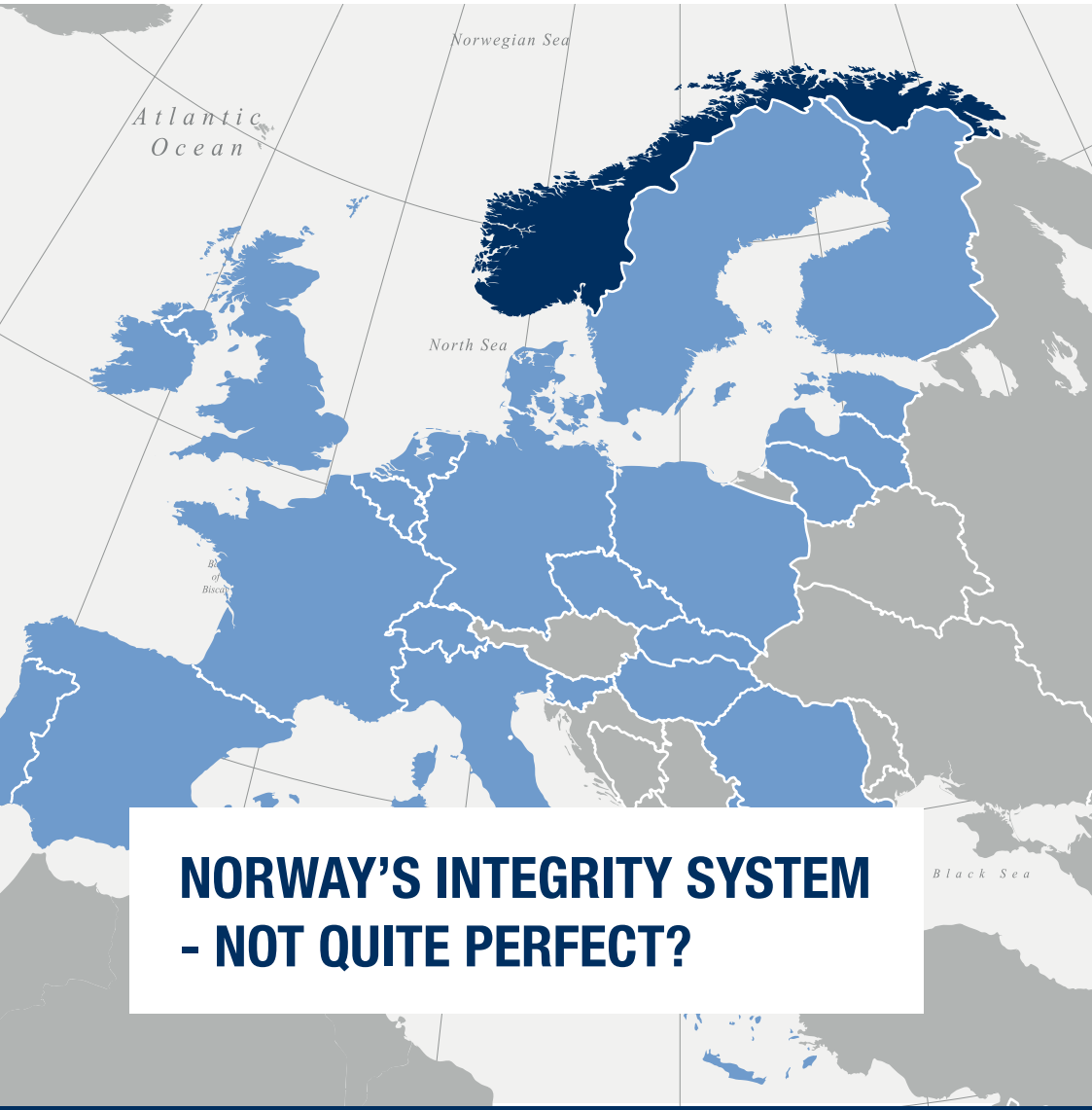
TRANSPARENCY INTERNATIONAL NORWAY




# NORWAY'S INTEGRITY SYSTEM - NOT QUITE PERFECT?

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# CONTENTS

Foreword ..... p. 5
Abbreviations ..... p. 6
Introduction: A study of Norway's integrity system ..... p. 7
Summary ..... p. 13
Country profile ..... p. 25
Corruption profile ..... p. 33
Anti-corruption work ..... p. 45
1. The Storting ..... p. 59
2. The Government ..... p. 81
3. The Courts/Judiciary ..... p. 101
4. The Public Sector ..... p. 123
5. Police and the Prosecuting Authorities ..... p. 157
6. The Electoral System ..... p. 179
7. The Parliamentary Ombudsman ..... p. 195
8. The Office of the Auditor General ..... p. 211
9. Political Parties ..... p. 227
10. The Media ..... p. 251
11. Civil Society ..... p. 271
12. The Business Sector ..... p. 285
Literature ..... p. 307
Appendix 1 - List of interviewees ..... p. 320
Appendix 2 – NIS indicator sheet ..... p. 321

# FOREWORD

*National Integrity System* (NIS) measures the vulnerability and risk of corruption in key public institutions. The report forms the final result of the first national integrity study (hereinafter NIS study) conducted in Norway. The NIS study is based on a methodology developed by Transparency International. The study was conducted in the summer/autumn 2011 and spring 2012. The report is drawn up by researcher Helge Renå at the Norwegian Institute for Urban and Regional Research (NIBR). The chapter on political parties is written by a PhD student at the University of Oslo, Anders Ravik Jupskås. Renå has conducted the study on behalf of Transparency International Norway (TI-N). Researcher Staffan Andersson (Linnéuniversitetet) has been a supervisor. Special Adviser Gro Skaaren-Fystro in TI-N has headed the project.

TI-N would like to thank the Finance Markets Fund and the Ministry of Government Administration, Reform and Church Affairs for financial support for the project.

A reference group comprising of representatives with extensive experience in various areas relevant to this study was established. The group consisted of Kari Hesselberg (Norwegian Association of Local and Regional Authorities), Tina Søreide (Chr. Michelsen Institute), Dag Nenningsland (Office of Auditor General), Trygve Laake (Agency for Public Management and eGovernment), Åsfrid Betten (PricewaterhouseCoopers), Anne-Mette Dyrnes (Court of Appeal), Lise Stensrud (Norad), Beate Slydal (Amnesty International) and Erik Lundeby (NHO). The group has had three meetings. They have also provided written comments and input on several occasions. The members' participation has been voluntary, and they have put in a significant effort in this work. The reference group deserves a big thank you. Thanks are also extended to all the informants who agreed to participate in interviews for this study, many of these have also commented on certain draft chapters. The report has been subjected to NIBR procedures for quality assurance.

The researcher is responsible for the analysis portion of the NIS study. The reference group has provided input and advice during the research process. TI-N is responsible for the report's recommendations.

TI-N hopes that the study helps to promote awareness on corruption risks and strengthens the work towards integrity and transparency in Norwegian social institutions.

Secretary General Guro Slettemark Chairman Christian Hambro

# ABBREVIATIONS

| | |
|---|---|
| GDP | Gross domestic product |
| CPI | Corruption Perception Index |
| DA | Courts Administration |
| DnD | The Norwegian Judges' Association |
| Difi | Agency for Public Management and eGovernment |
| Doffin | Database for public procurement |
| EITI | Extractive Industries Transparency Initiative |
| EU | The European Union |
| EEA | European Economic Area |
| FAD | Ministry of Government Administration, Reform and Church Affairs |
| FO | The Storting's rules of procedure |
| FOA | Regulations on Public Procurement |
| FVL | The Public Administration Act |
| GCB | Global Corruption Barometer |
| GRECO | Group of States against Corruption |
| Const. | The Constitution |
| Kofa | The Complaints Board for Public Procurement |
| LGA | Local Government Act |
| KS | Norwegian Association of Local and Regional Authorities |
| LDO | The Equality and Anti-Discrimination Ombud |
| CBCR | Country-by-country reporting |
| LOA | The Public Procurement Act |
| MLGRD | Ministry of Local Government and Regional Development |
| NHO | The Confederation of Norwegian Enterprises |
| NIS | National Integrity Systems Study |
| NKRF | Norwegian Municipal Auditors Association |
| Norad | The Directorate for Development Cooperation |
| OECD | Organisation for Economic Co-operation and Development |
| PWYP | Publish What You Pay |
| SSB | Statistics Norway |
| strl | The Penal Code |
| TI | Transparency International |
| TI-N | Transparency International Norway |
| TJN | Tax Justice Norway |
| tml | Civil Service Act tvmlCivil Procedure Act |
| UD | Ministry of Foreign Affairs |

# INTRODUCTION: A STUDY OF NORWAY'S SYSTEM OF INTEGRITY

This report constitutes the final result of the first national integrity study conducted in Norway, and is based on a methodology developed by Transparency International, in collaboration with international experts and specialists. This methodological framework is applied in this study with certain modifications that have been made to adapt the framework to Norwegian conditions. In 2011 NIS studies were launched in 23 European countries with financial support from the European Commission, which will result in 23 country reports (corresponding to the one you are currently reading), as well as a regional report on overall similarities and differences between countries. The regional report and most of the country reports are now complete and available on Transparency International's website. The Norwegian NIS study has taken place in parallel with these processes, and findings from the Norwegian study are included in the basis of the regional report. Previously almost 70 Transparency International departments have completed NIS studies.

Initially, it is emphasized that this report and the NIS methodology employs an anti-corruption perspective – the report's assessments are made on the basis of such a perspective. That is not to say that there are not other considerations that may be relevant. For example, the need for new laws and regulations, or new control measures, must always be weighed against other considerations such as management efficiency.

### READER'S GUIDE

It is recommended that this introductory chapter on how the NIS methodology is structured is read first. Thereafter each pillar chapter may be read independently of one another. The summary highlights some of the weaknesses that this study points out. For a broader review of a pillar's strengths and weaknesses, one should therefore read the pillar chapter. It should be noted that the set of sub-questions that underlie each individual indicator question in the pillar chapters is attached as an appendix. The reader can thus, if desired, see what the individual indicator questions emphasize.

## WHAT IS MEANT BY A NATIONAL INTEGRITY SYSTEM?

In Transparency International's definition, a country's national integrity system consists of the institutions in a country that are important in the struggle against corruption. When these institutions function well, they comprise a healthy and robust national integrity system – a system that is effective in the struggle against corruption as a part of the greater struggle against abuse of power and other corrupting behaviour more generally. On the other hand, when these institutions are characterized by inadequate regulation and lack of accountability, there is reason to believe that the risk of corruption and other corrupting behaviour increases, with the negative effect this has on important social objectives such as equitable growth, sustainable development and social equality. Therefore, the strengthening of the national integrity system may also contribute to better governance and provide a more equitable society.[1]

This study examines the twelve pillars (institutions), which, in the NIS methodology's terminology, constitute the overall integrity system in Norway:[2]

| | | |
|---|---|---|
| The Storting | Police and the Prosecuting Authorities | Political parties |
| The Government | The Electoral System | The Media |
| The Judiciary | The Parliamentary Ombudsman | Civil Society |
| The Public Sector | The Office of the Auditor General | The Business Sector |

## HOW ARE THE INSTITUTIONS EXAMINED?

There are many ways to assess whether an institution can be said to be robust, efficient and characterized by integrity. The NIS methodology assesses the twelve institutions along three dimensions: *capacity, governance* and *role*. Each dimension comprises a set of indicator questions answered qualitatively, in the form of a text, and quantitatively, in that each indicator is awarded a score based on predetermined criteria. The chart on the next page schematically illustrates the fixed analytical framework applied to each institution.

| The NIS pillars | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| The Storting | The Government | The Judiciary | The Public Sector | The political parties | Police and prosecution | The electoral body | The ombudsman | OAG | Media | Civil Society Organisations | The private sector |

For each pillar

| Dimensions | Capacity | | | | Governance | | | | | | Role |
|---|---|---|---|---|---|---|---|---|---|---|---|
| Indicators | Resources | | Independence | | Transparency | | Accountability | | Integrity | | Individual from pillar to pillar |
| | Law | Practice | Law | Practice | Law | Practice | Law | Practice | Law | Practice | Law and practice |

The capacity dimension consists of the resources and independence indicators. The Governance consists of the transparency, accountability and integrity mechanisms indicators. The capacity and governance dimensions are the same for all pillar chapters in the sense that they include the same indicators. All of these indicators are twofold, where one deals with legislation and the other with practice. The final dimension – role – consists of one to three indicators. These vary between the different pillar chapters. These indicators more specifically concern the role of the institution in question in corruption prevention work, one does not distinguish between law and practice. The table below provides a general explanation of what the central question/questions is/are within the various indicators. What the indicators specifically refer to will vary somewhat between the respective institutions, but it will be apparent from the actual questions in each pillar chapter.

| Indicator | Description |
|---|---|
| Resources | To which extent does the institution have sufficient resources to perform its role. |
| Independence | To which extent the institution is sufficiently independent, including whether the institution is exposed to undue influence or control by others |
| Transparency | To which extent is there potential for transparency in the institution's activities |
| Accountability | To which extent are there mechanisms and arrangements that ensure that the institution is held responsible for its activities |
| Integrity Mechanisms | To which extent are there mechanisms that ensure the institution's integrity. This particularly refers to provisions to ensure that the institution's representatives act in an honest manner, hereunder ethical guidelines, partiality provisions, procedures for notification, etc. |

### MORE ON THE STUDY'S APPROACH

The questions the study addresses are somewhat extensive, and hence it is difficult to provide a satisfactory answer to them. The report has been prepared on the basis of a detailed description of methodology, and the study's analyses and assessments are as far as possible based on available documentation. It is thus possible for the reader to test the study's assessments and analyses. However, there is no escaping the fact that in a study like this there will always be a certain element of discretion in the assessments being made, including the scoring of each indicator. Where assessments are based on limited material, this is explicitly stated. That said, the study has been prepared, reviewed and validated with the assistance of a number of Norwegian experts and professionals from various fields.

### DATA

The study's assessments are based on a review of statutes and regulations, document studies of existing research and studies, and expert interviews with key representatives of the institutions and external experts. Overall, in-depth interviews have been conducted with 28 people.[3] As far as possible, information from informants has been cross-checked with other sources.

All chapters have been validated by the study's advisory group, and chapter drafts have in most cases been sent to the interviewees for comments. The study is guided and structured by a set indicator score sheets, developed by the TI Secretariat in Berlin. Each indicator is answered on the basis of an indicator sheet consisting of a general question (which is repeated in the pillar chapters), a number of guiding sub-questions that specify what should be emphasized in the response to the indicator question, and guidelines for scoring each indicator. The indicator sheets are attached as a separate appendix to demonstrate, as far as possible, the basis for the study's assessments and analyses. They are developed on the basis of international experience on good practice, and TI's worldwide experience in the field. In total, the study covers almost 150 indicators (approximately twelve indicators per pillar). As the objective is a broad rather than a deep analysis, most of the pillar chapters are between 10 and 20 pages in length.

**THE SCORE SYSTEM**

Although the NIS study is a qualitative assessment, each indicator provides a score that forms the basis for the design of the NIS temple (see figure in the summary). The purpose of scoring is to summarize and highlight the pillars' main strengths and weaknesses in a straightforward manner. It is also intended to make it easier for the reader to view the entire system with a birds-eye perspective. Scoring for each indicator is done according to a five-point scale from one to five that is subsequently converted to a five-point scale from 0 to 100 (0, 25, 50, 75, 100). A score is then calculated for each dimension (equal to the average of the scores for each indicator) and the average of the three dimensions corresponding to the overall score for each pillar. The score for each pillar indicates the quality of the pillar's integrity structure. If an institution or sector has a low score, this does not mean that it (and its leaders) is "corrupt". However, this means that if an institution and any of its leaders are "corrupt", the institutional arrangements to prevent them and expose them are weak.

Responsibility for scoring is initially with the study team, but scoring also been commented and assessed by the advisory group and informants. There is no international steering group that compiles and compares the individual countries' scores. It is therefore not possible to make a direct comparison or actual ranking of countries based on the scores in different NIS studies. However, one may through qualitative comparisons gain insight into differences between countries within the respective columns, including individual indicators.

1 *See p. 3 of EU NIS Toolkit and approach 2011, URL: http://transparency.dk/wp-content/uploads/2011/06/Metode_toolkit_NIS1.pdf Last visited 31/03/2012.*

2 The NIS method actually consists of 13 pillars. The thirteenth and last pillar is the Anti Corruption Agency. Norway does not have its own national anti-corruption agency and the pillar is therefore omitted for the Norwegian study. The closest institution to this in Norway is the Norwegian National Authority for Investigation and Prosecution of Economic and Environmental Crime (Økokrim), which is the central unit for investigation and prosecution of economic crime. However, Økokrim is not a separate independent institution and is subject to the Director General of Public Prosecutions (DPP) and the Police Directorate respectively. See Chapter 5. The Police and Prosecuting Authority for further discussion.

3 See Appendix 1 for an overview of interviewees.

# Summary

# SUMMARY

This is the first time a *National Integrity System Assessment* (NIS study) has been conducted in Norway. The purpose of the study is to promote awareness of corruption risks, vulnerability and risk management in key social institutions.

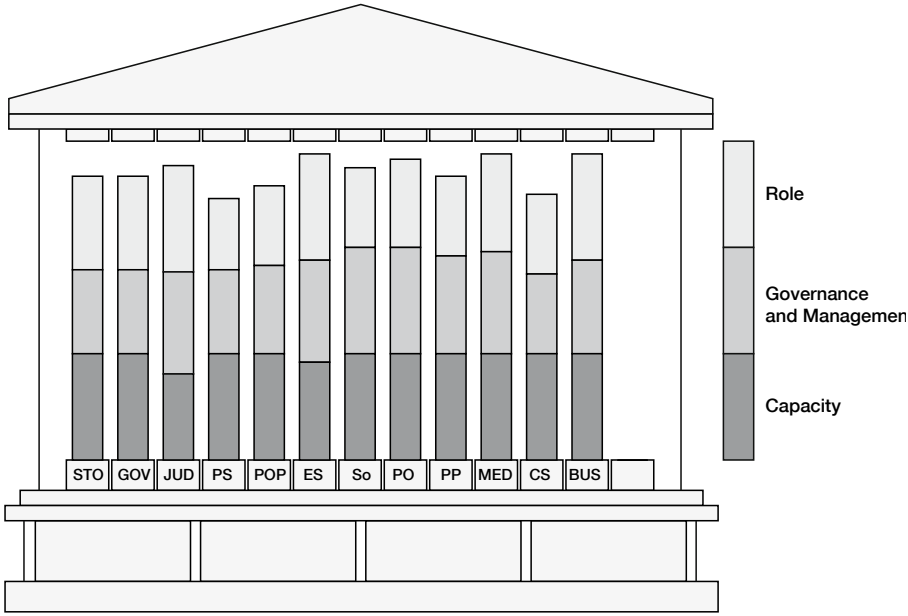
The NIS study is based on a method developed by the Transparency International Secretariat in Berlin. The study evaluates twelve key institutions and sectors (hereinafter also called pillars) in the context of both applicable legislation and practice. The assessments are based on a review of statutes and regulations, document studies of existing research and studies, and interviews with key representatives of the institutions and external experts.

The study provides a description and assessment of how well the pillars function according to the criteria and indicators assigned by the NIS method. The aim is to identify the pillars' strengths and weaknesses from a corruption prevention perspective. Transparency, independence and accountability systems are key concepts here.

