to its public officials for the performance of their functions and the possibility, when necessary, of effectively investigating, prosecuting and adjudicating offences established in accordance with this Convention.*

#### (a) Summary of information relevant to reviewing the implementation of the article

235. The King of Norway enjoys full immunity and there are limitations on the possibility to prosecute other members of the royal house as well. Members of Parliament enjoy parliamentary immunity; they are partly protected from arrest and pre-trial detention when they are physically in the Parliament or on the way to or from Parliament, and they cannot be held responsible for defamatory statements given in the Parliament. Consequently, they may be investigated and prosecuted for UNCAC offences, on a par with anyone else.

236. In addition, there are immunities stemming from international law applicable to representatives of foreign States and their diplomats, international organizations, etc.

#### (b) Observations on the implementation of the article

237. Based on the information provided to the review team and discussed during the country visit, immunities in Norway do not seem to constitute an impediment to the effective prosecution of UNCAC offences. The review team considers the provision under review to be adequately implemented.

## Article 30 Prosecution, adjudication and sanctions

### Paragraph 3

*3. Each State Party shall endeavour to ensure that any discretionary legal powers under its domestic law relating to the prosecution of persons for offences established in accordance with this Convention are exercised to maximize the effectiveness of law enforcement measures in respect of those offences and with due regard to the need to deter the commission of such offences.*

#### (a) Summary of information relevant to reviewing the implementation of the article

238. According to Norwegian authorities, in Norway, the aspect of deterrence is vital as regards the prosecution of economic crime cases, into which category the majority of offences relevant to the Convention fall. The above-cited provisions of the Penal Code implementing the UNCAC offences are all considered serious crimes and are given priority accordingly.

239. For example, the National Authority for Investigation and Prosecution of Economic and Environmental Crime in Norway (ØKOKRIM) has issued a report on the main challenge and priority of economic and environmental crime in Norway. Together with

tax fraud, corruption is on top of the list. Moreover, two of ØKOKRIM's ten investigation teams are devoted to handling corruption cases. The tax authorities are also being educated to improve their ability to uncover corruption cases through tax reviews.

240. Norway does not have a system of mandatory prosecution. It is for the prosecuting authority to decide whether or not a prosecution should be instituted in a specific case. There is no general law provision regulating how this discretionary authority should be exercised. Relevant factors that are taken into account are, amongst others, the public interest, the gravity of the crime, deterrence, if the violation has been met with other reactions and individual factors relating to the perpetrator. It follows from the hierarchical organization of the prosecuting authority that a higher level of the prosecution can issue guidelines for lower levels to follow.

241. According to Section 59a of the Criminal Procedure Act, a decision not to prosecute can be appealed by way of complaint to the immediately superior prosecuting authority. However, in cases involving corruption, prosecution will normally be instituted. It was reported during the country visit that approximately twenty persons of decisions not to prosecute are appealed.

#### **Section 59a of the Criminal Procedure Act**

The following administrative decisions of the prosecuting authority may, subject to the reservations contained in the second paragraph, be appealed by way of complaint to the immediately superior prosecuting authority:

- 1) a decision not to prosecute,
- 2) a decision to waive prosecution,
- 3) the issue of an optional penalty writ,
- 4) the issue of a bill of indictment,
- 5) a decision pursuant to section 459 (deferment of execution of sentence).

No complaint can be brought against the administrative decisions of the Director General of Public Prosecutions. An administrative decision referred to in section 67, sixth paragraph, may be appealed to the Director General of Public Prosecutions.

The right to appeal pursuant to the first paragraph can be exercised by:

- 1) the person at whom the decision is directed,
- 2) other persons with a legal interest in the complaint,
- 3) an administrative body provided the decision concerns its area of administrative responsibility.

The right to appeal by way of complaint cannot be exercised by any person who is entitled to bring the decision before the courts. Nor can a person charged appeal by way of complaint against a decision that institutes prosecution before a court.

The time-limit for lodging a complaint is three weeks from the date upon which notice of the decision was received by the complainant. The time-limit for a person who has not received such notice begins to run from the date upon which he has or ought to have become aware of the decision. As regards a decision to waive prosecution or to abandon proceedings that have been instituted, the time-limit for persons other than those to whom the decision is directed shall expire no later than three months after the date upon which the decision was made.

The person to whom the decision is directed shall be notified of complaints that before the expiry of the time-limit for such complaints have been received from any person specified in No.2 or 3 of the second paragraph. If the complaint concerns a decision to waive a prosecution or to abandon a prosecution that has been commenced against a person charged, notification of any reversal must be sent to the person charged not later than three months after the prosecuting authority received the complaint.

The decision of the prosecuting authority that hears the complaint cannot be appealed by way of complaint.

242. Norway provided the following statistics on corruption prosecutions from the Oslo Police District.

Reported cases - New registrations:

2011 15 Main cases 65 reports\*

2012 9 Main cases 12 reports\*

\* There are often several reports in each main case, for example when several individuals are reported in the same case, and/or when there are suspicions of several illegal actions conducted by the same person.

Indictments:

2011 2 Main cases 5 reports

2012 2 Main cases 1 report

On-going investigations:

At the time of reporting, there were four complex investigations relating to corruption.

Reported cases not pursued after investigation:

In the last few years, five reported cases and part of one reported case have been dismissed after being investigated.

Court decisions:

2012: Two cases were brought to district courts, and one to the Supreme Court, and all led to convictions.

2013: One case was brought to a court of appeals and led to a conviction.

243. During the country visit, reference was also made to Prosecutors' Guidelines, though a copy was not available to the review team.

**(b) Observations on the implementation of the article**

244. The provision is legislatively implemented, although no comprehensive statistics on prosecutions or decisions not to prosecute at the national level were available.

**Article 30 Prosecution, adjudication and sanctions**

**Paragraph 4**

*4. In the case of offences established in accordance with this Convention, each State Party shall take appropriate measures, in accordance with its domestic law and with due regard to the rights of the defence, to seek to ensure that conditions imposed in connection with decisions on release pending trial or appeal take into consideration the need to ensure the presence of the defendant at subsequent criminal proceedings.*

**(a) Summary of information relevant to reviewing the implementation of the article**

245. Norway cited Sections 181, 184 and 188 of the Criminal Procedure Act as relevant to decisions on release pending trial.

**Section 181 of the Criminal Procedure Act**

The prosecuting authority may forgo an arrest or release the person arrested on condition that he promises to present himself to the police at specified times or not to leave a specified place. The same applies when the

suspect consents to other conditions, such as handing over his passport, driving licence, sea service book, record of service, or the like. The promise or consent shall be given in writing.

The suspect may immediately or subsequently require that the question whether the conditions for arrest pursuant to section 171 to 173 have been fulfilled, and whether there is good reason to ratify the measures that have been taken, be referred to court. He shall be informed of this right when giving any promise or consent pursuant to the first paragraph.

The decision of the court shall be made by order.

#### **Section 184 of the Criminal Procedure Act**

The District Court before which the arrested person is brought shall by order decide whether he shall be remanded in custody. The decision shall as far as possible be made before the court concludes its sitting.

A remand in custody may be ordered if the conditions prescribed in sections 171, 172 or 173, second paragraph, are fulfilled and the purpose cannot be achieved by measures pursuant to section 188. The provisions of section 174 shall apply correspondingly. The order shall state the statutory authority, briefly mention why just cause for suspicion is deemed to exist, and otherwise explain the reason for the remand in custody. It shall also appear from the order that the remand in custody is not a disproportionate intervention. Without a preceding arrest the court may on application make an order for the remand in custody of a suspect who is present in court. Before any such decision is made, he shall be given an opportunity to speak. After an indictment has been preferred, also the court dealing with the case may order a remand in custody or a release.

Any order for a remand in custody or a release may at any time be reversed.

#### **Section 188 of the Criminal Procedure Act**

Instead of a remand in custody the court may decide on such measures as are specified in section 181, or on the provision of security in the form of a surety, deposit or mortgage of property.

Instead of a remand in custody the court may decide to place the person charged in an institution or municipal residential unit. Such placing may only be effected if the institution or municipality consents thereto. The court may decide that a person charged who is mentally retarded and is deemed to be of unsound mind shall be placed in a special unit for compulsory care, cf. section 39 a of the Penal Code. When the person charged has to stay in an institution or municipal residential unit, the court may determine that the said person may be kept there against his will and brought back if he absconds, by force if necessary, and with the aid of public authorities.

The provisions of sections 184, 185 and 187 shall apply correspondingly.

246. Generally, most of the coercive measures as described in Part IV of the Criminal Procedure Code of Norway would be applicable in relation to the penal provisions that cover the Convention's requirements, especially when it comes to gross/aggravated offences. These include, inter alia, arrest and remand into custody, freezing of assets, seizure and surrender and ban on visits, presence, etc.

#### **(b) Observations on the implementation of the article**

247. The provision is legislatively implemented, although no examples of implementation or statistics on release pending trial or appeal were available.

### **Article 30 Prosecution, adjudication and sanctions**

#### **Paragraph 5**

*5. Each State Party shall take into account the gravity of the offences concerned when considering the eventuality of early release or parole of persons convicted of such offences.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**



248. 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.

249. Norwegian authorities explained that the gravity of the offence comes into account as the minimum two thirds period of imprisonment is proportionate to the length of the sentence imposed and consequently a longer period is served, the longer the sentence imposed.

250. It may under certain circumstances be possible to release a person on probation after between half and two thirds of the sentence is served, depending on the gravity of the offence committed, among other factors to be considered.

**(b) Observations on the implementation of the article**

251. In light of the explanation provided, the review team is satisfied that that Norwegian legislation adequately covers the provision under review, although no related statistics or examples of implementation were available.

**Article 30 Prosecution, adjudication and sanctions**

**Paragraph 6**

*6. Each State Party, to the extent consistent with the fundamental principles of its legal system, shall consider establishing procedures through which a public official accused of an offence established in accordance with this Convention may, where appropriate, be removed, suspended or reassigned by the appropriate authority, bearing in mind respect for the principle of the presumption of innocence.*

**(a) Summary of information relevant to reviewing the implementation of the article**

252. Norway cited the following provision:

**The Penal Code Section 29**

"Any person who has committed a criminal act that shows that the said person is unfit for or may misuse any position, enterprise or activity may, when it is in the public interest,

a) be deprived of the position, or

b) be deprived of the right to hold in future any position or to carry on any enterprise or activity.

Loss of any right may be limited to a ban on carrying out certain functions pertaining to the position or enterprise, or to an order to carry on the enterprise or activity on specific conditions.

Any person who is deprived of the right to carry on an enterprise may not conduct such enterprise on behalf of other persons either or permit other persons to conduct such enterprise on his own behalf.

The offender may be ordered to surrender any document or other object that has served as evidence of the lost right.

Loss of any right pursuant to this provision may be imposed in addition to or instead of another penalty, but may only be imposed as the only penalty if a minimum penalty of imprisonment for one year or more is not prescribed for the act.

A public official may be suspended as a temporary measure, while the case is being investigated."

253. Norwegian authorities clarified that a conviction is required to invoke the cited Section 29 of the Penal Code and that the loss of rights pursuant to this section is a criminal penalty, on a par with imprisonment.

254. As with respect to public officials accused (but not convicted) of corruption, Norwegian authorities referred to the case TOSLO-2008-161011, in which a police officer was convicted of corruption and was also disqualified from holding any position in the police permanently. Before the case was brought to court, the official was suspended and a decision to dismiss the official was made, but put on hold until after the court proceedings.

**(b) Observations on the implementation of the article**

255. Noting that a conviction is required under Section 29 PC in order to deprive a person of his position, in light of the cited case example where an accused public official was dismissed pending the court proceeding, the review team considers the provision to be implemented.

**Article 30 Prosecution, adjudication and sanctions**

**Paragraph 7**

*7. Where warranted by the gravity of the offence, each State Party, to the extent consistent with the fundamental principles of its legal system, shall consider establishing procedures for the disqualification, by court order or any other appropriate means, for a period of time determined by its domestic law, of persons convicted of offences established in accordance with this Convention from:*

*(a) Holding public office; and*

*(b) Holding office in an enterprise owned in whole or in part by the State.*

**(a) Summary of information relevant to reviewing the implementation of the article**

256. Regarding subparagraph (a), Norway referred to its answer to the previous provision.

257. Regarding subparagraph (b), Norway explained that Penal Code, Section 29 is applicable to disqualification from holding office in an enterprise owned in whole or in part by the State. According to Norwegian authorities, Section 29 applies to disqualification from holding office in both the public and private sector as the wording does not make any distinction in this respect.

258. As for the duration of the disqualification and whether it is permanent or not, Norway referred to Section 33a, second paragraph, first sentence of the Penal Code, which specifies that a deprivation of right pursuant to Section 29 shall be imposed for a specific period not exceeding five years, or when special reasons so indicate, for an indefinite period. It may, however, be reviewed by the District Court every third year.

**(b) Observations on the implementation of the article**

259. The provision under review is adequately covered in Norway's legislation. The case example cited under the previous provision is referred to as an example of such disqualification from public office.

## **Article 30 Prosecution, adjudication and sanctions**

### **Paragraph 8**

*8. Paragraph 1 of this article shall be without prejudice to the exercise of disciplinary powers by the competent authorities against civil servants.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

260. Disciplinary sanctions can be issued under the Act Relating to Public Officials, Section 14, which stipulates:

##### **Act Relating to Public Officials Section 14 Disciplinary measures**

1. Senior civil servants (other than judges) and civil servant who are not by Statute subject to another disciplinary authority may be subjected to disciplinary measures for:

a. infringement of official obligations or failure to fulfil official duties,  
b. improper behaviour in or outside of the service that damages the respect or confidence essential to the post.

2. As disciplinary measures, senior civil servants and civil servants may be subjected to a written reprimand, or to loss of seniority for a period from one month to two years. Civil may also as a disciplinary measure, either permanently or for a limited period be demoted to a lower grade. An ordinary service reprimand shall not be regarded as a disciplinary measure.

3. Disciplinary measures are entered in the officer's record or personnel card. Regulations stipulate when the entry shall be removed.  
Any officer may demand a printout of his/her record or personnel card.

261. The above-mentioned Section 14 of the Act Relating to Public Officials authorizes the following sanctions: written warnings, loss of measured length of service (relevant for titles and pay), and demotion (permanently or temporary).

262. Suspension (Section 16) or dismissal (Section 15) can also be relevant measures in the event of a corruption case or other serious wrongdoing.

263. Regarding the implementation of the cited measures, separate integrity units exist, both for the police and the judiciary.

264. During the country visit, authorities referred to a case where two police officers were convicted and sentenced to imprisonment for corruption and related offences.

265. It was explained that both disciplinary and criminal sanctions can be imposed in corruption cases.

#### **(b) Observations on the implementation of the article**

266. The provision under review is adequately implemented.

## **Article 30 Prosecution, adjudication and sanctions**

### **Paragraph 10**

*10. States Parties shall endeavour to promote the reintegration into society of persons convicted of offences established in accordance with this Convention.*

**(a) Summary of information relevant to reviewing the implementation of the article**

267. According to the authorities, reintegration is a core principle of Norwegian criminal policy.

268. To reduce the rate of reoffending, the Correctional Services have introduced a resettlement guarantee to ensure that inmates have housing, work, social networks, etc. when they are released from prison. The Execution of Sentences Act, Section 4, states that the Correctional Services shall, by engaging in cooperation with other public services, arrange for inmates to receive the services to which they are statutorily entitled. Such cooperation shall lead to a coordinated effort to supply the needs of the inmates and to assist them to adjust to society.

269. The Norwegian government, in its Government Declaration, a central document on behalf of the coalition partners involved, has expressed a wish to introduce a Reintegration Guarantee, both during its first period in position (2005 – 2009) and its second (2009 – 2013). The Reintegration Guarantee is a political ambition for the Government. It does not provide any new rights, but it is a promise to establish structures of mandatory collaboration between the correctional services and municipal and state services in order to reduce recidivism. It will consist of close follow-up after release with a strong focus on employment or further education and with strict demands as to rehabilitation and change of behaviour.

270. The Reintegration Guarantee implies that anyone who has served their sentence in Norwegian corrections will, in principle and if needed, receive an offer of suitable housing, employment, education, some form of income, health services, addiction treatment, debt counselling and identity papers.

271. The Guarantee is as such a plan for the entire government, its ministries and the underlying organizations. It was developed in a more detailed form in and as a result of the White Paper on Corrections from 2008 called “Punishment that works – less crime – a safer society”. An English summary can be found at <http://www.kriminalomsorgen.no/stortingsmelding-nr-37.237910.no.html>.

272. As a result of this policy, 25 staff has been placed in key positions in the correctional system having the specific task to co-ordinate the necessary services at various levels for the individual offenders in order to promote their successful reintegration into the community and in that way reduce the risk of re-offending. A study showed a recidivism rate of 20 percent among all those released in a single year and followed up for a period of two years afterwards. For those who had received a community sentence, the rate was at 21 percent (“Retur, Nordic Research Group, 2010).

**(b) Observations on the implementation of the article**

273. 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.

**(c) Successes and good practices**

274. The review team positively noted the measures Norway has taken to promote the reintegration into society of convicted persons, including the collaborative aspects of its policy.

## **Article 31 Freezing, seizure and confiscation**

### **Subparagraph 1 (a)**

*1. Each State Party shall take, to the greatest extent possible within its domestic legal system, such measures as may be necessary to enable confiscation of:*

*(a) Proceeds of crime derived from offences established in accordance with this Convention or property the value of which corresponds to that of such proceeds;*

### **(a) Summary of information relevant to reviewing the implementation of the article**

275. Confiscation is regulated in Chapter 2 of the Penal Code on “Penalties and other sanctions”.

#### **Penal Code Section 34**

Any proceeds of a criminal act shall be confiscated. Such liability may however, be reduced or remitted in so far as the court is of the opinion that confiscation would clearly be unreasonable. Confiscation may be effected even though the offender cannot be punished because he was not accountable for his acts (sections 44 or 46) or did not manifest guilt.

Any asset that takes the place of proceeds, profit and other benefits of the proceeds shall be regarded as proceeds. Expenses incurred shall not be deducted. If the amount of the proceeds cannot be established, the court will determine the amount approximately.

Instead of any asset an amount equivalent to the value thereof or to part of the said value may be confiscated. It may be stipulated in the sentence that the asset shall serve as security for the amount to be confiscated.

Confiscation shall be effected from the person to whom the proceeds have directly accrued by the criminal act. Basically it shall be assumed that the proceeds have accrued to the offender unless he proves on a balance of probabilities that they have accrued to another person.

#### **Section 34 a**

Extended confiscation may be effected when the offender is found guilty of a criminal act of such nature that the proceeds thereof can be considerable, and he has committed

- a) one or more criminal acts that may collectively be punishable by imprisonment for a term of six years or more, or an attempt at such an act, or
- b) at least one criminal act punishable by imprisonment for a term of two years or more, or an attempt at such an act, and the offender during the five years immediately preceding the commission of the said act has been punished for an act of such a nature that the proceeds thereof can be considerable.

Any increase of the penalty limits in the event of repetition shall not be taken into account.

In the event of extended confiscation all assets belonging to the offender may be confiscated unless he proves on a balance of probabilities that the said assets have been lawfully acquired. Section 34, third paragraph, shall apply correspondingly.

In the event of extended confiscation from the offender the value of all assets belonging to the offender's present or previous spouse may also be confiscated unless he proves on a balance of probabilities that the said assets have been lawfully acquired. Section 34, third paragraph, shall apply correspondingly.

In the event of extended confiscation from the offender the value of all assets belonging to the offender's present or previous spouse may also be confiscated unless

- a) they have been acquired before the marriage was entered into or after the marriage was dissolved,
- b) they have been acquired at least five years before the criminal act that provides a basis for extended confiscation, or

c) the offender proves on a balance of probabilities that the assets have been acquired otherwise than by the criminal acts he has committed.

When two persons are living together permanently in a marriage-loke relationship, this shall be deemed equivalent to marriage.

### **Section 35**

Objects that have been produced by or been the subject of a criminal act may be confiscated if this is considered necessary for the purpose of the provision that prescribes the penalty for the act. Rights and claims are also deemed to be objects. The provision in section 34, first paragraph, third sentence, shall apply correspondingly.

The same applies to objects that have been used or intended for use in a criminal act.

Instead of the object an amount equivalent to its value or part of its value may be confiscated. It may be stipulated in the sentence that the object shall serve as security for the amount confiscated.

Instead of confiscating the object that court may impose measures to prevent the object being used for the commission of new offences.

### **Section 36**

Confiscation pursuant to section 35 may be effected from the offender or from the person on whose behalf he has acted.

Confiscation of any object mentioned in section 35, second paragraph, or of an amount that is wholly or partly equivalent to its value may also be effected from an owner who has or should have understood that the object was to be used for a criminal act.

### **Section 37**

A right that is legally secured on an object that is confiscated shall lapse to the extent provided in the sentence in the case of the holder of a right who is himself guilty of the criminal act, or on whose behalf the offender has acted. The provision in section 34, first paragraph, third sentence, shall apply correspondingly. Such provision may also be made in the case of a holder of a right who, when the right was established, understood or should have understood that the object was to be used in a criminal act, or that it could be confiscated.

When an object is sold with the ownership reserved to the seller, the purchaser shall be deemed to be the owner and the seller the holder of a right in applying the provisions of this section.

### **Section 37 a**

When any proceeds or objects mentioned in section 34 or 35 is after the commission of the offence transferred from a person from whom confiscation may be effected, what has been transferred or its value may be confiscated from the receiver if the transfer has occurred as a gift or if the receiver understood or should have understood the connection between the criminal act and what has been transferred to him.

If extended confiscation may be effected pursuant to section 34 a and the offender has transferred any asset to one of his next-of-kin, the said asset or its value may be confiscated from the receiver if the prosecuting authority proves on a balance of probabilities that it has been acquired by a criminal act committed by the offender.

If the assets of any person referred to in section 34 a, third paragraph, are wholly or partly taken into account in the event of confiscation from the offender, and the said person meets his or her liability pursuant to this section, the offender's liability shall be correspondingly reduced. If the offender has met his liability pursuant to section 34 a, second paragraph, any further contribution from him will lead to the receiver's liability being correspondingly reduced.

The second paragraph shall apply correspondingly in the event of the transfer of an enterprise if the offender

- a) alone or together with any person referred to in the second paragraph owns a substantial part of the enterprise,

- b) receives a considerable part of the income of the enterprise, or

- c) by virtue of his position as head thereof has substantial influence over it.

276. The Norwegian authorities stated that confiscation has been used as a sanction in a number of corruption cases. Although no supporting statistics were available, the following case examples have been provided.

1. 2009 Court of Appeal: confiscation of NOK 70,000 after conviction for gross corruption.

2. 2011 Supreme Court: confiscation of NOK 55,000.

3. 2010 Supreme Court: confiscation of NOK 100,000 after conviction for gross corruption.

4. 2008 Appeals Court: confiscation of approximately NOK 8 million after conviction for gross corruption.

277. Authorities referred to statistics from the Norwegian National Collection Agency in the Ministry of Finance (Statens innkrevingsentral), which is in charge of collecting assets.

Number of confiscations of assets and objects 2008-2012					
	2008	2009	2010	2011	2012
Assets, § 34	908	972	1011	1761	1061
Objects § 35	3958	4622	4842	5442	5342
Extended § 34a	84	94	155	61	359
Value NOK	226,555,385	94,460,016	187,381,910	135,087,588	108,115,322

It is noted that the above statistics are not limited to corruption cases.

**(b) Observations on the implementation of the article**

278. The provision under review is adequately implemented. The review team positively noted the following measures adopted in this respect by Norway, mainly:

- The reversal of the burden of proof.
- The possibility of ordering confiscation even when the offender cannot be punished.
- The extended confiscation which covers assets belonging to the offender's present or previous spouse, unless he proves on a balance of probabilities that the said assets have been lawfully acquired.

279. Value-based confiscation is also addressed (e.g., Section 35, third paragraph, first sentence).

**Article 31 Freezing, seizure and confiscation**

**Subparagraph 1 (b)**

*1. Each State Party shall take, to the greatest extent possible within its domestic legal system, such measures as may be necessary to enable confiscation of:*

*(b) Property, equipment or other instrumentalities used in or destined for use in offences established in accordance with this Convention.*

**(a) Summary of information relevant to reviewing the implementation of the article**

280. The requirements of the provision under review are covered by the Penal Code, Section 35, second paragraph.

### **Section 35**

Objects that have been produced by or been the subject of a criminal act may be confiscated if this is considered necessary for the purpose of the provision that prescribes the penalty for the act. Rights and claims are also deemed to be objects. The provision in section 34, first paragraph, third sentence, shall apply correspondingly.

The same applies to objects that have been used or intended for use in a criminal act.

...

### **(b) Observations on the implementation of the article**

281. The provision under review is legislatively implemented, although no examples of implementation were provided.

## **Article 31 Freezing, seizure and confiscation**

### **Paragraph 2**

*2. Each State Party shall take such measures as may be necessary to enable the identification, tracing, freezing or seizure of any item referred to in paragraph 1 of this article for the purpose of eventual confiscation.*

### **(a) Summary of information relevant to reviewing the implementation of the article**

282. The Criminal Procedure Act provides for a wide range of investigative tools relevant to the implementation of the provision under review. Those are mainly covered in Chapter 15 on “Search”, Chapter 15a on “Concealed video surveillance and technological tracking”, Chapter 15b on “Freezing of assets”, Chapter 16 on “Seizure and surrender order”, and Chapters 16a and 16b on “Audio surveillance”.

283. It was explained that investigations of cases of basic corruption punishable by up to three years imprisonment (Section 276a of the PC) only allow for the use of a basic range of investigative tools. However, investigations of cases of aggravated corruption, with penalties of up to ten years imprisonment (Section 276b), allow for the use of the full range of available investigative tools.

284. Norwegian authorities clarified that in gross corruption cases the investigators may use wiretapping and communication control according to Section 216a and 216b of the Criminal Procedure Act (as further described under UNCAC article 50 below). Otherwise there are no distinctions in the investigative tools available in aggravated and basic corruption cases. According to the authorities, so far this distinction has had no impact on Norway’s ability to identify and trace assets related to UNCAC offences.

285. Authorities further explained that a handbook on seizure and confiscation of assets is available to Norwegian police and prosecutors to guide them in confiscation and asset recovery cases.

### **(b) Observations on the implementation of the article**

286. Norwegian authorities have a range of investigative measures available for the identification, tracing, freezing or seizure of criminal proceeds and instrumentalities. The



provision is legislatively implemented, even if no specific examples of implementation were provided.

## **Article 31 Freezing, seizure and confiscation**

### **Paragraph 3**

*3. Each State Party shall adopt, in accordance with its domestic law, such legislative and other measures as may be necessary to regulate the administration by the competent authorities of frozen, seized or confiscated property covered in paragraphs 1 and 2 of this article.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

287. Norway referred to the following measures.

##### **Criminal Procedure Code**

###### **Section 207**

"All objects seized shall be accurately recorded and marked in such a way as to avoid confusion..."

###### **Section 208**

"Every person who is affected by a seizure may immediately or subsequently require the question whether it shall be ratified brought before a court. The prosecuting authority shall ensure that any such person shall be informed of this right"

288. According to the Norwegian authorities, the administration of seized assets is done by the police. There is no special agency in charge.

#### **(b) Observations on the implementation of the article**

289. The provision appears to be legislatively implemented.

## **Article 31 Freezing, seizure and confiscation**

### **Paragraph 4**

*4. If such proceeds of crime have been transformed or converted, in part or in full, into other property, such property shall be liable to the measures referred to in this article instead of the proceeds.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

290. Norway referred to Section 34, second paragraph:

##### **Penal Code Section 34**

...

Any asset that takes the place of proceeds, profit and other benefits of the proceeds shall be regarded as proceeds. Expenses incurred shall not be deducted. If the amount of the proceeds cannot be established, the court will determine the amount approximately.

291. Norway referred to District Court of Drammen Case nr. 11 – 127452 MED-DRAM, in which the Court approximately determined the amount of the criminal proceeds and ordered the confiscation of assets that had taken the place of the proceeds.

**(b) Observations on the implementation of the article**

292. The provision under review is implemented.

**Article 31 Freezing, seizure and confiscation**

**Paragraph 5**

*5. If such proceeds of crime have been intermingled with property acquired from legitimate sources, such property shall, without prejudice to any powers relating to freezing or seizure, be liable to confiscation up to the assessed value of the intermingled proceeds.*

**(a) Summary of information relevant to reviewing the implementation of the article**

293. Norway referred to the following provision.

**Penal Code Section 34**

...

Any asset that takes the place of proceeds, profit and other benefits of the proceeds shall be regarded as proceeds. Expenses incurred shall not be deducted. If the amount of the proceeds cannot be established, the court will determine the amount approximately.

Instead of any asset an amount equivalent to the value thereof or to part of the said value may be confiscated. It may be stipulated in the sentence that the asset shall serve as security for the amount to be confiscated.

294. According to Norwegian authorities, it follows from Section 34, first paragraph first sentence, read in conjunction with the second paragraph third sentence, that proceeds of crime that have been intermingled with legitimate funds shall be confiscated up to the assessed value. In the preliminary works, Odelsting Proposition no. 8 (1998-99), on page 65, the need for an explicit rule stating this is discussed. The ministry wrote:

“The committee’s draft mentions that if an advantage achieved through a criminal offence is intermingled with a legitimately obtained asset, a proportional share may be considered as proceeds of crime. In the ministry’s view the solution in cases of intermingling is so obvious that expressing this in the provision is superfluous.”

**(b) Observations on the implementation of the article**

295. The provision under review is legislatively implemented.

**Article 31 Freezing, seizure and confiscation**

**Paragraph 6**

*6. Income or other benefits derived from such proceeds of crime, from property into which such proceeds of crime have been transformed or converted or from property with which such proceeds of crime have been intermingled shall also be liable to the measures referred to in this article, in the same manner and to the same extent as proceeds of crime.*

**(a) Summary of information relevant to reviewing the implementation of the article**

296. Norway referred to Section 34 of the Penal Code (quoted above). According to the authorities, any asset that takes the place of proceeds, profit and other benefits of proceeds shall be regarded as proceeds.

297. Norwegian authorities also referred to the following case examples.

In 2011 the general manager and owner of a steel company was convicted of gross breach of trust for NOK360 million. The appeals court, in a recent decision in the same case, ordered the confiscation of a house in Spain, because the convicted person had used the proceeds from the legal offence to buy the house. The court decided that the house had taken the place of the proceeds. In this case they also seized assets for approximately NOK 73 million.

In a domestic bribery case related to an inter-municipal waterworks entity, the proceeds of the bribery (and breach of trust) were invested in farms in South Africa. The farms were finally confiscated by the Court of Appeals in May 2010.

**(b) Observations on the implementation of the article**

298. The provision under review is implemented.

**Article 31 Freezing, seizure and confiscation**

**Paragraph 7**

*7. For the purpose of this article and article 55 of this Convention, each State Party shall empower its courts or other competent authorities to order that bank, financial or commercial records be made available or seized. A State Party shall not decline to act under the provisions of this paragraph on the ground of bank secrecy.*

**(a) Summary of information relevant to reviewing the implementation of the article**

299. Norway referred to its response to UNCAC article 40 (below). A request that fulfils formal and material requirements would not be declined on the grounds of bank secrecy.

300. Courts have jurisdiction to order the production of bank records under Sections 210 to 210c of the Criminal Procedure Act and/or the seizure of financial records under Section 203 of the Criminal Procedure Act. The production order will be made on the condition that the evidence may be significant in the case and that the possessor is obliged to give a statement as witness in the case. Seizure may be terminated on the decision of the prosecution authority or the court.

**Criminal Procedure Act**

**Section 203**

Objects that are deemed to be significant as evidence may be seized until a legally enforceable judgment is passed. The same applies to objects that are deemed to be liable to confiscation or to a claim for surrender by an aggrieved person.

**Section 210**

A court may order the possessor to surrender objects that are deemed to be significant as evidence if he is bound to testify in the case. The provisions of section 137 and of section 206 of the Courts of Justice Act shall apply correspondingly.

If delay entails a risk that the investigation will be impaired, an order from the prosecuting authority may take the place of a court order. The decision of the prosecuting authority shall be submitted to the court for approval as soon as possible.

The prosecuting authority may order such witnesses as are specified in section 230, second paragraph, to surrender documents or other objects deemed to be significant as evidence and covered by the duty to make a statement to the police. If strong interests warrant such a surrender, a surrender order may be made regardless of whether an investigation has been in a criminal case.

Section 197, third paragraph, shall apply correspondingly to decisions made pursuant to the second or third paragraph.

#### **Section 210a**

When any person is with just cause suspended of an act or attempt at an act that is punishable pursuant to statute by imprisonment for a term exceeding six months, the court may by order decide that the giving of information about a surrender order made pursuant to section 210 to the suspect or other persons affected by the said order may be deferred if it is strictly necessary for the investigation of the case that such information shall not be given.

Section 208 a shall apply correspondingly.

#### **Section 210b**

If any person is with just cause suspected of committing an act or an attempt at an act that is punishable pursuant to statute by imprisonment for a term of five years or more, or that contravenes sections 90, 91, 91 a, 94, cf. 90, of the Penal Code, the court may order any person who in the future will gain possession of an object that is presumed to be significant as evidence to surrender the said object to the police as soon as it is received. A surrender order may only be given to a person who is bound to testify in the case.

Any increase of the maximum penalty because of repetition of concurrence of felonies shall not be taken into account. Sections 196 and 210, first paragraph, second sentence, shall apply correspondingly.

The order shall be given for a specific period of time, which must not be longer than I strictly necessary. The order must not be given for more than four weeks at a time. Section 216 f, second paragraph, shall apply correspondingly.

This provision shall not apply to the surrender of communication data, cf. section 216 b, second paragraph, (c).

#### **Section 210c**

The court may by an order decide that the giving of information to the suspect concerning a surrender order made pursuant to section 210 b may be deferred if it is strictly necessary for the investigation of the case that such information shall not be given.

Section 216 e, second paragraph, shall apply correspondingly. In cases concerning a contravention of chapter 8 or 9 of the Penal Code the prosecuting authority shall decide for how long the giving of information shall be deferred. The prosecuting authority may decide that the information may be entirely withheld. In other cases the court may decide that the giving of information may be deferred for up to eight weeks at a time. Section 202 c, sixth paragraph, third and fourth sentences shall apply correspondingly.

When the time-limit for deferment of the information has expired and has not been extended, the suspect shall be informed of the order and of what has been surrendered.

The court may order the person to whom the surrender order is directed to preserve secrecy in regard to the suspect concerning requests and decisions made pursuant to this provision and concerning the objects given to the police. When there are special reasons for doing so, such an order may also be given to other persons. An order to preserve secrecy may not, however, be given to any person specified in section 122, first or second paragraph.

Section 216 e, second paragraph, shall apply correspondingly.

301. A court order is not required to seize bank and financial records. Under Penal Code, Section 210, second paragraph, two, and Section 230, second paragraph, the prosecuting authority can instruct the bank in these matters.

302. Moreover, the FIU in ØKOKRIM has the ability to seize and access such records administratively. Through Section 19 of the Norwegian Money Laundering Act 2003, the

FIU is given the possibility to freeze transactions. The Money Laundering Act Section 18 obliges reporting entities to submit relevant information to the FIU as a suspicious transaction report (STR). Upon request from the FIU, reporting entities should provide further documentation deemed to be necessary by the FIU.

**(b) Observations on the implementation of the article**

303. The provision under review is legislatively implemented. No examples of implementation were provided. Norwegian officials explained that Norway does not keep specific statistics on Convention-related offences and that generally, banking and financial records will be routinely scrutinized in corruption and other serious economic crime cases.

**Article 31 Freezing, seizure and confiscation**

**Paragraph 8**

*8. States Parties may consider the possibility of requiring that an offender demonstrate the lawful origin of such alleged proceeds of crime or other property liable to confiscation, to the extent that such a requirement is consistent with the fundamental principles of their domestic law and with the nature of judicial and other proceedings.*

**(a) Summary of information relevant to reviewing the implementation of the article**

304. Norway referred to Section 34a of the Penal Code regarding extended confiscation, which provides under the said conditions for a shifting of the burden of proof.

305. Moreover, Section 34, fourth paragraph introduces the concept of a reversal of burden of proof on a limited area in the general provision on confiscation. It is a precondition that it is proven beyond any reasonable doubt that proceeds are actually acquired from a criminal act. In this case, the reversal of burden of proof only applies to the question of who actually acquired the proceeds from the criminal act.

**Penal Code Section 34**

...

Confiscation shall be effected from the person to whom the proceeds have directly accrued by the criminal act. Basically it shall be assumed that the proceeds have accrued to the offender unless he proves on a balance of probabilities that they have accrued to another person.

**(b) Observations on the implementation of the article**

306. The provision under review is legislatively implemented. No examples of implementation were provided.

**Article 31 Freezing, seizure and confiscation**

**Paragraph 9**

*9. The provisions of this article shall not be so construed as to prejudice the rights of bona fide third parties.*

**(a) Summary of information relevant to reviewing the implementation of the article**

307. Norway referred to the Penal Code, Sections 36, 37 and 37a. The main rule is that confiscation presupposes guilt or, alternatively, knowledge of a criminal act with the person at whom the claim for confiscation is aimed.

**Penal Code Section 36, first paragraph:**

“Confiscation pursuant to Section 35 may be effected from the offender or from the person on whose behalf he has acted.”

308. However, there are exceptions in cases where the proceeds have been transferred as a gift, cf. Section 37a first paragraph, or if the receiver is the offender’s next-of-kin.

309. The provision in the Penal Code is also reflected in the provisions of the Criminal Procedure Act on seizure (Section 214 second paragraph first sentence), in which it is stated, inter alia, that seized objects shall be returned to the person from whom they have been seized when the seizure lapses.

**(b) Observations on the implementation of the article**

310. The provision under review is legislatively implemented, although no examples of implementation were provided.

**Article 32 Protection of witnesses, experts and victims**

**Paragraphs 1 and 2 (a)**

*1. Each State Party shall take appropriate measures in accordance with its domestic legal system and within its means to provide effective protection from potential retaliation or intimidation for witnesses and experts who give testimony concerning offences established in accordance with this Convention and, as appropriate, for their relatives and other persons close to them.*

*2. The measures envisaged in paragraph 1 of this article may include, inter alia, without prejudice to the rights of the defendant, including the right to due process:*

*(a) Establishing procedures for the physical protection of such persons, such as, to the extent necessary and feasible, relocating them and permitting, where appropriate, non-disclosure or limitations on the disclosure of information concerning the identity and whereabouts of such persons;*

**(a) Summary of information relevant to reviewing the implementation of the article**

311. National guidelines for witness protection were established in 2008. Those measures have two goals:

1. To protect the witness's need for safety and security;
2. To satisfy the needs of society.

312. The witness protection programme is carried out at two levels: local and national. In general, witness protection will be handled by the police district, but in particularly serious cases, an application may be made for inclusion in the National Witness Protection

Responsibility for the National Witness Protection Programme is with the National Police Directorate and the National Criminal Investigation Service (KRIPOS).

313. Witness protection is offered to witnesses and their closest friends/family, based on mutual trust between the authorities and the witness. The measures to be implemented will depend on a concrete risk analysis in each individual case. Such measures are available under the witness protection guidelines and include fictitious identities (as regulated in Chapter IIa of the Police Act), physical safety measures, including relocation, surveillance, non-disclosure of identity
314. The Revised National Guidelines about Witness Protection from the District Chiefs of Police dated 1 November 2008 provide extensive detail on the national witness protection programme and witness protection principles. According to the Guidelines, witnesses include “participants in the judicial system” (as defined in Section 132a of the Penal Code, quoted above under UNCAC article 25), victims of domestic violence and informants (i.e., “someone who willingly and actively provides or obtains information in accordance with instructions from the police”), although it is noted that this definition is not exhaustive. The decision to provide organized witness protection is individually assessed in each case, also for any other person who risks being subjected to serious criminal acts targeting his or her life, health or freedom (page 9). Witness protection includes all measures taken by the police in terms of advice or guidance, as well as practical or legal measures, to protect witnesses against threats and retaliation. A unit at KRIPOS is responsible for the National Witness Protection Programme.
315. Norwegian authorities stated that they had no examples where witnesses in corruption cases or their families have received protections.
316. According to Norway, Proposition 147L was made to the Parliament on 7 May 2013 suggesting amendments to the Criminal Procedure Act to enhance witness protections.

**(b) Observations on the implementation of the article**

317. Norway has a comprehensive witness protection programme in place with protections both at the national and local level. A wide range of protections can be provided based on individual risk and evidence assessments.

**(c) Successes and good practices**

318. Based on the information provided, the review team is satisfied that the measures appear to be working well procedurally and in practice.

**Article 32 Protection of witnesses, experts and victims**

**Subparagraph 2 (b)**

*2. The measures envisaged in paragraph 1 of this article may include, inter alia, without prejudice to the rights of the defendant, including the right to due process:*

*(b) Providing evidentiary rules to permit witnesses and experts to give testimony in a manner that ensures the safety of such persons, such as permitting testimony to be given through the use of communications technology such as video or other adequate means.*

**(a) Summary of information relevant to reviewing the implementation of the article**

319. According to the Criminal Procedure Act, Sections 245 and 284, the person charged can be ordered to leave the courtroom if there is reason to fear that, unless this precaution is taken, he or she will withhold an unconditional admission. Section 272 of the Criminal Procedure Act further provides that the court may hold a preparatory meeting to decide, among other matters, whether the person charged or other persons should be instructed to leave the courtroom while a witness or another person charged in the same case is being examined, or whether the case should be heard, altogether or in part, in camera, and whether a witness should be allowed to appear anonymously. Section 109a of the Criminal Procedure Act allows for distant examination of witnesses, for instance combined with anonymity.

**Section 245 of the Criminal Procedure Act**

The court may decide that the person charged shall leave the courtroom while a witness is being examined if there is special reason to fear that an unreserved statement will not otherwise be made. The court may also decide that the person charged shall leave the courtroom during the hearing of an application for hearing the evidence of an anonymous witness, cf. sections 130 a and 234 a, and when an anonymous witness is being examined. Other persons may for the same reasons be ordered to leave the courtroom during the examination of a witness or a person charged. In the case of an examination of the aggrieved person, or of a witness who is under 18 years of age, the court may also decide that the person charged or other persons shall leave the courtroom if for special reasons this is in the interests of the aggrieved person or the witness respectively. The same applies in the case of an examination of any person who had parental responsibility for or was a guardian of the aggrieved person in cases specified in section 107 a, second paragraph, first and second sentences. Instead of ordering the person charged or other persons to leave the courtroom, the court may decide to institute measures that will prevent the person concerned from observing the witness.

When the person charged or any other person who has the rights of a party to the case has left the courtroom pursuant to the provisions of the first paragraph and later returns to it, he shall be informed of the proceedings that have taken place in his absence. In cases specified in the second sentence of the first paragraph he shall not, however, be given information that may lead to the witness's identity becoming known.

Under special circumstances the court may make an order entirely excluding the person charged and his private defence counsel if and for so long as there is reason to fear that the purpose of the investigation would otherwise be endangered, or if it is in the interests of national security or relations with a foreign State. Before any such order is made, the person concerned shall be allowed to express his views. If the person charged is excluded, he shall have a defence counsel during the court sittings.

**Section 284 of the Criminal Procedure Act**

The court may decide that a person indicted shall leave the courtroom while another person indicted or a witness is being examined if there is special reason to fear that an unreserved statement will not otherwise be made. The court may also decide that a person indicted shall leave the courtroom during the hearing of an application for hearing the evidence of an anonymous witness, cf. section 130 a. The same applies when an anonymous witness is to be examined. Other persons may also be ordered to leave the courtroom for the same reason. At the examination of the aggrieved person, or of a witness under 18 years of age, the court may also decide that a person indicted or other persons shall leave the courtroom if for special reasons this is in the interests of the aggrieved person or the witness respectively. The same applies to an examination of any



person who had parental responsibility for or was a guardian of the aggrieved person in cases specified in section 107 a, second paragraph, first and second sentences. Instead of ordering a person indicted or other persons to leave the courtroom, the court may decide that measures be taken to prevent the person concerned from observing the witness.

If a person indicted is ejected pursuant to section 133 of the Courts of Justice Act, the hearing may nevertheless continue when the court does not consider his presence to be necessary for the clarification of the case.

The provision of section 245, second paragraph, shall apply correspondingly.

#### **Section 272 of the Criminal Procedure Act**

The court may decide that a court sitting shall be held during the preparatory proceedings to deal with the issue of

- a) summarily dismissing the case,
- b) acquitting the person indicted because the matter described in the indictment is not criminal, or because criminal liability has lapsed,
- c) excluding the production of evidence during the main hearing, or refusing to postpone the main hearing for the production of evidence,
- d) the duty to testify,
- e) hearing the evidence of an anonymous witness, cf. section 130 a or 234 a,
- f) whether the person charged or other persons shall be ordered to leave the courtroom while a witness or an accomplice is being examined, or
- g) whether the proceedings shall wholly or partly be held in camera and subject to a ban on reporting.

No interlocutory appeal may be brought against such a decision.

The court may decide to postpone the decision until the main hearing.

Before the court decides whether a court sitting shall be held pursuant to the first paragraph (c), it may request the parties to give a written account of why they wish to produce the evidence invoked.

A decision to proceed with the case and decisions pursuant to the first paragraph, (c) to (g), are not binding at the main hearing. If the issue has been decided by a higher court on an interlocutory appeal, the decision cannot be reversed during the main hearing except on the basis of new evidence.

#### **Section 109a of the Criminal Procedure Act**

The Court of Appeal and the District Court may examine witnesses by distant examination. The King may by regulations prescribe further rules for distant examination.

The courts may order witnesses to attend at a specified place for such examination.

Section 109 and the Courts of Justice Act, section 205, shall apply correspondingly to such examination.

320. Video testimony is admissible and, according to the authorities, is routinely admitted.

#### **(b) Observations on the implementation of the article**

321. A range of evidentiary rules are in place to ensure the safety of witnesses and experts.

The provision is legislatively implemented, although no specific case examples were provided.

### **Article 32 Protection of witnesses, experts and victims**

#### **Paragraph 3**

*3. States Parties shall consider entering into agreements or arrangements with other States for the relocation of persons referred to in paragraph 1 of this article.*

**(a) Summary of information relevant to reviewing the implementation of the article**

322. Norway referred to the witness protection programme operated by the Police Directorate and the National Criminal Investigative Service (KRIPOS). Protective measures under the programme cover both domestic relocation and relocation to a foreign country (page 13).

323. No examples of implementation or statistics have been submitted.

**(b) Observations on the implementation of the article**

324. There was no information during the country visit on whether Norway has entered into relocation agreements with foreign countries, as relocation abroad can be done under the witness protection programme.

**Article 32 Protection of witnesses, experts and victims**

**Paragraph 4**

*4. The provisions of this article shall also apply to victims insofar as they are witnesses.*

**(a) Summary of information relevant to reviewing the implementation of the article**

325. The protections under the witness protection programme also apply to victims insofar as they are witnesses in the Norwegian legal system (page 7).

326. No examples of victim protections were provided.

**(b) Observations on the implementation of the article**

327. The provision under review is legislatively implemented, although no examples of implementation were provided.

**Article 32 Protection of witnesses, experts and victims**

**Paragraph 5**

*5. Each State Party shall, subject to its domestic law, enable the views and concerns of victims to be presented and considered at appropriate stages of criminal proceedings against offenders in a manner not prejudicial to the rights of the defence.*

**(a) Summary of information relevant to reviewing the implementation of the article**

328. Norway indicated that this is regulated in the Criminal Procedure Act. Specifically, the 2008 amendments to the Criminal Procedure Act strengthened victims' procedural rights, such as the right to be present in the proceeding, have access to victim's counsel and be

informed by the prosecution of relevant information. According to the Norwegian authorities, relevant measures are also included in the Prosecution Authority Regulations.

**(b) Observations on the implementation of the article**

329. Although the specific provisions of the Criminal Procedure Act were not available and no implementation examples were provided, the review team is satisfied based on the information provided that adequate measures to implement the provision under review are in place.

**Article 33 Protection of reporting persons**

*Each State Party shall consider incorporating into its domestic legal system appropriate measures to provide protection against any unjustified treatment for any person who reports in good faith and on reasonable grounds to the competent authorities any facts concerning offences established in accordance with this Convention.*

**(a) Summary of information relevant to reviewing the implementation of the article**

330. Norway cited the following measure.

**The Working Environment Act**

Section 2-4. Notification concerning censurable conditions at the undertaking

- (1) An employee has a right to notify concerning censurable conditions at the undertaking.
- (2) The employee shall follow an appropriate procedure in connection with such notification. The employee has notwithstanding the right to notify in accordance with the duty to notify or the undertaking's routines for notification. The same applies to notification to supervisory authorities or other public authorities.
- (3) The employer has the burden of proof that notification has been made in breach of this provision.

Section 2-5. Protection against retaliation in connection with notification

- (1) Retaliation against an employee who notifies pursuant to section 2-4 is prohibited. If the employee submits information that gives reason to believe that retaliation in breach of the first sentence has taken place, it shall be assumed that such retaliation has taken place unless the employer substantiates otherwise.
- (2) The first paragraph applies correspondingly in connection with retaliation against an employee who makes known that the right to notify pursuant to section 2-4 will be invoked, for example by providing information.
- (3) Anyone who has been subjected to retaliation in breach of the first or second paragraph may claim compensation without regard to the fault of the employer. The compensation shall be fixed at the amount the court deems reasonable in view of the circumstances of the parties and other facts of the case. Compensation for financial loss may be claimed pursuant to the normal rules.

Section 3-6. Obligation to facilitate notification

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

331. The promotion of whistleblower protection is also emphasized in the Government White Paper on Corporate Social Responsibility in a Global Economy. According to the authorities, the White Paper sets out government expectations of the private sector, one of which is to actively combat corruption by means of establishing whistleblowing or notification schemes, internal guidelines and awareness raising. Various private sector entities have reporting channels and whistleblower protection mechanisms in place. A

number of private sector entities have established reporting hotlines or use external whistleblowing channels managed by outside service providers, such as law firms.

332. For the public service, these provisions are further supplemented by Ethical Guidelines for the Public Service, issued by the Ministry of Modernization, on 7 September 2005, which contain further guidance on whistleblowing protections.

333. It was explained during the country visit that, in addition to the Constitution, the Working Environment Act of 2007 provides legal protections to employees in both the public and private sector, where a notification is made to supervisory or other public authorities and, according to Section 2.4 of the Act, concerns censurable conditions at the undertaking. However, the reviewers observed that, according to Section 3.6 of the Act, censurable conditions relate to systematic health, environment and safety work. Norwegian officials explained that this also included corruption-related notifications.

334. According to Section 18-1 of the Working Environment Act, the Labor Inspection Authority shall supervise compliance with the provisions of the Act and can issue coercive fines in case of non-compliance (Section 18-7). According to Norway, a unified procedure for notification is in place for all public sector entities.

#### **The Working Environment Act**

##### Section 18-1. The Labour Inspection Authority

(1) The Labour Inspection Authority shall supervise compliance with the provisions of and pursuant to this Act. When supervision pursuant to this Act requires special expertise, the Labour Inspection Authority may appoint specialists to conduct controls, inspections, etc. on behalf of the Labour Inspection Authority. The Ministry may issue provisions concerning the Labour Inspection Authority's organisation and activities.

(2) The Ministry may decide that supervision of parts of the public administration and transport undertakings operated by the State shall be organised in a manner other than that which ensues from this Act. The Ministry may decide that a public body other than the Labour Inspection Authority shall supervise compliance with the provisions laid down in or pursuant to this Act.

##### **Section 18-7. Coercive fines**

When ordered pursuant to this Act, a continuous coercive fine may be imposed for each day, week or month that passes after expiry of the time limit set for implementation of the order until the order is implemented. A coercive fine may also be imposed as a single payment fine. The Labour Inspection Authority may waive accrued coercive fines.

335. In the context of whistleblowing, Norwegian authorities also referred to the Foreign Service Internal Control Unit (FSCIU) in the Ministry of Foreign Affairs, which investigates fraud and corruption involving the foreign service and foreign development assistance. According to those authorities, a number of investigations are initiated through the internal whistleblowing system in the Ministry of Foreign Affairs. The FSCIU prerogatives are described more fully under UNCAC article 38 below.

#### **(b) Observations on the implementation of the article**

336. Despite the lack of statistics related to whistleblowing or examples of implementation, the review team considers the provision under review to be implemented.

## **Article 34 Consequences of acts of corruption**

*With due regard to the rights of third parties acquired in good faith, each State Party shall take measures, in accordance with the fundamental principles of its domestic law, to address consequences of corruption. In this context, States Parties may consider corruption a relevant factor in legal proceedings to annul or rescind a contract, withdraw a concession or other similar instrument or take any other remedial action.*

### **(a) Summary of information relevant to reviewing the implementation of the article**

337. Norway indicated that legal arrangements (whether contractual or otherwise) containing provisions that are contrary to the law are considered null and void. Corruption will also regularly lead to the annulment of any decision made by a public organ body.
338. Norway has acceded to the Council of Europe's Civil Law Convention on Corruption, which in Article 8, first paragraph, states that the parties shall provide in their internal law for any contract or clause of a contract providing for corruption to be null and void. An old Norwegian statutory provision states that contracts are binding unless contrary to law or decency (King Christian the Fifth's Norwegian Act 15 April 1687, second article, stating that all contracts entered into voluntarily by persons of full age, and which are not contrary to law or decency, should be complied with in accordance with their wording). Based on recent case law and the said Convention's status as a source of law and as a relevant factor when interpreting the said provision, it is assumed that contracts involving corruption will be considered null and void.
339. Norway reported that any public management decision, including concessions, may be altered or withdrawn in accordance with statutory and non-statutory law. Some rules on the withdrawal of concessions can be found in the law regulating the specific type of concession in question. In addition, any public management decision may be altered or withdrawn according to the provision on reversal of administrative decisions in the Act Relating to Procedure in Cases Concerning the Public Administration (Section 35), which refers to "general provisions of administrative law" as a supplementary basis for reversal. In accordance with the latter, a withdrawal may be based on analogy from the contract law doctrine on false premises. Corruption will regularly constitute a false premise. The decisions on suspension or withdrawal will be made by the administrative agency that made the first decision, by the appellate instance or by another superior agency. In some cases the reversal decision will be made subsequent to a penal judgment on corruption.
340. While licenses can be withdrawn from persons convicted of corruption and enterprises can be deprived of the right to conduct business (as described under paragraph 4 of UNCAC article 26 above), more formal guidance on debarment is expected to be issued by the European Union in the Fall of 2013, which would be considered by Norwegian authorities.

### **(b) Observations on the implementation of the article**

341. The provision under review is legislatively implemented, although no examples of implementation were provided.

## Article 35 Compensation for damage

*Each State Party shall take such measures as may be necessary, in accordance with principles of its domestic law, to ensure that entities or persons who have suffered damage as a result of an act of corruption have the right to initiate legal proceedings against those responsible for that damage in order to obtain compensation.*

### (a) Summary of information relevant to reviewing the implementation of the article

342. Norway cited the following measure, which was introduced in 2008.

#### **The Civil Liability Act, Section 1.6**

"Any person who has suffered damage as a consequence of corruption can claim compensation from anybody who intent or negligence is responsible for the corrupt act(s) or for complicity thereto. Compensation can also be claimed from the employer of the person responsible, if the corrupt act(s) have taken place in connection to the execution of work or functions for the employer, unless the employer can establish that all reasonable precautions to prevent corruption have been taken, and responsibility will not be reasonable after an overall assessment of the circumstances of the case."