**A WELL-FUNCTIONING INTEGRITY SYSTEM, BUT…**

The overall assessment is that Norway's integrity systems are generally well functioning. All columns are awarded a total score of 82 or higher, which must be said to be very good.

**Norway's integrity system**




| | | | |
|---|---|---|---|
| STO | The Storting | OAG | The Office of the Auditor General |
| GOV | The Government | PP | Political Parties |
| JUD | The Judiciary | MED | The Media |
| PS | The Public Sector | CS | Civil Society |
| POP | Police and Prosecuting Authorities | BUS | The Business Sector |
| ES | The Electoral System | | |
| PO | The Parliamentary Ombudsman | | |

Norway is considered to have a robust system of institutions that generally have sufficient resources to carry out their work and that can operate independently and autonomously. Furthermore, none of the sectors investigated can be said to be exposed to much unwarranted pressure from external parties.

The Norwegian corruption provisions are both extensive and rigorous. They apply to the public and private sector, and to domestic activities as well as overseas.

Although all pillars do well or very well in terms of score, the study also finds weaknesses in all of the pillars. Some of the shortcomings are found in actual legislation, while others are related to practice. The extent of the weaknesses and their urgency varies. The study's broad approach has limited ability to go into detail on individual points. Therefore, in some cases there is a need for more targeted studies to obtain more detailed knowledge about the *extent,* causes and what *action* may be appropriate to deal with the weaknesses. The remaining part of the summary focuses primarily on some of the shortcomings pointed out in the study. For a broader review of each pillar's strengths and weaknesses, refer to the individual chapters. The final part of the summary presents Transparency International's recommendations for further action and what should be done to strengthen the Norwegian integrity system.

#### Opportunity for greater transparency

The practice of openness and transparency is important for preventing corruption and other reprehensible practices. This is especially important within public sector bodies' decision making processes, transparency on government and private enterprises' financial activities and transparency in politicians' and government dignitaries economic interests. The practice of transparency also has a democratic aspect in that voters should know the assessments that underlie the decisions political authorities and public administration make. It is often emphasized as a strength that Norwegian society is open—which is largely correct. Transparency is expressed partly through the Freedom of Information Act, which states that:
"The case documents of the public administration are public insofar as no exception is made by or pursuant to statute" and that anyone can request access. The study shows that this picture must be nuanced.

#### Public proceedings

All proceedings in the public sector must be filed and recorded pursuant to the provisions of the Archive Act and Regulations. However, the decision on which internal documents that are to be recorded is in part up to each agency. Internal agency documents must be recorded: "as far as the agency finds it expedient." The Freedom of Information Act applies in principle to all public enterprises, with some exceptions. One of the exceptions is publicly owned companies without employees. These companies manage large values (at the municipal level, about NOK 25 billion) and are currently exempt from the provisions of the Freedom of Information Act.

The study finds clear evidence that the current application of the Freedom of Information Act diverges. More publicity, as prescribed by the act, is practised in varying degrees, and the media and others often experience difficulty gaining access to case documents and the like from public agencies. The reasons seem to be complex. Complex legislation, for example, when it comes to the information covered by the duty of confidentiality, combined with a fear of breaking confidentiality (which may have consequences for the employee), entails that denial of access is often regarded as the simplest and least troublesome solution.

**Access to sentences**

The www.lovdata.no website includes an updated version of applicable Norwegian legislation. It is publicly accessible, but for full access to Lovdata's sources, including all the decisions in the Appeals Court and the Supreme Court, a monthly subscription fee of NOK 785 is required.

**Politicians' and public executives' activities**

Politicians are elected and thus hold public office and must represent the voters' interests. It is therefore important to be open about positions, appointments, receipt of major gifts and other financial interests that may be thought to influence politicians in their work. Representatives to the Storting must report all of their registered assignments and economic interests in accordance with the applicable financial rules. This information is publicly available, but representatives are only obliged to report their interests in terms of income and any other benefits. There is no requirement to report the size of the income and other benefits. For members of the government, the same rules for registration of financial interests and assignments apply as for representatives, but with one essential difference, registration is voluntary.

Two other elements that apply to representatives are the absence of written rules of impartiality and a lobby register. Current practice is that the representatives can choose to "abstain from" a case if the individual considers him/herself as disqualified. It is generally accepted that a representative who has formerly been involved in a case is not considered to be disqualified. However, according to sources for this study, there is little doubt that there are examples of unfortunate mixing of roles when the committees in the Storting handle cases, although it is assumed that this is not widespread.

The study points out that the public has an interest in obtaining information on who the representatives meet and which issues they discuss.

At the municipal level, there is a registry where one can look up the positions and economic interests of the elected officials, board representatives and employees of a municipality. The register is based on voluntary registration. Firstly, it is up to the individual municipality and municipal corporation to determine whether it should have a register. Secondly, it is up to each individual municipal politician, employee and board representative whether they want to report their interests.

**Judicial independence**

In the assessment of judicial independence the study points to some critical issues. Among other things, the question may be raised whether the independence of judges is sufficiently maintained if they are temporarily employed. Independence may be tested in that the considerations toward to their own positions may affect their decisions. This applies to both assistant judges and acting judges.

In order to maintain confidence in the courts, it is important that recruitment processes are open and that there are equal opportunities for all. A number of acting judges are used in today's courts. For short-term posts (less than six months), there is no requirement that the position be advertised, and this is often not done in practice. Upon the appointment of judges the Appointments Council provides a substantiated recommendation of three qualified applicants in order of priority, which is submitted to the Ministry of Justice and Public Security for further processing. The actual recommendation is public, but the justification for ranking is confidential. The study raises the issue of whether the justification for the recommendation should also be publicly accessible.

**Companies' overseas operations**

Currently, there are limited requirements toward Norwegian companies to explain the finances of their foreign subsidiaries, better known as country-by-country reporting. One consequence of this is that Norwegian companies who so wish, can avoid transparency in large parts of their operations by establishing subsidiaries in tax havens—states where foreign individuals and companies are given good opportunities to conceal information about their own operations and the ability to bypass a number of national and international regulations. Closed corporate structures make it possible to withhold substantial funds derived from corruption, tax evasion and capital flight. This is a problem in all countries, but it is most severe for poor countries' opportunities to achieve development and combat poverty.

**INVESTIGATIONS AND CASE LAW**

There are numerous parties in struggle against corruption, but ultimately it is the police and prosecuting authorities who determine whether a case should be investigated and before the courts. It is essential that the police and prosecuting authorities have the capacity to pursue cases that arouse suspicion. This is particularly important in cases of corruption, which are often very difficult to expose and where investigative work is demanding.

Allocations to the police have increased markedly in recent years. Furthermore, practice shows that the police and prosecuting authorities are capable of pursuing corruption cases involving small financial amounts. On the other hand, the study finds evidence that police and the prosecuting authorities does not have sufficient resources to investigate economic crimes, including corruption. One indication is reports that the financial police teams in the police districts due to lack of funds fail to investigate cases even if there is clear suspicion of corruption. Other indications are the recruitment challenges for Økokrim and financial crime teams, partly as a result of the inspection agencies and private investigation companies offering better salaries. The Office of the Auditor General's evaluation (2008) of the authorities' efforts against financial crime concluded that police and prosecutors constitute a bottleneck in the follow-up of reported cases. The study does not discuss whether the resource challenges related to the investigation of economic crimes is due to the priorities of the police and prosecuting authorities or whether they are due to the level of overall resource allocation (or both).

Another factor that may affect the investigation of corruption cases is the current leniency arrangement for breaches of the Competition Act, which involves amnesty against prosecution if the company reports itself. Økokrim has an informal agreement with the Competition Authority that Økokrim does not initiate investigations in cartel cases under consideration by the Competition Authority where leniency may be applicable. If an entity seeking leniency from the Competition Authority for breaches of competition regulations is also involved in other forms of economic crime, for example corruption, it is difficult for Økokrim authorities to initiate investigations. The study points out that the legal situation in this area appears to be problematic.

The study also points out the unfortunate consequences of corruption being punishable under the penal code while also being met with sanctions under the Public Procurement Act. It would appear that the threshold for imposing corporate penalties is high, because it involves being banned as a public supplier.

**PREVENTION**

Statutes and regulations are important elements of a national integrity system, but they alone are not sufficient. Institutions consist of individuals: Managers and staff, politicians and officials. A prerequisite for efficient and robust institutions are employees, managers and officers with a good grasp of ethics. Furthermore, criticism should be permissible and it should be possible to report suspicious matters. Findings in this study suggest that there is a need to improve opportunities to present such criticism.

Norway has wide-ranging notification provisions, and we have come further than many other countries in regulating protection of whistleblowers. There is still room for improvement in that businesses and managers make conditions more conducive to whistleblowing at the workplace. Reports of employees who dare not speak up concerning unacceptable conditions at their workplace is an indication that things could be improved.

An explanation of the current situation may be a lack of knowledge among some managers on the balance between freedom of expression (constitutional right) and the employees' duty of loyalty. Attitudes among some managers may also be an explanation. Awareness of the notification provisions, including the employer's obligation to establish conditions for notification, appear to be inadequate in both the public and private sectors.

Since the provisions for notification came into force in 2007, they have been the subject of much discussion, and practice can be improved. Opinion is divided on whether the regulations should be adjusted. Protection of notifiers may be enhanced by removing the requirement that the employee's procedure must be appropriate, which could lower the threshold for external notification. Sceptics believe other considerations counter such changes. Viewed from a corruption prevention perspective, strong protection of whistleblowers is important.

Norwegian journalists and the media have played a central role in the identification of many corruption cases in recent years. The same applies to disclosures of corruption-related cases and corrupting behaviour among public officials and other key stakeholders. The media have a low threshold for shining a critical spotlight on politicians and others in the case of suspicion of unacceptable conditions, while the threshold is higher when it comes to directing critical attention on activities within one's own sector. The media plays an important role in establishing the agenda for public debate. Which matters provide big headlines and extensive media coverage, and on what basis? And more importantly: Which matters do *not* get media attention? The study points out that the Norwegian media has been criticized for its limited scrutiny of each other.

The reporting of suspicious transactions is an important contribution to the authorities' efforts to combat financial crime. The study reproduces figures from Økokrim that suggest that lawyers, auditors, brokers and accountants under-report suspicious transactions. Lack of knowledge of regulations, attitudes and inadequate understanding of their own role may be possible explanations.

Regulation of the activities of representatives to the Storting (Integrity Mechanisms - law) is the only single indicator that is awarded 25 points, which is very low. The Storting pension case from 2009, where former Storting representatives had been paid substantial Storting pensions at the same time as having other paid work, and media stories in 2010 where it became evident that certain ministers had kept gifts from official visits for private use, are examples of how politicians have exercised poor judgement. The cases also show that awareness of their own roles and attitudes are also important in the area of politics. On the other hand, the relationship is balanced to a certain extent by critical and investigative journalism that uncovers unacceptable conditions in the Storting's and the Storting representatives' activities. By extension, it is worth noting that corruption appears to attract limited attention from the political parties. To increase awareness of these issues and the problems related to the subject, it is pointed out in the study that the political parties also should take the initiative and become involved in these issues.

The study has also looked at certain control routines. For several of the institutions, the schemes can be described as a "control of their own." One example is the Special Unit for Police Matters which investigates cases where the police or prosecuting authorities are suspected of committing criminal acts. The unit consists mainly of former police officers. If the unit decides that there is no basis for an investigation, the case is sent to the police for ordinary appeal process if deemed appropriate. Another example is the Supervisory Committee for Judges which consists of two judges from the Supreme Court, the appeal courts or the District Courts, a lawyer and two members who are representatives of the general public. If one wishes to appeal the Supervisory Committee's decision, the appeal will be processed in the District Courts. A third example is the media's own Professional Committee (PFU), which consists of seven permanent members where the press is represented by two editors and two reporters, and the remaining three are external representatives. These examples show that there is reason to question whether regulatory bodies are sufficiently independent. These are difficult trade-offs between the need for professional expertise and the need for distance to those being checked.

## RECOMMENDATIONS

This study points out both strengths and weaknesses of the Norwegian integrity system. On this basis Transparency International Norway (TI-N) presents some recommendations that may help to strengthen the Norwegian integrity system. TI-N will work to ensure that these recommendations are followed up.

### Compulsory registration of elected officials' positions and economic interests

Currently such registration is only mandatory for representatives to the Storting. It should also be mandatory for ministers and local politicians. There should be full transparency on which activities they participate in and any financial benefits they receive and the size of these.

### Strengthen the transparency of public authorities and administration

The study finds flaws in the opportunities for access to public authorities and administration—both in legislation and in practice. Exceptions to the provisions of the current Freedom of information Act are extensive, and the requirements for record keeping are partly characterized by discretion. Two specific recommendations that will contribute to enhance the transparency of public authorities and administration are proposed.

- Removal of the exemption provision for public companies without employees

  There are a number of public companies registered without employees who combined manage billions on behalf of society. The same right of access should apply to these companies' financial statements and other documents, as applies to other public agencies.

- Better enforcement of the Public Administration Act and the Freedom of Information Act

  If employees of the administration act contrary to the confidentiality provisions, it may have legal implications, while this seems less likely in the case of violations of the Archive Act or Freedom of Information Act. As part of the forthcoming evaluation of the Freedom of Information Act it should be considered whether sanctions may contribute to better enforcement and compliance with the Act's intentions. It should be considered whether new rules on registration of internal documents should be formulated. Furthermore, the authorities and administration should ensure the implementation of competence-enhancing measures for public employees responsible for record keeping, and ensure that continuous work on raising awareness is implemented to emphasize the importance that political authorities and public administration practice transparency.

**Impartiality rules and lobby register for Storting representatives**

There are no written impartiality rules for Storting representatives, and there is reason to believe that examples of unfortunate mixing of roles occurs in the Storting, albeit to a limited extent. Rules or guidelines should therefore be introduced that provide representatives with some formal guidance for how the issue of impartiality should be considered. Who meets with representatives at the Storting and the issues discussed are of public interest. Therefore, the Storting should consider a scheme where who the representatives meet with is registered, who they represent and which issue(s) are discussed. The register should be publicly available.

**Judicial independence – the use of temporarily appointed judges**

The use of temporarily appointed judges is significant, and should be limited. Where temporary appointments are still necessary, these positions must be advertised.

**Strengthen resource prioritization of economic crime**

The study finds indications that the police are forced to refrain from investigating cases even where there is clear suspicion of financial crimes. This is unsatisfactory. It should be a goal that the financial police teams (and Økokrim) have sufficient resources to investigate such cases.

**Better harmony between corporate penalties and tender refusal in the public sector**

The government should clarify the current situation in terms of enforcement of tender refusal in the procurement regulations and the threshold for imposing corporate penalties. The authorities should, in consultation with Økokrim the Competition Authority, look at what can be done to establish a more unified and consistent practice in this area. In this context it should also be investigated whether there is a need for new rules regarding what a company that has been found guilty of corruption must do to return as a supplier to the public sector.

**Further strengthening of protection for whistleblowers**

Current protection for whistleblowers came into force in 2007. There is still a need to disseminate knowledge on this subject, both in the public and private sectors. This includes knowledge on the right of public employees' to raise criticism in public. Removal of the requirement towards appropriate procedure would further strengthen protection of whistleblowers. The authorities and employers in the public and private sectors must work to raise the awareness among their own managers of the rights of employees to present criticism of their own workplaces and areas of work in public. Moreover, employers should have a duty to investigate the conditions that the notification concerns.

**Increased awareness of ST reporting to Økokrim**

There appears to be significant under-reporting of suspicious transactions (STRs) to Økokrim from lawyers, auditors, brokers and accountants. It is therefore important that these sectors work to raise awareness of the role and responsibilities of each employee, managers and the sector in general has to report suspicious transactions.

**Better country-by-country reporting (CbC) for companies**

The Storting should introduce reporting standards for companies on a country-by-country basis. The government should play an active role internationally to encourage other countries to also introduce improved CbC. Reporting standards should be broadly based in order to be an effective instrument in efforts to combat corruption, tax evasion and prevent capital flight.

# Country Profile

# COUNTRY PROFILE

## POLICY

*To which extent do the county's political institutions ensure an effective national integrity system?*

Score: 100

The political institutions in Norway contribute greatly toward the country having an effective national integrity system. Two key reasons for this are that the political institutions are largely functional and that they have great legitimacy among the population.

Today's parliamentary governance principle has served as constitutional common law[4] since the beginning of the 1900s. Parliamentarism was set out in the constitution in 2007 when the Storting adopted the Constitution's Article 15 that states that the government or an individual minister is obliged to resign if a motion of no confidence is passed in the Storting. Norway is among the countries that practice negative parliamentarism, which means that the government, once it has taken office, remains in power until it is overturned through a vote of no confidence, or it resigns voluntarily.[5] In the post war period minority governments have been the norm. However, since 2005 Norway has had a majority government consisting of the Norwegian Labour Party (DNA), the Socialist Left Party (SV) and the Centre Party (Sp).

The electoral period in Norway is 4 years for all elections. Elections to the municipal councils and to the county councils are held at the same time and are held half way through the period of the Storting. The Norwegian electoral system is based on the principles of direct election and proportional representation in multi-member constituencies. Direct election means that voters vote directly for representatives of the electoral districts by voting for an electoral list. Proportional representation means that representatives are distributed according to the relationships between the number of votes attributable to the individual electoral lists. Both political parties and other groups can submit list proposals at elections.[6] Norway has no formal block boundary in individual constituencies, but in order to compete for the 19 equalisation seats7 (of a total 169) the party must have at least four percent sup-

port nationwide.[8] Proportional representation is based on the principle of equitable distribution of seats in relation to votes cast.

In the past two decades, seven to eight parties have been represented in the Storting. Turnout in the parliamentary elections in the 1990s and 2000s has varied between 75 and 78 percent. This places the Norway among the top half in Europe. At the previous local elections voter turnout was 64.2 percent, which was the highest turnout in the 2000s but still lower than what has been typical in local elections earlier. Since the 1987 local elections there has been a general and marked decline in voter participation in local elections.[9]

Norway achieves a high score in surveys where respondents are asked about their satisfaction with democracy. In Norwegian election surveys the percentage who say that they are very or fairly satisfied with democracy has remained stable at around 90 percent in the 1977-2009 period. In the large comparative study European Social Survey (29 countries) similar questions were asked in 2008, and then there were only two countries with a higher points average than Norway.[10] These are indications that the current Norwegian system of government has a high degree of legitimacy among the population.

## SOCIETY

*To what extent does the internal relationship between social groups and between the social groups and the country's political system contribute to an effective national integrity system?*

Score: 75

The overall picture is good, but discrimination in employment and discrimination of certain groups are challenges that are prevalent in Norway today.