(Unofficial translation by the Ministry of Justice).

343. According to the authorities, so far there have been no civil cases involving corruption.

### (b) Observations on the implementation of the article

344. The provision under review is legislatively implemented, although no examples of implementation were provided.

## Article 36 Specialized authorities

*Each State Party shall, in accordance with the fundamental principles of its legal system, ensure the existence of a body or bodies or persons specialized in combating corruption through law enforcement. Such body or bodies or persons shall be granted the necessary independence, in accordance with the fundamental principles of the legal system of the State Party, to be able to carry out their functions effectively and without any undue influence. Such persons or staff of such body or bodies should have the appropriate training and resources to carry out their tasks.*

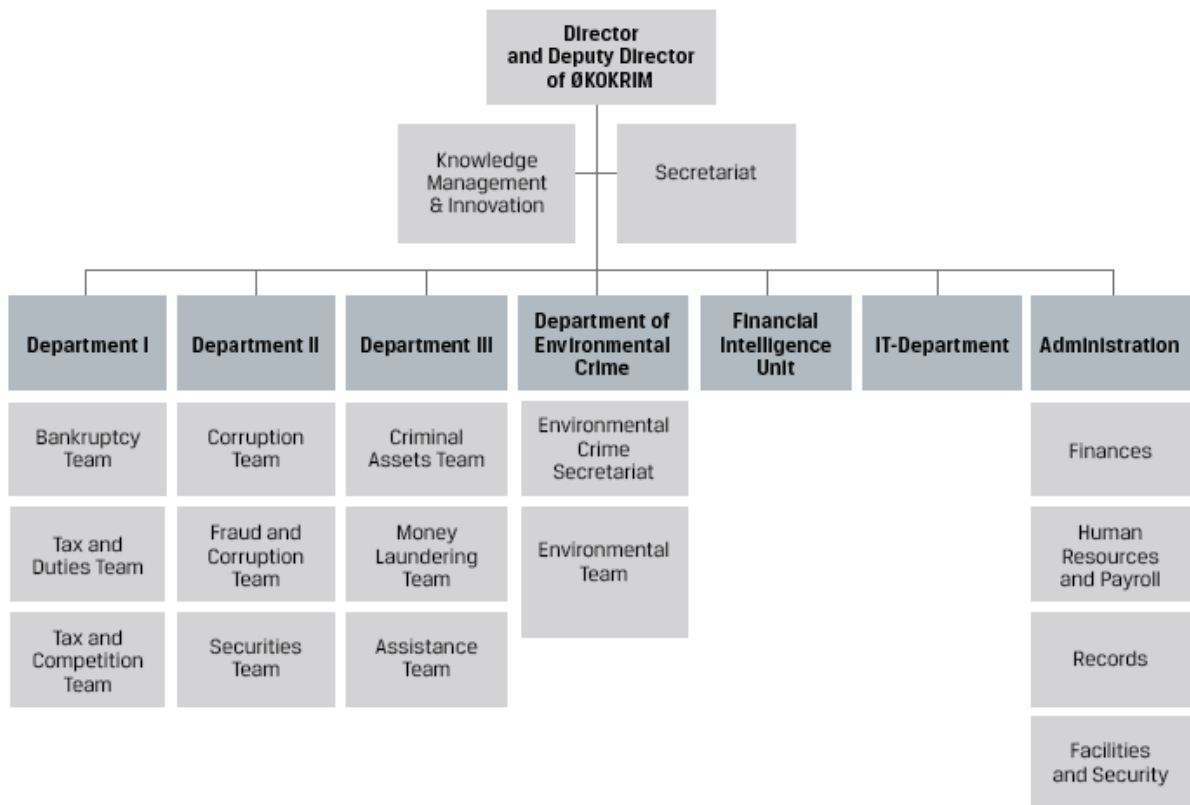
### (a) Summary of information relevant to reviewing the implementation of the article

345. Norway has a unitary police force. The Norwegian Police Service is divided into 27 regional police districts. Each of these districts is divided further into local and rural police districts. Since 2005, all 27 districts have specialized economic crime teams with dedicated resources. The size of these teams, which are multi-disciplinary and include an investigator and a prosecutor per team, varies with the size of the district.

346. In addition, ØKOKRIM, the National Authority for Investigation and Prosecution of Economic Crime, is a specialized body which can take cases concerning economic crime from all police districts. Its field of competence covers mainly gross fraud, embezzlement, corruption, breach of trust, money laundering, handling of stolen property, and tax

evasion. The formal rules about which cases ØKOKRIM can take on and other matters can be found in chapter 35 of the Prosecution Instructions.

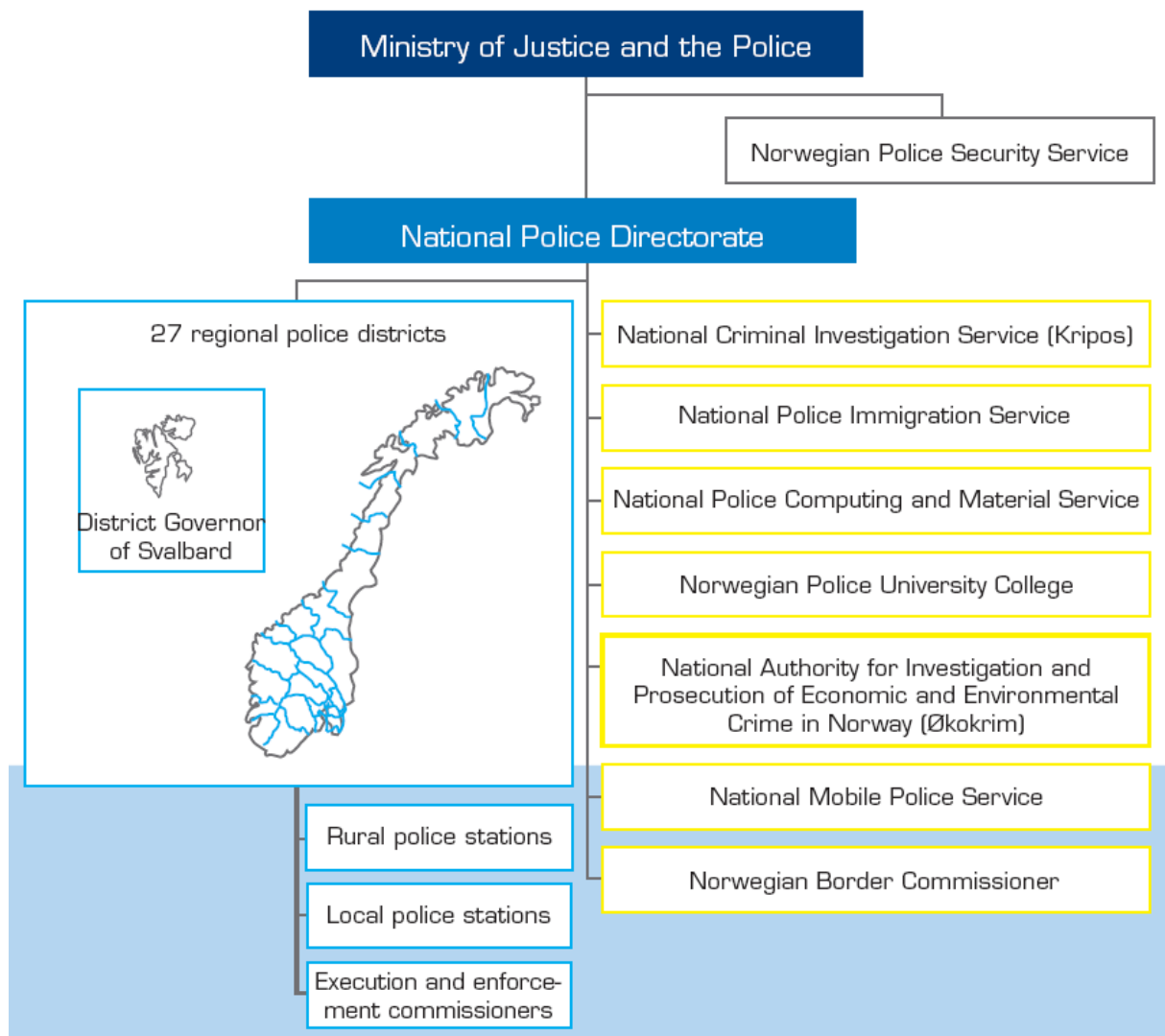
347. ØKOKRIM was established in 1989 and is both a special police unit and a public prosecutor with national authority. It thus holds both police and prosecutorial powers. ØKOKRIM investigates and brings major, complex, more serious and/or fundamental cases concerning economic or environmental crime to court. As a public prosecutor, ØKOKRIM is under the Director General of Public Prosecutions. As a central police unit, ØKOKRIM is administratively and budgetarily under the National Police Directorate.
348. ØKOKRIM's tasks and objectives include:
- to uncover, investigate, prosecute and bring to trial its own cases;
  - to assist the national and international police and prosecuting authorities;
  - to raise the level of expertise of the police and the prosecuting authorities and to engage in the provision of information;
  - to engage in criminal intelligence work, dealing in particular with reports of suspicious transactions;
  - to act as an advisory body to the central authorities; and
  - to participate in international cooperation
349. ØKOKRIM's senior management team comprises the Director and the Deputy Director and seven heads of department. These heads represent the investigation teams handling economic and environmental crime, FIU, the information technology department and the administration department. The Director, who decides which cases ØKOKRIM will take on, is selected through open competition based on qualification and nominated for ten years by the Government. He can only be dismissed by the Government, which ensures him a high level of independence.
350. Investigations are conducted by inter-disciplinary teams, and each team has its own special area of responsibility. Most of the teams are headed by a chief public prosecutor. Prosecutors at ØKOKRIM are only accountable to the Director of Public Prosecution, who, according to Norwegian authorities, does not interfere in ongoing investigations or cases.
351. ØKOKRIM has two designated anti-corruption teams, which specialize in the investigation and prosecution of this category of cases. ØKOKRIM takes a multi-disciplinary approach, employing auditors and economists, among others.
352. As for resources, ØKOKRIM's annual budget for 2012-2013 (NOK 140 million) is allocated on the basis of the budget for the police determined by the Ministry of Justice and Public Security.
353. The following chart reflects the organization of ØKOKRIM:



354. KRIPOS, the National Criminal Investigation Service, is the police's national centre of expertise in the fight against organized and other serious crimes. KRIPOS is also the national contact point in relation to the Schengen Information System (SIS), INTERPOL and EUROPOL. Its primary task is to offer assistance to the police districts and be the national point of contact for foreign countries. KRIPOS is a central assistance unit with special expertise in tactical and technical investigation, and it is an advisory body for the central authorities.
355. In addition to being an assistance unit, KRIPOS is responsible for investigating and bringing complex and serious cases related to organized crime to court. With regard to investigation and prosecution, KRIPOS is under the National Authority for Prosecution of Organized and Other Serious Crime.
356. Around half of the employees in KRIPOS are police personnel, while the remainder are civilian employees, primarily administrative officers, engineers, technologists, laboratory assistants and administrative personnel.
357. Police officers are trained in the Police University College, the central educational institution for the Norwegian Police Service. The University College offers a three-year higher education programme that leads to a bachelor's degree. The education is vocationally oriented and provides a broad theoretical and practical foundation for police work, including special courses on economic crimes. The University College also offers a master's degree in police science.
358. In the context of economic crime, it has been the policy of the Government to develop a multidisciplinary approach, both at the national and local level. A number of relevant training activities have taken place.



359. The following chart reflects the organization of the police in Norway<sup>5</sup>:



360. Regarding the Prosecution Authority, Chapter 6 of the Criminal Procedure Act is dedicated to the Prosecution authority. According to Section 56 thereof, the Director General of Public Prosecution (DPP) is the chief administrator of the prosecution authority. Under the Penal Code, only the King in Council may prescribe general rules and give binding orders as to how he shall discharge his duties. However, Norwegian authorities explained during the country visit that this has never happened.

361. The DPP is selected through open competition based on qualification and is appointed by the King in Council for life, which guarantees his independency.

362. The Prosecution Authority supervises the Norwegian criminal policy and handles criminal cases. Cases are usually initiated by the Prosecution Authority in the Police, but regarding serious crimes, the decision is for the public prosecutors or the DPP.

<sup>5</sup> Excerpted from the publication issued by the National Police Directorate, “The Police in Norway”, ISBN 978-82-8256-000-9 (June 2010).

363. The DPP leads the Prosecution Authority by means of instructions issued in the form of circulars. The DPP can give instructions and reverse all decisions made by the public prosecutors or by the police prosecutors.
364. The budget of the Prosecution Authority is determined by the Ministry of Justice and Public Security, in the same way as for the Police.
365. According to the authorities met during the country visit, ten prosecutors deal with economic crimes in Oslo alone.

**(b) Observations on the implementation of the article**

366. Based on the information provided, the review team is of the view that the article under review is adequately implemented. The structure of various law enforcement and criminal justice institutions linking the Police, including different 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.
367. The role of the FIU in providing leads for potential corruption cases was also noted, as described under UNCAC article 38 below.

**(c) Successes and good practices**

368. The multidisciplinary approach taken by law enforcement authorities such as ØKOKRIM and the specialized units established were considered by the review team to be conducive to the investigation and prosecution of corruption and economic crime cases. They organizations appeared to be working effectively in practice. Moreover, the cohesion between investigative and prosecutorial staff was positively noted. A high level of police education in Norway is also observed.

**Article 37 Cooperation with law enforcement authorities**

*1. Each State Party shall take appropriate measures to encourage persons who participate or who have participated in the commission of an offence established in accordance with this Convention to supply information useful to competent authorities for investigative and evidentiary purposes and to provide factual, specific help to competent authorities that may contribute to depriving offenders of the proceeds of crime and to recovering such proceeds.*

*2. Each State Party shall consider providing for the possibility, in appropriate cases, of mitigating punishment of an accused person who provides substantial cooperation in the investigation or prosecution of an offence established in accordance with this Convention.*

**(a) Summary of information relevant to reviewing the implementation of the article**

369. Norway referred to Penal Code, Section 59, second paragraph:

"If the person charged has made an unreserved confession, the court shall take this into account when passing sentence. The court may reduce the penalty below the minimum prescribed for the act and to a milder form of penalty."

370. According to Norwegian authorities, this provision, which requires the court to take into account an unreserved confession, facilitates the contact and cooperation between the police/prosecution service and offenders.

371. It was reported that suspects are always informed about Penal Code, Section 59, second paragraph, when they are first interviewed by the police. They are also informed that the courts are not obliged to, but normally will, follow the Prosecution Authority's suggestion as to how much the penalty should be reduced due to a confession.

372. Norway cited the following examples.

In 2011, the chief executive officer of a company in the coal and mining industry was sentenced to two years in prison for aggravated corruption amounting to approx. NOK 4 million. The court stated in the ruling that the sentence without the unreserved confession would be three years in prison. The court is not bound by the Prosecuting Authority's suggestion of what is the correct sentence, neither with nor without an unreserved confession. In this case, the prosecuting authority was of the opinion that the sentence without the confession should be three years in prison, and - taking into account the confession - in this case should be two years and eight months in prison.

In 2012 a consultant working for an oil company, convicted of corruption, was given a 25 percent reduction in the prison sentence due to his confession. The Prosecuting Authority's suggestion to the court was that the reduction should be 30 percent.

**(b) Observations on the implementation of the article**

373. The provision is implemented.

**Article 37 Cooperation with law enforcement authorities**

**Paragraph 3**

*3. Each State Party shall consider providing for the possibility, in accordance with fundamental principles of its domestic law, of granting immunity from prosecution to a person who provides substantial cooperation in the investigation or prosecution of an offence established in accordance with this Convention.*

**(a) Summary of information relevant to reviewing the implementation of the article**

374. Norway indicated that it has not considered or adopted measures to grant immunity from prosecution to persons who provide substantial cooperation in the investigation or prosecution of offences established in accordance with this Convention.

375. However, during the country visit officials reported that ØKOKRIM takes into account a range of factors in deciding whether or not to prosecute a cooperating offender, including whether adequate preventive measures were taken, for example whether comprehensive integrity guidelines or compliance trainings were in place in an enterprise.

**(b) Observations on the implementation of the article**

376. Based on the information provided, there appear to be limited measures in place to implement the provision.

## **Article 37 Cooperation with law enforcement authorities**

### **Paragraph 4**

*4. Protection of such persons shall be, mutatis mutandis, as provided for in article 32 of this Convention.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

377. Norway referred to its answers regarding article 32, including the protective measures available under the witness protection programme for informers, as described in the police Guidelines on Witness Protection.

#### **(b) Observations on the implementation of the article**

378. The provision is implemented, although no case examples were provided where relevant protections were afforded to cooperating offenders.

## **Article 37 Cooperation with law enforcement authorities**

### **Paragraph 5**

*5. Where a person referred to in paragraph 1 of this article located in one State Party can provide substantial cooperation to the competent authorities of another State Party, the States Parties concerned may consider entering into agreements or arrangements, in accordance with their domestic law, concerning the potential provision by the other State Party of the treatment set forth in paragraphs 2 and 3 of this article.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

379. As described under UNCAC article 32(3) above, protective measures available to informants and other persons under the witness protection programme include both domestic relocation and relocation to a foreign country (page 13). No further information was available during the country visit regarding any relocation agreements.

#### **(b) Observations on the implementation of the article**

380. The provision is implemented, although no examples of implementation were provided.

## **Article 38 Cooperation between national authorities**

*Each State Party shall take such measures as may be necessary to encourage, in accordance with its domestic law, cooperation between, on the one hand, its public authorities, as well as its*

public officials, and, on the other hand, its authorities responsible for investigating and prosecuting criminal offences. Such cooperation may include:

(a) Informing the latter authorities, on their own initiative, where there are reasonable grounds to believe that any of the offences established in accordance with articles 15, 21 and 23 of this Convention has been committed; or

(b) Providing, upon request, to the latter authorities all necessary information.

**(a) Summary of information relevant to reviewing the implementation of the article**

381. The Ethical Guidelines for the Public Service establish a duty by public officials to report corruption and other irregularities. According to paragraph 2.2,

“in order to implement measures to avoid or limit losses or damages, public officials are required to report to their employer any circumstances of which she or he is aware that could cause the employer, employee or the surroundings to suffer losses or damages. [...] The same applies to corruption and crimes or irregularities. As regards corruption, it will be especially important to provide the most accurate and comprehensive information possible about the giver and receiver of bribes, cf. General Civil Penal Code § 276 a, 276 b and 276 c. Under the circumstances, one viable alternative to in-house notification might be to contact the police or the supervision or inspection authorities.”

382. Cooperation between tax authorities, the prosecution service and law enforcement, including the FIU, is well established and takes place at all levels.

383. The FIU’s primary responsibility is to receive and analyze suspicious transaction reports (STRs) from entities with a reporting obligation under the Money Laundering Act. The objective is to prevent and combat the laundering of proceeds of crime and the financing of terrorism by sharing intelligence. The FIU differs from the other departments at ØKOKRIM in that the unit usually does not engage in criminal case work. The FIU has access to police records and its data constitutes a significant source of corruption leads.

384. In 1995, under the Regulations relating to identity checks and anti-money laundering measures of 7 February 1994, the Ministry of Finance appointed a special Supervisory Committee for anti-money laundering measures. Chaired by a Court of Appeals judge, the Committee’s responsibilities are enshrined in Section 31 of the Money Laundering Act, and include supervising ØKOKRIM’s handling of information received from reporting entities.

385. Norway provided the following statistics on filed STRs.

Number of STRs by entity 2012	
Lawyers	12
Others (Cf. Money Laundering Act, Section 4)	38
Banks	2903
E-money firms	1
Dealers in expensive objects	59
Insurance Companies	55
Estate Agents	17

Accountants	47
Auditors	54
Securities Firms	1
Money transfer entities	882

<b>Grounds for suspicion as stated by the reporting entity 2012<sup>6</sup></b>	
Other	541
A mix of corporate and personal transactions	387
Destination of transaction	460
Documentation	96
UN list	24
Identity of reported person	87
Behaviour of reported person	359
Cash transactions	2677
Reported previously	410
Source of funds	1984
Identity of recipient	67
Cross border transactions	1219
Abnormal activity on account	678
Abnormal use of payment cards	75

386. Norwegian authorities further referred to oversight role of the Foreign Service Internal Control Unit (FSICU) in the Ministry of Foreign Affairs. It was explained that the Norwegian Agency for Development Cooperation (NORAD) and the Ministry of Foreign Affairs oversee the use of bilateral international development assistance through audit reports and inspection of Norwegian embassies that provide substantial funds for grants. The FSICU also undertakes spot-checks of projects and recipients of Norwegian international development funds to prevent and discover corruption, embezzlement, etc. The main task of the FSICU and the anti-fraud team of NORAD is to investigate possible cases of corruption and fraud related to Norwegian international development assistance. Most investigations are triggered by reports from Norwegian embassies or development partners, but some cases are discovered through spot-checks, third party reports or, more commonly, analysis of audit reports received by the Ministry and NORAD from grant recipients. In all cases where irregularities are proven to have taken place, the affected funds will be sought to be repaid through civil law claims, the exceptions being claims prescribed by the relevant legal limitation period or obstacles to using local legal remedies. Where the evidence is strong enough for prosecution and human rights concerns are not a hindrance to prosecution, the relevant public authorities will be informed. On the preventive side, NORAD also has a separate anti-corruption team working with Norway's development partners to raise awareness and assist them in establishing a framework for preventing and prosecuting corruption.

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<sup>6</sup> According to Norway, reporting entities can select more than one alternative when submitting STRs to the FIU. The numbers do not, therefore, correspond to the total number of STRs received. Moreover, reported grounds for suspicion are often based only on a preliminary analysis by reporting entities.

387. According to the authorities, no formal mechanism for sharing of case-related information between agencies exists, although this is done on a case-by-case basis.

388. Moreover, ØKOKRIM has been engaged in personnel exchange with tax authorities and some divisions in the police.

**(b) Observations on the implementation of the article**

389. The provision under review is adequately implemented. The review team also welcomes indications by the FIU to institute more comprehensive systems to track the outcome of STR referrals to relevant law enforcement authorities.

390. While corruption cases are handled by various agencies, including ØKOKRIM, the police and the DPP, there appear to be effective working relationships in place between the organizations.

## **Article 39 Cooperation between national authorities and the private sector**

### **Paragraph 1**

*1. Each State Party shall take such measures as may be necessary to encourage, in accordance with its domestic law, cooperation between national investigating and prosecuting authorities and entities of the private sector, in particular financial institutions, relating to matters involving the commission of offences established in accordance with this Convention.*

**(a) Summary of information relevant to reviewing the implementation of the article**

391. According to Norway, 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. The legislative processes are also very open and facilitate input from different professions and institutions.

392. ØKOKRIM, which also contains the Norwegian FIU, cooperates closely with financial institutions in this context, including through common seminars.

393. The National Confederation of Businesses has been active in the area of anti-corruption work. The Financial Supervisory Authority also has important functions vis-à-vis the financial sector.

394. During the country visit, the review team met with representatives from the private sector, including representative of Finance Norway (FNO), the federation for banks, insurance companies and other financial institutions in Norway, which represents some 200 financial institutions operating in Norway. The team also met with representative of the media, the Norwegian Confederation of Trade Unions (LO) and the Norwegian Bar Association.

**(b) Observations on the implementation of the article**

395. The review team welcomed indications by interlocutors during the country visit that the duty of secrecy provisions concerning lawyers' client accounts are under review in Norway. Proposed revisions would potentially facilitate access to client account records when such accounts are being used to hide illegal funds on behalf of a client.

**(c) Successes and good practices**

396. Based on the meetings held during the country visit, the review team positively noted the government-private sector cooperation in the fight against corruption, which appeared to be active and inclusive. One example are the regular working group meetings held between FNO and different government institutions to enhance collaboration with the private sector.

**Article 39 Cooperation between national authorities and the private sector**

**Paragraph 2**

*2. Each State Party shall consider encouraging its nationals and other persons with a habitual residence in its territory to report to the national investigating and prosecuting authorities the commission of an offence established in accordance with this Convention.*

**(a) Summary of information relevant to reviewing the implementation of the article**

397. There is no general statutory obligation to report offences to the police. However it is encouraged to report serious criminal activity. As regards corruption in particular, failure to report could be regarded a breach of duties. According to Norwegian authorities, a starting point would be the duty of loyalty/obedience. From this contractual basis, it could be considered to be a breach of these duties to ignore suspicions of possible corruption. In addition, there are the rules concerning whistleblowing referred to above.

**(b) Observations on the implementation of the article**

398. The provision is adequately implemented, although no examples of implementation were provided.

**Article 40 Bank secrecy**

*Each State Party shall ensure that, in the case of domestic criminal investigations of offences established in accordance with this Convention, there are appropriate mechanisms available within its domestic legal system to overcome obstacles that may arise out of the application of bank secrecy laws.*

**(a) Summary of information relevant to reviewing the implementation of the article**

399. Norway cited the following measure.

**Criminal Procedure Code, Section 230**

"The police may take statements from suspected persons, witnesses and experts but may not order any person to make a statement. Public officials and other persons acting on behalf of the State or a municipality are nevertheless obliged to make a statement concerning matters with which they have become acquainted



in their position or office if this can be done without breaching any duty of secrecy imposed on them by any statute, regulation, or directive.

Witnesses who are subject to a duty of secrecy pursuant to section 21 of the Saving Banks Act, section 18 of the Commercial Banks Act, section 1-3 of the Insurance Institutions Act, section 3-14 of the Financial Institutions Act, section 9-8 of the Securities Trading Act or section 8-1 of the Securities Registration Act are obliged to make a statement to the police concerning matters that are covered by the duty of secrecy or any contractual duty of secrecy, if strong public interests indicate that a statement shall be made, the duty to make it shall apply regardless of whether an investigation in a criminal case has been commenced."

400. As mentioned previously under article 31 paragraph 7, courts have jurisdiction to order the production of bank records under Sections 210-210c of the Criminal Procedure Act and/or the seizure of records under Section 203 of the Criminal Procedure Act. The production order will be made on the condition that the evidence may be significant in the case and that the possessor is obliged to give statement as a witness in the case. Seizure may be terminated on the decision of the Prosecution Authority or the court.

401. A court order is not required to seize bank and financial records. Under the Penal Code, Section 210, second paragraph two, and Section 230, second paragraph, the Prosecuting Authority can instruct the bank in these matters.

402. Moreover, the FIU in ØKOKRIM has the ability to seize and access such records administratively. Through Section 19 of Norwegian Money Laundering Act, the FIU has the ability to administratively freeze transactions. Section 18 of the Money Laundering Act obliges reporting entities to submit relevant information to the FIU in an STR. Upon request from the FIU, reporting entities should provide further documentation deemed necessary by the FIU.

**(b) Observations on the implementation of the article**

403. The provision under review appears to be adequately implemented, although no examples of implementation were provided.

**Article 41 Criminal record**

*Each State Party may adopt such legislative or other measures as may be necessary to take into consideration, under such terms as and for the purpose that it deems appropriate, any previous conviction in another State of an alleged offender for the purpose of using such information in criminal proceedings relating to an offence established in accordance with this Convention.*

**(a) Summary of information relevant to reviewing the implementation of the article**

404. According to Norwegian authorities, previous foreign convictions can be taken into consideration when deciding on the severity of the sentence.

405. Norway referred to Section 61 of Penal Code.

...