The Norwegian legal system and society at large facilitates the participation of individuals in political activities within the context of political parties. Very few criteria must be satisfied in order to establish a political party and to stand for election in Norway. Political parties also have very good and stable public financing. This applies both to parties in power and parties in opposition, and public financing thus contributes to efficient competition between the parties. The independent position of the parties is not explicitly laid down in the constitution, but the Supreme Court in plenary session has indicated that the current right to form political parties follows from constitutional common law.[11]

The formal consultation process is an important democratic institution in the Norwegian political system, which provides interest organisations, associations and others with the possibility of promoting their view for the committees in the Stort-

ing in connection with a case being dealt with by the Storting. The committees decide by simple majority12 whether consultations will be held and who will be asked to participate – actual participation is voluntary.[13]Another important aspect of the consultation process is the legislative work carried out at government level. This usually starts with a study in which the need for the bill is examined and evaluated. The evaluation is generally undertaken by a special analysis committee, or by the ministry or in a working group from several ministries. Subsequently a bill is usually sent out for consultation where all affected agencies and organisations have the right to voice their opinion before the ministry prepares a proposal for a legislative enactment with detailed qualifications, which the government presents to the Storting. The consultation system gives Norwegian NGOs the opportunity to present their views to the political authorities, but neither representation in committees or participation in the consultation rounds is a guarantee that their views will be of decisive importance in shaping the law.[14]

A clear majority of the Norwegian population is Norwegian-born with two Norwegian-born parents. This group accounted for 82 percent of the total population of around 4,9 million inhabitants as of 01/01/2011, while 92.5 percent of the population held Norwegian citizenship.[15] After 2000, there has been a sharp increase in immigration to Norway. This is mainly due to increased immigration from EEA countries to vacant jobs in Norway – the expansion of the EU in 2004 is important in this context. In the same period there has been a slight decline in net immigration from Africa, Asia and Latin America.[16]

Immigration is a frequently discussed topic in public life and politics, but the debate is not polarized to the same degree as it is in Denmark and France for example. However, the terrorist actions on 22 July 2011 was a gruesome reminder that there are people in Norway with right-wing views and attitudes. Today Norwegian right-wing extremism is characterized by anti-Islamic ideas represented through some activist groups, but there has been very limited support for public demonstrations organized by anti-Islamic organizations – usually no more than ten to thirty people. Activities in the so-called "virtual communities" in social media has greater support. However, it is hard to tell how binding declarations of support and endorsements from individuals on social media are, and it is therefore also difficult to estimate the actual size of the groups.[17] Extreme right-wing views have no significant political representation in Norway.[18]

Although extreme right-wing attitudes are not widespread in Norway, discrimination of people based on ethnicity is a problem. According to a major study of discrimination in working life, the likelihood of being called for interviews is reduced by about 25 percent if you have a foreign name.[19] Studies of the Norwegian indigenous people's situation indicates that many experience discrimination because of

their Sami background.[20] A clear example of this was the very intense and polarized debate that came about as a result of a number of municipalities in northern Norway having road signs in Sami.[21]

## ECONOMY

*To which extent does the county's socio-economic situation support an effective national integrity system?*

Score: 100

The Norwegian economy is sound. Measured as gross domestic product (GDP) per capita, Norway is among the world's leaders. In 2010 GDP per capita was NOK 516,076, and only six countries in the world were higher.[22] A major reason is the country's access to important natural resources, in particular oil, gas and fish. The country is the world's second largest gas exporter ninth largest oil exporter.[23] The oil industry currently accounts for about one quarter of the country's GDP.[24] In 2010, the country's fish farmers accounted for 70 percent of world exports of salmon and trout.[25]

An important reason that the Norwegian government gets a large part of the wealth created by oil activities are the special tax rules – for income from the exploitation of oil and gas there is a special tax rate of 50 percent (in addition to the ordinary corporate tax rate of 28 percent). Marginal tax on the profits of the oil companies is thus 78 percent.[26]

The amount of income from petroleum activities that is to be used over the national budget is controlled by the so-called fiscal rule. It says that the state as a rule may spend petroleum revenue that is within four percent of the Petroleum Fund's size at the beginning of the year.[27] The remainder of the money is placed in the Petroleum Fund, which is managed by Norges Bank, and the funds are invested in foreign securities and foreign property. The Petroleum Fund owns about one percent of the world's listed companies and as of the third quarter 2011, had a market value of NOK 3,055 billion.[28] There has been a broad political majority for compliance with the fiscal rule, and this does not seem likely to change in the near future.

Petroleum activities on the Norwegian continental shelf are becoming more and more dominant in the Norwegian economy. NHO's economic survey for 2012 shows that the willingness to invest for the rest of industry is low. Petroleum investment in 2011 was NOK 140 billion, which is seven times more than the investment in industry and mining in the mainland economy.[29]

Norway has long been at the head of the UN's *Human Development Index,* a meas-

ure of wealth in different countries, which in addition to the country's GDP includes social factors such as life expectancy and education. In 2010 the United Nations introduced a new way to calculate HDI, where uneven distribution of wealth within countries in included; Norway also tops this index. The overall picture is thus that the preconditions for living a dignified life are good in Norway. The vast majority have an economic situation that ensures them good access to basic necessities such as food and housing.

An important feature of the Norwegian social structure is an institutional complementarity between market-organized institutional arrangements within the three factors of production: labour, capital and natural resources. Collaboration at the state level protects them from the free play of market forces.[30]

In an international context, Norway has a relatively high wages and minor wage differences. If one divides the population into ten groups of equal size based on the size of household income, the tenth with the highest income received 20 percent of all income in 2009, while the tenth of the population with the lowest income received four percent of all income. In the 2004-2009 period income increased by around 18 percent in fixed prices for all income classes.[31]

The Norwegian bargaining system between workers and employers is characterized by a high degree of centralization and coordination between employee and employer organizations, where also the state plays an important role. It is customary to consider the centralization of negotiations as the key condition for the minor differences in wages.[32] The master collective agreement that is renegotiated every two years is an important element. Other important institutional arrangements are the chief state mediator (see the Act relating to labour disputes, chapter 3, Articles 27-39) and the National Wages Board (cf. the Act respecting wage committees in labour disputes). The former is intended to prevent the negotiations from ending in open conflict, while the latter is an arbitration body that in practice largely has been used by the authorities in connection with compulsory arbitration. Several labour organisations have perceived compulsory arbitration as an infringement of the right to strike, and Norway has repeatedly been criticized by the International Labour Organisation to using the system too easily, that is, well before life or health is in danger or vital national interests are threatened by a strike.[33] The Norwegian union density (defined as the proportion of employees who are members of unions) has been stable over the past decade (53 percent in 2009, 52 percent in 2000). In 2009 the Norwegian Confederation of Trade Unions organized 27 percent of all wage earners. In the public sector 80 percent were members of trade unions, while the figure was 37 percent in the private sector. All employees in the public sector have collective agreement, while approximately the figure is 70 percent in the private sector.[34]

**CULTURE**

*To which extent do the prevailing ethics, norms and values in society support an effective national integrity system?*

Score: 100

In similarity with the other Scandinavian countries the Norwegian population is characterized by a high level of social capital, understood as trust in other people. Norway consistently scores well on measures of social capital in international comparisons, be it faith in various forms of interpersonal trust, confidence in social institutions and systems or social networks and organizational networks.[35] Trust strengthens the conditions for collective action and a high level of social capital has a number of positive effects for society.[36]

The high level of social capital is an important contribution toward Norway having an effective integrity system. The population's participation in civil society and voluntary work is high in an international context. About 80 percent of the population are members of at least one organization and almost half of those define themselves as "active members". 48 percent of the population (above 16 years of age) annually contribute with voluntary work in the NGOs. This is the highest percentage recorded worldwide.[37]

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4 In brief, constitutional common law is constitutional rules with constitutional authority established through consistent practice over time, and those who apply the rule must have done so in the belief that it was a statutory rule they followed *(opinio juris).*

5 Nordby (2004:111).

6 http://www.regjeringen.no/nb/dep/krd/kampanjer/valg/valgordningen.html?id=456636

7 An equalisation seat is a mandate awarded to ensure parties in parliamentary elections greater proportional representation for the number of votes nationwide than the allocation of constituency seats suggests.

8 Aardal (2010).

9 http://www.ssb.no/kommvalg/. Last visited 20/01/2012

10 Listhaug and Aardal (2011:295–296).

11 See the Political Parties chapter.

12 In the Scrutiny and Constitutional Committee it is sufficient with support from one third of the members on questions on consultations in control cases (Cf. The Storting's rules of procedure Article 12.)

13 The Storting's rules of procedure Section 18

14 Also see the chapters on the Storting, the Government and the public sector.

15 See SSBs website, URL: http://www.ssb.no/emner/02/01/10/innvbef/tab-2011-04-28-01.html and table 05196 in SSB's statistics bank, URL: http://statbank.ssb.no/statistikkbanken/ Last visited 01/03/2012.

16 Østby (2011).

17 Strømmen (2011:9–12). Cf. See also the Police's security service's Trusselvurdering 2012 [Threat Assessment 2012], URL: http://www.pst.no/media/utgivelser/trusselvurdering-2012/ Last visited 11/03/2012.

18 Two parties (Vigrid and Norgespatriotene) who typically fall under this definition, stood for election in their respective counties in 2009 but closed down their operations due to marginal support. Demokratene, who in any case may be called racist, currently have eight members elected locally, and one representative on a county council. Cf. e-mail correspondence with Anders Ravik Jupskås, 04/03/12.

19 1800 fictitious job applications were sent to real vacancy announcements. Applications differed in that the applicants either had a foreign or a typical Norwegian name (Midtbøen and Rogstad (2012).

20 In a survey, four out of ten Sami-speaking men and one in three Sami-speaking women stated that they had experienced discrimination. Hansen (2011).

21 See for example *Samiske skilt provoserer [Signs in Sami provoke],* URL: http://nrk.no/nyheter/distrikt/nordland/1.7495194 Last visited 02/02/2012.

22 http://www.ssb.no/regnskap/. Last visited 20/01/2012

23 https://www.cia.gov/library/publications/the-world-factbook/rankorder/2004rank.html?countryName=Norway&countryCode=no&regionCode=eur&rank=7#no. Last visited 20/01/2012

24 http://www.ssb.no/regnskap/. Last visited 20/01/2012

25 25 http://www.aftenposten.no/okonomi/innland/article3918611.ece. Last visited 20/01/2012

26 Schiefloe (2010:34).

27 The rule to use within four percent of the fund each year is based on the expectation that the future performance of the Petroleum Fund on average will be four percent. The government may abandon this rule if major fluctuations in the international capital market so dictate. One may also spend more if unemployment is high, or less if unemployment is low. Also see the Petroleum Fund and the fiscal rule, URL: http://www.regjeringen.no/nb/dep/nhd/dok/veiledninger_brosjyrer/2005/Faktahefte-om-norsk-naringsliv/29.html?id=275601 Last visited 01/03/12.

28 See *Kvartalsrapport 3. kv. 2011*, URL: http://www.nbim.no/no/media-og-publikasjoner/Rapporter/810/963/ Last visited 01/03/12.

29 Se Økonomisk overblikk 1/2012, URL: http://www.nho.no/getfile.php/bilder/RootNY/%F8konomisk%20politikk%2C%20bank%20%26%20finans/%D8konomisk%20overblikk%201%202012%20med%20forside.pdf Last visited 01/03/2012.

30 Mjøset (2010:40); Barth, Moene and Wallerstein (2009).

31 See *Jevnere inntektsfordeling,* URL: http://www.ssb.no/emner/05/01/iffor/ Last visited 01/03/2012.

32 Fennefoss (2010:92)

33 Ibid.

34 Nergaard and Stokke (2010)

35 Segaard and Wollebæk (2011). See e.g. www.worldvaluessurvey.org and www.europeanvaluesstudy.eu

36 See e.g. Uslan and Rothstein (2005), Bergh and Bjørnskov (2011), Rothstein (2011).

37 See *Nøkkelfakta om frivillighet*, [Key facts on voluntary work] URL: http://www.frivillighetnorge.no/ N%C3%B8kkelfakta+om+frivillighet.b7C_wlHY1A.ips Last visited 02/02/2012.

# Corruption Profile

# CORRUPTION PROFILE

The chapter provides a brief description of corruption-related issues in Norway. On the basis of existing studies, research and documentation, we will, to the extent which this is possible, say something about the extent of corruption in Norway, what distinguishes it and where it occurs. The knowledge of this is limited, partly because corruption is covert and thus difficult to study and research, and partly because there currently are few studies and little research on corruption in Norway. Corruption is a term used in many ways, and we therefore start by clarifying what is meant by corruption in this study.

### What is corruption?

A Norwegian dictionary states that corruption is "to accept or give bribes." Equating corruption with bribery is a narrow definition of the term. In the social sciences corruption is usually related to the misuse of public position, power and/or resources for personal benefit.38 Transparency International (TI) defines corruption as "the abuse of entrusted power for private gain." This has a wider scope than bribery, and includes fraud and favouritism, for example. According to the Norwegian Penal Code, corruption concerns inducement and bribery (and attempts at this), in the case of actions where one demands, receives, accepts, gives or offers anyone an improper advantage. This NIS study employs the legal definition of corruption, and corruption is understood in the following as actions in violation of the Penal Code Article 276 a), b) or c). The provisions include both public and private sectors.

### The extent of corruption

It is difficult to establish the actual level of corruption in a country.[39] Part of the reason is that corruption takes place in secret, and as already mentioned there are several different definitions of the phenomenon. The most common measures of corruption in and between countries are based on surveys directed at a sample of the population. This type of research has been criticized due to methodological weaknesses.[40] At the same time, survey methods have improved and are often used in international corruption research. Such surveys provide an indication of people's *perception* of the problem, without necessarily being a good measure of the extent of the actual problem. Norway does well in such surveys and is placed among those who are often called the *least corrupt states*.[41] In the most widely known international corruption survey, TI's *Corruption Perception Index* (conducted annually), Norway has throughout the 2000s been rated among the top 15, that is, among the 15 countries in the world where, as assessed by the CPI index, there is least corruption. The CPI measures the respondents' perceptions of corruption in the public sector.[42]

Another way to measure the extent of corruption is to pose experiential questions – respondents are asked whether they have seen or experienced examples of corruption. There are little results of this in Norway. In TI's *Global Corruption Barometer* respondents were questioned on whether they or anyone in their household had paid a bribe in the last twelve months. For Norway there are surveys from 2004-2006 and 2009 and 2010.[43] The percentage who confirm that they have paid bribes ranges between one (2010) and four percent (2005).[44] National surveys have also been conducted in which people, either as private individuals or professionally, have been asked experience-based questions. In Matthiesen et al (2008) four percent of respondents claimed they had witnessed misappropriation of funds or embezzlement, and three percent claimed they had witnessed corruption.[45] In another study that focused primarily on whistleblowing, one percent of a sample of 6000 claimed that they had witnessed or uncovered receipt of bribery/corruption.[46]

The respondents participating in GCB participate as individuals – is it conceivable that the results would have been different if one asked by virtue of the position they held? National surveys indicate that there is a difference. NHO's Security Council has since 2006 annually conducted the KRISINO study where managers and security supervisors from the public sector (500 persons) and business (2,000 people) are asked if they are aware of attempts to bribe or induce anyone in their enterprise in order to win contract.[47] The percentage of positive responses in all surveys has remained at about 2-3 percent. When the question is changed to concern knowledge of specific examples of corruption in one's own sector, the percentage is 8-10 percent among those who work in business and five percent among those working in the public sector.[48] The highest proportion in construction where the percentage has varied between 13 and 17 percent in the last three surveys. 28 percent said

in this year's (2011) survey that they or others in the industry had participated in social events, paid by the supplier. This is a slight increase from 2009 (23 percent) but lower than 2006 when 41 percent answered affirmatively to the question. The building and construction industry is the sector where this is clearly the most prevalent - in 2006, the proportion was 60 percent, while in 2011 it was 38.[49]

Norway can be described as a well-functioning constitutional state. Therefore, the number of people/businesses who have been convicted of corruption may to a certain degree say something about the extent of corruption. Aftenposten journalists Gedde-Dahl, Hafstad and Magnussen performed searches in Lovdata, media archives and other sources to establish an overview of corruption cases that have been considered by the courts in the period from 1990 to June 2008. The review showed that there has been a marked increase in the latter part of the period. In the period from 2005 to June 2008, 49 individuals and companies were convicted of corruption, pursuant to the new corruption provisions, which came into force on 4 July 2003. More than 60 percent of the cases were related to the public sector. In the 15 previous years only 52 people were convicted of corruption.[50] This does not necessarily mean that corruption has increased. Stricter regulations and increased awareness of the phenomenon suggests that today more cases are uncovered than before, without this necessarily meaning that the total number of cases is higher today than in the past (also see the chapter on anti-corruption work).[51]

Corruption is closely related to other types of financial crimes such as embezzlement of public funds, misappropriation of funds, fraud, price-fixing, etc. Actions of these types usually fall under other provisions of the penal code than corruption clause, such as misappropriation of funds (Articles 275 and 276), embezzlement (Articles 255 and 256) and fraud (Articles 270 and 271). An indication of the extent of this type of case is Statistics Norway's (SSB) survey *Virksomheter som ofre for økonomisk kriminalitet.* [Businesses as victims of economic crime].[52] Of the enterprises surveyed about 20 percent of them had been subjected to economic crime in 2003, while the percentage had dropped to 15 percent in 2008.

In the aforementioned KRISINO survey 12 percent of respondents said they are aware of price-fixing, for the private sector the figure was 16 percent.[53] The Competition Authority has revealed several examples of price-fixing in recent years.[54] The biggest case was the uncovering of illegal price-fixing in the asphalt sector from 2005-2008. The Competition Authority's preliminary assessments entail that the company NCC must pay NOK 165 million in fines, while Veidekke may possibly get off because the company itself reported the matter.[55] This, combined with examples of cartel operations identified in the other Nordic countries may be an indication that this is a problem of a certain size.[56] However, as with other forms of corruption and other economic crimes, it is very difficult to uncover and document, and it is therefore difficult to be sure of the actual extent.

A second and important category with regard to corruption are actions that are in the grey area of what is legal or not, but which most people agree are clearly unacceptable. In 2006, a major report series in the newspaper *Aftenposten* focused on possible role conflicts and relations between politicians, employees in the municipality and other enterprises in more than 50 smaller municipalities[57] all over the country. The findings were to some extent very serious and were documented in a series of newspaper articles and reports. Examples of controversial mixing of roles, or suspicions of this were unearthed in nearly 40 of the 50 municipalities.[58] In 2010 the same newspaper focused on how municipalities manage property and uncovered eleven contentious issues where local politicians in dual roles, lack of control of municipal companies and close ties to developers were recurring issues.[59] Folkvord (2011) documented several examples of extremely reprehensible practices in Oslo municipality, where close ties between politicians, public officials and others were recurring characteristics – without this necessarily being corruption in the legal sense.[60] This is a clear indication that there are corruption-related issues and challenges in Norway too.

We can conclude from the above that corruption is a problem in Norway too. Several major corruption cases have been uncovered in recent years and the number of people convicted of corruption is increasing, without this necessarily meaning that corruption has increased. In surveys where respondents (ordinary people and/or experts) are questioned on the extent of or experience with corruption, Norway performs well. At the same time, the previous section shows several examples of cases that are in a grey area of what is legal, and which many would say is clearly unacceptable. In the report to the Storting *Kampen mot den organiserte kriminaliteten* [The struggle against organized crime], it is noted that "Norway is a small community where many people have several roles that others regard as unfortunate dual roles" and "cronyism and decisions/actions that may be in favour of one's own and/or related persons' interests [are perceived] to belong to the corruption debate."[61]

Norway does well in international (and national) surveys where one asks about knowledge of bribery and the like. However, this type of research fails to uncover a lot of other corruption-related challenges that are evident in a Norwegian context (for example, close networks and conflicts of interest). It would therefore be useful with studies and surveys on the topic employing other methods and approaches. At present there are very few in-depth studies and little research on corruption and corruption-related challenges in Norway.[62]

On the basis of the knowledge we have, we will in the following attempt to say something where corruption takes place, where there is reason to believe that the risk of corruption is high and what type of corruption we are dealing with.

**Where does corruption take place?**

A basic review of corruption convictions (cases where individuals and/or companies have been convicted of corruption pursuant to the Penal Code sections 276 a), b) or c) and where the sentence is final) from 2003 to 2011 show that the number of cases is relatively evenly distributed between the public and private sectors. [63] During the period, there have been 27 cases in the Norwegian courts that have ended with convictions where one or more persons and/or companies have been convicted of corruption (25 cases) or trading in influence (two cases). In twelve of the cases, only persons employed in the private sector were convicted, in eight of the cases, only persons employed in the public sector were convicted, while in seven of the cases persons from both the public and private sectors were convicted. Here it must be mentioned that there were several cases where individuals from both the private and public sectors were involved, but only employees in one of the sectors were convicted.

In other words, many of the cases originate at the intersection between the public and private sectors, often related to public procurement, which is not uncommon in other countries either.[64] Økokrim's assessment is that "the corrupt action(s) do not appear to be organized to any great degree, but are characterized by very good relationships between parties." Bribery and fictitious billing are methods that are often used, and intermediaries are increasingly used.[65]

The number of cases is low and provides insufficient basis for making generalizations. It is also important to remember that the above figures are only the cases where persons have been convicted under the Penal Code sections 276 a) (corruption), b) (gross corruption), and c) (trading in influence). Økokrim addresses several corruption-related issues in its 2011-2012 threat assessment of financial and environmental crime *(Trusselvurdering Økonomisk kriminalitet og miljøkriminalitet 2011–2012)*. Økokrim reports that in cases of financial fraud and embezzlement the police districts reported largely new offenders from case to case, although some repeated offenders occur. Moreover, most of these types of action take place locally. Økokrim believes that many companies are reluctant to report embezzlement/fraud because such cases may have negative consequences for the company's reputation. It is therefore assumed that there is widespread under-reporting, and that it is somewhat incidental which embezzlement/fraud cases the police learns of.[66] The fact that there is significant under-reporting is supported by Statistics Norway's survey of businesses as victims of economic crime, which found that only 30 percent of cases of economic crime that companies were exposed to were reported to the police.[67] Some sectors are described in more detail below.[68]

### The municipal sector

The NIS method has the national level as its analytical focus, and this is why the local level is not discussed in detail in this study. However, several factors indicate that the municipal sector in Norway is a risk area for corruption-related challenges, assessed within a Norwegian context, and is the reason the local government sector is discussed in this chapter (also see the Anti-Corruption Work chapter). Several of the major corruption cases from recent years have been linked to the local government sector. As a rule, the main parties have been public servants. The waterworks case, the Undervisningsbygg cases and the Bærum case are all examples of this.[69] At the moment a new corruption case is being rolled up that extends into the public transport company owned by Oslo Municipality, and as of February 2012, 13 people were indicted. It's too early to say anything certain about the case beyond that it appears to be another major corruption case in the municipal sector.

Many Norwegian municipalities have a small population – 74 percent of Norway's 430 municipalities (as of 2010) have fewer than 10,000 inhabitants, 54 percent have fewer than 5,000 inhabitants.[70] Small communities tend to have less political competition than larger communities, which may increase the risk of corruption.[71]

In the last two decades there has been significant changes in the Norwegian municipal sector, where parts of municipal activities have been separated from the ordinary municipal administration and converted into enterprises and companies.[72] As of March 2011, there were approximately 2,000 municipally-owned companies and approximately 250 inter-municipal companies in Norway, which corresponds to around 75 and 9 percent respectively of all municipally owned companies.[73]

Municipal undertakings organized as companies are independent legal entities. This means that they are not part of the municipal organization, and that they are not obliged to follow the municipality's rules and regulations to the same extent as the traditional municipal administration. The Norwegian Association of Local and Regional Authorities (KS) estimated in 2009 that the municipally-owned businesses collectively managed assets of approximately NOK 300 billion, and that they had a turnover of approximately NOK 100 billion.[74] Researchers have pointed out that the new organizational forms pose supervisory challenges for municipalities. Several research reports also conclude that municipalities are passive in the exercise of their ownership in municipal companies. This is partly explained by the politicians having limited knowledge of the ownership role and what it implies.[75]

From what we know, it may seem that the people in power in dual roles and conflicts of interest are a problem in some municipalities. Close links between leaders in the municipality and local builders and real estate developers seem to be a particular risk. Another risk is related to the increasing number of municipal companies. The municipality has a supervisory responsibility, and this supervision

can be impaired by unfortunate ties between officers in the municipality and the municipal-owned companies. This gives cause for concern since the municipal-owned companies often have a stronger market position than private companies, and are thus in a position to earn higher profits the individuals involved can take advantage of. It is important that local control of municipal companies is not weakened by close ties, but rather promotes the best possible price/quality combination of services and products, and also keeps executive salaries at a reasonable level. We know these are challenges in a number of municipalities, and there are grounds for arguing that corruption risks are significant at the local level.

**Norwegian trade and industry: oil and gas, building and construction, international trade**

As previously mentioned, corruption convictions were fairly evenly distributed between the public and private sectors. Under Norwegian law, enterprises may also be convicted of corruption. Enterprises may be punished with fines, which can take the form of a penalty notice (or a sentence). The prosecuting authorities can issue fines for corporate penalties for corruption. In order for the case to be enforceable and not be forwarded to the courts, the penalty notice, and a specified fine, must be accepted by the enterprise. If the case goes to court, the court can convict the enterprise for corruption, or acquit it. The courts can impose corporate penalties if the corruption provision is violated[76] by a person acting on behalf of a company. In determining whether a corporate penalty will be imposed, particular consideration must be made toward conditions specified in the provision concerning corporate liability (Penal Code section 48 b).[77] There may be several reasons why an enterprise accepts a penalty issued by the prosecuting authorities rather than try the case to court – for example because a trial can be a very resource-intensive process that ties up resources for a long time, or to avoid the negative focus a trial will have on the enterprise, or because the chance of acquittal for the enterprise is considered small.

In the period 2003-2011, four companies have accepted fines for corruption issued by Økokrim, while one company has been handed a corporate penalty for corruption by the court. With one exception, the amounts are in the range of NOK 2-5 million.[78] The exception is the Statoil corruption case in Iran, where the company accepted a fine of NOK 20 million, but it was emphasized that the acceptance was neither an admission or denial of guilt on the part of Statoil. In 2006, however, Statoil admitted that bribes had been paid in connection with the Horton Agreement. As a company that is also listed on the stock exchange in New York, Statoil is subject to U.S. securities laws, including *U.S. Foreign Corrupt Practices Act* (FCPA), and Statoil entered into a settlement with U.S. authorities for violation of these rules. The company had to pay a NOK 140 million fine, with deduction for the fine Økokrim had imposed on Statoil in connection with the penalty.

A study of the experience of 82 Norwegian firms doing business in countries where corruption is a widespread problem found, among other things, that nearly 70 per-

cent of respondents thought they had lost a contract as a result of corruption, while 41 percent said they rarely (24 percent), sometimes or often (17 percent) made use of influence trading (facilitation payments). When asked directly, very few (6 percent) said they accepted corruption, while there was an equally small percentage who said they would make a formal complaint if they met a competitor they suspected of having paid bribes to win the competition - as many as 45 percent said they would do nothing in such a situation, and the majority of them agreed with the statement "corruption is part of the game".[79]

The results are an indication that doing business in foreign countries is a risk area for Norwegian companies. This is confirmed by a representative of NHO, who points out that some companies report uncertainty as to how to deal with corruption provisions internationally, in practice when operating in cultures where practices and expectations are different.[80]Are there thus any specific sectors in Norwegian industry that are particularly exposed to corruption? A characteristic feature of Norwegian business' international activities is that they take place on a large scale in a number of sectors which, according to *Transparency International Bribe Payers Index*, are the most vulnerable to corruption: the oil and gas sector and the power sector. The fact that Norwegian oil and gas companies are corruption prone has been evident through several examples in the past decade.[81] In the 1995-2005 period four corruption convictions were handed down on employees of the oil company Statoil. As mentioned in the previous section, Statoil as a company was also affected in that it had to pay a total of NOK 140 million. It appears that these cases had implications in the sense that the group took the risk of corruption seriously and strengthened its focus on internal control, in terms of improved internal control systems and raising ethical awareness and work on attitudes aimed at the employees. This is confirmed by Økokrim and several people interviewed for this study.[82] At the same time, several smaller and medium-sized oil companies operating on the Norwegian continental shelf have arrived in recent years. In its recent threat assessment, Økokrim suggests that these companies do not have the same attitude towards and focus on corruption as the major oil companies such as Statoil, which is reason to follow this sector carefully in the future.[83]

Another sector where there is reason to believe there is a clear risk of corruption is the building construction industry. One indication is the findings from the aforementioned KRISINO survey where the percentage of respondents who said that they themselves or others in the undertaking had attended social events paid for by the supplier was highest in the construction industry. Another, and perhaps stronger, indication is that the majority of large corruption cases in Norway in recent years have been in this industry: The Ullevål case, the Bærum case, the waterworks case and the two cases in Undervisningsbygg. These are cases where corruption has occurred in situations where public employees have made major purchases of goods and services from suppliers in the building and construction in-

dustry. There is reason to believe that the risk of corruption is high in public works projects and public procurements within the building and construction industry in general, typically in development and maintenance projects private contractors perform under contract for the public authorities.

#### Norwegian aid projects

The fact that there are corruption risks in connection with aid and development projects is not unique to Norway. What is important is what Norwegian authorities and those who receive aid funds do – regardless of whether they are Norwegian or international organizations, the UN system and other multilateral organizations, or the authorities in other countries
– to ensure that the funds go to the intended purpose, and are not misused or contribute to reinforce corruption in the country. We will return to this in the chapter on Anti-corruption work.

#### Other sectors

The sections above that have discussed sectors with a risk of corruption are all areas where several cases of corruption have been revealed. But the absence of actual corruption cases does not necessarily mean that there is no risk of corruption. There are examples from other sectors where circumstances have been uncovered that *may* be indications that there is a clear risk of corruption. Here are a couple of examples to illustrate this point – the examples should not be understood as an exhaustive list.

According to Transparency International's *Bribe Payers Index,* the armaments and defence industry and fisheries are among the sectors where there is a high probability that bribes are offered and accepted. The Norwegian Armed Forces is a major public purchaser. In recent years, the Armed Forces' purchases have amounted to around NOK 20 billion annually, which in 2010 constituted 12.5 percent of central government's total procurements.[84] In 2010 the Office of the Auditor General identified significant deficiencies in the Armed Forces' internal control routines. In 2010 the Armed Forces had made purchases of NOK 10.4 billion without following its own procedures to ensure adequate internal controls that purchases are made in accordance with applicable laws and regulations for procurements.[85] Another example is fish exports. In 2010, Norwegian fish farmers were responsible for 70 percent of world exports of salmon and trout.[86] A 2010 study funded by the Ministry of Fisheries and Coastal Affairs documented cases of organized crime in the Norwegian fishing industry and noted that the offences in the Norwegian fishing industry often have financial motives and are carried out to conceal quota overruns and illegal fishing. The report also pointed out that offences in the fisheries area are often accompanied by other serious offences such as fraud, embezzlement, money laundering, receiving and gross misappropriation of funds.[87]

38 See e.g. Tevfik F. Nas (1986:108), Della Porta and Vannucci (1999:16), Rose-Ackermann (2004:1), Svensson (2005:20), Lambsdorff (2007:16).
39 Andvig (2005), Søreide (2006b).
40 See e.g. Andvig (2005) and Andersson and Heywood (2009).
41 Heidenheimer (1996).
42 http://www.transparency.org/policy_research/surveys_indices/cpi
43 In the two first years approximately 500 respondents participated in Norwegian part of the study, while the figure in recent years has been in excess of 1,000 respondents.
44 http://www.transparency.org/policy_research/surveys_indices/gcb
45 The survey is based on a random sample of the Norwegian population (7,000), and has a response rate of 23 percent, which is very low. This means that the 1604 respondents participated in the survey, see Matthiesen, Bjørkelo and Nielsen (2008).
46 Trygstad (2010a:54).
47 From 2009, every two years. All surveys are available at NHO's Security Council website for the KRISINO survey, URL: http://www.nsr-org.no/krisino.htm Last visited 13/02/2012.
48 This is true only up to 2008. Questions posed in 2006 and 2007 were too imprecise to be comparable with those numbers.
49 NHO's Security Council (2006, 2007; 2008; 2009 and 2011).
50 Verdicts from the district courts are only available to a limited degree in Lovdata, and it was only in 1996 that all verdicts from the courts of appeal were made available in Lovdata. The figure should therefore be regarded as a minimum figure based on the cases that journalists found through their searches. The cases had as a common denominator that the individual was convicted for acts which in the sentence were termed bribery and/or corruption, as a rule the individual was convicted pursuant to the provision concerning misappropriation of funds (Sections 275 and 276), but reference to other statutory provisions was made in some of the cases (Gedde-Dahl, Magnussen and Hafstad (2008:246-260).
51 Renå (2009:6), Økokrim (2011:14).
52 The survey "businesses as victims of economic crime" (VOØK) was first carried out in 2004 for the year 2003 and repeated in 2009 for the year 2008. The sample in both surveys consisted of 2,000 businesses with five or more employees, extracted at the company level from Statistics Norway's corporate and business register (BoF). In both studies was the participation rate was very high, 92 and 94 percent respectively. More information: see Ellingsen and Sky (2005) and Ellingsen (2010).
53 NHO's Security Council (2011).
54 Økokrim (2011:16).
55 Another recent example is the research done in connection with suspected collusion in the poultry industry (Meyer (2011)).
56 Andvig (2011).
57 Most municipalities have less than 5,000 inhabitants.
58 Mauren and Eliassen (2006).
59 Gedde-Dahl and Haugnes (2010), ibid.
60 Folkvord (2011).
61 Report No. 7 (2010–2011:56).
62 There are some exceptions, see e.g. Gedde-Dahl, Magnussen and Hafstad (2008), Andvig and Todorov (2011), Folkvord (2011), Gottschalk (2011), as well as several master's theses, but the selection is limited.
63 This section is based on a simple compilation the author has made of the cases as described in the collection of sentences done by TI-Norway (2011).
64 Andvig (2011).

65 Økokrim (2011:13).
66 Ibid.:25).
67 Ellingsen (2010).
68 It should be noted that when statements such as "significant risk of corruption" and similar are used below, this is relative compared with other sectors in Norway, *not* compared to similar sectors in other countries. For example, it is stated below that there is reason to believe that significant corruption risk is associated with major public construction projects. This means a significant risk of corruption compared to many other areas/sectors in Norway, *not* that the corruption risks of major public construction projects in Norway are higher than in other countries.
69 Gedde-Dahl, Magnussen and Hafstad (2008), Renå (2009).
70 http://statbank.ssb.no/statistikkbanken/Default_FR.asp?PXSid=0&nvl=true&PLanguage=0&tilside=selectvarval/define.asp&Tabellid=04695
71 See e.g. Keefer and Khemani (2005), Shah (2006).
72 Vabo and Stigen (2000), Hovik and Stigen (2008).
73 Companies where one or more municipalities are majority owners.
74 E-mail from KS 23 January 2012.
75 Econ (2004:70–71), Gjertsen and Martinussen (2006:4, 38–39, 77), Ringkjøb, Aars and Vabo (2006:229), Brandtzæg, Kili and Aastvedt (2008:11, 53).
76 The corruption provision imposes conditions which must be proven to be true.
77 It *may* differ from the acceptance of penalty notices where the company *may* state that it accepts the fine, without agreeing with the prosecuting authority's assessment of guilt.
78 TI-Norway (2011).
79 Søreide (2006:389–390, 397–399).
80 Interview with Lundeby, 25/10/11; Søreide (2006).
81 Also see Andvig (2005).
82 Angell (2011), Halvorsen (2011) and Kvamme (2011) interviews with author, Økokrim (2011:13).
83 Ibid.
84 Public procurements include expenditure on goods, services and gross investments. The figures are from Statistics Norway, URL: http://www.ssb.no/vis/emner/12/01/offinnkj/main.html Last visited 16/02/2012
85 Document 3:9 (2010-2011).
86 http://www.aftenposten.no/okonomi/innland/article3918611.ece. Last visited 20/01/2012.
87 Christophersen (2011). Also see -*Viktig rapport om fiskerikriminalitet*, URL: http://www. regjeringen.no/nb/dep/fkd/pressesenter/pressemeldinger/2011/--viktig-rapport-om-fiskerikriminalitet.html?id=645094 Last read 20/03/2012.

# Anti-Corruption Work

# ANTI-CORRUPTION WORK

This chapter reports on what anti-corruption work has been done in recent years in terms of reforms, initiatives and activities. The main focus is on what has been done by the government and underlying regulatory and administrative bodies, but we will also briefly mention important initiatives, measures and activities from the business sector, civil society and other stakeholders.

Anti-corruption work is about limiting the opportunities to commit acts of corruption, increasing the risk of detection for those who commit such acts, and ensuring that any disclosure will lead to a harsh reaction. Statutes and regulations, investigation and prosecution and awareness raising activities are important in this respect. We will begin with a description of current anti-corruption provisions in legislation and some reflections on them. Secondly, we will describe other important legislative changes that have been made (in an anti-corruption perspective), before we look at what the government has done in terms of reforms and measures to combat corruption. Finally, we look at the measures and activities implemented by other parties. We will mainly concentrate on the last two to five years, but will also go back to 2003 when the Storting adopted the current statutory provisions on corruption.[88]

**What does legislation say about corruption?**

Up until 1996 undertakings in Norway could claim tax deductions for expenses for bribes to the public and private sectors in other countries.[89] Much has changed since then, and Norway has ratified all relevant international agreements against corruption and made the necessary adjustments to the penal code in connection with this: The OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (dated 7 August 1997, ratified on 27 October 1998[90]), the Council of Europe Civil Law Convention on Corruption ratified 13 Dec. 2007[91]) and its Criminal Law Convention (dated 27 January 1999, ratified on 13 June 2003[92]) and the UN Convention against Corruption (dated 31 October 2003, ratified 7 June 2006[93]).

Ratification of the Council of Europe Criminal Law Convention on Corruption[94] created a need for changes in Norwegian legislation and resulted in Norway adopting a special penal code provision on corruption on 4 July 2003 – Penal Code Section 276 a), b) and c). Statutory provisions dealing with corruption prior to 2003 did exist, but these were not considered appropriate – partly because there were unjustified differences in punishability terms and penalties for corruption in the public and private sectors, and limitation periods for some of the penalty provisions were too short.[95]

The Norwegian Penal Code defines corruption as any person who for himself or other persons *requests or receives an improper advantage or accepts an offer thereof in connection with a position, office or assignment,* or *gives or offers any person an improper advantage in connection with a position, office or assignment.*[96] The decisive question is what is considered an improper advantage. According to preparatory work on the law, this is based on an overall assessment of the situation, where a number of factors come into play. We shall not go into these in detail here, but important factors are: the economic value of the advantage, the parties' position or office, the purpose behind the performance, the degree of transparency in relation to the recipient's employer or client, whether any internal organizational guidelines, etc. have been violated, what is customary in the relevant area of life or business, whether any guidelines etc. from a trade association have been broken.[97] It is worth noting that the Norwegian corruption provisions are wide-ranging, and they apply to both private and public sectors. Furthermore, the courts can also apply the provisions to matters that take place abroad.[98] For the prosecution of foreigners it is not required that the relationship is punishable in the relevant country. According to the Norwegian Penal Code, it is also illegal for Norwegian companies to engage in trading in influence at home and abroad (Section 276c). Both individuals and corporations can be criminally liable. In Norwegian case law there are examples of sentences where values as low as a few thousand kroner have been considered improper pursuant to the legal standard.[99] The maximum sentence for

corruption is ten years, while it is three years for trading in influence.[100] Looking at the sentences delivered in the period 2003-2011, where the person concerned has been convicted of offences pursuant to the corruption clause, the courts' sentencing has usually not deviated significantly from prosecution demands – the toughest sentence so far was handed down on the main perpetrator in the waterworks case, who was sentenced to a penalty of imprisonment of seven years and six months.[101]

The current statutory provisions on corruption have been subject to evaluation by international observers under the auspices of GRECO[102] and the OECD. GRECO assessed whether the statutory provisions relating to corruption and trading in influence fulfilled the obligations under the Council of Europe Convention on Corruption and concluded that they are "clearly of a high standard" and that in some areas go beyond that required by the Council of Europe Convention.[103] The OECD assessment focused at on Norway's implementation and enforcement of the OECD convention on counteracting bribing of public servants in international business relations. The evaluation has undergone three phases where the last concluded that, on the whole, implementation of the OECD Convention has worked well and that it is enforced in an efficient manner.[104] It may also be mentioned that this year Norway is subject to a peer review of its implementation of the UN Convention against Corruption (UNCAC).