The provisions concerning an increased penalty in cases of repeated offences are only applicable to persons who have completed their 18th year at the time of the commission of the previous criminal act, and who have committed the new criminal act after the sentence for that

previously committed has been fully or partly executed. Unless otherwise provided, there shall be no such increase if the new criminal act, if it is a felony, has been committed more than six years, and if a misdemeanour, more than two years, after the sentence for the previous offence has been served completely.

**The court may allow previous sentences imposed in other countries to serve as a basis for an increased penalty in the same way as sentences imposed in Norway.**

406. Norway also reported that, according to Norwegian court practice, previous convictions are considered an aggravating circumstance.

407. No case examples were provided.

**(b) Observations on the implementation of the article**

408. The provision under review is legislatively implemented.

**Article 42 Jurisdiction**

*1. Each State Party shall adopt such measures as may be necessary to establish its jurisdiction over the offences established in accordance with this Convention when:*

*(a) The offence is committed in the territory of that State Party; or*

*(b) The offence is committed on board a vessel that is flying the flag of that State Party or an aircraft that is registered under the laws of that State Party at the time that the offence is committed.*

*2. Subject to article 4 of this Convention, a State Party may also establish its jurisdiction over any such offence when:*

*(a) The offence is committed against a national of that State Party; or*

*(b) The offence is committed by a national of that State Party or a stateless person who has his or her habitual residence in its territory; or*

*(c) The offence is one of those established in accordance with article 23, paragraph 1 (b) (ii), of this Convention and is committed outside its territory with a view to the commission of an offence established in accordance with article 23, paragraph 1 (a) (i) or (ii) or (b) (i), of this Convention within its territory; or*

*(d) The offence is committed against the State Party.*

*3. For the purposes of article 44 of this Convention, each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences established in accordance with this Convention when the alleged offender is present in its territory and it does not extradite such person solely on the ground that he or she is one of its nationals.*

*4. Each State Party may also take such measures as may be necessary to establish its jurisdiction over the offences established in accordance with this Convention when the alleged offender is present in its territory and it does not extradite him or her.*

**(a) Summary of information relevant to reviewing the implementation of the article**

409. Jurisdiction over UNCAC offences is established in the Penal Code, Section 12, first paragraph no. 1.

410. In the White Paper submitted to Parliament concerning the ratification of UNCAC, the Ministry of Justice and Public Security made it expressly clear that it considered all the obligations under article 42 of UNCAC to be covered by the Penal Code, Section 12.

**Section 12 of The Penal Code**

"Unless it is otherwise specially provided or accepted in an agreement with a foreign State, Norwegian criminal law shall be applicable to acts committed:

1. in the realm, including

- a) any installation or construction placed on the Norwegian part of the continental shelf and used for exploration for or exploitation or storage of submarine natural resources,
- b) constructions for the transport of petroleum resources connected with any installation or construction placed on the Norwegian part of the continental shelf,
- c) the security zone around such installations and constructions as are mentioned under a and b above,
- d) any Norwegian vessel (including a Norwegian drilling platform or similar mobile installation) in the open sea, and
- e) any Norwegian aircraft outside such areas as are subject to the jurisdiction of any State;

2. on any Norwegian vessel or aircraft wherever it may be, by a member of its crew or any other person travelling on the vessel or aircraft; the term vessel here also includes a drilling platform or similar mobile installation;

3. abroad by any Norwegian national or any person domiciled in Norway when the act

- a) is one of those dealt with in chapters 8, 9, 10, 11, 12, 13, 14, 17, 18, 20, 23, 24, 25, 26 or 33 of this code or sections 135, 141, 142, 144, 169, 192 to 195, 199, 206 to 209, 222 to 225, 227 to 235, 238, 239, 242 to 245, 291, 292, 294 item 2, 317, 326 to 328, 330, last paragraph, 338, 367 to 370, 380 381 or 423 and in any case when it
- b) is a felony or misdemeanor against the Norwegian State or Norwegian State Authority,
- c) is also punishable according to the law of the country in which it is committed, or
- d) is committed in relation to the EFTA Court of Justice and is included among those dealt with in section 163, cf. section 167 and section 165, of the present act or sections 205 to 207 of the Courts of Justice Act;

4. Abroad, by a foreigner when the act either

- a) is one of those dealt with in sections 83, 88, 89, 90, 91, 91a, 93, 94, 98 to 104, 110 to 132, 148, 149, 150, 151 a, 152 first cf. second paragraph, 152 a, 152 b, 153 first to fourth paragraphs, 154, 159, 160, 161, 169, 174 to 178, 182 to 185, 187, 189, 190, 192 to 195, 217, 220, 221, 222 to 225, 227 to 229, 231 to 235, 238, 239, 243, 244, 256, 258, 266, 269, 271, 276 to 276c, 291, 292, 324, 325, 328, 415 or 423 of this code or sections 1,2, 3 or 5 of the Act relating to defence secrets,
- b) is a felony also punishable according to the law of the country in which it is committed, and the offender is resident in the realm or is staying therein, or
- c) is committed in relation to the EFTA Court of Justice and is included among those dealt with in section 163, cf. section 167 and section 165, of the present Act, or sections 205 to 207 of the court of Justice Act. In cases in which the criminality of an act depends on or is influenced by an actual or intended effect, the act shall be regarded as committed also where such effect has occurred or is intended to be produced."

411. Other than the exception for Nordic countries, Norwegian nationals may not be extradited, in accordance with Section 2 of the Extradition Act and Norway's declaration to article 6 in the European Convention on Extradition. When extradition is refused because the person in question is a Norwegian national, the case will (upon request) be forwarded to the Prosecution Authority.

**(b) Observations on the implementation of the article**

412. The provisions under review appear to be adequately implemented.

## Article 42 Jurisdiction

### Paragraph 5

*5. If a State Party exercising its jurisdiction under paragraph 1 or 2 of this article has been notified, or has otherwise learned, that any other States Parties are conducting an investigation, prosecution or judicial proceeding in respect of the same conduct, the competent authorities of those States Parties shall, as appropriate, consult one another with a view to coordinating their actions.*

#### (a) Summary of information relevant to reviewing the implementation of the article

413. According to Norway, such cooperation could be established through mutual legal assistance procedures.

#### (b) Observations on the implementation of the article

414. The provision under review also addresses the possibility of consultations among authorities, not necessarily in the context of formal mutual legal assistance. Further information in this context is included under UNCAC article 46(7) below.

415. The provision under review appears to be legislatively implemented, although no examples of implementation were provided.

## Article 42 Jurisdiction

### Paragraph 6

*6. Without prejudice to norms of general international law, this Convention shall not exclude the exercise of any criminal jurisdiction established by a State Party in accordance with its domestic law.*

#### (a) Summary of information relevant to reviewing the implementation of the article

416. Norway has adopted grounds of criminal jurisdiction in chapter 1 of the Penal Code, other than those described in the aforementioned article. The Convention does not exclude the exercise of any criminal jurisdiction by Norway.

#### (b) Observations on the implementation of the article

417. The provision under review is legislatively implemented.

## Chapter IV. International cooperation

### **General assessment regarding Norway's implementation of Chapter IV of the Convention**

418. By all accounts, Norway has in place a solid and comprehensive system to combat corruption through international cooperation.
419. Norway has implemented legislation and taken measures to implement the provisions included in Chapter IV of the Convention. However, little information was provided by Norway on how these provisions are enforced and implemented. Hardly any examples are given on concrete steps or relevant court cases. For the reviewing States, this makes it difficult to make a proper assessment of the actual implementation of the relevant provisions.
420. However, taking into account consultations with Norwegian authorities, the reviewing States have reasons to believe that implementation of the Convention's provisions on international cooperation is relatively effective.
421. The reviewing States, however, note in this context that it was difficult to assess in detail Norway's practice of providing mutual legal assistance in corruption cases, due to the absence of data on any requests that Norway has refused, and, more generally, the absence of a specific system for collecting data. It is recommended that Norway adapt its information system to allow it to collect data on the type of mutual legal assistance requests (e.g., underlying offences), the timeframe for providing responses to these requests, and the response provided, including any grounds for refusal.
422. A further general remark pertains to the reviewers' observations in this chapter. Although, as described in the introduction, international treaties are not directly binding in Norway and have to be implemented in Norwegian law, according to the presumption principle, the Norwegian law is presumed to be in accordance with Norway's international law obligations, even non-implemented or inadequately implemented. While it is thus noted that Norway interprets its domestic legislation in accordance with international treaties such as UNCAC, the reviewers have made certain recommendations under chapter IV, where the domestic legislation is either silent or does not specifically address a particular issue, in the interest of greater legal certainty, especially concerning non-treaty partners, to whom the domestic legislation can be directly applied. It is, however, understood that all requests, whether treaty-based or non-treaty based, are dealt with in accordance with the provisions of the domestic legislation.

### **Article 44 Extradition**

423. Generally, the Norwegian extradition procedure involves both a judicial and an administrative procedure, as described below.
424. Requests for extradition received from a foreign State should be forwarded by diplomatic channels unless other channels of communication have been agreed between

the States concerned. The request is firstly 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 the request has not been refused by the Ministry, it will be forwarded to the prosecuting authorities, which shall initiate the necessary investigations. A defence counsel will be appointed. 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 appealed to the Supreme Court. The time limit for lodging an appeal is three days.

425. Provided that it is decided by a final court ruling that the criteria of the Extradition Act are fulfilled, the Ministry of Justice and Public Security will decide whether the request for extradition shall be complied with. Before the decision is taken, the defence counsel is given an opportunity to give comments. The decision of the Ministry of Justice and Public Security may be appealed to the King in Council. However, provided the Court has found that the criteria for extradition are not fulfilled, extradition is excluded, and the Ministry of Justice and Public Security will have to deny the request.
426. If the requesting State is a party to the Schengen Convention, and the person concerned consents to be extradited, a simplified procedure may take place. In this event, it is the Public Prosecutor who decides whether extradition may take place or not.
427. 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 the 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 that applies, and subsequently, the prosecuting authorities will decide on the surrender. There are strict time limits for the decisions and few grounds for refusal.
428. When the Nordic-European Arrest Warrant procedure between the Member States of the European Union and Iceland and Norway enters into force, there will be a similar regime for all arrest warrants from the EU-countries.

## **Paragraph 1**

*1. This article shall apply to the offences established in accordance with this Convention where the person who is the subject of the request for extradition is present in the territory of the requested State Party, provided that the offence for which extradition is sought is punishable under the domestic law of both the requesting State Party and the requested State Party.*

### **(a) Summary of information relevant to reviewing the implementation of the article**

429. Norway cited the following measures.

#### **The Extradition Act of 13 June 1975, Sections 1 and 3**

Section 1 - "Any person who is charged, accused or sentenced by a foreign State for punishable act, and who is in Norway, may be extradited in accordance with the provisions of the present Act."

Section 3 - "Extradition may take place only if the act, or a similar act, is punishable under Norwegian law by imprisonment for more than 1 year. If the person whose extradition is requested has been sentenced for

the offence, extradition may take place only if the sentence entails imprisonment or confinement to an institution for a period of not less than 4 months, or if by virtue of the sentence a decision is made or could be made about such confinement."

**(b) Observations on the implementation of the article**

430. Unofficial translations of the Extradition Act and Regulations relating to International Cooperation in Criminal Matters (the latter in force from 1 January 2013) were provided to the reviewers at the time of the review.

431. Norway ratified the European Convention on Extradition (Paris, 13.23.1957) and is party to three bilateral treaties on extradition with Australia, Canada and the United States of America. Other agreements are described under paragraph 4 of this article below.

432. To the extent that not all offences under the Convention are fully criminalized in Norway, the implementation of this article with regard to dual criminality may be impacted.

433. There is a basic requirement of dual criminality for extradition, except as provided in the following paragraphs.

**Article 44 Extradition**

**Paragraph 2**

*2. Notwithstanding the provisions of paragraph 1 of this article, a State Party whose law so permits may grant the extradition of a person for any of the offences covered by this Convention that are not punishable under its own domestic law.*

**(a) Summary of information relevant to reviewing the implementation of the article**

434. Norway can extradite to the other Nordic countries also in the absence of dual criminality according to the Convention on the Nordic Arrest Warrant, which entered into force on 16 October 2012. This agreement is implemented in the Act on the Surrender Procedure due to an Arrest Warrant, according to which there is no double criminality requirement for surrender between the Nordic States. Thus, the Nordic arrest warrant abolishes the principle of dual criminality.

435. In relation to extradition to other countries than the Nordic countries, there is a double criminality requirement according to the Extradition Act, Section 3, paragraph 1. However, when the Agreement between the European Union and the Republic of Iceland and the Kingdom of Norway on the surrender procedure between the Member States of the European Union and Iceland and Norway (Nordic-European Arrest Warrant) enters into force, the double criminality requirement will be relinquished on certain specified conditions for several offences, including corruption; cf. the Agreement, Section 3, paragraph 4, and the Act on the Surrender Procedure due to an Arrest Warrant, Section 7, paragraph 3.

**(b) Observations on the implementation of the article**

436. Extradition in the absence of dual criminality is at present only possible to other Nordic states. No statistics were available as regards extradition cases among Nordic States. The provision is legislatively implemented.

## **Article 44 Extradition**

### **Paragraph 3**

*3. If the request for extradition includes several separate offences, at least one of which is extraditable under this article and some of which are not extraditable by reason of their period of imprisonment but are related to offences established in accordance with this Convention, the requested State Party may apply this article also in respect of those offences.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

437. Norway cited the following measures.

##### **The Extradition Act, Section 3, no. 2 and 3**

Section 3 no. 2: "The King-in-Council may enter into agreement with a foreign state on extradition for acts even if the duration of imprisonment imposed or imposable is shorter than provided in sub-section 1."

Section 3 no. 3: "Extradition for prosecution or completion of sentence for more than one act may take place even if the conditions of sub-section 1 are complied with in respect of one of the offences only, provided that the other offences may entail imprisonment or confinement in an institution under the laws both of Norway and of the foreign state in question."

#### **(b) Observations on the implementation of the article**

438. It was explained during the country visit that no treaty is required and that Norway would apply the Extradition Act directly in the absence of a treaty. Accordingly, extradition would be granted under Section 3 paragraph 3 as long as one offence satisfies the one-year imprisonment threshold.

439. Norway reported that there are no formal statistics on extradition, including any cases related to the provision under review.

440. However, there have been several extradition cases not relating to UNCAC offences where the Extradition Act Section 3 paragraph 3 has been applied.

## **Article 44 Extradition**

### **Paragraph 4**

*4. Each of the offences to which this article applies shall be deemed to be included as an extraditable offence in any extradition treaty existing between States Parties. States Parties undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them. A State Party whose law so permits, in case it uses this Convention as the basis for extradition, shall not consider any of the offences established in accordance with this Convention to be a political offence.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**



441. Extradition may take place irrespective of the existence of an extradition treaty between the parties, provided that the conditions of the Extradition Act are met. This also means that there is a basic requirement of dual criminality.

442. Concerning extradition, the most important agreements are:

- The European Convention on Extradition with additional protocols
- The Schengen Convention
- The Act on the Surrender Procedure due to an Arrest Warrant

Norway has also bilateral extradition agreements with the USA, Canada and Australia.

443. Regarding the political offence exception, the Norwegian Extradition Act Section 5 paragraph 1 states that extradition may not be granted if the offence is considered as a political offence. Moreover, the King in Council may conclude agreements with other States stating that certain specific offences shall not be considered as political offences. The UNCAC is such an agreement, and thus corruption shall not be regarded as a political offence according to Norwegian law.

444. Below are the provisions dealing with the political offence exception in Norway's bilateral treaties on extradition:

**Extradition treaty between the Kingdom of Norway and the United States of America of 9 June 1977, Article 7 letter c:**

“If the offence for which the extradition is requested is regarded by the requested State as a political offence or if the person sought proves that the request for his extradition has in fact been made with a view to try or punish him for an offence of a political character.”

**Treaty between Norway and Australia concerning extradition of 9 September 1985, Article 6 paragraph 1:**

“A person shall not be extradited of the offence for which his extradition is requested is regarded by the requested State as an offence of a political character. An offence against the law relating to genocide shall not be regarded as an offence of a political character.”

**Extradition treaty of 26 June 1873 with Australia, Great Britain, New Zealand and South Africa (in force between Norway and Canada), Article 6:**

“A fugitive criminal shall not be surrendered if the offence in respect of which his surrender is demanded is one of a political character, or if he prove that the requisition for his surrender has in fact been made with a view to try or punish him for an offence of a political character.”

**(b) Observations on the implementation of the article**

445. It was reported that, based on unofficial internal statistics provided by the Ministry of Justice and Public Security, there have not been any requests for extradition to or from Norway based on the Convention.

446. Norway confirmed that all UNCAC offences are punishable by at least one year in Norway and are thus extraditable under the Act.

447. Norway considers UNCAC as a legal basis for extradition. Thus, for purposes of the political offence exception Norwegian legislation (Section 5 of the Extradition Act) will be interpreted in line with the provisions of UNCAC. However, according to the

Norwegian Extradition Act, extradition may take place irrespective of the existence of an extradition treaty between the parties.

## Article 44 Extradition

### Paragraph 5

*5. If a State Party that makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may consider this Convention the legal basis for extradition in respect of any offence to which this article applies.*

#### (a) Summary of information relevant to reviewing the implementation of the article

448. The provision does not apply to Norway since extradition from Norway is not dependent on a treaty. A treaty is not a condition for extradition from Norway.

449. Norway reported that there are no official statistics available on extradition. However, according to unofficial internal statistics provided by the Ministry of Justice and Public Security, the number of incoming and outgoing extradition requests are the following:

Number of incoming requests for extradition to Norway (All criminal cases)		Number of outgoing requests for extradition from Norway (All criminal cases)	
2012	68	2012	47
2011	80	2011	29
2010	83	2010	50

According to these internal statistics, none of the requests related to corruption.

No statistics were available on the number of requests refused (incoming or outgoing).

Moreover, it is noted that requests between the Nordic countries do not appear in the above internal statistics, as these requests are sent directly between the prosecuting authorities.

#### (b) Observations on the implementation of the article

450. Although it was reported that the majority of the cases are complied with, no information was available as to whether this related to incoming or outgoing requests.

451. Norway considers UNCAC as a legal basis for extradition. However, as mentioned under paragraph 4 above, extradition from Norway to a foreign country may take place irrespective of the existence of an extradition treaty between the parties.

## Article 44 Extradition

### Paragraph 6

*6. A State Party that makes extradition conditional on the existence of a treaty shall:*

*(a) At the time of deposit of its instrument of ratification, acceptance or approval of or accession to this Convention, inform the Secretary-General of the United Nations whether it will take this Convention as the legal basis for cooperation on extradition with other States Parties to this Convention; and*

*(b) If it does not take this Convention as the legal basis for cooperation on extradition, seek, where appropriate, to conclude treaties on extradition with other States Parties to this Convention in order to implement this article.*

**(a) Summary of information relevant to reviewing the implementation of the article**

452. Norway does not make extradition conditional on a treaty.

453. According to UNCAC Article 44 paragraph 6 the notification obligation is on State parties that make extradition conditional on the existence of a treaty. However, Norway reported that it would consider sending the information to the Treaty Section.

**(b) Observations on the implementation of the article**

454. Although Norway does not require a treaty to effect extradition, Norway is encouraged to send the aforementioned information to the Chief, Treaty Section, Office of Legal Affairs, Room M-13002, United Nations, 380 Madison Ave, New York, NY 10017 and copy the Secretary of the Conference of the States Parties to the United Nations Convention against Corruption, Corruption and Economic Crime Branch, United Nations Office on Drugs and Crime, Vienna International Centre, P.O. Box 500, 1400 Vienna, Austria (uncac.cop@unodc.org).

455. The most important extradition agreements are listed under subparagraph 4 above.

## **Article 44 Extradition**

### **Paragraph 7**

*7. States Parties that do not make extradition conditional on the existence of a treaty shall recognize offences to which this article applies as extraditable offences between themselves.*

**(a) Summary of information relevant to reviewing the implementation of the article**

456. UNCAC offences can be the basis for extradition if the conditions related to dual criminality described above and the minimum period of imprisonment are satisfied.

457. The Norwegian Extradition Act Section 3 states that extradition may take place only if the act, or a similar act, is punishable under Norwegian law by imprisonment for more than one year.

458. As regards Norway's treaties, the same one-year term applies:

**Norway's declaration to the European Convention on Extradition Article 2:**

“Under the terms of the Norwegian Act No. 39 of 13 June 1975, relating to the Extradition of Offenders etc., paragraph 3, Norway is in a position to grant extradition only in respect of an offence, or a corresponding offence, which under Norwegian law is punishable, or would have been punishable with imprisonment for more than one year.”

## **Treaty between Norway and Australia concerning extradition of 9 September 1985**

### **Article 4**

#### **Extraditable offences**

1. For the purposes of this Treaty, extraditable offences are offences however described which are punishable under the laws of both Contracting Parties by imprisonment or other deprivation of liberty for a period of more than one year or by a more severe penalty. Where the request for extradition relates to a person convicted of such an offence who is wanted for the enforcement of a sentence of imprisonment or other deprivation of liberty, extradition shall be granted only if penalty remains to be served.
2. For the purpose of this Article it shall not matter whether the laws of the Contracting Parties place the acts or omissions constituting the offence within the same category of offence or denominate the offence by the same or similar terminology.
3. For the purpose of this Article in determining whether an offence is an offence against the law of both Contracting Parties the totality of the acts or omissions alleged against the person whose surrender is sought shall be taken into account without reference to the elements of the offence prescribed by the law of the requesting State.

## **Extradition treaty between the Kingdom of Norway and the United States of America of 9 June 1977**

### **Article 2**

1. Extradition shall be granted for any offense described in the Schedule annexed to this Treaty, which forms and integral part of the Treaty, only when both of the following conditions exist:
  - a. The law of the requesting State, in force when the offense was committed, provides a possible penalty of deprivation of liberty for a period of more than one year, or by the death penalty; and
  - b. The law in force in the requested State generally provides a possible penalty of deprivation of liberty for a period of more than one year, or by the death penalty, which would be applicable if the offense were committed in the territory of the requested State.
2. When the person sought has been sentenced in the requesting State, extradition shall only be granted when the detention originally imposed is for a period of at least four months, and the amount of time remaining to be served is for a period of at least four months.
3. Extradition shall also be granted for the preparation or attempts to commit, conspiracy to commit, or participation in any offenses within paragraph 1 of this Article. Preparation or attempts include conspiracy to commit such offenses according to the law in the United States. The provisions of this paragraph shall be qualified on the basis that the offense is punishable under the law of both States by imprisonment or other form of detention for more than one year or by the death penalty.
4. An offense shall be extraditable whether or not the laws of both Contracting States would place that offense within the same category of offenses made extraditable by the first or third paragraph of this Article and whether or not the laws of the requested State denominate the offense by the same terminology.

459. However, between the Nordic countries, the one-year minimum period of imprisonment does not apply. The Convention on the Nordic Arrest Warrant Article 2 states that surrender may take place if the offence is punishable by imprisonment. This provision is implemented in the Act on the Surrender Procedure due to an Arrest Warrant Section 17.

#### **(b) Observations on the implementation of the article**

460. UNCAC offences can be the basis for extradition if the conditions related to dual criminality and the minimum period of imprisonment are satisfied. Accordingly, UNCAC offences, which are all punishable by at least one year in Norway (except for illicit enrichment, which is not criminalized), are thus extraditable.

## **Article 44 Extradition**

### **Paragraph 8**

*8. Extradition shall be subject to the conditions provided for by the domestic law of the requested State Party or by applicable extradition treaties, including, inter alia, conditions in relation to the minimum penalty requirement for extradition and the grounds upon which the requested State Party may refuse extradition.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

461. The Extradition Act Section 3 requires that the act, or a similar act, is punishable under Norwegian law by imprisonment for more than one year.

462. The Norwegian Extradition Act states the conditions for extradition from Norway to a foreign country in Sections 2-10.

463. The grounds for refusal in the Norwegian Extradition Act are summarized as follows:

- Norwegian nationals cannot be extradited (Section 2)
- There is a double criminality requirement (Section 3), and extradition may only take place if the offence for which extradition is sought is punishable under Norwegian law by imprisonment for more than one year. Regarding extradition for the purpose of serving a sentence, the sentence imposed must entail imprisonment for a period of not less than 4 months.
- Extradition for a breach of military law may take place only if the act is also punishable under non-military law (Section 4).
- Extradition may not take place for political offences (Section 5).
- Extradition is prohibited if it may be assumed there is a grave danger that the person concerned, for reasons of race, religion, nationality, political convictions or other political circumstances, will be exposed to persecution directed against his life or liberty, or that the said persecution is otherwise of a serious nature (Section 6).
- According to Section 7, extradition may not take place if it would be contrary to fundamental humanitarian considerations, especially on account of the person's age, condition of health or other circumstances of personal nature.
- *Ne bis in idem* is a ground for refusal (Section 8).
- Extradition may not take place if the right to prosecute or execute punishment is statute barred by lapse of time under Norwegian law (Section 9).
- According to Section 10, extradition will be refused if it is not found that there is just and sufficient cause for suspecting the person concerned being guilty. Extradition for the purpose of serving a sentence may not take place if there are specific grounds for believing that the judgment was not passed on a correct appraisal of the question of the accused's guilt.

464. Relevant treaty provisions are set forth below.

## **Treaty between Norway and Australia concerning extradition of 9 September 1985**

### **Article 6**

#### **Political offences, race, humanitarian considerations**

1. A person shall not be extradited if the offence for which his extradition is requested is regarded by the requested State as an offence of a political character. An offence against the law relating to genocide shall not be regarded as an offence of a political character.
2. a person shall not be extradited if the requested State has substantial grounds for believing that the request for extradition was made for the purpose of prosecuting or punishing the person by reason of his race, religion, nationality, political opinions or other political circumstances or that his position may be prejudiced for any of these reasons.
3. A person shall not be extradited if the requested State, while also taking account the nature of the offence and the interests of the requesting State, considers that, in the circumstances of the case, including the age, health or other personal circumstances of the person claimed, the extradition of that person would be in conflict with fundamental humanitarian considerations.

### **Article 7**

#### **Military offences, provisional courts, *non bis in idem*, lapse of time, etc.**

1. Extradition may be refused where the offence for which extradition is requested is considered by the requested State to constitute only a breach of liminary law. Where the offence for which extradition is requested is of a kind that, under the law of the requested State, constitutes both an offence against military law and another offence against the law of that State, the extradited person shall not be proceeded against for the offence against military law.
2. Extradition may further be refused where:
  - (a) the person claimed is liable to be tried by a Court or Tribunal that is only provisionally, or under exceptional circumstances, empowered to deal with the offence for which his extradition is requested for the purpose of his serving a sentence imposed by such a court or Tribunal;
  - (b) the person claimed is under examination or trial in the requested State for the offence in respect of which extradition is requested;
  - (c) the person claimed has in the territory of the requested State, or in a third State, been acquitted or a penalty has imposed for the offence for which extradition is requested;
  - (d) examination proceedings against the person claimed have been discontinued and that person has not been put on trial in the requested State in respect of the offence for which extradition is requested;
  - (e) the person claimed is exempt from prosecution or punishment by lapse of time according to the law of the requesting State or the requested State in respect of the offence for which extradition is requested.
3. Extradition may also be refused on any other grounds or for any other reason specified by the law of the requested State.

### **Article 9**

#### **Capital punishment**

If, under the law of the requesting State, a person claimed is liable to the death penalty for an offence for which his extradition is requested or for any other offence for which he may be detained or tried in accordance with Article 10, the requested State may refuse his extradition unless the requesting State undertakes that the death penalty will not be imposed, or if imposed, will not be carried out.

## **Extradition treaty between the Kingdom of Norway and the United States of America of 9 June 1977**

### **Article 7.**

1. Extradition shall not granted in any of the following circumstances:
  - a. When the person whose surrender is sought is being proceeded against or has been tried and discharged or punished in the territory of the requested State for the offence for which extradition is requested. If the charge against the person sought has been waived in Norway, or the

proceedings discontinued due to lack of evidence, extradition may be granted only if the conditions of applicable Norwegian law permit.

b. When the prosecution or the enforcement of the penalty for the offence for which extradition is sought has become barred by lapse of time according to the laws of the requesting or requested State.

c. If the offense for which extradition is requested is regarded by the requested State as a political offense or if the person being sought proves that the request for his extradition has in fact been made with a view to try or punish him for an offense of a political character.

d. In respect of a military offense, unless it is punishable in accordance with non-military penal legislation as prescribed in Article 2.

2. Extradition may be refused in any of the following circumstances:

a. When the person whose surrender is sought has been tried and acquitted, or has undergone punishment, or has been pardoned, on a third State.

b. If, in special circumstances, having particular regard to the age, health or other personal conditions of the person concerned, in requested State has reason to believe that extradition will be incompatible with humanitarian considerations.

3. Extradition may be refused on any other grounds provided for by the law of the requested State.

#### **Article 8.**

If the offense for which extradition is requested is punishable by death under the laws of the requesting State and the laws of the requested State do not provide for the death penalty for that offense, extradition may be refused unless the requesting State provides assurances satisfactory to the requested State that the death penalty shall not be imposed, or, if imposed, shall not be carried out.

465. There are no specific examples related to the offences under this Convention.

#### **(b) Observations on the implementation of the article**

466. According to the Convention on the Nordic Arrest Warrant referred to under paragraph 2, a Nordic arrest warrant may be issued regardless of the minimum length of the custodial sentence or detention order with which the offence is punishable.

467. It was explained during the country visit that the King in Council is the final arbiter as to grounds for denial of extradition requests.

### **Article 44 Extradition**

#### **Paragraph 9**

*9. States Parties shall, subject to their domestic law, endeavour to expedite extradition procedures and to simplify evidentiary requirements relating thereto in respect of any offence to which this article applies.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

468. Norway reported that the established procedures are regarded as generally well functioning. The legal provisions dealing with timeframes and evidentiary requirements for extradition are as follows.

469. Legal provisions dealing with timeframes:

*The Extradition Act:*

If the person sought has been provisionally arrested awaiting the formal request for extradition, the request for extradition must be received within four weeks from the date the foreign State was notified of the arrest. Otherwise, coercive measures may no longer be applied (Section 20 paragraph 2).

The time limit for lodging an appeal against the court decisions is three days (Section 17 paragraph 3).

The time limit for lodging an appeal against the decision from the Ministry of Justice and Public Security is three weeks from the notification of the decision. When there is a final decision on extradition, it shall be executed as soon as possible, and coercive measures may not be applied for longer than four weeks from the final decision (Section 19 paragraph 2).

*The Nordic Arrest Warrant:*

The Nordic Arrest Warrant stipulates strict timeframes. If the person sought consents to the surrender, the prosecuting authority shall reach a decision within three days. If the person sought does not consent to the surrender, there must be a final court decision on the mandatory grounds for refusal within three weeks. Then the prosecuting authorities have three days from the final court decision to decide whether there are any optional grounds for refusal that should apply. The surrender shall be executed as soon as possible, and at latest within five days from the final decision on the surrender.

470. Legal provisions dealing with evidentiary requirements:

According to Section 10 of the Extradition Act, extradition will be refused if it is not found that there is just and sufficient cause for suspecting the person concerned being guilty. Extradition for the purpose of serving a sentence may not take place if there are specific grounds for believing that the judgment was not passed on a correct appraisal of the question of the accused's guilt.

The Nordic Arrest Warrant is based on a mutual recognition instrument. There are no evidentiary requirements. However, the issuing State must justify the existence of an arrest warrant.

In general, the simplified extradition procedure described in the introduction to Chapter IV is applied in all in all cases between the Schengen-States where the person sought consents to the simplified extradition procedure.

471. Relevant treaty provisions are as follows.

**Treaty between Norway and Australia concerning extradition of 9 September 1985**

**Article 8**

**Evidence**

In the case of a person charged with an offence, but not yet convicted, extradition from Norway may be refused if the appropriate Norwegian authorities consider the evidence insufficient to establish a presumption that the person concerned is guilty of the offence he is charged with.

**Extradition treaty between the Kingdom of Norway and the United States of America of 9 June 1977**



### **Article 5.**

1. Extradition shall be granted only if the evidence be found sufficient according to the law of the requested State either to justify the committal for trial of the person sought if the offense of which he is accused had been committed in the territory of the requested State or to prove that he is identical person convicted by the courts of the requesting State.

2. In the case of a request made to the Government of Norway, the Norwegian authorities shall, in accordance with Norwegian extradition law, have the right in exceptional cases to request evidence to establish a presumption of guilt of a person previously convicted. Extradition may be refused if such additional evidence is found to be insufficient.

### **(b) Observations on the implementation of the article**

472. A short description of the extradition procedures in Norway is provided in the introduction to Chapter IV above.

473. It was reported that no formal statistics or case examples were available regarding the implementation of the provision under review.

474. Simplified evidentiary requirements are applied in all surrender cases between the Nordic states, in accordance with the provisions in the Act on Arrest Warrant and the Convention on Nordic Arrest Warrant. Please see point 261.

475. It was explained during the country visit that the timeframe for under the simplified extradition procedure among the Schengen-States where the person sought consents to the procedure is about one to three months. If the person appeals the matter, the average timeframe is approximately nine months to one year. For extradition among non-Schengen-States, the average timeframe is also approximately nine months to one year.

476. The provision is legislatively implemented, although no case examples or statistics were provided.

## **Article 44 Extradition**

### **Paragraph 10**

*10. Subject to the provisions of its domestic law and its extradition treaties, the requested State Party may, upon being satisfied that the circumstances so warrant and are urgent and at the request of the requesting State Party, take a person whose extradition is sought and who is present in its territory into custody or take other appropriate measures to ensure his or her presence at extradition proceedings.*

### **(a) Summary of information relevant to reviewing the implementation of the article**

477. 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.

#### **Extradition Act, Section 15**

1. To further the investigation and to ensure extradition, the coercive measures mentioned in Chapters 14, 15, 15 a, 15 b, 16, 16 a and 16 b of the Norwegian Criminal Procedure Act may be used to the same extent as in cases of offences of a similar nature prosecuted in Norway. When deciding whether the conditions for the use of coercive measures are present, the judgment

accompanying the extradition request may be used without further trial of the evidence of the guilt of the person in question.

2. Unless otherwise determined by the court, its decision to use coercive measures shall apply until the extradition request has been resolved and extradition, if granted, is implemented, cf. Section 19 no. 2. The subject of the extradition request shall nevertheless be entitled to a re-trial of such a decision if more than 3 weeks have elapsed since it was made or last tried.

*Amended through Act no. 71 of 14 June 1985 and Act no 54 of 28 June 2002.*

#### **(b) Observations on the implementation of the article**

478. Norway reported that, in accordance with the Extradition Act Section 20 paragraph 1 and Section 15, coercive measures may be applied before an extradition request has been lodged or granted. Coercive measures may also be applied before a formal extradition request is lodged, provided the foreign State so requests or on the basis of an INTERPOL Red notice.

479. Regarding case examples, it was reported that in the majority of cases the person sought to be extradited is held in custody awaiting the decision on the request.

### **Article 44 Extradition**

#### **Paragraph 11**

*11. A State Party in whose territory an alleged offender is found, if it does not extradite such person in respect of an offence to which this article applies solely on the ground that he or she is one of its nationals, shall, at the request of the State Party seeking extradition, be obliged to submit the case without undue delay to its competent authorities for the purpose of prosecution. Those authorities shall take their decision and conduct their proceedings in the same manner as in the case of any other offence of a grave nature under the domestic law of that State Party. The States Parties concerned shall cooperate with each other, in particular on procedural and evidentiary aspects, to ensure the efficiency of such prosecution.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

480. Norwegian nationals can at present not be extradited (Section 2 of the Extradition Act), except under certain circumstances to other Nordic States (cf. the Act on the Surrender Procedure due to an Arrest Warrant Section 22 paragraph 2). However, when the Nordic-European Arrest Warrant enters into force, Norwegian nationals can on certain conditions be surrendered to the EU-states.

#### **Extradition Act Section 2**

Norwegian nationals shall not be extradited.

481. The principle *aut dedere aut judicare* is recognized in Norway, but is not regulated by statutory law. Although international treaties are not directly binding in Norwegian law, all Norwegian laws should be construed as being in line with international requirements. Hence, the principle of *aut dedere aut judicare* applies and Section 2 of the Extradition Act will be interpreted accordingly.

482. Norway has ratified the Council of Europe Extradition Convention of 1957, cf. article 6, second paragraph of the Convention. Other relevant treaty provisions are set forth below.

**Treaty between Norway and Australia concerning extradition of 9 September 1985**

**Article 5**

**Nationals**

No Contracting Party shall be obliged to extradite its own nationals.

2. If Australia requests extradition of a person who, at the time of the request for extradition, is a permanent resident of Norway and a national of Denmark, Finland, Iceland or Sweden, extradition may be refused, specifying reasons therefore, but the requested State may extradite the person claimed if, in its discretion, it deems it proper to do so.

3. If the extradition is not granted in pursuance of paragraphs 1 or 2, the requested State, if asked to do so by the requesting State, shall submit the case to its competent authorities in order that proceedings, if considered appropriate, may be taken in accordance with the law of the requested State, and shall inform the requested State, and shall inform the requesting State of the result of the request.

**Extradition treaty between the Kingdom of Norway and the United States of America of 9 June 1977**

**Article 4**

1. Neither Contracting State shall be bound to deliver up its own nationals, but the executive authority of the requested State shall, if not prevented by the laws of that State, have the power to deliver them up if, in its discretion, it be deemed proper to do so.

2. If the extradition is not granted in the pursuance of paragraph 1 of this Article, the requested State shall submit the case to its competent authorities for the purpose of prosecution.

483. The competent authority to refuse the extradition of Norwegian nationals is the Ministry of Justice and Public Security. However, the Norwegian INTERPOL- and the Sirene-office (Supplementary Information Request at the National Entry) usually inform the State that has issued an alert, at an early stage, that Norwegian nationals may not be extradited. Consequently, there are not many requests for extradition of Norwegian nationals.

**(b) Observations on the implementation of the article**

484. As indicated in provision under review, Norway does not extradite Norwegian citizens, except on certain conditions to other Nordic countries (Sweden, Finland, Denmark and Iceland).

485. No case examples or statistics were available as to cases in which the extradition of nationals was granted or refused. During the country visit it was explained that there have been no cases where the extradition of a national was refused and the case was submitted for prosecution. A case example was mentioned not related to corruption where a national was prosecuted in lieu of extradition.

486. Although it was explained that Norway interprets its Act in accordance with international treaties such as UNCAC and notifies requesting States of the non-extradition of nationals, 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.

## Article 44 Extradition

### Paragraph 12

*12. Whenever a State Party is permitted under its domestic law to extradite or otherwise surrender one of its nationals only upon the condition that the person will be returned to that State Party to serve the sentence imposed as a result of the trial or proceedings for which the extradition or surrender of the person was sought and that State Party and the State Party seeking the extradition of the person agree with this option and other terms that they may deem appropriate, such conditional extradition or surrender shall be sufficient to discharge the obligation set forth in paragraph 11 of this article.*

#### (a) Summary of information relevant to reviewing the implementation of the article

487. The Extradition Act does not provide for the possibility of the conditional extradition of Norwegian nationals, as there is no exception from the prohibition of extradition of nationals (Section 2). However, between the Nordic States there is a possibility to make the surrender of nationals conditioned on the subsequent return to serve the sentence in Norway according to the Act on the Surrender Procedure due to an Arrest Warrant, Section 22 paragraph 2.

488. The same principle will apply to arrest warrants between the EU and Norway when the agreement between the EU, Norway and Iceland on the Nordic-European Arrest Warrant enters into force (cf. the Act on the Surrender Procedure due to an Arrest Warrant Section 15 paragraph 2).

#### (b) Observations on the implementation of the article

489. The conditional extradition of nationals as described in the provision under review is possible between Nordic States according to the cited legislation.

## Article 44 Extradition

### Paragraph 13

*13. If extradition, sought for purposes of enforcing a sentence, is refused because the person sought is a national of the requested State Party, the requested State Party shall, if its domestic law so permits and in conformity with the requirements of such law, upon application of the requesting State Party, consider the enforcement of the sentence imposed under the domestic law of the requesting State Party or the remainder thereof.*

#### (a) Summary of information relevant to reviewing the implementation of the article

490. Enforcement of foreign penal sanctions can be considered in the context of the Act on Transfer of Sentenced Persons. A summary and unofficial translation of relevant sections of the Act provided by the Ministry of Justice and Public Security is included below.

491. Norway reported that it would depend on the legal basis whether a sentence can be transferred in cases where extradition of a national has been refused. The Act on Transfer of Sentenced Persons incorporates the Convention on Transfer of Sentenced Persons and its Additional Protocol. The Convention on Transfer of Sentenced Persons applies only to

the transfer of foreign nationals who have already commenced serving the sentence in the sentencing State. The Additional Protocol makes an exception to this rule by stating that if a sentenced person seeks to avoid the execution of the sentence by fleeing to his or her country of origin, the sentencing State may request this State to take over the execution of the sentence. Different countries might have different understandings of when a sentenced person is seeking to avoid execution.

**Summary of relevant provisions of the Act on Transfer of Sentenced Persons (unofficial translation)**

**Chapter I**

Section 1: According to the provisions in this Act, Norwegian sentences may be enforced in other countries and foreign sentences may be enforced in Norway.

Section 2: The Ministry of Justice and Public Security may lay down detailed rules on the implementation of the law.

**Chapter II**

Section 3: Decisions regarding transfers which are covered by the European Convention on the Transfer of Sentenced Persons, cf. part B of the Act, may be enforced under the Convention. If the other State is a Party to the Additional Protocol to the Convention, the sentence may be enforced in accordance with the Convention as it is supplemented by the provisions of the Additional Protocol. The Ministry of Justice and Public Security will decide whether or not to agree to a request from another State regarding transfer to or from Norway. The Ministry shall promptly inform the requesting State of its decision whether or not to agree to the requested transfer. A request from Norway to another Party to the Convention regarding transfer to or from Norway shall be submitted to the appropriate authority in the other Party by the Ministry.

Section 4: The term "national" means a person who is a citizen of Norway, or a person who has his residence in Norway, or where a person has such close ties to Norway which makes the transfer appropriate.

Section 5: If it is decided that a sentenced person shall be transferred to Norway, the Ministry shall decide which procedure is to be followed:

- a) continue the enforcement of the sentence under the conditions set out in Article 10 of the Convention or
- b) convert the sentence under the conditions set out in Article 11 of the Convention

Section 6: If the Ministry decides to continue the enforcement, the Prosecution Authorities will be asked to implement the enforcement of the remainder of the sentence. If, however, this sentence by its nature or duration is incompatible with Norwegian law, the Prosecution Authorities will be asked to bring the case before a court. The sentence from the Norwegian court shall as far as possible correspond with the sentence imposed by the sentencing State. It shall not exceed the maximum prescribed by Norwegian law and shall not aggravate the sanction imposed in the sentencing State.

Section 7: If the Ministry decides to follow the procedure of conversion, the Prosecution Authorities will be asked to bring the case before a court who will pronounce a new judgment in accordance with the Norwegian Penal Code. The court

- a) shall be bound by the findings as to the facts insofar as they appear explicitly or implicitly from the judgment imposed in the sentencing State
- b) may not convert a sanction involving deprivation of liberty to a pecuniary sanction
- c) shall deduct the full period of deprivation of liberty served by the sentenced person, and
- d) shall not aggravate the penal position of the sentenced person, and shall not be bound by any minimum which Norwegian law may provide for the offence or offences committed.

Section 7a: If the Administering State makes a request under the Additional Protocol Article 3, 4. Paragraph, the procedure regarding extradition applies correspondingly.

Section 8: The Convention on the Transfer of Sentenced Persons will apply also for sentences being passed before the Convention entered into force between Norway and the respective State

*[Chapter III*

*Sections 9 to 11 are related to the European Convention on the International Validity of Criminal Judgments and are very rarely used. The sections have therefore not been translated.]*

Chapter IV

Section 12: Norwegian sentences that might be enforced in another State pursuant to an agreement other than the Convention on the Transfer of Sentenced Persons or the European Convention on the International Validity of Criminal Judgments may be enforced in accordance with this agreement. If the agreement does not provide otherwise, continued enforcement may be decided without a decision by a court, even if the penalty exceeds the maximum prescribed by Norwegian law. The consent of the person is required in this instance.

Chapters II and III apply to the enforcement of sentences in Norway as far as they are in conformity with the agreement. The Execution of Sentences Act with regulations and guidelines apply to the enforcement of sentences in Norway.

Section 13:

If special reasons exist, the King in Council may decide that a sentence imposed in another country may be enforced in Norway even if there is no agreement as mentioned in Sections 3, 9 or 12. On the same terms, the King in Council may decide that a sentence imposed in Norway may be enforced in another State.

According to §13 para 3, § 12 para 2 and 3 are applied accordingly.

*[Sections 14 to 18 provide rules of procedure including the application of the Criminal Procedure Act when a judicial decision is required.]*

*Part B consists of the Convention on the Transfer of Sentenced Persons and Part C consists of the European Convention on the International Validity of Criminal Judgments.]*

**(b) Observations on the implementation of the article**

492. Norway has once requested another State to accept responsibility for a sentence where the sentenced person had, in Norway's opinion, avoided execution. The requested State did not agree with Norway's understanding of the term "avoiding" and the case was consequently closed.

493. It appears that Norway would consider enforcing the remainder of a sentence where the person sought is a Norwegian national and extradition is therefore refused, as described in the provision under review, in accordance with the cited measures. The Ministry of Justice and Public Security will decide whether or not to agree to a request from another State regarding the transfer of the national to or from Norway, as provided in Section 3 of the Act on Transfer of Sentenced Persons.

**Article 44 Extradition**

## Paragraph 14

*14. Any person regarding whom proceedings are being carried out in connection with any of the offences to which this article applies shall be guaranteed fair treatment at all stages of the proceedings, including enjoyment of all the rights and guarantees provided by the domestic law of the State Party in the territory of which that person is present.*

### (a) Summary of information relevant to reviewing the implementation of the article

494. Norway reported that the guarantees of fair treatment are guaranteed in the Constitution and the Criminal Procedure Act.

495. The Extradition Act, Section 14, paragraph 3, states that unless otherwise provided by the present Act, the rules of the Criminal Procedure Act shall apply. This implies that the person sought will be entitled to all rights and guarantees provided for in a domestic criminal procedure, inter alia the right to be informed of the charges against him in a language he understands, the right to a defence counsel, the right to appeal, etc. In addition, the obligations under international human rights instruments cited in the Human Rights Act dated 21 May 1999, will apply in Norway. Should there be a conflict between Norwegian law and the international instruments mentioned in the said Act, the latter shall take precedence.

496. Relevant treaty provisions are the extradition treaty between Norway and Australia of 9 September 1985, Article 7 paragraph 2, and the extradition treaty with the United States of America, Article 7 (both quoted above).

### (b) Observations on the implementation of the article

497. Norway confirmed during the country visit that the cited measures are applicable in extradition proceedings. The provision under review is legislatively implemented, although no case examples or statistics were provided where the relevant protections were invoked.

## Article 44 Extradition

### Paragraph 15

*15. Nothing in this Convention shall be interpreted as imposing an obligation to extradite if the requested State Party has substantial grounds for believing that the request has been made for the purpose of prosecuting or punishing a person on account of that person's sex, race, religion, nationality, ethnic origin or political opinions or that compliance with the request would cause prejudice to that person's position for any one of these reasons.*

### (a) Summary of information relevant to reviewing the implementation of the article

498. Extradition will not take place if there may be presumed to be a serious risk of persecution related to race, religion, nationality, political opinion or other political circumstances (Extradition Act, Section 6). Extradition will also be refused if it would conflict with basic humanitarian considerations (Extradition Act, Section 7).

499. The courts make the initial decision on whether the legal requirements in the Extradition Act are fulfilled or not. If the court decides that there are substantial grounds for believing that the extradition will be contrary to the non-refoulement principle (Extradition Act, Section 6), extradition is refused. If the court finds that the legal requirements in the Extradition Act are fulfilled, the Ministry of Justice and Public Security decides whether the person sought should be extradited or not, after an assessment of whether the legal requirements in the Extradition Act are fulfilled.

500. Relevant treaty provisions include the extradition treaty between Norway and Australia of 9 September 1985, Article 6 paragraphs 2 and 3, and the extradition treaty with the United States of America (only political offences are addressed in Article 7(1)(c)).

**(b) Observations on the implementation of the article**

501. The provision under review is legislatively implemented, although no case examples or statistics were provided where the relevant measures were invoked.

**Article 44 Extradition**

**Paragraph 16**

*16. States Parties may not refuse a request for extradition on the sole ground that the offence is also considered to involve fiscal matters.*

**(a) Summary of information relevant to reviewing the implementation of the article**

502. This is not a valid reason for refusing a request for extradition in the Norwegian system. The grounds for refusing extradition are summarized under paragraph 7 above.

**(b) Observations on the implementation of the article**

503. Fiscal offences are not included among the grounds for refusal under the Extradition Act or the referenced treaties. The provision is legislatively implemented, although no case examples were given where Norway granted an extradition request involving a fiscal offence and no statistics were available.

**Article 44 Extradition**

**Paragraph 17**

*17. Before refusing extradition, the requested State Party shall, where appropriate, consult with the requesting State Party to provide it with ample opportunity to present its opinions and to provide information relevant to its allegation.*

**(a) Summary of information relevant to reviewing the implementation of the article**

504. Norway reported that this would constitute part of the general policy and in conformity with internationally recognized practice.



**(b) Observations on the implementation of the article**

505. There are no general guidelines on extradition that spell out a duty to consult before refusing a request, and the matter is not directly addressed in the Extradition Act. However, according to the Extradition Act Section 14 paragraph 2, the prosecuting authorities shall initiate necessary investigations when they receive a request for extradition. It was explained that this implies that if the prosecuting authorities find that there are some parts of the request that needs further elaboration, they will ask for supplementary information from the requesting State.

**Extradition Act  
Section 14**

...

2. If the request is not refused under sub-section one, the case shall be forwarded to the Public Prosecutor, who shall immediately initiate the necessary investigation.

506. No examples of implementation or statistics were provided.

507. The provision appears to be implemented as a matter of practice. 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.

**Article 44 Extradition**

**Paragraph 18**

*18. States Parties shall seek to conclude bilateral and multilateral agreements or arrangements to carry out or to enhance the effectiveness of extradition.*

**(a) Summary of information relevant to reviewing the implementation of the article**

508. Norway has bilateral agreements with the USA and Australia of 1977 and 1985 respectively concerning extradition. It is also party to an extradition treaty of 26 June 1873 with Australia, Great Britain, New Zealand and South Africa (in force between Norway and Canada).

**(b) Observations on the implementation of the article**

509. Bilateral agreements exist with the USA, Australia and Canada (see paragraph 4 of article 44). Other treaties are cited under paragraph 4 above.

**Article 45 Transfer of sentenced persons**

*States Parties may consider entering into bilateral or multilateral agreements or arrangements on the transfer to their territory of persons sentenced to imprisonment or other*

*forms of deprivation of liberty for offences established in accordance with this Convention in order that they may complete their sentences there.*

**(a) Summary of information relevant to reviewing the implementation of the article**

510. Norway is a party to the European Convention on the Transfer of Sentenced Persons of 1983 and its Additional Protocol.

511. According to the Act on Transfer of Sentenced Persons of 1991, such transfers can take place.

512. Norway has bilateral agreements concerning transfer of sentenced persons with Thailand and Romania.

**(b) Observations on the implementation of the article**

513. The Act on Transfer of Sentenced Persons and the cited Convention and Treaties apply to sentences imposed by a court of law and the purpose of these laws is to facilitate the transfer of foreign prisoners to their home countries. UNCAC offences are covered for the purpose of prisoner transfers as far as the offences constitute felonies under the Norwegian criminal legislation. Reference is made to paragraph 13 of UNCAC article 44 above.

514. In addition, the acts or omissions on account of which the sentence has been imposed must also constitute a criminal offence according to the law of the State to which the sentenced person is transferred or would constitute a criminal offence if committed on its territory. It was reported that there have been no cases of prisoner transfer for UNCAC offences.

515. The article is legislatively implemented, although no case examples or statistics were provided.

**Article 46 Mutual legal assistance**

**Paragraph 1**

*1. States Parties shall afford one another the widest measure of mutual legal assistance in investigations, prosecutions and judicial proceedings in relation to the offences covered by this Convention.*

**(a) Summary of information relevant to reviewing the implementation of the article**

516. Norway does not have separate statutory law concerning mutual legal assistance in criminal matters (MLA). MLA is regulated in the Extradition Act, Chapter V, Sections 23a to 25 and the Court Administration Act, Sections 46-51. Norway reported that the Extradition Act Section 24 is only relevant for MLA requests involving coercive measures. For all MLA requests not involving the use of coercive measures, the Extradition Act Section 23a and the Court Administration Act Section 46 apply.

517. Norway also referred to the unofficial translation of the Regulations relating to International Cooperation in Criminal Matters, which came into force on 1 January 2013 and were provided to the reviewers during the review.

#### **Extradition Act**

#### **Chapter V. Other legal aid.**

#### **Section 23a.**

1. A request for legal aid from a foreign authority in connection with criminal proceedings in a foreign state that has been filed with the Ministry or in accordance with an agreement with the foreign state in question, shall, wherever possible, be complied with.
2. The request shall be denied if implementation would violate Norway's sovereignty, endanger national security or contrary to public policy or other significant interests.
3. The request may also be denied if
  - a) It concerns an act that under the provisions in Sections 4 and 5 cannot justify extradition,
  - b) The executive authority knows that in Norway or in a state that is not a signatory to the Schengen agreement or a member of the European Union a judgment or a ruling has been delivered that precludes further prosecution for the offence the request concerns,
  - c) There are weighty reasons why the request should not be complied with,
4. Sub-section 3 letter a) does not apply to a request from a state that is signatory to the Schengen agreement or the European Union.
5. It does not prevent implementation of the request that the offence the request concerns is not punishable under Norwegian law. However, this does not concern requests that involve use of coercive measures, cf. Section 24 (3).

*Added through Act no. 52 of 22 June 2012 (entry into force 1 January 2013 according to Royal Decree no. 1208 of 14 December 2012).*

#### **Section 23b.**

1. The prosecuting authority may decide to file a request to a foreign authority for assistance to record evidence. Such a request is sent via the Ministry of Justice, unless otherwise determined through an agreement with a foreign state.
2. The King in Council may issue further regulations relating to letters of request under this provision.