On this basis, there is reason to claim that the Norwegian corruption provisions are stringent, both in theory and practice. But this does not mean that things cannot be improved. From the interviews in connection with this study, there have been comments from various quarters that in different ways concern how legislation regulates corruption-related matters and the practice of this. The Økokrim representative identifies two things when it comes to the possibility of convicting companies under the corruption provisions: 1) He finds it difficult to succeed with charges of corporate penalties because the provisions of the Penal Code (Sections 48 a and b) state that certain conditions must exist for an enterprise to be liable to a penalty 2) In his opinion, there should be better harmony between corporate penalties pursuant to the Penal Code and tender refusal in the public sector, cf. the Public Procurement Act. It appears that the threshold to impose corporate penalties are high, partly because tender refusal is quite absolute.[105] The latter point emerged in the Norconsult case. The case involved bribery of public officials in connection with a construction contract in 2003-2006 in Tanzania, funded by the World Bank, where Norconsult was managing construction. It was Norconsult itself who reported the matter. Three Norconsult employees were convicted of corruption, while the company was acquitted. Although Norconsult was acquitted, the court concluded that the conditions for punishment were present. The fact that the company avoided punishment follows from the court's access not to impose corporate penalties on a discretionary basis. In its assessment, the court emphasized to a

certain degree that if the company were convicted, it would have lost all of its public contracts. This *may* suggest that the enforcement of tender refusal in the procurement regulations has adverse consequences for the threshold to impose corporate penalties. Økokrim and one of the three people who were convicted of complicity in cash payments, have decided to appeal. The sentence is not final and the appeal is scheduled for consideration by the Court of Appeal 31 august 2012. A private corruption investigator calls for legislation to give companies incentives to notify the authorities if they discover suspicious circumstances in their own undertakings. Current practice is that some companies experience that they are punished if they report matters, according to corruption investigator.[106] The NHO representative calls for procedures for what is required for a company that has been convicted of corruption to become "clean" again, for example that corruption convicted Company Z must meet requirements *a* and *b* in x number of years.[107] The above considerations take different directions, but show that there may be a need for adjustments to current legislation concerning companies in this area.

#### Relevant statutory amendments: whistleblowing, publicity and money laundering

In order to get rid of corruption, it is important to ensure the protection of whistleblowers and generally ensure transparency in the public sector. In both of these areas there have been changes in legislation in recent years. Other legislative changes that have been made, which are important in terms of anti-corruption, are the new Money Laundering Act, the introduction of quarantine regulations for members of government and state employees, the provision relating to employer liability for acts of corruption carried out by employees and tighter procurement regulations. [108] These are discussed briefly in the paragraphs below.

The right of employees to speak publicly about matters concerning the enterprise they work for is enshrined in the Constitution (Article 100). In 2007 special provisions to protect whistleblowers were included in the Working Environment Act. *The notification provisions* are wide-ranging – they apply to all employees in all positions in the public and private sectors. Employees are always entitled to notify via internal notification procedures or supervisory authorities or other public authorities, but the procedure must be *appropriate* (Section 2-4). The notification can be made anonymously. The employee also has the right to notify the media or in other ways make the information known to the public. The threshold for going to the media is higher than it is for notifying internally or to the supervisory authorities. This is due to the risk that information which may harm the business unnecessarily will be greater if one goes to the media.[109] The Norwegian Labour Inspection Authority is responsible for safeguarding the Working Environment Act's duty to allow conditions for whistleblowing, and it can overrule the employer's assessment as to whether there is a need for action. The Norwegian Labour Inspection Authority evaluates the notifications they receive and if needed follow up with in-

spection, orders or reporting, if the conditions warrant this, but has no responsibility to resolve actual disputes of a civil law character between an employer and an employee – that is up to the courts.[110] If the whistleblower is subjected to retaliation by his or her employer the individual can claim redress without consideration to the employer's culpability (Section 2-5).

A major study on the subject from 2010 concluded that whistleblowers in Norway are both more rarely penalised and whistleblowing is more effective than is reported in international literature.[111] Institutional features within the Norwegian labour market, such as collective agreements, central and local collaboration and a working environment act, which cover the majority of the Norwegian labour market, are seen as possible explanations.[112] However, this overall picture must be qualified. Those notifying of less serious "censurable conditions" appear to experience retaliation to a minor degree, while employees who notify on more serious censurable conditions may find that the matters they raise are not addressed and that they are exposed to repeated negative actions that can develop into bullying.[113] The notification provisions have also been criticized.[114] This includes the requirement that the notifier chooses an *appropriate* procedure and confusion on which formal requirements apply to undertakings' own notification procedures.[115] In his response (2006) to current notification provisions, law professor and labour law expert Henning Jakhelln pointed out that the requirement for the notification to be appropriate changes focus – rather than notification cases being a matter of an evaluation of censurable conditions at the undertaking, they become a matter of whether the notifier has acted reprehensibly with the consequence that they "take the eye off the ball." [116] This study finds indications that there is room for improvement in terms of: a) making employees aware of the current rules, b) protecting those who notify of censurable conditions, c) raising the awareness of managers in the public sector of the employees' right to express criticism in public more generally – without experiencing retaliation from employers. [117] In the largest study of notification conducted in Norway[118,] only half of the employees responded that they were aware of the Working Environment Act's notification provisions, and only a third of the respondents answered affirmatively that written notification procedures had been drawn up at the workplace. Furthermore, one third replied that they had witnessed, revealed or experienced censurable conditions at their workplace during the past twelve months. Of these 47 percent had omitted to notify. The fear that the unpleasantness would be too great was given as the main reason for the omission.[119]

The current *Freedom of Information Act* came into force on 1 January 2009. It was intended to ensure more transparency in public administration, as indeed it did in several areas. All undertakings that are primarily (at least 50 percent) owned by the public sector are now subject to the Freedom of Information Act. All e-mails

that are subject to proceedings and have value as information must now be recorded, and all government agencies must make their records publicly available on the Internet. Despite several provisions that contributed to a strengthening of the principle of public access to public administration, dissatisfaction was expressed from various quarters concerning the content of the new Freedom of Information Act. Media representatives were particularly critical, but legal experts have also forwarded critical comments that the exceptions to the provisions are too extensive and that the application of law is based on discretion.[120] This study also finds clear indications that that public administration has room for improvement in terms of compliance with the Freedom of Information Act.[121]

As part of efforts to improve supervision of the financial sector and strengthen the fight against economic crime, a *money laundering act* was introduced 2003 (which came into force on 1 January 2004) - Act on measures to combat the laundering of proceeds etc. (Act No. 2003-06-20-41). As a result of the introduction of the third EU Money Laundering Directive, and partly for educational reasons, a new Money Laundering Act was introduced in 2009 (which came into force on 15 April): Act relating to measures against money laundering and terror financing, etc. The Act applies to most of the financial market and a number of other undertakings (Section 4). Violations of the Act may result in fines or imprisonment for up to 1 year (Section 28). The act involves a number of obligations that reporting entities are required to comply with, including a duty of investigation and duty to report. [122] Økokrim annually receives more than 6,000 STRs. There is reason to believe that there is significant under-reporting in some sectors when looking at the number of STRs the sectors report in light of their central roles in accounting (accountants), auditing accounts (auditors) and assistance with and execution of transactions for clients (lawyers and brokers). Auditors, accountants, lawyers and brokers reported 86, 59, 6 and 15 STRs respectively to the FIU in 2010.[123]

In 2005, *quarantine regulations* were introduced for the government, consisting of three sets of guidelines. These apply, respectively, to civil servants, politicians in the sense of ministers, state secretaries and ministers' political advisers, and the last set of guidelines applies to the transition from political position to ministry position. For civil servants it is the employer who decides who shall be imposed quarantine and/or exclusion from case processing. For politicians an independent committee has been appointed (Quarantine Commission) which decides on matters of quarantine and exclusion from case processing. The quarantine rules for politicians have been criticized for being too relaxed, and this was probably a contributing factor when the government in October 2011 appointed a committee to review experiences with the government quarantine regulations.[124] Upon the implementation of the Council of Europe's Civil Law Convention on Corruption, a separate provision was introduced in the Act relating to compensation in certain

circumstances Section 1-6 that governs *employer liability* for damage caused by the corrupt actions committed by employees. [125] The purpose of the statutory provision on the part of the Ministry was to clarify the employer's responsibility to prevent the commission of corruption in the undertaking. [126] Finally, an important change in the public procurements regulations (FOA) in 2006 (which came into force in 2007), which requires that public principals reject suppliers the principal knows is legally convicted of corruption, cf. PPR Section 11 -10, No. 1 letter e How long after conviction the convicted suppliers are to be inadmissible is a question which at present seems to be unclear. [127]

#### The government's reform initiatives and anti-corruption measures

In 2002 the Bondevik II government commissioned Eva Joly to front a three-year project against financial and other profit-driven criminality, especially corruption and money laundering. A major aim of the project was that Norway was to play a more active role internationally in fighting corruption and money laundering. [128] The project was also to work toward better measures at home and headed the work on the government's action plan against economic crime, which was presented in 2004. This was not the first time the government prepared such an action plan (these were also prepared in 1992, 1995 and 2000), but it had a broader scope than the previous action plans.[129] In 2011, the government issued a new action plan to combat financial crime. Such action may be an indication that combating corruption is a priority policy area and can contribute to a better distribution of responsibilities between the various ministries and other relevant stakeholders, and also strengthen cooperation among the various stakeholders. The Ministry of Justice and the Police and Ministry of Finance have a particular responsibility for implementation of the action plan.[130] A priority area has been improved cooperation between different control bodies, and between control bodies and police and the prosecuting authorities. The final action plan includes a number of examples that measures have been implemented. Tax authorities, the police and the prosecuting authorities have established formal cooperation, including in the form of an agreement that sets out the principles for cooperation regionally and nationally, as well as instructions for how the operational work should take place. From 2007, the tax authorities' have tax auditors attached to the financial crime teams in all police districts to assist the police in tax matters.[131] Meanwhile, the Auditor General has noted that collaboration between the police (financial crime teams) and the control bodies could improve.[132]

In the following, we take a closer look at what has been done in terms of reforms and initiatives in areas where there is reason to believe that the risk of corruption is high compared to other areas in Norway (cf. Corruption Profile chapter): local government, business operations and development work abroad and public procurement.

### The municipal sector

In recent years the government has presented several initiatives to improve regulation of the municipal sector. In 2007, the Ministry of Local Government and Regional Development (MLGRD) presented the report "Regulations for the municipal sector in an ethical perspective." The report was followed by Proposition to the Odelsting No. 17 (2008-2009) *Relating to amendments to the Local Government Act and the Svalbard Act (on confidence-building management, etc. in municipalities and county municipalities).* In parallel MLGRD established a working group to consider possible measures to strengthen the municipalities' internal control. The working group released its report in 2009, and several of the report's recommendations have subsequently been followed up in the form of initiatives and legislative amendments from the government. It may also be noted that MLGRD in the autumn of 2011 provided financial support to a project organized by Transparency International and KS where the aim is to put anti-corruption on the agenda of local authorities and help raise the awareness of the stakeholders in the sector, as well as develop and disseminate instruments and methods that can reduce the risk of corruption.

### The Business Sector

The government has stated that there is a need for better cooperation between the authorities and industry in the fight against corruption, including a liaison between the Ministry of Justice and the Police, the police and prosecuting authorities and the private sector.[133] In 2009 the government increased focus on CSR in the form of a Report to the Storting. The report clearly expressed the responsibility of undertakings to fight corruption: "The government (...) expects undertakings to actively combat corruption through established notification schemes, internal policies and information work" and "expects that undertakings exercise the greatest possible degree of transparency in capital flows."[134] In the same year the government-appointed Capital Flight Committee issues its report, in which they looked at the relationship between tax havens and illicit capital flows from poor countries.[135] The committee proposed a number of measures to reduce the harmful effects of so-called tax havens, and also received some attention internationally.

### Development cooperation with other countries

In 2007 the Ministry of Foreign Affairs' (UD) anti-corruption project presented a report with a number of proposals for follow-up, including the establishment of a public committee to assess all aspects of the role of tax havens and their impact on developing countries[136,] taking the initiative to strengthen the international framework against corruption, highlighting Norwegian and international efforts to combat corruption, the establishment of the Business Anti-Corruption Portal[137], where the focus is on developing countries, and strengthening dialogue with multilateral organizations in terms of anti-corruption. Norwegian authorities were also one of the four founders of the U4 Anti-Corruption Resource Center *(www.U4.no),*

which is an Internet-based anti-corruption centre. The centre is a collaborative effort between the eight countries that currently finance it. The primary activities of the centre are research and training for the partner countries' aid agencies and their partners, but it is also widely used beyond the eight countries.

As an element of anti-corruption work, in 2007 the Ministry of Foreign Affairs created a central control unit. Since its inception and through August 2011, the Ministry of Foreign Affairs has registered a total of 253 notifications of suspected financial irregularities.[138] 123 of these cases are closed, and in 37 of these various forms of irregularities were uncovered.[139] The cases largely concern matters from NGOs and only rarely other governments. Given that aid to a lesser degree is distributed through organizations, there is the question of whether cases reported reflect the actual corruption situation in each country. In 2011 the Ministry established a notification team to handle the matters administered by Norad. It is too early to say anything about the effects of the establishment of the Ministry's control unit, but the measure can be viewed as an indication that the authorities are taking this risk seriously. It may be added that several of the NGOs have openly criticized how the control unit works – one major theme has been the current practice in which the organizations who have been victims of corruption must repay to the Ministry a sum equivalent to that which has been lost as a result of corruption. This is experienced by the organizations as a dual punishment, as it involves paying back money they have already lost. Furthermore, it has been argued that the Ministry's zero tolerance approach to corruption in NGOs may lead to fewer reports of irregularities.[140]

#### Public procurements

There is no separate body responsible for overseeing public procurements. The OAG has for a number of years in its annual audit reports of the administration reported lack of compliance with procurement regulations in public administration, and upon presentation of the annual report in 2007, it was stated that "violation of procurement regulations remains a pervasive problem, and there are few signs of improvement."[141] Given that public procurement is among the most risk-exposed areas for corruption, this is cause for concern and an area where there is room for improvement. Through Difi and the Ministry of Government Administration, Reform and Church Affairs, the Government has initiated a number of human resource development measures to remedy some of these problems. A website has been set up *(www.anskaffelser.no)* where, among other things, guidance material is available for all phases of the procurement process. Difi has also published a lot of information about public procurement and entered into an agreement with private companies that hold courses on the subject for public bodies and undertakings around the country. It is difficult to say anything about the results and effects of these measures, but there is no doubt that public procurement is an area where it is important to implement measures that reduce the risk of corruption.

**The private sector, civil society and other stakeholders**

Norwegian industry generally receives praise from the authorities for its work on combating financial crime.[142] NHO were front-runners in putting ethics and corruption on the agenda. In 1999 NHO took the initiative to develop a knowledge base on corruption. Among other things, this resulted in an information brochure on corruption following year ("Standpunkt korrupsjon"), and the organization has been active in raising its members' awareness of anti-corruption work in the form of courses, lectures, brochures and more. In 2006 NHO prepared the guide "... across the line?" which provides information and guidance on how undertakings should create guidelines for setting limits for gifts, representation, and more. A joint project to combat black economy has been established between tax authorities, trade unions and employer organizations. Information and awareness campaigns aimed at young people and the participating organization's members are among the most important measures.[143]

The Norwegian Association of Local and Regional Authorities (KS) has ethics and anti-corruption as a prioritized area. KS has implemented several initiatives and projects, and created courses and guidelines, with the aim to strengthen the municipalities' internal control and strengthen the knowledge and expertise of local politicians and municipal employees on corruption-related issues. Examples of this is training of representatives where competence, conflict of interest and pressure on representatives from interest groups and similar are important subjects *(www.folkevalgt.no)*; the Norwegian Association of Local and Regional Authorities Ethics Committee *(www.etikkutvalget.no)* which raises ethical issues for debate and provides advice to municipalities and counties on difficult ethical questions; and KS' ethics portal *(www.etikkportalen.no)* where much of the advisory material is electronically available.

Within civil society, there are two organizations that, in addition to Transparency International's Norwegian Section, are dedicated to anti-corruption work. The international organizations Publish What You Pay and the Tax Justice Network both have branches in Norway (PWYP-N and TJN-N). A primary goal of PWYP-N's work is to achieve greater transparency and accountability in the extractive industries. Among other things, TJN-N works to inform public opinion about the harmful effects of the secrecy provided by tax havens. When it comes to the aid and development area, several of the major NGOs have started preparing their own corruption reports on corruption cases they have discovered in their aid and development work. At the same time, the aid sector has been criticized for not having much allowance for criticism of the system.[144] It is therefore important that the media and others take a critical view of the Norwegian development aid sector to ensure that censurable issues see the light of day.

88 Proposition to the Odelsting, No. 78 (2002-2003).

89 This is not unique to Norway. Tax deductions for foreign bribes were common in many other Western European countries until the late 1990s (OECD (1997), cited in Andersson (2002:56).

90 Decision in the Odelsting No. 2 (1998-1999).

91 Recommendation to the Storting No. 41 (2007-2008).

92 Recommendation to the Storting No. 236 (2002-2003).

93 Recommendation to the Storting No. 188 (2005-2006).

94 The agreement was approved by the Council of Europe's Committee of Ministers 1 May 1999 and entered into force on 1 November 2003. Norway ratified the Convention on 2 March 2004 and monitoring of the Convention takes place in the Group of States against Corruption (GRECO), of which Norway is a member.

95 Stoltenberg and Schea (2007:76–77).

96 Penal Code Section 276a and b

97 Proposition to the Odelsting, No. 78 (2002–2003:53 pp.).

98 This is pursuant to the Penal Code Section 12, first paragraph, No. 1 and No. 4 letter a.

99 Cf. the judgement of the Hålogaland Court of Appeal (2 March 2009), where an amount of NOK 3,600 is considered improper. Also see Stoltenberg and Schea (2007).

100 The maximum penalty of ten years applies to actions that qualify for convictions of gross corruption. If "only" convicted of corruption, the maximum penalty is three years.

101 Sentence handed down in Eidsivating Court of Appeal 28 May 2010.

102 GRECO (Group of States against Corruption) is the Council of Europe's own body for monitoring the party states' implementation of convention obligations. Through country evaluations the body shall ensure that member countries implement the convention and other Council of Europe instruments against corruption in line with the intentions and obligations under international law.

103 GRECO (2009:18).

104 OECD (2011).

105 Interview with Angell, 30 October 2011.

106 Interview with Kvamme, 4 November 2011.

107 Interview with Lundeby, 25 November 2011.

108 This list is not exhaustive, but should be regarded as the most important statutory amendments with regard to anti-corruption made during the period.

109 The Norwegian Labour Inspection Authority (2011:8).

110 Ibid.

111 Trygstad (2010:23–28).

112 Skivenes and Trygstad (2010).

113 Bjørkelo, Ryberg, Matthiesen and Einarsen (2008).

114 Interview with Kvamme 04/10/2011; interview with Eriksen 09/11/2011, interview with Øy 14/10/2011, URL: http://www.byggaktuelt.no/node/983 Last visited 10/09/2011.

115 Jakhelln (2006), Eggen (2009:24), Lewis and Trygstad (2009:382), Trygstad (2010a:16-17).

116 Jakhelln (2006).

117 See the chapter on the public sector.

118 The study is based on a survey answered by 6,000 respondents and which was conducted in 2010 Trygstad (2010b).

119 Twenty five percent however reported that they lacked information to be able to assess the seriousness and 19 percent reported that they had notified.

120 Henriksen (2003), Johansen (2008a), Hove and Bernt (2009).

121 See the chapter on the public sector, the points on transparency.

122 On suspicion that a transaction is related to the proceeds of a criminal offence, investigations must be carried out to confirm or refute the suspicion, cf. Section 17 Suspicious transaction reports (STRs) should be reported to the Financial Intelligence Unit (FIU) of Økokrim, cf. Section 18.

123 Økokrim (2010:22). Also see the chapter on the business sector.

124 See Utvalg skal se på statens karanteneregelverk [Committee to look into government quarantine regulations], URL: http://www.regjeringen.no/nb/ dep/fad/pressesenter/pressemeldinger/2011/utvalg-skal-se-pa-statens-karanteneregel. html?id=661692 Last visited 15/02/2012. For further discussion of quarantine regulations, see the chapters on the government and the public sector.

125 Act relating to compensation in certain circumstances Section 1-6 was added in the Act of 11 January 2008 no. 1 (in force from 1 March 2008, according to Royal Decree of 11 January 2008 No. 3).

126 Proposition to the Odelsting, No. 73 (2006-2007:29).

127 Also see *Corruption prevention work related to public procurements* in the chapter on the Public Sector.

128 http://www.regjeringen.no/nb/dep/jd/tema/korrupsjon_og_hvitvasking/joly-prosjektet.html?id=418087

129 The Government (2004:4).

130 The Government (2011).

131 Ibid.:14).

132 The Office of the Auditor General (2009).

133 Ministry of Justice and the Police (2010:117).

134 Report. No. 10 (2008-2009:20).

135 NOU (2009c).

136 See NOU (2009c).

137 http://www.business-anti-corruption.com/

138 This includes not only cases where the foreign service manages the funds, but also cases where management is delegated to others, be they public institutions like the Ministry's subordinate agencies (Norad and the Peace Corps), Norfund, Innovation Norway, multi-lateral organizations/foundations or NGOs.

139 http://www.regjeringen.no/nb/dep/ud/dok/rapporter_planer/rapporter/2011/misligheter_rapport.html?id=661925

140 Another issue with regard to Norwegian development work abroad is to which extent Norwegian aid funds and development work affects the existing power relationships in the recipient country and whether this fuels corruption. The question is extensive and is beyond the scope of this study, which has its primary focus on Norwegian conditions and the management of Norwegian funds.

141 The Government (2009:26).

142 The Government (2011:17).

143 See www.handlehvitt.no.

144 Liland and Alsaker Kjerland (2003:259); Tvedt (2009); Østerud (2006:309).

# 1. The Storting

# 1. The Storting

**SUMMARY**

Today the Norwegian Storting (Parliament) is considered to be the highest state authority. In the 1990s and at the beginning of the 2000s a strengthening of the Storting took place in that more control mechanisms were put at its disposal. The actual balance of strength between the Storting and government is largely contingent on the actual balance of power between the ruling party/parties and the opposition parties in the Storting. The actual power of the Storting is necessarily greater when there is a minority government than when there is a majority government. The Storting has plentiful resources, and its independence is guaranteed by law, which must also be said to be the reality in practice. The activity of the Storting is generally characterised by a great degree of transparency, which makes it possible for anyone to have access to the activities of the Storting. One complaint is the inadequate regulation of the representatives' activities. For example, there is no register of lobbyists, no code of conduct or equivalent for members of the Storting, no quarantine provisions and no written eligibility rules, and there are also restrictions on what is available of information on the representatives' other positions and economic interests.

The table below shows the total score for the Storting. The qualitative assessments that form the basis of the score for each indicator is provided in the following pages.

| The Storting<br>Overall score: 89/100 | | | |
|---|---|---|---|
| | **Indicator** | **Law** | **Practice** |
| **Capacity 100 /**100 | Resources | 100 | 100 |
| | Independence | 100 | 100 |
| **Governance and Management 79/**100 | Transparency | 100 | 100 |
| | Accountability | 100 | 100 |
| | Integrity mechanisms | 25 | 75 |
| **Role 88/**100 | Control of Government | 100 | |
| | Anti-Corruption Legislation | 75 | |

**STRUCTURE AND ORGANISATION**

The political system in Norway is based on the parliamentary principle, and the Storting is today regarded as the principal branch of government.[145] The representatives in the Storting are elected by the people, and the government is accountable to the Storting. The Storting has authority in three key areas: legislative authority, taxing and allocating authority as well as controlling authority.

What the tasks of the Storting are and how the work in the Storting shall be organised and managed is set out in the Constitution and the Storting's Rules of Procedure. Planning and facilitation of the Storting's work are made by the Storting's Presidium, which is elected when the Storting is constituted every year, of and amongst the representatives. The representatives to the Storting, with the exception of the President of the Storting, are divided into 12 committees[146]. Who is to sit on which committee is decided by a nomination committee, which is established every time a new Storting convenes following an election. All party groups must be represented in the Standing Committee on Scrutiny and Constitutional Affairs. Otherwise the party groups should, as far as possible, be represented, on a proportional basis, in the committees. The committees vary in size and have from 8 to 18 members.

Parts of the Storting's controlling activity are left to external control agencies. These are: the Office of the Auditor General, the Parliamentary Ombudsman, the Ombudsman for Defence Matters, the Ombudsman for Civilian Conscripts and the Norwegian Parliamentary Intelligence Oversight Committee (the controlling agency for "the secret service"). The control agencies are subject to the Storting and regularly report in writing to the Storting on their work.

## CAPACITY

### RESOURCES (LAW)

*To what extent are there provisions in place that provide the legislature with adequate financial, human and infrastructure resources to effectively carry out its duties?*

Score: 100

The Constitution clearly states that the Storting shall have at its disposal the state's finances (Article 75 d), including the Storting's own budget. The Storting has both taxation and allocation powers. Through the former, the Storting procures finances, and through the latter it allocates the state's finances.[147]

The method of budgetary procedure is determined by the Storting's rules of procedure and the allocation rules. Both are adopted by the Storting in plenary session, and may be altered at any time in the same way. The government's proposal for a state budget for the coming year shall be presented to the Storting within six days of the opening meeting of the Storting.[148] The Standing Committee on Finance and Economic Affairs shall give its recommendations on the state's budget (Budget recommendation S.I) at the latest by 20 November, with a proposal for a framework decision for allocations in accordance with the division of the framework areas established by the Storting. The proposal must be considered by the Storting within one week, and the Storting's framework decision is binding for the subsequent budgetary procedure that year. Thereafter, the committees make recommendations on allocations within the framework areas they are assigned.[149] It is up to the Storting to decide on how much of the budget shall be specified in detail. [150]

The Storting's internal budget is prepared through an internal process in which the Secretary General of the Storting has the responsibility for preparing a budget proposal that is presented to the Storting's presidium for decision.[151] The budget proposal is then submitted to the Ministry of Finance, which incorporates it into the total budget proposal without objections or constraints. This is considered to be a fixed established practice. Whether it is to be considered as common law, in the sense that the Ministry of Finance/the Government is bound by it, is somewhat ambiguous, but in practice no changes are made to the budget proposal from the Storting. [152]

**RESOURCES (PRACTICE)**

*To what extent does the Storting have adequate resources to achieve its goals in practice?*

Score: 100

The Storting has sufficient financial means to carry out its duties in practice. This can be regarded as a natural consequence of the fact that in practice it is the Storting itself that decides its own budget, but this is also confirmed by the Secretary General of the Storting.[153]

As is shown by the table below the operating budget of the Storting has been balanced with a good margin in the past six years.

**TABLE 1.1 OPERATING EXPENDITURE FOR THE STORTING. 2005-2010. FIGURES IN NOK MILL.**[154]

| | Budget | Accounts | Balance |
|---|---|---|---|
| 2010 | 735,8 | 689,8 | 46,0 |
| 2009 | 682,0 | 615,1 | 66,9 |
| 2008 | 667,5 | 639,6 | 27,9 |
| 2007 | 629,0 | 547,0 | 82,0 |
| 2006 | 626,1 | 576,7 | 49,4 |
| 2005 | 591,4 | 571,8 | 19,6 |

The parliamentary activity in the Storting has increased considerably since the beginning of the 1990s. This has partly to do with the actual power sharing between government and the opposition parties in the Storting. The actual power of the Storting is necessarily greater when there is a minority government than when there is a majority government.[155] In the 1990s and up to 2005, which was a period of minority governments, the Storting acquired more power vis-à-vis the government. This was especially the case in the area of supervision.[156] An example of this is the number of decisions on requests per Storting session – "The Storting urges the government to..." – which increased steadily from the 1990s until reaching its peak in 2002-2003, when the number was 247. During the first session of the Storting with a majority government (2005-2006) the figure decreased to nine.[157]

The increase in parliamentary activity has several consequences. In the first place the representatives travel more and have more meetings. The time squeeze is a big problem for many representatives.[158] More and more often committee meetings and consultations take place at the same time as meetings in the Storting. Therefore it often seems to be virtually empty during debates in the Storting's assembly hall,

which may represent a reputation problem for the Storting.[159] It may appear that members of the Storting are not active in their work, and people's confidence in the Storting and parliamentary debate may be impaired. All representatives can follow the debates from their offices, and due to the increased meeting activity, the informants do not see any other solution than having parallel meetings.[160] Secondly, demands on and expectations toward the Storting's administration are on the increase, for example, professional support to the Storting has been considerably strengthened in recent years. This support system provides practical and expert assistance to representatives, party groups and committees.[161] There are many applicants in response to the job announcements in the Storting's administration and the retirement age is high, at 66 years in 2010, which proves that the Storting is a popular place to work. The Storting also has considerable international activity, which is handled by the international section. A great amount of the activity is directed towards EU, including the EU parliament, and is the reason why the Storting established a special office in Brussels.

Around 15 percent of the entire budget of the Storting is allocated to the party groups (NOK 140.8 mill. in 2010), which is mainly used for salaries for political advisors and secretaries. Each party group receives an annual basic contribution, which in 2010 was NOK 2,204,497, plus NOK 698,036 per representative. Groups in opposition also receive an opposition contribution, which is a whole or half basic contribution respectively, depending on the size of the party group (<5/2-5 representatives).[162]

**INDEPENDENCE (LAW)**

*To what extent is the Storting independent and free from being subordinate to other parties by law?*

Score: 100

The Storting cannot be dissolved by other bodies. Its independence is based on regulations in the constitution and constitutional common law. It is the Storting itself that elects the leader of the Storting, and the distribution of representatives in the committees. At the beginning of a new Storting, the Storting elects its presidium consisting of the President of the Storting and five vice presidents.[163] The presidium plans the work in the Storting and leads the Storting's meetings.[164]

As soon as the Storting is constituted, a nomination committee of 37 members is elected, which determines the composition of the Storting's permanent committees. The nomination committee should be represented proportionally based on the party groups.[165]

In accordance with Norwegian constitutional law the courts have a right and a duty to check that legislation is kept within the boundaries of the constitution.[166] The arrangement is part of the principle of power sharing and can therefore not be deemed to upset the independence of the Storting.[167]

The Storting can cede its authority "in an acceptably limited area" to international organisations (Const. Article 93). The condition is that three quarters of the representatives give their consent. In addition two thirds of the representatives must participate in the vote. The Storting in office normally sits for four years, but if elections cannot take place because of war or other extraordinary circumstances, the sitting Storting must continue until new elections can be held.[168] The King may formally sett supplement the Storting's power in the legislative area through the right to provide provisional devices, within certain areas, when the Storting is not convened (Const. Article 17).[169]

Norway does not practice parliamentarian immunity as a general principle set out in the legislation; which means that consent must be given by parliament in order to bring charges against one of its members. However, Article 66 of the constitution provides a limited freedom of responsibility for members of the Storting. The members have a certain degree of protection from arrest and confinement, known as exemption from personal arrest. In addition, the freedom of responsibility goes a long way in respect of the representatives' utterances – charges cannot be brought against the representatives, nor can claims for damages be brought, for utterances they have made in the "assemblies of the Storting".[170] On the other hand, inappropriate behaviour or forms of address during the debates is not allowed according to the Storting's rules of procedure (Article 38) If a representative acts in contravention of this, the president of the Storting can give the person concerned a warning, and as a final resort, the president can make a proposal to vote to exclude the person for the remainder of the day (Article 42).

**INDEPENDENCE (PRACTICE)**

*To what extent is the legislature free from pressure from or subordination to external actors in practice?*

Score: 100

The independence of the Storting is strong in practice and cannot be said to be exposed to undue pressure or be subjugated other bodies within its area of operations. There has been a constriction in the Storting's remit, but this does not upset its independence.

The parliamentary principle means that government emanates from the Storting, is accountable to the Storting and must resign if a majority in the Storting carries a motion of no confidence. It is not unusual that the government resigns without having had a vote of no confidence against it, but as a result of having "lost" the election.[171] On such occasions the government has always waited to resign until a newly elected Storting has convened.[172]

Increased internationalisation, resulting in Norway ceding authority to international bodies, contributes to limiting the remit of the Storting. The EAA agreement is perhaps the clearest example, but Norway has also entered into a number of other trade agreements and the like, which all in all limit the remit of the Storting considerably.[173]

In practice, the King's opportunity to stop a legislative enactment was removed in the transition to parliamentary rule. The probability that the King would use this opportunity today is negligible.[174]

Legislative proposals are raised either on recommendation from the government or from one of the Storting's representatives, the so-called Document 8 proposal. In the last decade the number of legislative proposals from the government have usually been between 85 and 126, and between 100 and 130 from the Storting's representatives.[175] Since the majority government was constituted in 2005 the share of legislative proposals from the government which have been amended in the Storting has fallen considerably. In the period 2005-2009 the share was ten percent, while the share in the period 1993-97 was around 35 percent.[176] This is a good illustration of how the activities in the Storting in practice depend on the government's parliamentary power base.

## GOVERNANCE AND MANAGEMENT

### TRANSPARENCY (LAW)[177]

*To what extent are there provisions in place to ensure that the public can obtain relevant and timely information on the activities and decision-making processes of the legislature?*

Score: 100

The constitution states that the Storting shall operate with open doors (Article 84), which implies that the Storting's debates shall be open to the public. In addition the public has access when the standing committees arrange open consultations. Beyond this, the public has access only by appointment.[178] There is no legal duty that requires the parliamentary representatives to receive visits from certain groups or the population in general.[179]

The Storting's rules of procedure contain a number of provisions that calls for meetings, agendas, weekly plans etc. should be available for the representatives in advance, but there is no explicit stipulation that these should be available to the general public. For example it is stipulated in the rules of procedure that calls for committee meetings and meetings in the Storting's assembly hall that "notice of the meeting shall be posted in the Storting building prior to the meeting" (Section 17).

For the latter it is also required that the notice contains the agenda and is "available to members on paper or in electronic form not later than 24 hours before the appointed time for the sitting" (Section 24). Similar requirements for transparency apply to plans for meeting activities for the ensuing week.

The committee meetings are closed to the public, while the committees' consultations are initially open (Section 18). From the committee meetings only a record of those present, the cases which are being processed and which decisions have been taken, are kept. For debates in the Storting shorthand reports must be kept.[180]

Meetings are held in the Storting that are is secret in the sense that there is no publicly available information about the meeting. Minutes of these meetings are sealed and archived. The minutes may be made public if the Storting so decides.[181] The meetings in the Enlarged Committee on Foreign Affairs and Defence are per definition secret (Section 13), while the meetings in the European Consultative Committee are held behind closed doors. Minutes from the meetings in the European Consultative Committee, with the exception of what is exempt from public disclosure, are made available to the public after the meetings.[182] The minutes are made available in their entirety one year later. These are meetings where the government consults with the Storting on EU/EAA issues before the government reaches a decision. To some extent, the minutes from the meetings give an insight into the topics of the meetings, but they do not enable a public debate or a public opinion on the issues concerned ahead of the meetings.

All journalists with a valid press ID have access to the Storting's premises when meetings are held in the Storting. Members of the Storting's press box seats also have access to the Storting's common areas, the press box seats in the Storting's meeting hall and the press centres in the Storting's buildings – as well as to the Storting's training rooms and saunas. Apart from this the press only has access by appointment.[183] There are no formal limitations to what the press may report on from the activities of the Storting and its members.

There are no express provisions in either the Constitution or in the rules of procedure that the delegates are obliged to vote, but in practice those representatives present have a duty to vote.[184] Voting is conducted in one of the following ways:

those who are for (or against) stand, electronic voting, roll call, unsigned ballot papers (only in case of elections) (Section 44). The voting records are found in the minutes and in the Storting's archive.

There are access restrictions on some types of meetings. For some of these, limitations must be said to be well justified (see next section), and the overall assessment is that access restrictions are not of such a nature that points should be deducted for this indicator.

**TRANSPARENCY (PRACTICE)**

*To what extent can the public obtain relevant and timely information on the activities and decision-making processes of the legislature?*

Score: 100

In practice the Storting is marked by a great deal of transparency. The amount of information that is accessible to the public on the Storting's activities and decision-making processes is considerable.

In 2010 the Storting's website was elected "The government's website of the year 2010" by the Agency for Public Management and eGovernment (Difi). The information on the website is considerable, both with respect to planned activities and former activities. There is information on the meeting activities for the coming session of the Storting. It is updated every Thursday, which is the day the presidium determines the program for the coming week's meetings, and it contains meeting plans, agenda for the meetings and documents relative to the meetings.

From previous activities it is possible to access earlier cases, with access to the documents concerning the case and information on the processing, national budget, legislation, written questions (to the government), complete minutes from the debates in the Storting etc. There is also some simple statistics on the number of cases belonging to which session of the Storting. The Storting also publishes a series of publications that contains all recommendations, "Document 8"proposals and the minutes from the negotiations in the Storting.

All debates in the Storting's assembly hall and in the committee debates are (normally) streamed directly on Internet-TV. The video files are stored in the video archive, which is accessible on the website. The debates in the Storting's assembly hall and the committee debates can also (normally) be attended in the Storting while they are on-going. From the debates in the Storting minutes are produced which are made available concurrently in electronic form as well as being available in the publication series.