*Added through Act no. 52 of 22 June 2012 (entry into force from 1 January 2013 according to Royal Decree no. 1208 of 14 December 2012).*

#### **Section 24.**

1. Upon request, it may be determined that for purposes of prosecuting a case in a foreign state, coercive measures mentioned in Sections 15, 15 a, 15 b, 16, 16 a, 16 b and 17 of the Norwegian Civil Procedure Act, may be used in the same manner as in cases of offences of a similar nature when prosecuted in Norway. It may also otherwise be determined that objects which may be seized or confiscated pursuant to Chapter 16 of the Norwegian Criminal Procedure Act, shall be transferred to a foreign state for the purpose of returning the object to the rightful owner. Similarly, it may be determined that objects which have been temporarily handed over to the foreign state shall be relinquished.
2. The request shall be submitted to the Ministry, unless otherwise stated in the agreement with the foreign state. The request shall contain details about the nature, time and location of the criminal offence. Unless otherwise stated in an agreement with a foreign state, the request shall only be complied with if it can be proved that a decision has been made to use of coercive measures issued in accordance with the legislation of the state in question.
3. The request cannot be complied with if the offence to which the prosecution relates, or an equivalent offence, is not punishable under Norwegian law, or if it does not warrant extradition under the provisions of Sections 4-6. First sentence, second alternative does not apply to states that are not signatory to the Schengen agreement or members of the European Union. First sentence, first alternative does not apply in the case of a request from Denmark, Finland, Iceland or Sweden.
4. The Ministry may reject the request immediately if it does not comply with the conditions in sub-section two, or if it is obvious that it will not be complied with. If the request is not denied under this provision, the case will be sent to the prosecuting authority. When the court considers whether there is legal justification to use coercive measures, it shall also consider whether the conditions under this section have been met. The provisions in Section 17 (3) apply accordingly. In connection with the agreement mentioned in sub-section 2, first sentence, it may nevertheless be determined that the case shall be decided by another authority than the Ministry.

5. If it is probable that a person staying in Norway, who is not accused in connection with prosecution, is entitled to a seized object, the surrender of the latter to the authorities of another country shall take place only on the condition that it is returned free of charge when the prosecution has ended.

*Amended through Act no. 17 of 14 June 1985, Act no. 39 of 11 June 1999 nr. 39 (entry into force 1 July 1999 according to Royal Decree no. 663 of 11 June 1999), Act no. 67 of 16 July 1999 (entry into force 25 March 2001 according to Royal Decree no. 1348 of 21 December 2000), Act no. 54 of 28 June 2002, Act no. 49 of 30 June 2006, Act no. 4 of 20 January 2012 (entry into force from 16 October 2012 by Royal Decree no. 895 of 21 September 2012), Act no. 52 of 22 June 2012 (entry into force from 1 January 2012 by Royal Decree no. 1208 of 14 December 2012).*

#### **Section 24a.**

1. For the purpose of criminal proceedings in a foreign state, a foreign court, or other competent authority under legislation of the state in question, may request a live link court examination of witnesses and experts who are in Norway. The request shall be submitted to the Ministry, unless otherwise stipulated in an agreement with a foreign state.

2. Live link examination under this provision is conducted in a Norwegian court. The person who is to testify shall be summoned in accordance with the provisions in the Criminal Procedure Act. Sections 108, 109 and 143 (3) apply accordingly to the duty to attend as a witness or expert. The third sentence does not apply to examination by telephone.

3. The examination may be conducted in accordance with the legislation of the state that has submitted the request, as long as such a procedure is not prohibited under Norwegian law. A judge shall be present during the entire examination and shall control the questioning.

4. As regards the right and duty of the witness and the expert to testify, the provisions in Chapters 10 and 11 of the Criminal Procedure Act apply accordingly to the extent applicable. The person being interviewed may also refuse to give a statement to the extent the legislation of the requesting state permits this. Live link examination may only take place if the witness or the expert agrees.

5. As regards criminal liability for making a false statement, Sections 163 to 167 of the General Civil Penal Code shall apply accordingly.

6. The King-in-Council may issue regulations relating to live link examination under this provision, including provisions relating to the keeping of minutes, use of an interpreter and control of the examination by the judge, etc.

*Added through Act no. 52 of 22 June 2012 (entry into force on 1 January 2013 according to Royal Decree no. 1208 of 14 December 2012).*

#### **Section 25.**

1. For use in criminal proceedings in Norway or in a foreign state, it may be determined that a person who has been deprived of his or freedom in Norway due to a criminal offence, shall be transferred temporarily to a foreign state for questioning as a witness or for confrontation. Transfer as mentioned in the first sentence may also take place at the person in question's consent in order to assist in other investigations or in connection with a re-trial of a judgment.

2. A request for transfer pursuant to no. 1 shall be submitted via the Ministry, unless otherwise stated in an agreement with a foreign state. The request shall contain details of the nature of the criminal offence.

3. The request for temporary transfer for use in criminal proceedings in a foreign state shall not be allowed if the offence the prosecution concerns or an equivalent offence, is not punishable under Norwegian law, or if pursuant to the provisions in Sections 4 – 6, it cannot justify extradition. Transfer to a foreign state shall not take place if the person in question's presence is required here in Norway in connection with a criminal case, or if there are other strong grounds against transfer. Special consideration shall be paid to whether the transfer is likely to prolong the period of deprivation of his or freedom. The first sentence shall not apply to requests from Denmark, Finland, Iceland or Sweden.

4. If the person in question does not agree to transfer under paragraph 1, first sentence, the court shall decide by a ruling whether transfer is justified by law. If the person in question is being prosecuted in Norway, the case falls in under the jurisdiction of the court handling the criminal case. The provisions in Section 17 (3) apply accordingly. If the person in question consents to temporary transfer in writing to the prosecuting authority or the Norwegian Correctional Services, the local public prosecutor decides whether transfer shall take place. Before a decision regarding transfer abroad is made, a statement shall be obtained from the prison or detention authority, if the person in question is serving a sentence or has been confined to an institution.

5. Transfer may only take place on the condition that the person in question is returned as soon as possible, if necessary, within a specified time limit and that during his stay in the foreign state he is not subjected to prosecution, nor punished or extradited for any act committed before his transfer.

*Amended through Act no. 67 of 30 August 2002 (entry into force 1 January 2003 according to Royal Decree no. 938 of 30 August 2002), Act no. 78 of 4 July 2003, Act no.4 of 20 January 2012 (entry into force 16 October 2012 according to Royal Decree no. 895 of 21 September 2012), Act no. 52 of 22 June 2012 (entry into force 1 January 2013 according to Royal Decree no. 1208 of 14 December 2012).*

**Section 25a.**

1. A person abroad who is deprived of their liberty due to a criminal offence may be transferred temporarily to Norway for questioning as a witness or to assist in other investigations. The same applies to review of a judgment.

2. A request for transfer pursuant to paragraph 1 shall be submitted to the prosecuting authority and sent via the Ministry, unless otherwise stated in an agreement with a foreign state.

3. The person being transferred shall remain remanded in custody, unless the foreign authority in question requests that this shall cease. A condition for remand in custody is that it is proved that there is a decision regarding use of remand in custody in accordance with the state in question's legislation. Act no. 4 of 20 January 2012 relating to arrest and extradition to and from Norway for criminal offences based on an arrest warrant, Section 13 (3) first and second sentence applies accordingly.

4. The person transferred shall during his stay in Norway not be subject to prosecution, punished or extradited for an offence he has committed before the transfer. The person in question shall be returned to the foreign state as soon as possible or within a given time limit.

*Added through Act no. 52 of 22 June 2012 (entry into force from 1 January 2013 according to Royal Decree no. 1208 of 14 December 2012)*

518. Norwegian legislation does, in most cases, provide for the possibility of giving effect to MLA requests irrespective of the existence or applicability of a treaty. However, reference is made in Section 23a of the Extradition Act to certain international agreements for purposes of granting MLA. Moreover, certain procedures generally require a treaty basis, such as the interception of telecommunications pursuant to the European Union the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union.

519. 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, pursuant to Section 23a paragraph 5 of the Extradition Act.

520. MLA requests are carried out in accordance with Norwegian law referenced above and applicable treaties. However, special formalities and procedures expressly indicated by the requesting State will be complied with, provided that such formalities and procedures are not prohibited pursuant to Norwegian law.

521. The same range of coercive measures that are available in domestic criminal proceedings are also available in relation to MLA requests.

522. Norway has signed two bilateral treaties concerning mutual legal assistance.

1. Treaty between Norway and Canada on Mutual Assistance in Criminal Matters, 1998

2. Treaty between Norway and Thailand on Mutual Assistance in Criminal Matters, 1999.

Norway is party to the following multilateral agreements in relation to MLA:

1. The Council of Europe Convention on Mutual Assistance in Criminal Matters of 20 April 1959 and its Additional Protocol of 17 March 1978. Norway has also signed the

Second Additional Protocol of 8 November 2001, which entered into force on 1 March 2013.

Within its scope, the Council of Europe Convention applies to all MLA requests from other signatory States.

According to reservations made by Norway, requests for MLA involving coercive measures are subject to dual criminality.

2. Treaty between Norway, Denmark, Finland, Iceland and Sweden on Mutual Legal Assistance of 26 April 1974.

3. Agreement between the European Union and the Republic of Iceland and the Kingdom of Norway on the application of certain provisions of the Convention of 29 May 2000 on Mutual Assistance in Criminal Matters between the Member States of the European Union and the 2001 Protocol thereto, which entered into force for Norway on 1 January 2013.

523. There are no official statistics available on the number of MLA requests. However, the Ministry of Justice and Public Security provided the following statistics on the number of incoming and outgoing requests for MLA in criminal matters, based on its internal registry of MLA cases. The numbers below only include MLA requests being sent via the Ministry of Justice and Public Security as the central authority. Requests that are sent directly between the judicial authorities are not included in the statistics below, for example requests sent to or from the Nordic countries or requests based on other Conventions/agreements permitting direct transmission, like the European Union Convention of 29 May 2000.

Number of incoming requests for MLA to Norway (All criminal cases)		Number of outgoing requests for MLA from Norway (All criminal cases)	
2012	246	2012	57
2011	205	2011	39
2010	356	2010	90

No information was available as to how many of the requests related to corruption.

No statistics were available on the number of requests refused (incoming or outgoing).

Moreover, it is noted that requests between Schengen Member States do not appear in the above statistics, as these requests are sent directly between the prosecuting authorities.

#### **(b) Observations on the implementation of the article**

524. Norway does not have a specific statutory law regulating MLA but applies provisions in the Extradition Act chapter V, the Court Administration Act and the Regulations relating to International Cooperation in Criminal Matters, which came into force on 1 January 2013.

525. As described in the introduction, international treaties are not directly binding in Norwegian law, and have to be implemented into Norwegian legislation. As indicated, Norway may in most cases provide assistance irrespective of the existence of a treaty. All requests, both treaty-based and non-treaty based, are dealt with in accordance with the

provisions in the Extradition Act chapter V, the Court Administration Act, and the new Regulation on International Cooperation in Criminal Matters.

526. MLA requests are carried out in accordance with Norwegian law. It was explained that, accordingly, investigative steps which can be conducted in a national criminal case may also be conducted on the basis of an MLA request, and that the said steps are carried out in accordance with Norwegian law, i.e. the Norwegian Criminal Procedure Act or the Court Administration Act.

527. The Court Administration Act was not available in English and could not be examined by the reviewers.

## **Article 46 Mutual legal assistance**

### **Paragraph 2**

*2. Mutual legal assistance shall be afforded to the fullest extent possible under relevant laws, treaties, agreements and arrangements of the requested State Party with respect to investigations, prosecutions and judicial proceedings in relation to the offences for which a legal person may be held liable in accordance with article 26 of this Convention in the requesting State Party.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

528. MLA can be afforded in relation to legal persons, as permitted under the laws and treaties cited under the previous provision. The Extradition Act and Court Administration Act allow for the provision of MLA by reference to the Criminal Procedure Act.

#### **(b) Observations on the implementation of the article**

529. Although no concrete examples or statistics were available, it was explained during the country visit that there have been numerous requests for MLA in criminal matters involving legal persons and that Norway has faced no difficulties in executing these requests. According to Norway, MLA requests regarding physical and legal persons are treated equally.

## **Article 46 Mutual legal assistance**

### **Subparagraphs 3 (a) to (i)**

*3. Mutual legal assistance to be afforded in accordance with this article may be requested for any of the following purposes:*

*(a) Taking evidence or statements from persons;*

*(b) Effecting service of judicial documents;*

*(c) Executing searches and seizures, and freezing;*

*(d) Examining objects and sites;*

*(e) Providing information, evidentiary items and expert evaluations;*

*(f) Providing originals or certified copies of relevant documents and records, including government, bank, financial, corporate or business records;*

*(g) Identifying or tracing proceeds of crime, property, instrumentalities or other things for evidentiary purposes;*

*(h) Facilitating the voluntary appearance of persons in the requesting State Party;*

*(i) Any other type of assistance that is not contrary to the domestic law of the requested State Party;*

*(j) Identifying, freezing and tracing proceeds of crime in accordance with the provisions of chapter V of this Convention;*

*(k) The recovery of assets, in accordance with the provisions of chapter V of this Convention.*

**(a) Summary of information relevant to reviewing the implementation of the article**

530. It follows from the Extradition Act, Section 24, first paragraph, that “Upon request, it may be determined that for purposes of prosecuting a case in a foreign state, coercive measures mentioned in Sections 15, 15 a, 15 b, 16, 16 a, 16 b and 17 of the Norwegian Civil Procedure Act, may be used in the same manner as in cases of offences of a similar nature when prosecuted in Norway.” This would cover the requirement of this subparagraph of the Convention.

**(b) Observations on the implementation of the article**

531. Norway can afford the forms of mutual assistance listed in these provisions.

532. As mentioned under paragraph 1, investigative steps that can be conducted in a domestic criminal case may also be conducted on the basis of an MLA request, and the said steps are carried out in accordance with Norwegian law, i.e. the Norwegian Criminal Procedure Act or the Court Administration Act. This includes coercive measures such as the recovery of assets and identifying, freezing and tracing proceeds, as there is no specification of permissible measures in the law. No specific examples of implementation were given.

533. As described under UNCAC article 48 below, ØKOKRIM also assists national and international police and prosecuting authorities, including in matters related to asset recovery, and executes related MLA requests.

## **Article 46 Mutual legal assistance**

### **Paragraphs 4 and 5**

*4. Without prejudice to domestic law, the competent authorities of a State Party may, without prior request, transmit information relating to criminal matters to a competent authority in another State Party where they believe that such information could assist the authority in undertaking or successfully concluding inquiries and criminal proceedings or could result in a request formulated by the latter State Party pursuant to this Convention.*



5. The transmission of information pursuant to paragraph 4 of this article shall be without prejudice to inquiries and criminal proceedings in the State of the competent authorities providing the information. The competent authorities receiving the information shall comply with a request that said information remain confidential, even temporarily, or with restrictions on its use. However, this shall not prevent the receiving State Party from disclosing in its proceedings information that is exculpatory to an accused person. In such a case, the receiving State Party shall notify the transmitting State Party prior to the disclosure and, if so requested, consult with the transmitting State Party. If, in an exceptional case, advance notice is not possible, the receiving State Party shall inform the transmitting State Party of the disclosure without delay.

**(a) Summary of information relevant to reviewing the implementation of the article**

534. Norway indicates that the transmission of information as described in Paragraph 4 of article 46 is possible. This could inter alia take place in the context of established police cooperation such as INTERPOL and EUROPOL or also through EUROJUST. Relevant information could also be communicated through the FIU.

535. Section 24, paragraph 4 of the Police Act 1995 further provides that the police may share information with foreign police authorities and is not precluded by a duty of confidentiality of the police or the secrecy measures under the Criminal Procedure Act.

**Act relating to the Police, 1995**

**Section 24 – Duty of confidentiality**

...

The duty of confidentiality of the police does not prevent information from being made known to

- 1 other officers in the police service and the prosecuting authority to the extent required in the course of duty
- 2 other public authorities and to foreign collaborating police and security authorities when the purpose is to prevent or avert criminal acts
- 3 Witnesses and sources when this is necessary to enable the police to obtain information or assistance with a view to preventing or averting criminal acts.

536. Moreover, Norwegian officials would not be required to disclose evidence that is exculpatory to an accused person and was received pursuant to an MLA request where a relevant court order was issued pursuant to Section 242a, paragraph 1(d) of the Criminal Procedure Act, which sets forth grounds on which a court may decide to keep information confidential, including due to possible interference in a police collaboration with foreign authorities.

**Criminal Procedure Act**

**Section 242a**

On application by the public prosecutor the District Court may as a distinct judicial proceeding, cf. section 272 a, by order decide that the prosecuting authority may deny the person charged and his defence counsel access to information that the prosecuting authority will not put forward as evidence in the case if the granting of such access may entail any risk

- a) of a serious crime being committed against any person's life, health or liberty,
- b) that the possibility of a person participating under cover in the investigation of other cases specified in the second paragraph will be substantially impeded,
- c) that the possibility of the police preventing or investigating crimes specified in the other cases or police methodology will become known, or
- d) that police collaboration with the authorities of another country will be substantially impeded.

A decision to exempt documents from access may only be made if it is strictly necessary and does not give rise to substantial doubts in regard to the defence of the person charged.

The provisions of the first sentence, (b) to (d), of the first paragraph apply only to cases concerning an act or attempt at an act:

- a) that is punishable pursuant to statute by imprisonment for a term of five years or more, or
- b) that contravenes chapter 8 or 9 or section 162 of the Penal Code or section 5 of the Act relating to control of the export of strategic goods, services and technology, etc.

**(b) Observations on the implementation of the article**

537. Norway explained that, prior to conducting a formal investigation, the FIU may exchange information with its counterparts in other jurisdictions to determine whether there are reasonable grounds to send a formal MLA request at a later stage. This is typically done by mail or telephone.

538. No examples were available where Norway has spontaneously provided information under these circumstances without a formal request.

539. The provision is legislatively implemented.

**Article 46 Mutual legal assistance**

**Paragraph 8**

*8. States Parties shall not decline to render mutual legal assistance pursuant to this article on the ground of bank secrecy.*

**(a) Summary of information relevant to reviewing the implementation of the article**

540. Norway referred to the information provided in article 40 and article 46, paragraph 1.

**(b) Observations on the implementation of the article**

541. As noted above, a court order is not required to seize bank and financial records. Under the Penal Code, Section 210 second paragraph two and Section 230 second paragraph, the prosecuting authority can instruct the bank in these matters.

542. Moreover, there is no rule under Norwegian law that a mutual legal assistance request must be refused if there is an applicable law requiring maintenance of secrecy or confidentiality.

**Article 46 Mutual legal assistance**

**Paragraph 9**

*(a) A requested State Party, in responding to a request for assistance pursuant to this article in the absence of dual criminality, shall take into account the purposes of this Convention, as set forth in article 1;*

*(b) States Parties may decline to render assistance pursuant to this article on the ground of absence of dual criminality. However, a requested State Party shall, where consistent with the*

*basic concepts of its legal system, render assistance that does not involve coercive action. Such assistance may be refused when requests involve matters of a de minimis nature or matters for which the cooperation or assistance sought is available under other provisions of this Convention;*

*(c) Each State Party may consider adopting such measures as may be necessary to enable it to provide a wider scope of assistance pursuant to this article in the absence of dual criminality.*

**(a) Summary of information relevant to reviewing the implementation of the article**

543. Norway referred to the information provided under UNCAC article 46, paragraph 1. It also underscored that dual criminality is not a requirement with regard to non-coercive measures.

544. Regarding the types of non-coercive actions taken when rendering assistance in the absence of dual criminality, it was reported that this could be inter alia communication of information and documents, taking statements, etc.

**(b) Observations on the implementation of the article**

545. In accordance with Section 23a, paragraph 5 of the Extradition Act, dual criminality is not a requirement for the provision of MLA that does not involve coercive measures.

546. No statistics were available on the number of requests refused by Norway, including on the grounds of dual criminality.

547. The fact that an MLA request involves offences considered de minimis is not among the reasons for refusing assistance mentioned in the Extradition Act, Section 23 a paragraphs 2-5, Section 24 paragraph 3, or Section 25 paragraph 3.

548. The provision is legislatively implemented, although no case examples were available where assistance was rendered in the absence of dual criminality.

**Article 46 Mutual legal assistance**

**Paragraph 10**

*10. A person who is being detained or is serving a sentence in the territory of one State Party whose presence in another State Party is requested for purposes of identification, testimony or otherwise providing assistance in obtaining evidence for investigations, prosecutions or judicial proceedings in relation to offences covered by this Convention may be transferred if the following conditions are met:*

*(a) The person freely gives his or her informed consent;*

*(b) The competent authorities of both States Parties agree, subject to such conditions as those States Parties may deem appropriate.*

**(a) Summary of information relevant to reviewing the implementation of the article**

549. Norway cited Section 25 paragraphs 1-5 and Section 25a paragraphs 1-4 of the Extradition Act. Section 25 addresses the transfer of prisoners from Norway to a foreign

State, while prisoner transfers from a foreign State to Norway are regulated in Section 25a.

#### **Extradition Act, Sections 25 and 25a**

##### **Section 25**

1. For use in criminal proceedings in Norway or in a foreign state, it may be determined that a person who has been deprived of his or freedom in Norway due to a criminal offence, shall be transferred temporarily to a foreign state for questioning as a witness or for confrontation. Transfer as mentioned in the first sentence may also take place at the person in question's consent in order to assist in other investigations or in connection with a re-trial of a judgment.

2. A request for transfer pursuant to no. 1 shall be submitted via the Ministry, unless otherwise stated in an agreement with a foreign state. The request shall contain details of the nature of the criminal offence.

3. The request for temporary transfer for use in criminal proceedings in a foreign state shall not be allowed if the offence the prosecution concerns or an equivalent offence, is not punishable under Norwegian law, or if pursuant to the provisions in Sections 4 – 6, it cannot justify extradition. Transfer to a foreign state shall not take place if the person in question's presence is required here in Norway in connection with a criminal case, or if there are other strong grounds against transfer. Special consideration shall be paid to whether the transfer is likely to prolong the period of deprivation of his or freedom. The first sentence shall not apply to requests from Denmark, Finland, Iceland or Sweden.

4. If the person in question does not agree to transfer under paragraph 1, first sentence, the court shall decide by a ruling whether transfer is justified by law. If the person in question is being prosecuted in Norway, the case falls in under the jurisdiction of the court handling the criminal case. The provisions in Section 17 (3) apply accordingly. If the person in question consents to temporary transfer in writing to the prosecuting authority or the Norwegian Correctional Services, the local public prosecutor decides whether transfer shall take place. Before a decision regarding transfer abroad is made, a statement shall be obtained from the prison or detention authority, if the person in question is serving a sentence or has been confined to an institution.

5. Transfer may only take place on the condition that the person in question is returned as soon as possible, if necessary, within a specified time limit and that during his stay in the foreign state he is not subjected to prosecution, nor punished or extradited for any act committed before his transfer.

*Amended through Act no. 67 of 30 August 2002 (entry into force 1 January 2003 according to Royal Decree no. 938 of 30 August 2002), Act no. 78 of 4 July 2003, Act no.4 of 20 January 2012 (entry into force 16 October 2012 according to Royal Decree no. 895 of 21 September 2012), Act no. 52 of 22 June 2012 (entry into force 1 January 2013 according to Royal Decree no. 1208 of 14 December 2012).*

##### **Section 25a**

1. A person abroad who is deprived of their liberty due to a criminal offence may be transferred temporarily to Norway for questioning as a witness or to assist in other investigations. The same applies to review of a judgment.

2. A request for transfer pursuant to paragraph 1 shall be submitted to the prosecuting authority and sent via the Ministry, unless otherwise stated in an agreement with a foreign state.

3. The person being transferred shall remain remanded in custody, unless the foreign authority in question requests that this shall cease. A condition for remand in custody is that it is proved that there is a decision regarding use of remand in custody in accordance with the state in question's legislation. Act no. 4 of 20 January 2012 relating to arrest and extradition to and from Norway for criminal offences based on an arrest warrant, Section 13 (3) first and second sentence applies accordingly.

4. The person transferred shall during his stay in Norway not be subject to prosecution, punished or extradited for an offence he has committed before the transfer. The person in question shall be returned to the foreign state as soon as possible or within a given time limit.

*Added through Act no. 52 of 22 June 2012 (entry into force from 1 January 2013 according to Royal Decree no. 1208 of 14 December 2012)*

550. Dual criminality is a requirement for prisoner transfers also when the prisoner freely gives his consent, according to the Extradition Act, Section 25 paragraph 3 first sentence. A difference in the classification of the offence does not affect the dual criminality principle, cf. "if the offence to which the prosecution relates, or an equivalent offence, is not punishable under Norwegian law".

**(b) Observations on the implementation of the article**

551. The consent requirement is addressed in the second sentence of Section 25 paragraph 1. Consent from the person concerned is only required under Norwegian law if the purpose of the transfer is to assist in other evidentiary purposes than the ones mentioned in the first sentence (to be questioned as a witness or for confrontation).
552. Norway explained that all requests, both treaty-based and non-treaty based, are dealt with in accordance with Sections 25 and 25a.
553. The provision is legislatively implemented, although no case examples were available.

**Article 46 Mutual legal assistance**

**Paragraph 11**

*11. For the purposes of paragraph 10 of this article:*

*(a) The State Party to which the person is transferred shall have the authority and obligation to keep the person transferred in custody, unless otherwise requested or authorized by the State Party from which the person was transferred;*

*(b) The State Party to which the person is transferred shall without delay implement its obligation to return the person to the custody of the State Party from which the person was transferred as agreed beforehand, or as otherwise agreed, by the competent authorities of both States Parties;*

*(c) The State Party to which the person is transferred shall not require the State Party from which the person was transferred to initiate extradition proceedings for the return of the person;*

*(d) 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.*

**(a) Summary of information relevant to reviewing the implementation of the article**

554. Norway cited the Extradition Act, section 25a (quoted above).
555. There are also relevant provisions in the European Convention on Mutual Legal Assistance, the Second Additional Protocol to the Convention and the EU 2000-Convention. In addition there are relevant provisions in the two bilateral treaties with Canada and Thailand.

**(b) Observations on the implementation of the article**

556. Norway has largely implemented this provision.
557. The cited provision of the Extradition Act does not specify the requirement (d) of UNCAC article 46, paragraph 11. Norwegian officials explained during the country visit that this would be ensured in practice and that Norway would interpret its domestic legislation in line with its multilateral and bilateral treaties. Nonetheless, 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.

## **Article 46 Mutual legal assistance**

### **Paragraph 12**

*12. Unless the State Party from which a person is to be transferred in accordance with paragraphs 10 and 11 of this article so agrees, that person, whatever his or her nationality, shall not be prosecuted, detained, punished or subjected to any other restriction of his or her personal liberty in the territory of the State to which that person is transferred in respect of acts, omissions or convictions prior to his or her departure from the territory of the State from which he or she was transferred.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

558. Norway cited the following measure.

**Extradition Act, Section 25a, paragraph 4:**

“The person transferred shall during his stay in Norway not be subject to prosecution, punished or extradited for an offence he has committed before the transfer. The person in question shall be returned to the foreign state as soon as possible or within a given time limit”

#### **(b) Observations on the implementation of the article**

559. The provision is legislatively implemented, although no case examples were available.

## **Article 46 Mutual legal assistance**

### **Paragraph 13**

*13. Each State Party shall designate a central authority that shall have the responsibility and power to receive requests for mutual legal assistance and either to execute them or to transmit them to the competent authorities for execution. Where a State Party has a special region or territory with a separate system of mutual legal assistance, it may designate a distinct central authority that shall have the same function for that region or territory. Central authorities shall ensure the speedy and proper execution or transmission of the requests received. Where the central authority transmits the request to a competent Authority for execution, it shall encourage the speedy and proper execution of the request by the competent authority. The Secretary-General of the United Nations shall be notified of the central authority designated for this purpose at the time each State Party deposits its instrument of ratification, acceptance or approval of or accession to this Convention. Requests for mutual legal assistance and any communication related thereto shall be transmitted to the central authorities designated by the States Parties. This requirement shall be without prejudice to the right of a State Party to require that such requests and communications be addressed to it through diplomatic channels and, in urgent circumstances, where the States Parties agree, through the International Criminal Police Organization, if possible.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

560. The central authority for MLA in criminal matters in Norway is the Ministry of Justice and Public Security.

**(b) Observations on the implementation of the article**

561. Norway has established a central authority in accordance with this provision.

562. As noted in the introduction above, Norway made the requisite declaration to the United Nations on 21 September 2006 (C.N.788.2006.TREATIES-29):

“Article 46 (13)

The Norwegian authority responsible for receiving requests for mutual legal assistance in accordance with article 46 (13) is:

The Royal Ministry of Justice and the Police, P.O. Box 8005 Dep, N-0030 Oslo.”