There are four activities in the Storting on which there is little transparency. These are the secret meetings, the meetings in the Enlarged Committee on Foreign Affairs and Defence, the meetings in the European Consultative Committee, and the ordinary committee meetings. The secret meetings are primarily meetings where treaties with foreign states are debated, and where the foreign state wishes the meeting to be secret, and also when a case is brought before the Storting from the Enlarged Committee on Foreign Affairs and Defence. These meetings are few[185] and they are of short duration.[186] A certain degree of secrecy around meetings, especially those dealing with other states, may be well justified.[187] Discussions in the ordinary committees take place behind closed doors. In comparison, all committee meetings at a municipal level are as a rule open to the public (Local Government Act Section 31). Two professors with expertise in constitutional law, public administration law and freedom of information law who were interviewed for this report do not consider it particularly problematic that the committee meetings are held behind closed doors. They identify three considerations in particular: unlike committee meetings at the municipal level, the committees in the Storting are not administrative agencies, they do not discuss individual cases in the same way as committees at the municipal level, and good solutions sometimes necessitate closed proceedings.[188]

Even though there are no provisions set out in legislation that the representatives are obliged to vote, in practice it is expected that they do so. A representative who is reluctant to take a position on a certain issue, will often solve the problem by abstaining from voting. This is a circumvention of the rules that is difficult to prevent in practice.[189] The results of the ballots are recorded in the minutes and in the Storting's archive, where information can be found as to how the individual representative has voted in each individual case As of January 2012, this information also became available online.[190]

In addition to the extensive information available on the website, the Storting has a library and an archive that can be accessed by the public. In addition, the Storting has a so-called Information Corner, where members of the public can enquire to obtain answers to general questions on the activities of the Storting, and which also assists the public in finding what they are looking for. The administration of the Storting issues annual reports with supplementary information on recent years' activities, including the budget of the Storting.

**ACCOUNTABILITY (LAW)**

*To what extent are there provisions in place to ensure that the legislature has to report on and be answerable for its actions?*

Score: 100

In line with the parliamentary principle the Storting and its representatives are accountable to the electorate through elections. In Norway there is a general election every four years.

If the representatives to the Storting have breached their "constitutional duties", they may be held responsible by way of the Court of Impeachment (Const. Article 86). Any one case for impeachment is first assessed by the Scrutiny and Constitutional Committee. The committee may do this at its own initiative or at the request of external instances. Support from one third of the members is sufficient for the committee to assess a possible impeachment case. In order to bring charges a simple majority of votes in a plenary session of the Storting is required. The court of impeachment is composed of five high court judges and six laypersons. The laypersons are elected by the Storting, and cannot be members of government or Storting, and they are elected for six years at the time.[191] Apart from this a representative to the Storting can be charged, as everyone else, and if the person is convicted he or she must serve time in the normal way.

The courts' judicial review, including assessing whether an act is in line with the constitution, today has to be considered as constitutional common law. But in contrast to common practice in other West-European countries, Norway does not have a special constitutional court. It is up to the courts themselves to decide, and in principle there is no difference between the Supreme Court and the subordinate courts. [192]

The formal consultation process is an important democratic institution in the Norwegian political system, which provides interest organisations, associations and others with the possibility of promoting their view for the committees in the Storting in connection with a case being dealt with by the Storting. The committees decide by simple majority[193] whether consultations will be held and who will be asked to participate – actual participation is voluntary.[194] Another important part of the formal consultation process is that all bills from the government being dealt with by the Storting have been through a consultation round in advance. This entails that affected parties are given the opportunity to voice their comments on the bill. [195]

**ACCOUNTABILITY (PRACTICE)**

*To what extent do the legislature and its members report on and answer for their actions in practice?*

Score: 100

The representatives of the Storting must be accountable at elections and in their daily business vis-à-vis the media and others who are out to scrutinize them – the practice of transparency provides good opportunities for just this.

In the parliamentary system of today the practice is that the representatives and the Storting are primarily put to account by the electorate itself. Participation at elections to the Storting has been between 75 and 80 percent for the past 20 years. Traditionally it was the Court of Impeachment that was to enforce the constitutional responsibility of the parliamentarians.[196] The last time a case of impeachment was brought was in 1926. The Court of Impeachment was reformed in 2007, but as yet it is too early to say whether or not this will have any direct impact. The professional point of view suggests that the threshold for bringing a case for the Court of Impeachment is too high, and, that bringing a case before the Court of Impeachment makes the case more important than it should strictly be.[197]

When the courts review an act's legality, legal practice says that in its assessment of an act's constitutional legality the court shall attribute the legislative branch's opinion a certain importance, but there is no agreement on how much room for manoeuvre the legislator shall have. To some degree judicial review enjoyed a renaissance in the 1970s-80s, and today it is alive and well in our constitutional system.[198] Recent years' development may indicate that the Supreme Court to a greater extent than previously is taking a more independent stand from the representatives elected by the people, by overruling decisions and legislative proposals from the Storting.[199] On the occasions the Supreme Court has done this there has been strong dissent. A recent example is the ruling in the ship owners' case in 2010, in which the verdict had support from six of the 11 Supreme Court justices. What is certain is that judicial review in Norway is practiced with a certain degree of intensity, and that it is an important part of our lively constitutional system.[200] What is not equally clear, and about which scholars also disagree, is where the limits for the courts' judicial review shall be set.

The committees in the Storting hold very many consultations. Many organisations take part in the consultations, many in connection with the budget negotiations, but some organisations also participate in other matters. As a rule it is the organisations themselves that ask to participate. In 2010 a total of 73 consultations were held in addition to consultations related to the national budget negotiations. In connection with the national budget negotiations there were 429 organisations participating,

while there were 321 organisations participating in the other consultations.[201]

The activities in the Storting are in general characterised by transparency, and they thus provide a good opportunity for the population, media and others to follow their activities and to scrutinise them. As an example, the members must declare their financial interests and positions, and their business travel, and the use of the Storting's fringe benefits must be documented in a verifiable way. This information is accessible to the public on request. Opinion is divided on to what extent the media fills its role in this respect. On a critical note it is asserted that the journalists refrain from reporting when the budget negotiations in the Storting become heated, for fear of losing the trust of the politicians.[202] It has also been pointed out that the journalists, in their reporting from the Storting, are not sufficiently preoccupied with the issues, and that they lack sufficient knowledge in the various political fields – this applies in particular to questions of politics and finance.[203]

### INTEGRITY MECHANISM (LAW)

*To what extent are there provisions in place to ensure the integrity of members of the legislature?*

Score: 25

There are some restrictions on what is available of information on the representatives' other positions and economic interests. There is no lobby register, no ethical guidelines or the like for the members of the Storting, no provisions on quarantine and no written rules of impartiality. Furthermore there is no independent body that can "go through the representatives with a fine toothcomb," as for example in the UK.[204] In sum, there are significant deficiencies with respect to what this indicator emphasizes, and this indicator is therefore awarded only 25 points.

There is no requirement in the legislation for a lobby register or the like in the Storting. Consultations in the Storting are, as a rule, open to the general public. However, an overview of who contacts the representatives beyond these is not subject to the duty of registering.

As stated, no written rules on impartiality exist, even though some unwritten rules of impartiality exist. This applies in the assessment as to whether the representative has been legally elected and in questions of bringing a case before the Court of Impeachment.[205] This very limited regulation of impartiality is based on the special position of the Storting, where it is desirable that the members have a widest possible association with various professions, walks of life, etc. This point of view is not considered convincing by experts on constitutional law, who consider the absence of written rules of impartiality to be a flaw in the system.[206]

The remuneration of the representatives, except for the President of the Storting, is determined with the consent of the Storting by a special commission– the Salaries Commission of the Storting – which also determines the salaries of the members of the government. The commission consists of three members who are elected by the Storting's presidium for four years at the time.[207] The representatives to the Storting are compensated for business travel and commuting, telephone and use of the Internet (including private use[208]). Travel must be justified in such a way as to be able to be subsequently verified. Vouchers are kept both on paper and electronically. Access will be given to the payment of various expenses for the representatives in accordance with the rules of the Freedom of Information Act, cf. the Storting's own body of rules for access to documents. Details on the representatives' salaries, remuneration and pensions are available on the Internet.

Representatives must report all of their registered assignments and economic interests in accordance with the applicable financial rules. The information is reported to the Storting's financial register, which is accessible to the public Formerly this was a voluntary reporting, but as of 1 January 2009 the representatives have been required to report.[209] Besides all office and salaried positions one might have in addition to the parliamentary one, all assignments for the same client within the same calendar year with remuneration of NOK 50,000 or more shall be reported.[210] However, the representatives are only bound to report *which* interests they have in the form of salaries or other benefits/advantages, not the income or the *extent* of the interest.[211] During the latest discussion of these rules the Storting's Presidium emphasised that "it will continue to be the case that only the existence and type of the various interests have to be reported – not figures, value or amount." The reasoning was twofold; "to prevent the duty to report becoming too comprehensive and work-intensive for the representatives" and "in respect of the representatives' privacy and the purpose of the register".[212] From an anti-corruption perspective, there should be more transparency with respect to these matters.

**INTEGRITY MECHANISM (PRACTICE)**

*To what extent is the integrity of legislators ensured in practice?*

Score: 75

Today's practice regarding impartiality is that the representatives can choose to "abstain from" a case if the individual considers him/herself as disqualified. It is in general accepted that a representative who has formerly been involved in a case is not considered to be disqualified.[213] According to a constitutional law expert, there is little doubt that there are examples of unfortunate mixing of roles when the committees handle cases, although it is assumed that this is not widespread.[214] There are also examples of deputy representatives who have a job, for example as

public relations consultant, which means that they can easily find themselves in a conflict of interest.[215]

In connection with the National Survey of Power and Democracy a study was made on the attitude of parliamentary representatives and leaders to, and use of, professional lobbyism. 65.5 percent of representatives fully or partly agreed that professional lobbyists could contribute to shedding more light on important issues. 88.4 percent of the representatives wholly or partly agreed that professional lobbyism should be discernible, while 79.8 percent of the representatives wholly or partly agreed that undertakings which are fully financed by public funds, should not buy professional lobbying services. The study also found that the Norwegian parliamentary representatives perceive the influence of professional lobbyists as relatively great in the cases where the lobbyists have been involved. [216] In light of these figures one may wonder why proposals to introduce a registration scheme for lobbying in the Storting has never received a majority despite being proposed four times in the last twelve years. [217] The justification of the majority has been that "such a register is bureaucratic, difficult to maintain and will drive lobbying out of the Storting and the ministries and into closed rooms."[218]

How this is dealt with in other countries varies, and the picture is not unambiguous.[219] Current practice entails that there is little transparency on individual representatives' visits and meetings, including contact with special interest organizations, industry and others.

Occasionally it occurs that the media reveal dubious financial management amongst the Storting representatives. For example, VG (Norway's highest selling newspaper), in 2008 revealed that one representative had had a telephone bill of NOK 58,000 the previous six months, while average annual consumption for the representatives was NOK 20,000.[220] Without doubt the biggest scandal in recent years was the "pension" case, which started as a result of a report from the Auditor General who concluded that six former parliamentary representatives had unjustifiably received more than NOK 5 million in pension.[221] On the basis of this, the Storting's presidium decided to establish an expert committee to scrutinize the pension arrangements.[222] The expert committee concluded that six representatives had received too much pension.[223] The committee's criticism of the system was extensive and received full support in the public opinion. The committee concluded, *inter alia*, that the pension arrangements of the Storting were characterised by many and large "rooms devoid of the law", that the pension arrangement had been allowed to exist without inspection and control by other bodies and persons, that the pension board lacked competence and also in practice exercised no control. The processing of cases was largely oral, which made it difficult to check later.[224]

The Norwegian National Authority for Investigation and Prosecution of Economic and Environmental Crime (Økokrim) initiated an investigation that resulted in bringing charges against two of the former parliamentary representatives. The Supreme Court ruled in one of the two cases 23 April 2012 in which the accused representative was acquitted.[225]

The limited regulation of the representatives' activities and examples of questionable financial management and the like results in the Storting not achieving the maximum score on this indicator.

## ROLE

### CONTROL OF GOVERNMENT

*To what extent does the legislature provide effective oversight of the executive?*

Score: 100

The Storting is in possession of a wide range of control mechanisms vis-à-vis the government. To what extent the representatives make use of them depends to a large extent on the their willingness to do so and the political power relations.

The strongest form of power the Storting possesses is the Vote of no Confidence, which implies that the sitting government and the individual government members are constitutionally bound to resign if a majority vote for a motion of no confidence against them (Const. Article 15).

There is little doubt that the Storting's control of the government has been considerably strengthened since the beginning of the 1990s up until today – both formally and in practice. In 1993 the new Standing Committee on Scrutiny and Constitutional Affairs was established and in that the Storting had one permanent committee to keep control. From 1994 the most important auditing cases were dealt with separately, in 1995 the Norwegian Parliamentary Intelligence Oversight Committee was established. In 1996 the arrangement with open consultations in scrutiny cases was established, which allowed the Storting to summon government members and representatives of the central administration. In the same year a spontaneous question hour was established[226], as well as the performance audit, which is to check that the intentions of the Storting have been implemented. The Ombudsman introduced reports in individual cases in 1997. In 1999 a new procedure was introduced to check the implementation of the Storting's instructions, and as of 2002 the Storting could implement its own investigations.[227] The institutional changes that took place in the 1990s also naturally resulted in an increase in the control activity.[228] Some of the explanation for the Storting's increased control activity is

the increased management control, which has become a more general development feature in the past two decades.[229] As previously mentioned, the actual control activity has partly to do with the balance of power between the government and the opposition in the Storting. The actual power of the Storting is necessarily greater when there is a minority government than when there is a majority government.[230]

However, the increased control activity[231] is not necessarily only a positive thing. In the 1990s the concept of "Storting's governance" was conceived, and politicians, academics and others have all been critical to the development. Several former ministers fear that the increased control activity by the Storting results in ministers becoming too preoccupied with not making mistakes. Moreover, they are concerned that the public focus on government officials – by calling them in to consultations, amongst other things – will undermine the desired creative boldness within the government system. This will lead to a tendency to "control" rather than to "create".[232] The increased control activity requires steadily increased resources from the government and the public administration. On the other hand, the "internationalization" poses challenges to the Storting's control activity because it restricts the Storting's authority as legislative body.

### ANTI-CORRUPTION LEGISLATION

*To what extent does the Storting give anti-corruption work priority?*

Score: 75

The Storting has approved all international provisions against corruption and made the necessary adaptations of the penal code in this connection: The OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (dated 7 August 1997, ratified on 27 October 1998[233],) the Council of Europe Civil Law Convention on Corruption (dated 14 November 1999, ratified on 13 December 2007[234]) and its Criminal Law Convention (dated 27 January 1999, ratified on 2 March 2004[235]) and the UN Convention against Corruption (dated 31 October 2003, ratified on 7 June 2006[236]).

Representatives in the Storting have expressed that they have an ambition to position Norway at the forefront of the struggle against corruption.[237] The study is not aware of evidence of the extent to which corruption and corruption-related challenges are discussed by representatives. In 2003 a special section in the penal code was adopted which dealt with corruption (Article 276) and the Money Laundering Act was adopted in the same year.[238] The Storting adopted provisions for whistleblowing in 2005,[239] which were later strengthened by several amendments to the act the following year.[240] The new Act on Freedom of Information entered into force on 1 January 2009 and was launched as a strengthening of the freedom

of information principle, although this study indicates several instances where the law does not go far enough.[241]

Concerning the body of rules that is meant to regulate the Storting's own activities, today's regulations are deficient.[242] The declaration of financial assets and board positions was made obligatory as of 1 January 2009, and several modifications and restrictions of the parliamentary representatives' pension schemes were proposed in the wake of the above-mentioned "pension scandal."[243] The limited regulation of the representatives' activities and criticism that several of the aforementioned statutory provisions are inadequate, results in the Storting not achieving the maximum score on this indicator.

145 Andenæs and Fliflet (2006:137).

146 Standing Committee on Labour and Social Affairs, Standing Committee on Energy and the Environment, Standing Committee on Family and Cultural Affairs, Standing Committee on Finance and Economic Affairs, Standing Committee on Health and Care Services, Standing Committee on Justice, Standing Committee on Education, Research and Church Affairs, Standing Committee on Local Government and Public Administration, Standing Committee on Scrutiny and Constitutional Affairs, Standing Committee on Business and Industry, Standing Committee on Transport and Communications, Standing Committee on Foreign Affairs and Defence.

147 Andenæs and Fliflet (2006:283).

148 Cf. the Storting's rules of procedure Article 21 and the Appropriation regulations Article 8.

149 Cf. the Storting's rules of procedure Article 21

150 Andenæs and Fliflet (2006:285).

151 Cf. Main instructions for the financial administration in the Storting, Article 3.

152 Interview with Brattestå, 29/06/11.

153 Interview with Brattestå, 29/06/11.

154 The figures refer only to operating expenses (salaries and other remunerations + goods and services), and do not include major equipment procurements and maintenance (which can be transferred to the following budget year) and the annual allowances to the parliamentary groups. The figures are taken from the annual reports of the Storting's administration for the period 2005-2010. Available at: http://www.stortinget.no/no/Stortinget-og-demokratiet/Administrasjonen/Arsrapporter-PDF/. Last visited 10/11/2011

155 Andenæs and Fliflet (2006:198).

156 Interview with Nordby, 17/06/2011.

157 See p. 23 of the annual report of the Storting's administration (2008).

158 In a poll from 1995 87% of the respondents said that they thought meetings and other activity "very often" or "quite often" collided (Nordby 2004:236). Looking at recent developments gives little room for thinking that the number today would be lower.

159 Jenssen (2007:9).

160 Interviews with Brattestå, 29/6/11, and Nordby, 17/6/11.

161 In general, the administration in the Storting consisted of 443 persons in 2010, spread over six departments, and the figure in 2005 was 392 employees. In 1998 a special evaluation section with five employees was established, and this has increased to 14 individuals over the years. The evaluation section provides professional assistance to representatives, party groups and committees in addition to publishing a special series of notes. The library functions as a centre for knowledge and documentation, and is in frequent use, both by internal and external users (lending figures 2010: 7,470 loans whereof 6,005 were internal). See p. 33 and 40 in 2010 Annual Report. The Storting's administration. URL: http://www.stortinget.no/Global/pdf/Diverse/%c3%85rsrapport%202010.pdf
Last visited 22/11/2011.

162 See p. 39 in 2010 Annual Report. The Storting's administration.

163 The Storting's rules of procedure Article 4, cf. Article 5.

164 The Storting's rules of procedure Article 5 and 6

165 The Storting's rules of procedure Article 8

166 Andenæs and Fliflet (2006:212).

167 Interview with Smith, 29/08/11.

168 Andenæs and Fliflet (2006:139).

169 Pursuant to the wording of the Constitution, the King also has a deferring veto vis-à-vis legislative decisions, (Const. Article 78–79), but in the current Norwegian parliamentary system, the King does not have such an opportunity under normal circumstances.

170 Andenæs and Fliflet (2006:161).

171 It has also been the case that the government has resigned after having posed a vote of confidence (see chapter on the Executive)

172 Andenæs and Fliflet (2006:204).

173 See chapter 11 of NOU (2012).

174 Interview with Smith, 29/08/11.

175 See p. 30 in 2010 Annual Report. The Storting's administration.

176 E-mail correspondence with Nordby, 17/06/2011.

177 That which is related to transparency in the activities of *representatives* (salary, travel, etc.) is discussed under the indicator Integrity Mechanisms (law) and Integrity Mechanisms (practice).