563. The Ministry of Justice and Public Security has a more administrative than a substantive role in the review and processing of MLA requests. When receiving a request, the Ministry will make a brief formality check of the request, i.e. that the request is issued by the competent authority and that it fulfils the formal requirements. If it is clear that the conditions for rendering MLA are not fulfilled, the Ministry may deny the request. The Ministry may also ask for clarification or additional documents. However, it was explained that the vast majority of cases are transmitted to the competent Norwegian authority for execution after a brief formality check.

564. The request can be forwarded directly to the central authority and does not have to be sent through diplomatic channels. The request can in urgent circumstances be transmitted through INTERPOL.

**Article 46 Mutual legal assistance**

**Paragraph 14**

*14. Requests shall be made in writing or, where possible, by any means capable of producing a written record, in a language acceptable to the requested State Party, under conditions allowing that State Party to establish authenticity. The Secretary-General of the United Nations shall be notified of the language or languages acceptable to each State Party at the time it deposits its instrument of ratification, acceptance or approval of or accession to this Convention. In urgent circumstances and where agreed by the States Parties, requests may be made orally but shall be confirmed in writing forthwith.*

**(a) Summary of information relevant to reviewing the implementation of the article**

565. Norway explained that generally requests are made in writing.

566. As noted in the introduction above, Norway made the requisite declaration to the United Nations on 21 September 2006 (C.N.788.2006.TREATIES-29):

“Article 46 (14)

Norway will accept requests in English, Danish and Swedish in addition to Norwegian.”

**(b) Observations on the implementation of the article**

567. According to Norwegian officials, the central authority has no experience with oral requests. Even in urgent circumstances, requests shall be in writing. However, as stated

under paragraph 13 of UNCAC article 46 above, urgent requests can be sent through the INTERPOL.

## **Article 46 Mutual legal assistance**

### **Paragraphs 15 and 16**

*15. A request for mutual legal assistance shall contain:*

- (a) The identity of the authority making the request;*
- (b) The subject matter and nature of the investigation, prosecution or judicial proceeding to which the request relates and the name and functions of the authority conducting the investigation, prosecution or judicial proceeding;*
- (c) A summary of the relevant facts, except in relation to requests for the purpose of service of judicial documents;*
- (d) A description of the assistance sought and details of any particular procedure that the requesting State Party wishes to be followed;*
- (e) Where possible, the identity, location and nationality of any person concerned; and*
- (f) The purpose for which the evidence, information or action is sought.*

*16. The requested State Party may request additional information when it appears necessary for the execution of the request in accordance with its domestic law or when it can facilitate such execution.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

568. Norway referred to Section 13 of the Regulations relating to International Cooperation in Criminal Matters, which regulates the formal requirements with regards to outgoing MLA requests. The formal requirements regarding incoming requests for MLA involving the use of coercive measures are regulated in the Extradition Act Section 24 paragraph 2.

#### **Regulations relating to International Cooperation in Criminal Matters**

Established by Royal Degree of 14 December 2012 pursuant to Sections 46, 48, 164 and 190 of Act no. 5 of 13 August 1915 relating to the Courts of Justice, Sections 23 b, 24 a and 28 of Act no. 39 of 13 June 1975 relating to the Extradition of Offenders etc., and Section 62 and 216 a of Act no. 25 of 22 May 1981 relating to Legal Procedure in Criminal Matters.

#### **Section 13 Formulation of letters of request**

Letters of request to foreign states for the service of documents must, insofar as possible, contain information about:

- a) the authority that is submitting the request,
- b) the assistance requested,
- c) any conventions or agreements that regulate the matter with a statement of the provisions that potentially obligate the recipient to execute the request,
- d) what the documents that must be served pertain to, and
- e) the name and full address of the person the documents shall be served to.

In addition to the information in (a) to (c), letters of request to record evidence must, insofar as this is possible, contain information about:

- f) biographical data, nationality and address of the person the criminal case in Norway concerns,
- g) the background to the request,
- h) the criminal offence and the grounds for this,
- i) in the event of assistance with questioning: biographical data, nationality and address of the person who will be questioned and a more detailed description of what the person will be questioned about,
- j) relevant criminal and criminal procedure provisions and
- k) contact person in Norway with contact details

For requests that involve the use of coercive measures, a decision by a competent Norwegian authority authorising the use of such coercive measures must be enclosed.

Case documents shall only be enclosed if they are of importance to the execution of the request. The request should not refer to documents other than those that are enclosed.



If it is desirable that representatives of Norwegian authorities and possibly defence counsels are present during the execution of the letter of request in the foreign state and that they are possibly given the opportunity to ask questions to the person who will be questioned, a separate request for this must be made. The names of the Norwegian representatives should be stated in the request.

The letter of request with any enclosures must be issued in or translated to the official language of the requested state unless otherwise stipulated in an agreement with the state in question. Letters of request to the other Nordic countries can be issued in Norwegian, Danish or Swedish.

If the request is also sent as an urgent request via Interpol, this must be reported in addition to the grounds for why the matter is urgent.

Furthermore, the requirements for the formulation of letters of request specified by or issued pursuant to an agreement with a foreign state shall be observed.

#### **Extradition Act Section 24**

..

2. The request shall be submitted to the Ministry, unless otherwise stated in the agreement with the foreign state. The request shall contain details about the nature, time and location of the criminal offence. Unless otherwise stated in an agreement with a foreign state, the request shall only be complied with if it can be proved that a decision has been made to use of coercive measures issued in accordance with the legislation of the state in question.

569. Relevant provisions from Norway's bilateral treaties on mutual legal assistance in criminal matters are set forth below.

#### **Article 15 Treaty between the Government of the Kingdom of Norway and the Government of Canada on mutual legal assistance in criminal matters**

##### **Article 15**

##### **CONTENTS OF REQUESTS**

(1) In all cases requests for assistance shall indicate:

- a. The competent authority conducting the investigation or proceedings to which the request relates;
- b. The nature of the investigation or proceedings, and include a summary of the facts and a copy of the applicable laws;
- c. The purpose of the request and the nature of the assistance sought;
- d. The degree of confidentiality required and the reason therefore;
- e. Any time limit within which the request should be executed; and
- f. Whether assistance should be provided by a court or some other authority

(2) In the following cases requests for assistance shall include:

- a. In the case of requests for the taking of evidence, search and seizure, or the location, restraint or securing the confiscation of proceeds of crime, a statement indicating the basis for belief that evidence or proceeds may be found in the Requested State;
- b. In the case of requests to take evidence from a person, an indication as to whether sworn or affirmed statements are required and a description of the subject matter of the evidence or statement sought;
- c. In the case of lending of exhibits, the current location of the exhibits in the Requested State and an indication of the person or class of persons who will have custody of the exhibits in the Requesting State, the place to which the exhibit is to be removed, any tests to be conducted and the date by which the exhibit will be returned;
- d. In the case of making detained persons available, an indication of the person or class of persons who will have custody during the transfer, the place to which the detained person is to be transferred and the date of that person's return.

(3) If necessary and where possible requests for assistance shall include:

- a. The identity, nationality and location of the person or persons who are the subject of the investigation or proceedings;

b. Details of any particular procedure or requirement that the Requesting State wishes to be followed and the reasons therefore.

(4) If the Requested State considers that the information is not sufficient to enable the request to be executed, it may request additional information.

(5) A request shall be made in writing. In urgent circumstances, a request may be made orally but shall be confirmed in writing promptly thereafter.

**Article 4 Treaty between the Government of the Kingdom of Norway and the Government of the Kingdom of Thailand on mutual assistance in criminal matters**

**ARTICLE 4**

**Contents of Requests for Mutual Assistance**

1. A request for assistance shall be submitted in writing in the language of the Requested Party or in English. All accompanying documents shall be translated into the language of the Requested Party or into English. Documents to be served under Article 10 shall be translated into the language of the Requested Party, except where the person to be served is a national of the Requesting Party; in which case the documents should be in the language of the Requesting Party accompanied by a translation in English.

2. The request shall include the following:

a. The name of the authority conducting the investigation, prosecution, or proceedings to which the request relates;

b. The subject matter and nature of the investigation, prosecution, or proceedings;

c. A description of the evidence or information sought or the acts of assistance to be performed;

d. The purpose for which the evidence, information, or other assistance is sought; and

e. A statement or text of the relevant laws, except in cases or a request for service of documents.

3. When appropriate, a request shall also include:

a. Available information on the identity and whereabouts of a person to be located.

b. The identity and location of a person to be served, that person's relationship to the investigation, prosecution, or proceedings, and the manner in which service is to be effected;

c. The identity and location of persons from whom evidence is sought;

d. A precise description of the place or person to be searched and of the articles to be seized;

e. A description of the manner in which any testimony or statement is to be taken and recorded;

f. A list of questions to be asked;

g. A description of any particular procedure to be followed in executing the request;

h. Information as to the allowances and expenses to which a person appearing in the territory of the Requesting Party will be entitled; and

i. Any other information which may be brought to the attention of the Requested Party to facilitate its execution of the request.

**(b) Observations on the implementation of the article**

570. The relevant measures of the Extradition Act (concerning both coercive and non-coercive measures) and the cited Regulations do not contain detailed specifications regarding the acceptable format and content of incoming MLA requests. Norwegian officials explained that Norway would therefore apply the provisions of its bilateral and multilateral treaties and interpret its domestic legislation accordingly.

571. In the interest of greater legal certainty for incoming requests and for future cases, Norway may wish to consider providing further legislative or administrative specification regarding the required format and content of MLA requests.

## **Article 46 Mutual legal assistance**

### **Paragraph 17**

*17. A request shall be executed in accordance with the domestic law of the requested State Party and, to the extent not contrary to the domestic law of the requested State Party and where possible, in accordance with the procedures specified in the request.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

572. Norway cited Section 46 paragraph 3 of the Court Administration Act and Section 8 of the Regulation on International Cooperation in Criminal Matters.

573. As noted under paragraph 1 of article 46, MLA requests are carried out in accordance with Norwegian law. However, special formalities and procedures expressly indicated by the requesting State will be complied with, provided that such formalities and procedures are not prohibited pursuant to Norwegian law.

#### **Regulations relating to International Cooperation in Criminal Matters**

Established by Royal Degree of 14 December 2012 pursuant to Sections 46, 48, 164 and 190 of Act no. 5 of 13 August 1915 relating to the Courts of Justice, Sections 23 b, 24 a and 28 of Act no. 39 of 13 June 1975 relating to the Extradition of Offenders etc., and Section 62 and 216 a of Act no. 25 of 22 May 1981 relating to Legal Procedure in Criminal Matters.

#### **Section 8 Execution of letters of request**

The request must be executed pursuant to Norwegian law unless otherwise stipulated. Notice to the parties is not necessary unless this is explicitly requested. If special requirements as to form or procedure are requested, these must be observed insofar as this is possible if this is not prohibited under Norwegian law. If the request cannot be executed or can only be executed in part in accordance with the requested requirements as to form or procedure, the requesting authority should be informed about the reason for this and attempts should be made to clarify that the request will still be maintained.

If the request applies to assistance that requires a legal decision or other involvement of the courts, the prosecuting authority must submit a request for this if the legal conditions are in place.

If the provisions in paragraph one are not an obstacle to do so, the authority that is processing the case shall, when requested, provide the foreign authority with the opportunity to be present during the execution of the request and the right to ask questions.

#### **(b) Observations on the implementation of the article**

574. The provision is legislatively implemented, although no examples were available where Norway has executed requests in accordance with requested procedures.

## **Article 46 Mutual legal assistance**

### **Paragraph 18**

*18. Wherever possible and consistent with fundamental principles of domestic law, when an individual is in the territory of a State Party and has to be heard as a witness or expert by the judicial authorities of another State Party, the first State Party may, at the request of the other, permit the hearing to take place by video conference if it is not possible or desirable for the*

*individual in question to appear in person in the territory of the requesting State Party. States Parties may agree that the hearing shall be conducted by a judicial authority of the requesting State Party and attended by a judicial authority of the requested State Party.*

**(a) Summary of information relevant to reviewing the implementation of the article**

575. Norway referred to the new provision in the Extradition Act, Section 24 a, regulating the use of videoconferencing. Before the new provision came into force, the Court Administration Act Section 46 was the legal basis also for these kinds of MLA requests, as described under paragraph 1 of UNCAC article 46.

576. Chapter 4 of the Regulation on International Cooperation in Criminal Matters has more detailed provisions on the use of videoconferencing.

**Extradition Act, Section 24a**

1. For the purpose of criminal proceedings in a foreign state, a foreign court, or other competent authority under legislation of the state in question, may request a live link court examination of witnesses and experts who are in Norway. The request shall be submitted to the Ministry, unless otherwise stipulated in an agreement with a foreign state.

2. Live link examination under this provision is conducted in a Norwegian court. The person who is to testify shall be summoned in accordance with the provisions in the Criminal Procedure Act. Sections 108, 109 and 143 (3) apply accordingly to the duty to attend as a witness or expert. The third sentence does not apply to examination by telephone.

3. The examination may be conducted in accordance with the legislation of the state that has submitted the request, as long as such a procedure is not prohibited under Norwegian law. A judge shall be present during the entire examination and shall control the questioning.

4. As regards the right and duty of the witness and the expert to testify, the provisions in Chapters 10 and 11 of the Criminal Procedure Act apply accordingly to the extent applicable. The person being interviewed may also refuse to give a statement to the extent the legislation of the requesting state permits this. Live link examination may only take place if the witness or the expert agrees.

5. As regards criminal liability for making a false statement, Sections 163 to 167 of the General Civil Penal Code shall apply accordingly.

6. The King-in-Council may issue regulations relating to live link examination under this provision, including provisions relating to the keeping of minutes, use of an interpreter and control of the examination by the judge, etc.

*Added through Act no. 52 of 22 June 2012 (entry into force on 1 January 2013 according to Royal Decree no. 1208 of 14 December 2012).*

**Regulations relating to International Cooperation in Criminal Matters**

Established by Royal Decree of 14 December 2012 pursuant to Sections 46, 48, 164 and 190 of Act no. 5 of 13 August 1915 relating to the Courts of Justice, Sections 23 b, 24 a and 28 of Act no. 39 of 13 June 1975 relating to the Extradition of Offenders etc., and Section 62 and 216 a of Act no. 25 of 22 May 1981 relating to Legal Procedure in Criminal Matters.

**Chapter 4 Questioning by video or telephone conference (live link court examination)**

**Section 15 Scope**

The provisions in this chapter supplement the rules relating to live link court examination pursuant to Section 24 a of the Extradition Act. The provisions shall be without prejudice to the right to conduct cross-border, non-judicial live link examinations (police questioning).

**Section 16 Decision on whether the letter of request shall be complied with etc.**

A decision to comply with a request from a foreign authority to conduct a live link court examination shall be rendered by the district court.

The decision pursuant to paragraph one shall be rendered in accordance with the provisions in Section 23 a of the Extradition Act. The request can also be rejected if the court does not have the necessary technical equipment to conduct a live link court examination. Before the request is rejected pursuant to the second sentence, attempts must be made to procure such technical equipment. The request cannot be rejected pursuant to the second sentence if the requesting authority provides the necessary technical equipment.

**Section 17 Summons to a live link court examination**

The district court shall summon the person who will provide testimony in accordance with the rules in the Criminal Procedure Act. In the summons to the live link court examination it must be stated that the questioning is conditional upon consent from the person who is to be questioned and a deadline should be set for a response about whether the person in question is willing to testify.

**Section 18 The judge's control of the questioning, duty to provide guidance, records of the court etc.**

The judge who is present during the questioning must ensure to verify the identity of the person who is to be questioned. In addition, the judge must also ensure compliance with Section 117-127 of the Criminal Procedure Act.

Records of the court will be compiled and shall contain information about:

- a) the time and location of the questioning,
- b) the identity of the person questioned,
- c) the identities of all other people involved in the questioning in Norway and the capacities in which they were involved,
- d) any assurances or similar that were given,
- e) the technical circumstances under which the questioning took place, and
- f) any other information for which a separate request is made to be recorded.

The statements that are given are not recorded unless the requesting authority requests this or other special grounds exist for doing so. Transcripts of the records of the court must be sent to the requesting authority as soon as the questioning has been completed.

**Section 19 Interpreter**

When using interpreters, Section 135 of the Courts of Justice Act applies correspondingly. The judge can agree to be assisted by an interpreter to the extent to which this is necessary for controlling the questioning.

**Section 20 Reimbursement of costs**

The court shall compile a statement of costs in connection with the questioning. Reimbursement of the costs can be claimed by the requesting authority if this is specified in an agreement with the foreign state.

**Section 21 Request to foreign state for live link court examination**

In requests for live link court examination from Norwegian authorities, it must be stated, in addition to the information referred to in Section 13, as to why it is not desirable or possible for the person who shall be questioned to attend in person. The names and positions of the people who shall conduct the questioning must also be stated.

**(b) Observations on the implementation of the article**

577. Norway has had experience with the use of videoconference, both with regard to incoming and outgoing requests. One example was referred to during the country visit in connection with the 2011 terrorist attacks against government offices in Oslo and on Utoya Island, Norway. In the case, witness testimony received via videoconference from the United States of America was introduced in a Norwegian court under the MLA procedure.

578. The provision is implemented.

**Article 46 Mutual legal assistance**

**Paragraph 19**

*19. The requesting State Party shall not transmit or use information or evidence furnished by the requested State Party for investigations, prosecutions or judicial proceedings other than those stated in the request without the prior consent of the requested State Party. Nothing in this paragraph shall prevent the requesting State Party from disclosing in its proceedings information or evidence that is exculpatory to an accused person. In the latter case, the requesting State Party shall notify the requested State Party prior to the disclosure and, if so requested, consult with the requested State Party. If, in an exceptional case, advance notice is not possible, the requesting State Party shall inform the requested State Party of the disclosure without delay.*

**(a) Summary of information relevant to reviewing the implementation of the article**

579. Norway referred to the information under article 46 paragraph 1.

**(b) Observations on the implementation of the article**

580. As mentioned in paragraph 5 of article 46 above, Norwegian officials would not be required to disclose evidence that is exculpatory to an accused person and was received pursuant to an MLA request where a relevant court order was issued pursuant to Section 242a, paragraph 1(d) of the Criminal Procedure Act (quoted under paragraph 5 of UNCAC article 46 above).

581. Norway explained that it would apply its multilateral and bilateral treaties and interpret the domestic laws in conformity with the applicable treaties. As a result, it would withdraw the case or not charge the individual where evidence obtained pursuant to an MLA request was received and could be used for purposes other than as stated in the request.

582. Nonetheless, in the interest of greater legal certainty, Norway may wish to consider providing further legislative specification regarding the limitation on use of information as described in the provision under review.

583. Relevant provisions from Norway's bilateral treaties on mutual legal assistance in criminal matters are set forth below.

**Article 18 Treaty between the Government of the Kingdom of Norway and the Government of Canada on mutual legal assistance in criminal matters**

**Article 18**

**LIMITATION OF USE**

(1) The Requesting State shall not disclose or use information or evidence furnished for purposes other than those stated in the request without the prior consent of the Central Authority of the Requested State.

(2) The Requested State may require, after consultation with the Requesting State, that information or evidence furnished or the source of such information or evidence be used subject to such terms and conditions as it may specify.

**Article 7(1) Treaty between the Government of the Kingdom of Norway and the Government of the Kingdom of Thailand on mutual assistance in criminal matters**

**ARTICLE 7**

**Limitations on Use**

1. Information and evidence obtained under this Treaty, as well as information derived therefrom, shall not be used for purposes other than those stated in the request without the prior consent of the Requested Party.

**Article 46 Mutual legal assistance**

**Paragraph 20**

*20. The requesting State Party may require that the requested State Party keep confidential the fact and substance of the request, except to the extent necessary to execute the request. If the requested State Party cannot comply with the requirement of confidentiality, it shall promptly inform the requesting State Party.*

**(a) Summary of information relevant to reviewing the implementation of the article**

584. Norway referred to Section 242a, paragraph 1(d) of the Criminal Procedure Act (quoted under paragraph 5 of UNCAC article 46 above), which sets forth grounds on which a court may decide to keep information confidential from a defendant, including due to possible interference in a police collaboration with foreign authorities.

**(b) Observations on the implementation of the article**

585. It appears that Norway would comply with a request for confidentiality on the grounds of the cited Section of the Criminal Procedure Act on the basis of a court order. However, it is noted that the cited measures only apply to cases involving offences punishable by a minimum of five years, which would not encompass all corruption-related offences, and that the cited measures do not prevent disclosure for other purposes.

586. Norway further explained that it would apply its multilateral and bilateral treaties and interpret the domestic laws in conformity with the applicable treaties. As a result, it would comply with a request for confidentiality that was not in contradiction to its domestic law.

587. No further information was available during the country visit as to whether issues of confidentiality have arisen in practice.

588. The confidentiality provisions in the domestic legislation do not appear to fully address the requirements of the provision under review, which appear to be implemented largely through Norway's treaties. Norway may wish to monitor the application of the confidentiality provisions in practice for future cases, especially not involving treaty partners.

589. Relevant provisions from Norway's bilateral treaties on mutual legal assistance in criminal matters are set forth below.

**Article 17 Treaty between the Government of the Kingdom of Norway and the Government of Canada on mutual legal assistance in criminal matters**

**ARTICLE 17**

**CONFIDENTIALITY**

(1) The Requested State may require, after consultation with the Requesting State, that information or evidence furnished or the source of such information or evidence be kept confidential or be disclosed or used only subject to such terms and conditions as it may specify.

(2) The Requested State shall, to the extent requested, keep confidential a request, its contents, supporting documents and any action taken pursuant to the request. If the request cannot be executed without breaching the confidentiality requirement, the Requested State shall so inform the Requesting State prior to executing the request and the latter shall then determine whether the request should nevertheless be executed.

**Article 7(2) and (3) Treaty between the Government of the Kingdom of Norway and the Government of the Kingdom of Thailand on mutual assistance in criminal matters**

**Limitations on Use**

2. The Requesting Party may require that the application for assistance, its contents and related documents, and the granting of assistance be kept confidential. If the request cannot be executed without breaching the required confidentiality, the Requested Party shall so inform the Requesting Party which shall then determine whether the request should nevertheless be executed.

3. The Requested Party may require that information or evidence furnished, and information derived therefrom, be kept confidential in accordance with conditions which it shall specify. In that case, the Requesting Party shall comply with the conditions, except to the extent that the information or evidence is needed in a public trial resulting from the investigation, prosecution, or proceedings described in the request.

## **Article 46 Mutual legal assistance**

### **Paragraph 21**

*21. Mutual legal assistance may be refused:*

*(a) If the request is not made in conformity with the provisions of this article;*

*(b) If the requested State Party considers that execution of the request is likely to prejudice its sovereignty, security, ordre public or other essential interests;*

*(c) If the authorities of the requested State Party would be prohibited by its domestic law from carrying out the action requested with regard to any similar offence, had it been subject to investigation, prosecution or judicial proceedings under their own jurisdiction;*

*(d) If it would be contrary to the legal system of the requested State Party relating to mutual legal assistance for the request to be granted.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

590. The grounds for refusal with regard to non-coercive MLA are regulated in the Extradition Act, Section 23a, paragraphs 2-5. In addition, the grounds for refusal with regard to MLA requests involving the use of coercive measures are specified in the Extradition Act Section 24 paragraph 3. Furthermore, the Regulation on International Cooperation in Criminal Matters, Section 16 paragraph 2, regulates the grounds for refusal with regard to requests for hearing by videoconference.

#### **Extradition Act, Section 23a, paragraphs 2-5**

2. The request shall be denied if implementation would violate Norway's sovereignty, endanger national security or contrary to public policy or other significant interests.

3. The request may also be denied if

a) It concerns an act that under the provisions in Sections 4 and 5 cannot justify extradition,

b) The executive authority knows that in Norway or in a state that is not a signatory to the Schengen agreement or a member of the European Union a judgment or a ruling has been delivered that precludes further prosecution for the offence the request concerns,

c) There are weighty reasons why the request should not be complied with,

4. Sub-section 3 letter a) does not apply to a request from a state that is signatory to the Schengen agreement or the European Union.

5. It does not prevent implementation of the request that the offence the request concerns is not punishable under Norwegian law. However, this does not concern requests that involve use of coercive measures, cf. Section 24 (3).

*Added through Act no. 52 of 22 June 2012 (entry into force 1 January 2013 according to Royal Decree no. 1208 of 14 December 2012).*

#### **Extradition Act, Section 24, paragraphs 3 and 4**

...

3. The request may not be complied with if the offence to which the prosecution relates, or an equivalent offence, is not punishable under Norwegian law, or if it does not warrant extradition under the provisions of §§ 4-6. In the case of a request from Denmark, Finland, Iceland or Sweden, instead of the requirements of



item one it shall be required that extradition for the offence cannot justify extradition under the Act of 3 March 1961 No. 1 § 4.

4. The Ministry may reject the request forthwith if it does not comply with the conditions of subsection two, or if it is obvious that it will be rejected. If the request is not refused under this provision, the case shall be sent to the Public Prosecutor. When the court considers whether there is legal justification for coercive measures, it shall also consider whether the conditions of this section are fulfilled. The provisions of §§ 17 subsection three and § 18 subsection one shall apply correspondingly. In connection with the agreement mentioned in the first item of subsection two, it may nevertheless be resolved that the case be decided by an authority other than the Ministry.

#### **Regulations relating to International Cooperation in Criminal Matters, Section 16**

Established by Royal Degree of 14 December 2012 pursuant to Sections 46, 48, 164 and 190 of Act no. 5 of 13 August 1915 relating to the Courts of Justice, Sections 23 b, 24 a and 28 of Act no. 39 of 13 June 1975 relating to the Extradition of Offenders etc., and Section 62 and 216 a of Act no. 25 of 22 May 1981 relating to Legal Procedure in Criminal Matters.

#### **Chapter 4 Questioning by video or telephone conference (live link court examination)**

#### **Section 16 Decision on whether the letter of request shall be complied with etc.**

A decision to comply with a request from a foreign authority to conduct a live link court examination shall be rendered by the district court.

The decision pursuant to paragraph one shall be rendered in accordance with the provisions in Section 23 a of the Extradition Act. The request can also be rejected if the court does not have the necessary technical equipment to conduct a live link court examination. Before the request is rejected pursuant to the second sentence, attempts must be made to procure such technical equipment. The request cannot be rejected pursuant to the second sentence if the requesting authority provides the necessary technical equipment.

591. Relevant provisions from Norway's bilateral treaties on mutual legal assistance in criminal matters are set forth below.

#### **Article 3 Treaty between the Government of the Kingdom of Norway and the Government of Canada on mutual legal assistance in criminal matters**

##### **Refusal or postponement of assistance**

(1) Assistance may be refused if the request does not meet the legal requirements for execution in the Requested State or, in the opinion of the Requested State, the execution of the request would impair its sovereignty, security, ordre public, essential public interest, prejudice the safety of any person, or be unreasonable on other grounds.

(2) Assistance may be postponed by the Requested State if the execution of the request would interfere with an ongoing investigation or prosecution in the Requested State.

(3) The Requested State shall promptly inform the Requesting State of a decision of the Requested State not to comply in whole or in part with a request for assistance, or to postpone execution, and shall give reasons for that decision.

(4) Before refusing a request for assistance or before postponing the execution of a request, the Requested State shall consider whether assistance may be provided subject to such conditions as it deems necessary. If the Requesting State accepts assistance subject to these conditions, it shall comply with them.

#### **Article 2 Treaty between the Government of the Kingdom of Norway and the Government of the Kingdom of Thailand on mutual assistance in criminal matters**

##### **Limitations on Compliance**

1. The Requested Party may refuse to execute a request to the extent that:

- (a) the execution of the request would prejudice the sovereignty, security, or other essential public interest of the Requested Party; or
- (b) the request relates to a political offence.

2. Before refusing the execution of any request pursuant to this Article, the Requested Party shall determine whether assistance can be given subject to such conditions as it deems necessary. If the Requesting Party accepts the assistance subject to these conditions, it shall comply with the conditions.

3. If the execution of a request would interfere with an ongoing criminal investigation, prosecution or proceeding in the Requested Party, execution may be postponed by that Party, or made subject to conditions determined to be necessary by that Party after consultations with the Requesting Party.

4. The Requested Party shall promptly inform the Requesting Party of the reason for refusing or postponing the execution of a request.

**(b) Observations on the implementation of the article**

592. Norway has adopted measures to implement the provision under review. Norway recognizes grounds for refusal as provided in the provision under review.

**Article 46 Mutual legal assistance**

**Paragraph 22**

*22. States Parties may not refuse a request for mutual legal assistance on the sole ground that the offence is also considered to involve fiscal matters.*

**(a) Summary of information relevant to reviewing the implementation of the article**

593. Norway stated that this is not in itself a reason for refusing a request for mutual legal assistance. The fact that the MLA request involves fiscal matters is not among the reasons for refusing assistance mentioned in the Extradition Act Section 23a paragraphs 2- 5 or Section 24 paragraph 3.

**(b) Observations on the implementation of the article**

594. There is no rule under Norwegian law that a mutual legal assistance request must be refused if the offence is considered to involve fiscal matters, as such grounds for refusal are not recognized under the Extradition Act.

595. The provision is legislatively implemented, although no case examples were available.

**Article 46 Mutual legal assistance**

**Paragraph 23**

*23. Reasons shall be given for any refusal of mutual legal assistance.*

**(a) Summary of information relevant to reviewing the implementation of the article**

596. It follows from the Regulation on International Cooperation in Criminal Matters Section 9 that reasons shall be given if the request for MLA is refused.

**Regulations relating to International Cooperation in Criminal Matters**

Established by Royal Degree of 14 December 2012 pursuant to Sections 46, 48, 164 and 190 of Act no. 5 of 13 August 1915 relating to the Courts of Justice, Sections 23 b, 24 a and 28 of Act no. 39 of 13 June 1975 relating to the Extradition of Offenders etc., and Section 62 and 216 a of Act no. 25 of 22 May 1981 relating to Legal Procedure in Criminal Matters.

**Section 9 Notice in the event of rejection**

If the request cannot be complied with or can only be partly complied with, the requesting authority must be informed of this as soon as possible. Grounds must be provided for full or partial rejection.

**(b) Observations on the implementation of the article**

597. The provision is implemented in Norway's regulations, although no case examples were available.

**Article 46 Mutual legal assistance**

**Paragraph 24**

*24. The requested State Party shall execute the request for mutual legal assistance as soon as possible and shall take as full account as possible of any deadlines suggested by the requesting State Party and for which reasons are given, preferably in the request. The requesting State Party may make reasonable requests for information on the status and progress of measures taken by the requested State Party to satisfy its request. The requested State Party shall respond to reasonable requests by the requesting State Party on the status, and progress in its handling, of the request. The requesting State Party shall promptly inform the requested State Party when the assistance sought is no longer required.*

**(a) Summary of information relevant to reviewing the implementation of the article**

598. It follows from the Regulation on International Cooperation in Criminal Matters, Section 5 that requests for MLA should be handled as soon as possible. If the requesting State has indicated a specific time limit for the execution of the request, and it is assumed that it would not be possible for Norwegian authorities to handle the request within the specified timeframe, the competent Norwegian authority shall inform the requesting State accordingly. There are no guidelines, besides the above mentioned provision, on timeframes to be followed.

**Regulations relating to International Cooperation in Criminal Matters**

Established by Royal Degree of 14 December 2012 pursuant to Sections 46, 48, 164 and 190 of Act no. 5 of 13 August 1915 relating to the Courts of Justice, Sections 23 b, 24 a and 28 of Act no. 39 of 13 June 1975 relating to the Extradition of Offenders etc., and Section 62 and 216 a of Act no. 25 of 22 May 1981 relating to Legal Procedure in Criminal Matters.

**Section 5 Deadlines**

Letters of request from foreign authorities must be processed as promptly as possible.

If a foreign authority has stated a deadline and it is expected that the request will not be able to be executed by the deadline, the authority that is processing the case must inform the requesting authority as soon as possible about when the request can be expected to be executed and the reason why the request cannot be executed by the deadline.

**(b) Observations on the implementation of the article**

599. Norway reported that there are no official statistics available on MLA requests, and it is not therefore possible to state the average time it takes to execute a request for MLA, which depends on the complexity of the request. However, Norway explained that if the requesting State has indicated a specific time limit, or that the matter is urgent, Norwegian authorities will aspire to handle the request within a short period of time.

**Article 46 Mutual legal assistance**

## Paragraph 25

*25. Mutual legal assistance may be postponed by the requested State Party on the ground that it interferes with an ongoing investigation, prosecution or judicial proceeding.*

### (a) Summary of information relevant to reviewing the implementation of the article

600. The postponement of the execution of an MLA request on the grounds that it interferes with an ongoing investigation, prosecution or judicial proceeding is not directly regulated in Norwegian law. However, the fact that there is an ongoing Norwegian investigation, prosecution or proceeding could be one of the reasons why would not be possible for Norwegian authorities to comply with the request within a short period of time, as mentioned above in paragraph 24 of UNCAC article 46.

601. Moreover, an ongoing investigation, prosecution or judicial proceeding would not as such be considered as a ground for refusal as described under paragraph 21 of UNCAC article 46 above.

602. Relevant provisions from Norway's bilateral treaties on mutual legal assistance in criminal matters are set forth below.

#### **Article 3(2) Treaty between the Government of the Kingdom of Norway and the Government of Canada on mutual legal assistance in criminal matters**

(2) Assistance may be postponed by the Requested State if the execution of the request would interfere with an ongoing investigation or prosecution in the Requested State.

#### **Article 2(3) Treaty between the Government of the Kingdom of Norway and the Government of the Kingdom of Thailand on mutual assistance in criminal matters**

3. If the execution of a request would interfere with an ongoing criminal investigation, prosecution or proceeding in the Requested Party, execution may be postponed by that Party, or made subject to conditions determined to be necessary by that Party after consultations with the Requesting Party.

### (b) Observations on the implementation of the article

603. As there are no official statistics on MLA, no examples of cases where assistance was refused due to an ongoing investigation or proceeding were available.

## Article 46 Mutual legal assistance

### Paragraph 26

*26. Before refusing a request pursuant to paragraph 21 of this article or postponing its execution pursuant to paragraph 25 of this article, the requested State Party shall consult with the requesting State Party to consider whether assistance may be granted subject to such terms and conditions as it deems necessary. If the requesting State Party accepts assistance subject to those conditions, it shall comply with the conditions.*

### (a) Summary of information relevant to reviewing the implementation of the article

604. The Regulation on International Cooperation in Criminal Matters has several provisions establishing an obligation to consult with a requesting State in Section 5 paragraph 2, Section 6 and Section 8 paragraph 1.

**Regulations relating to International Cooperation in Criminal Matters**

Established by Royal Degree of 14 December 2012 pursuant to Sections 46, 48, 164 and 190 of Act no. 5 of 13 August 1915 relating to the Courts of Justice, Sections 23 b, 24 a and 28 of Act no. 39 of 13 June 1975 relating to the Extradition of Offenders etc., and Section 62 and 216 a of Act no. 25 of 22 May 1981 relating to Legal Procedure in Criminal Matters.

**Section 5 Deadlines**

...

If a foreign authority has stated a deadline and it is expected that the request will not be able to be executed by the deadline, the authority that is processing the case must inform the requesting authority as soon as possible about when the request can be expected to be executed and the reason why the request cannot be executed by the deadline.

**Section 6 Incomplete requests**

If a letter of request from a foreign authority is incomplete or further information is required to be able to execute the request, the authority that is processing the case must inform the requesting authority of this and provide the relevant authority with the opportunity to rectify or supplement the request.

**Section 8 Execution of letters of request**

The request must be executed pursuant to Norwegian law unless otherwise stipulated. Notice to the parties is not necessary unless this is explicitly requested. If special requirements as to form or procedure are requested, these must be observed insofar as this is possible if this is not prohibited under Norwegian law. If the request cannot be executed or can only be executed in part in accordance with the requested requirements as to form or procedure, the requesting authority should be informed about the reason for this and attempts should be made to clarify that the request will still be maintained. ...

**(b) Observations on the implementation of the article**

605. The obligation to consult before postponing or refusing MLA is addressed in the Regulation on International Cooperation in Criminal Matters.

606. No cases were available where such consultations were held.

**Article 46 Mutual legal assistance**

**Paragraph 27**

*27. Without prejudice to the application of paragraph 12 of this article, a witness, expert or other person who, at the request of the requesting State Party, consents to give evidence in a proceeding or to assist in an investigation, prosecution or judicial proceeding in the territory of the requesting State Party shall not be prosecuted, detained, punished or subjected to any other restriction of his or her personal liberty in that territory in respect of acts, omissions or convictions prior to his or her departure from the territory of the requested State Party. Such safe conduct shall cease when the witness, expert or other person having had, for a period of fifteen consecutive days or for any period agreed upon by the States Parties from the date on which he or she has been officially informed that his or her presence is no longer required by the judicial authorities, an opportunity of leaving, has nevertheless remained voluntarily in the territory of the requesting State Party or, having left it, has returned of his or her own free will.*

**(a) Summary of information relevant to reviewing the implementation of the article**

607. The rule of speciality with regard to witnesses who are not kept in custody is not directly regulated in Norwegian law. However, although international treaties are not

directly binding in Norwegian law, all Norwegian laws should be construed as being in line with international requirements.

**(b) Observations on the implementation of the article**

608. Norway would apply its bilateral or multilateral treaties and interpret its domestic law accordingly. Nonetheless, in the interest of greater legal certainty for incoming requests and for future cases, Norway may wish to consider providing further legislative specification regarding the rule of specialty for witnesses who are not in custody.

**Article 46 Mutual legal assistance**

**Paragraph 28**

*28. The ordinary costs of executing a request shall be borne by the requested State Party, unless otherwise agreed by the States Parties concerned. If expenses of a substantial or extraordinary nature are or will be required to fulfil the request, the States Parties shall consult to determine the terms and conditions under which the request will be executed, as well as the manner in which the costs shall be borne.*

**(a) Summary of information relevant to reviewing the implementation of the article**

609. There is no general provision with regard to the question of costs. However, when Norway is the requested State, the costs are generally borne by the Norwegian State.

610. With regard to requests for the hearing by videoconference, the Regulation on International Cooperation in Criminal Matters section 20 states that expenses should be refunded by the requesting State if this has been agreed with the requesting State.

Regulations relating to International Cooperation in Criminal Matters

Established by Royal Degree of 14 December 2012 pursuant to Sections 46, 48, 164 and 190 of Act no. 5 of 13 August 1915 relating to the Courts of Justice, Sections 23 b, 24 a and 28 of Act no. 39 of 13 June 1975 relating to the Extradition of Offenders etc., and Section 62 and 216 a of Act no. 25 of 22 May 1981 relating to Legal Procedure in Criminal Matters.

**Section 20 Reimbursement of costs**

The court shall compile a statement of costs in connection with the questioning. Reimbursement of the costs can be claimed by the requesting authority if this is specified in an agreement with the foreign state.

611. Relevant provisions from Norway's bilateral treaties on mutual legal assistance in criminal matters are set forth below.

**Article 21 Treaty between the Government of the Kingdom of Norway and the Government of Canada on mutual legal assistance in criminal matters**

**Article 21**

**Expenses**

(1) The Requested State shall meet the cost of executing the request for assistance, except that the Requesting State shall bear:

(a) The expenses associated with conveying any person to or from the territory of the Requested State at the request of the Requesting State and any expenses payable to that person while in the Requesting State pursuant to a request under Article 10 or 11 of this Treaty;

(b) The expenses and fees of experts either in the Requested State or Requesting State;

(c) The expenses of translation, interpretation and transcription.

(2) If it becomes apparent that the execution of the request requires expense of an extraordinary

**Article 6 Treaty between the Government of the Kingdom of Norway and the Government of the Kingdom of Thailand on mutual assistance in criminal matters**

**ARTICLE 6**

**Costs**

1. The Requested Party shall, subject to paragraph 2 of this Article, pay all costs relating to the execution of the request, except for the fees of expert witnesses and the allowances and expenses related to travel of persons pursuant to Articles 12 and 16, which fees, allowance, and expenses shall be borne by the Requesting Party.

2. If the Central Authority of the Requested Party notifies the Central Authority of the Requesting Party that execution of the request might require cost or other resources of an extraordinary nature, or if it otherwise requests, the Central Authorities shall consult with a view to reaching agreement on the conditions under which the request shall be executed and the manner in which costs shall be allocated.

612. Examples of arrangements related to such costs exist.

**(b) Observations on the implementation of the article**

613. Norway appears to address the costs of MLA in line with the provisions of the Convention, although no specific measures exist in Norway's legislation and no case examples were available.

**Article 46 Mutual legal assistance**

**Paragraph 29**

*29. The requested State Party:*

*(a) Shall provide to the requesting State Party copies of government records, documents or information in its possession that under its domestic law are available to the general public;*

*(b) May, at its discretion, provide to the requesting State Party in whole, in part or subject to such conditions as it deems appropriate, copies of any government records, documents or information in its possession that under its domestic law are not available to the general public.*

**(a) Summary of information relevant to reviewing the implementation of the article**

614. Norway referred to the information provided under article 46 paragraph 1 concerning publicly available government records and documents.

615. Norway referred to the Criminal Procedure Act concerning the production of government records that are not available to the general public.

616. Relevant provisions from Norway's bilateral treaties on mutual legal assistance in criminal matters are set forth below.

**Article 6(1) and (2) Treaty between the Government of the Kingdom of Norway and the Government of Canada on mutual legal assistance in criminal matters**

**ARTICLE 6**

**PROVISION OF INFORMATION, DOCUMENTS, RECORDS AND OBJECTS**

(1) The Requested State shall provide copies of publicly available information, documents and records of government departments and agencies.

(2) The Requested State may provide any information, documents, records and objects in the possession of a government department or agency, but not publically available, to the same extent and under the same conditions as would be available to its own law enforcement and judicial authorities.

**Article 9(1) and (2) Treaty between the Government of the Kingdom of Norway and the Government of the Kingdom of Thailand on mutual assistance in criminal matters**

**ARTICLE 9**

**Provision of Records of Government Offices or Agencies**

1. The Requested Party shall provide copies of publicly available records of a government office or agency.
2. The Requested Party may provide any record or information in the possession of a government office or agency, but not publicly available, to the same extent and under the same conditions as it would be available to its own law enforcement or judicial authorities. The requesting Party may refuse a request pursuant to this paragraph in whole or in part.

**(b) Observations on the implementation of the article**

617. No further information was available during the country visit as to the grounds on which Norway could share non-public government records and no case examples were provided.

**Article 46 Mutual legal assistance**

**Paragraph 30**

*30. States Parties shall consider, as may be necessary, the possibility of concluding bilateral or multilateral agreements or arrangements that would serve the purposes of, give practical effect to or enhance the provisions of this article.*

**(a) Summary of information relevant to reviewing the implementation of the article**

618. As listed under paragraph 1 of UNCAC article 46, Norway has signed two bilateral treaties concerning mutual legal assistance with Canada (1998) and Thailand (1999). Multilateral agreements in relation to MLA include:

1. Council of Europe Convention on Mutual Assistance in Criminal Matters of 20 April 1959 and its Additional Protocol of 17 March 1978. Norway has also signed the Second Additional Protocol of 8 November 2001, which entered into force on 1 March 2013.
2. Treaty between Norway, Denmark, Finland, Iceland and Sweden on Mutual Legal Assistance 26 April 1974.
3. Agreement between the European Union and the Republic of Iceland and the Kingdom of Norway on the application of certain provisions of the Convention of 29 May 2000 on Mutual Assistance in Criminal Matters between the Member States of the European Union and the 2001 Protocol thereto, which entered into force for Norway on 1 January 2013.

**(b) Observations on the implementation of the article**

619. Norway has entered into relevant treaties as described in the provision under review.



## **Article 47 Transfer of criminal proceedings**

*States Parties shall consider the possibility of transferring to one another proceedings for the prosecution of an offence established in accordance with this Convention in cases where such transfer is considered to be in the interests of the proper administration of justice, in particular in cases where several jurisdictions are involved, with a view to concentrating the prosecution.*

### **(a) Summary of information relevant to reviewing the implementation of the article**

620. Norway is party to the European Convention the Transfer of Criminal Proceedings of 1972. The transfer of criminal proceedings in relation to States that are party to the said Convention is regulated in the Norwegian Act on Transfer of Criminal Proceedings to and from another European State dated 25 March 1977.

621. Requests for the transfer of proceedings from other States will be considered in accordance with the Court Administration Act Section 46 and the Extradition Act Section 23a (quoted under UNCAC article 46(1) above).

622. Norway indicated that it is not aware of any circumstances where the transfer of criminal proceedings has been considered in relation to offences established in accordance with the Convention.

### **(b) Observations on the implementation of the article**

623. The Norwegian Act on Transfer of Criminal Proceedings to and from another European State dated 25 March 1977 was not available in English and could not be examined by the reviewers.

624. During the country visit, Norwegian officials explained that requests to transfer criminal proceedings are generally handled and received in the same way as MLA requests.

625. Norway has adopted measures to implement this article, though no examples of implementation were given.

## **Article 48 Law enforcement cooperation**

### **Paragraph 1**

*1. States Parties shall cooperate closely with one another, consistent with their respective domestic legal and administrative systems, to enhance the effectiveness of law enforcement action to combat the offences covered by this Convention. States Parties shall, in particular, take effective measures:*

*(a) To enhance and, where necessary, to establish channels of communication between their competent authorities, agencies and services in order to facilitate the secure and rapid exchange of information concerning all aspects of the offences covered by this Convention, including, if the States Parties concerned deem it appropriate, links with other criminal activities;*

*(b) To cooperate with other States Parties in conducting inquiries with respect to offences covered by this Convention concerning:*

(i) *The identity, whereabouts and activities of persons suspected of involvement in such offences or the location of other persons concerned;*

(ii) *The movement of proceeds of crime or property derived from the commission of such offences;*

(iii) *The movement of property, equipment or other instrumentalities used or intended for use in the commission of such offences;*

(c) *To provide, where appropriate, necessary items or quantities of substances for analytical or investigative purposes;*

(d) *To exchange, where appropriate, information with other States Parties concerning specific means and methods used to commit offences covered by this Convention, including the use of false identities, forged, altered or false documents and other means of concealing activities;*

(e) *To facilitate effective coordination between their competent authorities, agencies and services and to promote the exchange of personnel and other experts, including, subject to bilateral agreements or arrangements between the States Parties concerned, the posting of liaison officers;*

(f) *To exchange information and coordinate administrative and other measures taken as appropriate for the purpose of early identification of the offences covered by this Convention.*

**(a) Summary of information relevant to reviewing the implementation of the article**

626. Norway has channels of communication through inter alia INTERPOL, EUROPOL and the Schengen Information System. Furthermore, the Norwegian FIU is a member of the Egmont Group of financial intelligence units. Norway also has an agreement with EUROJUST.

627. The National Authority for Investigation and Prosecution of Economic and Environmental Crime, ØKOKRIM, has significant experience in cooperating with foreign counterparts. One of ØKOKRIM's primary objectives is to assist national and international police and prosecuting authorities, including through a specialized unit dedicated to providing assistance to foreign and national law enforcement units.

628. KRIPOS, the National Criminal Investigation Service, is the contact point for international cooperation in relation to inter alia INTERPOL, EUROPOL, the Schengen Information System, and cooperation within the Baltic Sea Task Force on Organized Crime. It is also the main contact point in relation to Nordic police and customs cooperation.

**(b) Observations on the implementation of the article**

629. Norwegian law enforcement authorities cooperate through the above-mentioned 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.

630. By way of example of direct law enforcement cooperation concerning offences under this Convention, Norway reported that ØKOKRIM had two foreign bribery cases under investigation at the time of the country visit, "the Fertilizer-case" and "the shipping-

company case”. In both cases ØKOKRIM had extensive direct cooperation with law enforcement authorities in many countries, including Switzerland, the UK and the US.

631. Norway’s police has engaged in personnel exchanges with other Nordic countries on the basis of the Nordic police cooperation arrangements.

632. It was explained during the country visit that police-to-police cooperation is regulated under the Police Act and the Criminal Procedure Act.

## **Article 48 Law enforcement cooperation**

### **Paragraph 2**

*2. With a view to giving effect to this Convention, States Parties shall consider entering into bilateral or multilateral agreements or arrangements on direct cooperation between their law enforcement agencies and, where such agreements or arrangements already exist, amending them. In the absence of such agreements or arrangements between the States Parties concerned, the States Parties may consider this Convention to be the basis for mutual law enforcement cooperation in respect of the offences covered by this Convention. Whenever appropriate, States Parties shall make full use of agreements or arrangements, including international or regional organizations, to enhance the cooperation between their law enforcement agencies.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

633. Norway referred to its answer to paragraph 1 of UNCAC article 48.

634. Norway considers this Convention as the basis for law enforcement cooperation in respect of UNCAC offences.

635. There have been no cases of direct law enforcement cooperation using the Convention as a basis. However, in one of the two cases mentioned under paragraph 1 of UNCAC article 48 above, Norwegian authorities made reference to the Convention in a formal request for assistance to a country in Asia, which was still pending at the time of the country visit. The cases mentioned under that provision were covered by the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and the Schengen system.

#### **(b) Observations on the implementation of the article**

636. Norway has entered into the kind of arrangements referred to in this article, including the Nordic police cooperation arrangements, although no comprehensive list of such agreements or arrangements could be provided during the country visit. Norway has also cooperated on the basis of its existing agreements, including in corruption-related matters.

## **Article 48 Law enforcement cooperation**

### **Paragraph 3**

*3. States Parties shall endeavour to cooperate within their means to respond to offences covered by this Convention committed through the use of modern technology.*

**(a) Summary of information relevant to reviewing the implementation of the article**

637. Norway cooperates internationally with different law enforcement counterparts. Standard communication channels are used, in addition to secure covert channels like INTERPOL's I24/7 database and the Egmont system. The Norwegian FIU has one of the worlds most advanced Anti-Money Laundering solutions, which analyzes all STRs (suspicious transaction reports) to also reveal possible corruption leads. In addition, information discovered in the investigation of criminal cases and from collaborators, including Transparency International, is enriched with data from available police registers and analyzed using several different tools, including SESAM data analysis software, IBM's Analyst's Notebook and Microsoft Excel.

**(b) Observations on the implementation of the article**

638. Norway appears to have a wide range of tools for communication and analysis at the international level.

**Article 49 Joint investigations**

*States Parties shall consider concluding bilateral or multilateral agreements or arrangements whereby, in relation to matters that are the subject of investigations, prosecutions or judicial proceedings in one or more States, the competent authorities concerned may establish joint investigative bodies. In the absence of such agreements or arrangements, joint investigations may be undertaken by agreement on a case-by-case basis. The States Parties involved shall ensure that the sovereignty of the State Party in whose territory such investigation is to take place is fully respected.*

**(a) Summary of information relevant to reviewing the implementation of the article**

639. Norway takes inter alia part in the EUROJUST cooperation and also takes part in Nordic joint investigations.

**(b) Observations on the implementation of the article**

640. Norway explained that it can conduct joint investigations also with non-European and non-Nordic countries, though no further information was available as to the basis for such cooperation.

641. Regarding Nordic joint investigations, Norway reported that it cooperates frequently with the Swedish anti-corruption unit (Riksenheten mot korruption).

642. By way of examples of joint investigations involving corruption-related offences at the international level, Norwegian authorities referred to a case of controlled delivery where an employee of a UK company that delivered tools to a Norwegian oil company had demanded a bribe from an official of the Norwegian company. During the investigation, law enforcement officers transported the money by way of controlled delivery in order to arrest the suspect.

## Article 50 Special investigative techniques

1. *In order to combat corruption effectively, each State Party shall, to the extent permitted by the basic principles of its domestic legal system and in accordance with the conditions prescribed by its domestic law, take such measures as may be necessary, within its means, to allow for the appropriate use by its competent authorities of controlled delivery and, where it deems appropriate, other special investigative techniques, such as electronic or other forms of surveillance and undercover operations, within its territory, and to allow for the admissibility in court of evidence derived therefrom.*

2. *For the purpose of investigating the offences covered by this Convention, States Parties are encouraged to conclude, when necessary, appropriate bilateral or multilateral agreements or arrangements for using such special investigative techniques in the context of cooperation at the international level. Such agreements or arrangements shall be concluded and implemented in full compliance with the principle of sovereign equality of States and shall be carried out strictly in accordance with the terms of those agreements or arrangements.*

3. *In the absence of an agreement or arrangement as set forth in paragraph 2 of this article, decisions to use such special investigative techniques at the international level shall be made on a case-by-case basis and may, when necessary, take into consideration financial arrangements and understandings with respect to the exercise of jurisdiction by the States Parties concerned.*

4. *Decisions to use controlled delivery at the international level may, with the consent of the States Parties concerned, include methods such as intercepting and allowing the goods or funds to continue intact or be removed or replaced in whole or in part.*

### (a) Summary of information relevant to reviewing the implementation of the article

643. For offences under the Convention, coercive measures available under the Criminal Procedure Act are available as special investigative techniques, including inter alia:

- Communication control (tapping) (Section 216a),
- Secret search (Section 200a),
- Video surveillance and technological tracking (Chapter 15a),
- Concealed video surveillance of a public place (Section 202a).

However, the majority of these measures require that there is just cause for suspicion of a serious crime (maximum penalty of 5 or 10 years imprisonment).

644. Moreover, under Section 216i(b) of the Criminal Procedure Act, the use of wiretapping is limited to acts necessary to prove the crime giving rise to the need for the wiretapping.

#### **Criminal Procedure Act, Section 216i**

All persons shall maintain secrecy concerning any application or decision relating to communication control in any case, and concerning any information derived from such control. The same applies to other information which is of significance for the investigation, and which they become acquainted with in connection with such control or the case. The duty of secrecy shall not prevent the information being used

- a) In the course of investigating a criminal matter, including examination of the suspects,
- b) As evidence of a criminal matter that may justify the form of communication control from which information is derived,
- c) In order to prevent an innocent person being penalized,
- d) In order to avert a criminal act punishable by a custodial sentence, or
- e) In order to provide the control committee with information.

Section 166 a, second paragraph, shall apply correspondingly.

All persons shall maintain secrecy vis-à-vis unauthorized persons concerning information about any person's private affairs with which they have become acquainted in connection with communication control.

645. Other special investigative means, such as controlled delivery and infiltration, are not statutorily regulated in Norway. The availability of such investigative means follows from court practice and guidelines issued by the Director General of Public Prosecutions and must be assessed on a case by case basis. A general restriction regarding the use of controlled delivery and other means is that the technique may not constitute provocation.

**(b) Observations on the implementation of the article**

646. It was reported during the country visit that wiretaps had been employed in 2011 in 175 criminal cases mostly related to narcotics offences, and that the use of such wiretaps was prohibited by the court in only three cases. In two cases their use was permitted following appeals regarding the use of such techniques. The numbers were not limited to cases at the international level.

647. The guidelines issued by the Director General of Public Prosecutions were not available in English and could not be examined by the reviewers.

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