178 Cf. Access regulations for the Storting.

179 Interview with Smith, 29/08/11.

180 It follows from the Constitution's Article 84 that negotiations in the Storting must be printed.

181 The Storting's rules of procedure Section 61 and 13, cf. the Constitution Article 84.

182 The Storting's rules of procedure Article 13 and 13 a).

183 Cf. Access regulations for the Storting.

184 It follows from the Constitution's provisions on presence of quorum and the fact that the Storting's rules of procedure do not allow for abstaining from voting.

185 In the previous period of the Storting ('03-'07) there were seven secret meetings (e-mail from the Storting's administration of 8 August 2011).

186 Interview with Brattestå, 29/06/11.

187 For example, national security interests, national trade secrets, etc.

188 Interviews with Bernt, 23/08/11, and Smith, 29/08/11.

189 Andenæs and Fliflet (2006:168).

190 E-mail from the Storting's administration 8 August 2011.

191 http://www.stortinget.no/no/Stortinget-og-demokratiet/Arbeidet/Riksrett/.

192 Andenæs and Fliflet (2006:345-349).

193 In the Scrutiny and Constitutional Committee it is sufficient with support from one third of the members on questions on consultations in control cases (Cf. The Storting's rules of procedure Article 12.)

194 The Storting's rules of procedure Section 18

195 See the Government chapter.

196 Andenæs and Fliflet (2006:219).

197 Interview with Smith, 29/08/11.

198 Smith (1993:278-283).

199 Several law professors have stated this, amongst them Dean at the law faculty at Oslo University, Hans Petter Graver (Kristjánsson (2010)).

200 Smith (1993:344-349).

201 2010 Annual Report The Storting's administration.

202 Nordby (2004:269).

203 Allern (2001:296–300).

204 TI-UK (2011:30–32).

205 Hansen and Mo (1993:198–199).

206 Stordrange (1988:198, 206–209); Interview with Smith, 29/08/11.

207 Recommendation to the Storting No. 282 (1995-96).

208 The Storting does not cover expenses for so-called entertainment services and any such expenses are deducted from the individual's remuneration (e-mail of 16 Sept, The Storting's administration).

209 The Storting's rules of procedure Section 60a.

210 The financial regulations Section 3

211 Hansen and Mo (1993:206).

212 Recommendation to the Storting No. 72 (2008-2009).

213 Hansen and Mo (1993:207–208), Andenæs and Fliflet (2006:169).

214 Interview with Smith, 29/08/11.

215 See Frp-politiker blir PR-rådgiver, URL: http://www.kampanje.com/jobb/article5834173.ece Last visited 16/02/2012

216 Gullberg and Helland (2003).

217 Doc. No. 8:31 (2000–2001), Doc. No. 8:5 (2003–2004), Doc. No. 08:32 (2007-2008), Doc. No. 8:14 (2009–2010),

218 Recommendation to the Storting No. the Storting No. 21 (2008-2009). Reference was also made to this argument the last time the issue was discussed, cf Recommendation 179 S (2009–2010).

219 The United States, Canada, Germany and the European Parliament has a registration scheme.The European Commission has a register on a voluntary basis while neither Sweden, Denmark or Finland have one. See *Perspektiv 04/08* from Stortingets utredningsseksjon, URL: http://www. stortinget.no/global/pdf/Utredning/Perspektiv08_04.pdf Last visited 16/02/2012.

220 Bongard and Hegvik (2008).

221 *Report from the Auditor General 25 June 2008*.

222 The pension arrangement was managed by a board of five persons elected from the parliamentary representatives and administered by a secretary, who used a half working position to administer the arrangement (Kjønstad (2009:64-64).

223 Four of these were also mentioned in the Auditor General's report.

224 Kjønstad (2009:13–22). Another thing worth noting is that this was the first time an investigation of the Storting's activities was undertaken, and the report by the expert committee was not published by the Storting in any document series or other, which was criticised by the head of the committee (Kjønstad 2009:18).

225 In the District Court these were sentenced to six months and sixty days imprisonment respectively for gross negligent fraud. Both appealed to the Court of Appeal, where one of two was acquitted. The prosecuting authorities appealed to the Supreme Court, which also acquitted the accused (HR-2012-810-A). The second case has been put on hold pending the outcome of the first case, and was not finally resolved when this report went to press.

226 Normally the Storting has a question hour every Wednesday, in which there is first a spontaneous question hour (approximately one hour) and then an ordinary question hour. The difference between them is that the former arrangement is spontaneous, in the sense that the minister does not know which questions will be raised and he/she has no time to think about the answer.

227 Recommendation to the Storting No. the Storting No. 210 (2002-2003).

228 Document 14 (2002–2003:16).

229 Document 14 (2002–2003:21).

230 Andenæs and Fliflet (2006:198).

231 An example to illustrate this is the increase in the number of written questions and interpellations to the government from the Storting. In the 2001/02-session the figures were 590 and 32 respectively, while they had increased to1816 and 98 respectively in the 2009/10-session. See p. 35 in 2010 Annual Report. The Storting's administration.

232 Statskonsult (1997:13–14).

233 Decision in the Odelsting No. 2 to the Storting (1998-1999).

234 Recommendation to the Storting No. 41 (2007-2008).

235 Recommendation to the Storting No. 236 (2002-2003).

236 Recommendation to the Storting No. 188 (2005-2006).

237 Recommendation to the Storting No. (2002-2003:2).

238 Proposition to the Odelsting, No. 78 (2002–2003); Proposition to the Odelsting, No. 72 to the Storting (2002-2003).

239 Proposition to the Odelsting, No. 49 to the Storting (2004-2005).

240 Proposition to the Odelsting, No. 84 to the Storting (2005-2006).

241 See the chapter on the public sector.

242 See Integrity Mechanisms (law).

243 See *Ny pensjonsordning for stortingsrepresentanter [New pension scheme for Storting representatives],* URL: http://www.stortinget.no/no/ Hva-skjer-pa-Stortinget/Nyhetsarkiv/Pressemeldinger/2011-2012/Ny-pensjonsordning-for-stortingsrepresentanter/ Last visited 29/02/2012.

# 2. The Government

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**SUMMARY**

The government has ample resources, and its independence within the Norwegian parliamentary system is secured both formally and in practice. Besides, there are a number of provisions and agencies that ensure that the government must be held accountable for its activities, choices and allocations. As concerns transparency, there is reason to question parts of the government's work that are not controlled by legislation today. Furthermore, criticism has been raised that the government is restrictive in its application of the Freedom of Information Act. When it comes to integrity and measures to combat corruption, the government has introduced a number of provisions in areas that are important from an anti-corruption perspective, but several of the provisions have been criticized for not going far enough.

The table below shows the total score for the government. The qualitative assessments that form the basis of the score for each indicator is provided in the following pages.

| The Government<br>Overall score: 89/100 | | | |
|---|---|---|---|
| | **Indicator** | **Law** | **Practice** |
| **Capacity**<br>**100**/100 | Resources | -* | 100 |
| | Independence | 100 | 100 |
| **Governance and Management**<br>**79**/100 | Transparency | 50 | 75 |
| | Accountability | 100 | 100 |
| | Integrity mechanisms | 75 | 75 |
| **Role**<br>**88**/100 | Control of the PS | 100 | |
| | Anti-Corruption Legislation | 75 | |

* Is not included in the assessment of the government.

### STRUCTURE AND ORGANISATION

It is the people, through general elections, who indirectly appoint the government, as the government emanates from the party/parties in the Storting which has/have the majority or a workable minority. This implies that a general election may lead to a change in the government, but not necessarily so. It also implies that a change of government may take place without a general election, if a situation arises where a government does not have the confidence of the Storting. If a motion of no confidence is carried, the government must resign. This is the core of the Norwegian parliamentary governing system.

As a collegiate the government has two types of fixed meetings per week. This is the Council of State meeting and the government conference. It is in the government conference, as well as in the preparatory Council of State that the political debates take place, and they make up the core of the government's activity.[244] The Council of State meeting is to be regarded more as a formality where the matters are put before the King in the Council of State, and where the King puts his signature and thus his support for the matters in hand.[245] The Constitution and constitutional practice decide which matters must be formally decided in the Council of State presided over by the King, and which may be decided by the individual minister on his/her own. For decisions to be made in the Council of State, more than half its members must be present (Const., Article 27).

There are frequent changes in the ministerial structure as subject matters are transferred between the ministries or as ministries are closed down/established. As of September 2011 there are 18 ministries and 20 members of the government, including the Prime Minister. The Office of the Prime Minister and the ministries are government offices, under the administration of the Prime Minister and the ministers respectively. The Office of the Prime Minister assists the Prime Minister in coordinating the government work, and as such it is the government's combined office. The ministries assist the ministers in the work of leading the various sectors within the public administration.

### CAPACITY

### RESOURCES (PRACTICE)

*To what extent does the government have adequate resources to achieve its goals in practice?*

Score: 100

In general the government has ample resources to carry out its duties and obligations.[246] The government consists of the Prime Minister and 19 other ministers.

Traditionally the individual minister enjoys a great amount of autonomy, which necessitates coordination through the gathering of the government collegiate in meetings.[247] Compared with collegiates in other countries, the Norwegian government is known to spend a lot of time in meetings – both often and for long periods.[248] Every Monday and Thursday there is a government conference, preceded by a preparatory Council of State on Thursdays, while on Fridays there is Council of State at the Royal Palace.

The political management of each individual ministry consists of one or more state secretaries and one or more political advisors in addition to the minister(s). The usual number is one or more state secretaries and one political advisor. An important support body for the government and its work is the Prime Minister's Office (SMK). SMK functions both as a support body for the government as collegiate and as a secretariat for the Prime Minister. Former ministers are very positive about the assistance they received from SMK and they felt SMK was a good resource for them. Compared with European colleagues, however, the Norwegian SMK a small staff. [249] Today the SMK consists of a political staff of eight persons in addition to the Prime Minister, together with an administration of 50 man-years spread over four sections: administration, domestic affairs, international affairs and communications, of which the first is by far the largest (37.5 man-years in the administration).[250]

Finding the balance between involvement in specific current affairs and leaving time for more long-term thinking is a challenge for Norwegian governments. Being a minister is generally found to be a very time and resource-consuming job.[251] Persistent media attention, an increased workload and a more active Storting are seen as factors that explain the increased pressure on the ministers.[252] More to the point, a survey found that a number of ministers criticised the amount of time spent at budget conferences and the strong control exercised by the Ministry of Finance in that connection.[253]

**INDEPENDENCE (LAW)**

*To what extent is the executive secured independence by law?*

Score: 100

The government's independence, as it is understood within the Norwegian system of governance is well assured through the Constitution and constitutional common law.

The relationship to the King is such that, as of today, it is the members of the government who assume the functions that, in accordance with the Constitution,

are assigned to the King, and it is the government that formally passes the resolutions.[254]

The Norwegian parliamentary system is not based on equal power sharing between the legislative and the executive authorities. The government is accountable vis-à-vis the Storting. The relationship between the two authorities is largely based on the political power distribution in the Storting.[255]

The government has a form of constitutionally protected leader role as the supreme leader for public administration.[256] The government decides which ministries shall exist at any one time and the distribution of tasks between them (Const. Article 22). Furthermore the government has the supreme public administration authority in all areas that are not explicitly transferred to others (Const., Article 3).

On its side, the Storting can deprive the government of authority in one area or instruct it, by giving the government detailed instructions to follow. Today there is consensus that the Storting has a general instructional authority, a right to interfere in the government's day-to-day exercise of authority.[257] The instructions are passed as plenary resolutions, in which the government is instructed to act or prepare action. There is however disagreement as to how wide the Storting's instructional authority is.[258]

**INDEPENDENCE (PRACTICE)**

*To what extent is the government independent in practice?*

Score: 100

There is little to suggest that political parties or other organisations exercise improper pressure on the government that in practice would affect its independence in practice.[259] The Storting and its bodies, as well as the courts, limit the power of the government, but these limitations are in accordance with the parliamentary system and its intentions. On his side, the King does not try to influence today's situation in which the government possesses the actual power. His own position is primarily of symbolic importance.

Today it is considered normal that the Storting interferes with the public administration through plenary resolutions, both with general provisions and in the case of individual decisions. How far this practice may be regarded as constitutional common law is somewhat unclear, but it is not likely that the government, in today's political system, should overrule the will of the Storting.[260]

The government itself chooses how the central administration shall be organised

and is free to decide which proposals the central administration shall study and prepare.[261] Furthermore the government is in charge of the preparatory budgetary procedure. On this the Storting imposes few instructions, and here the government has a dominating influence over the nation's expenditures.[262]

To what extent the Storting actually allows the government sufficient room for manoeuvre to exercise its role as executive power is open for discussion. Especially during minority governments the Storting has been very active vis-à-vis the government. In other words, the government's room for manoeuvre largely depends on the distribution of power between the different parties, not the distribution of power between the Storting and the government as such.

One development feature worth mentioning here is the internationalisation of the execution of power – it does not influence directly the independence of the government, but it limits the power of the government's scope for action in several ways. The most important matter in this connection is the EAA agreement. This limitation operates partly through the EFTA's supervisory body ESA and the EFTA court, and it partly follows from EU legislation in that political authorities do not have the full right to instruct subordinate administration agencies. A survey from 2010 showed that cases from a total of 38 legislative areas had been brought before the ESA and EFTA courts. On 21 of the 38 areas the rulings/verdicts from ESA and the EFTA-court came out against Norwegian authorities and led to amendments of national resolutions.[263]

## GOVERNANCE AND MANAGEMENT

### TRANSPARENCY (LAW)

*To what extent are there regulations in place to ensure transparency in relevant activities of the executive?*

Score: 50

The activities of the government are divided into three levels: the ministerial meetings, the government conferences and the activities carried out by the individual minister in his or her ministry in his or her capacity as the head of the ministry. To what extent there are regulations in place to ensure transparency varies greatly between the three activities.

For the ministerial meetings the general rule is that most decisions passed in Council of State are public. After the end of Council of State the Prime Minister's Office (SMK) sends out the publication "Offisielt fra statsråd" (Official bulletin from the

Council of State) to the Norwegian News Agency and other key newsrooms, the ministries and to others with a special interest. The communication contains all resolutions passed in the Council of State with the exception of what is marked "u.off." (exempted from publication).[264]

There is no formal body between the King in the Council of State and the ministries, although much of the policy making and other dialogue between ministers takes place in the government conferences and is considered to be the core of the government's business.[265] The government conferences are not regulated in the Constitution or other laws. Nonetheless the government has prepared internal guidelines for the government conferences. Here it is stated *inter alia* that for all matters to be presented at a government conference a government memo shall be prepared (r-notat), but these memos are not public.[266] There is no transparency on what takes place in this dialogue between the ministers, except for secretaries and political advisers when necessary. In a government, there will always be political discussions and negotiations, and sometimes closed negotiations are necessary to achieve good solutions. However, the individual minister discusses the handling of individual cases with the rest of the government, primarily in government conferences, before the case goes back down to the Ministry for formal processing. Sometimes these discussions are crucial to the outcome of individual cases. [267]

The minister is also the head of the Ministry. The processing of matters on their way to the ministers and the decisions passed there are, in principle, subject to the Freedom of Information Act. However, there are two exceptions to the provisions of the Freedom of Information Act that limit access quite significantly: the exemption for "internal documents" (Section 14) and documents obtained externally from a subordinate agency or another ministry for use in its internal preparation of a case (Section 15). There has been criticism from the legal profession that the exemption clauses in the Freedom of Information Act go too far on this point. [268] This particularly applies to Section 15, which in principle means that assessments and recommendations from a subordinate agency or another ministry may be exempt from public disclosure. Exemptions from access to a document under Section 15 may be made "where it is necessary in order to ensure proper internal decision processes" and "where this is required in the interest of satisfactory protection of the government's interests in that case." That the government's internal political discussions are not accessible is normal. However, one may question the why it is natural that the discussions of individual cases which actually lie with one of the ministries also are exempt from public disclosure.

The national budget is made public in accordance with a principle of deferred publication – the budget is published after having been presented to the Storting.[269] Until publication, budget documents are classified as "strictly confidential." Some

case documents regarding the state budget may also be exempted after the budget has been presented to the Storting, cf. the Freedom of Information Act Section 22 The exemptions may have various statutory bases according to the content in the budget and the manner in which the case processing has been conducted. For example, with certain conditions, it is still possible to exempt assessments that have been made in the budget process by the ministries and the government. The provision entails a limitation in the Storting's and the general public's opportunity to be informed of the prevailing registration of requirements and not least the terms for these. There is no corresponding exemption clause for the municipalities.

It is the Salaries Commission of the Storting that stipulates the annual remuneration for the members of the government, including the Prime Minster.[270] The decisions of the commission are made public, which can be considered as established common law.[271]

The absence of regulation of the government conferences, the exceptions in the Freedom of Information Act that limit access to documents the ministries collect, and access constraints in the assessments that form the basis for the state budget (also after the state budget is made public), give the government 50 points for this indicator .

**TRANSPARENCY (PRACTICE)**

*To what extent is there transparency in relevant activities of the executive in practice?*

Score: 75

There is a great deal of transparency regarding the government's external activities, while much of its internal activities are exempted from the general public. This is based on the prevailing legal provisions, the government's internal guidelines and the government's application of these.

On the government's website (www.regjeringen.no) there is an overview of the government's external activity. There are bills, proposals and other reports to the Storting, the ministers' official meeting calendar, comprehensive information on the ministries' activities, etc. The state budget is available in its entirety, as well as information on how to navigate the document. The salaries of the members of government are easily accessible on the Storting's website.

In practice there are several examples where the government has been preoccupied with shielding from disclosure to the general public and external control agencies, the internal consultations in the government and those between the government

and the public administration.[272] Individuals in charge of commissions of investigation on assignment by the Storting, who have requested access in relevant government memos, speak of strong resistance from the government and the central administration. They were finally granted access, but it required a lot of effort on the part of the head of the inquiry.[273] Another example is two different governments' statements in connection with the drafting of new legislation for the Auditor General. Both argued that the Office for the Auditor General should have limited access to the government's documents:

> The need to guard purely political deliberations is in principle the same whether they arise from e.g. a government memo or an internal document in the individual ministry. The government therefore thinks that other documents, besides government memos etc. which contain internal deliberations, should be exempted from the Auditor General's right of access.[274]

> In comparison with other public administration however special considerations apply to the government and the ministries. (…) In connection with the preparation of policies there is a recognised need to be able to carry on confidential deliberations.[275]

The examples show a clear wish from the government's side for distinct limitations on what should be transparent. The Supreme Court has previously assumed that government conferences have "emerged as a necessary and appropriate part of the government's working."[276] Nor has the Storting has indicated anything in the direction of a desire for more transparency.[277] As long as both the judicial and legislative powers – those who should act as counterweights in the principle of the separation of powers – are satisfied with the status quo, there will be no changes. It may be added that the central administration, which is the technical support system for the government, also seems to have a restrictive attitude to the practice of the Freedom of Information Act.[278]

Another point concerning transparency is the increased number of information employees in the government and in the ministries. In 1987 there were 22 information employees working in the 17 ministries in addition to the Office of the Prime Minister. In 1997 the figure had increased to 31 while in 2007 there were roughly 90 information employees with press contact.[279] The communication employees regard themselves as door openers and therefore do not consider these developments to be problematic. Others, including the media, perceive them as door closers – that they "sift" out which media enquiries shall be allowed to slip through to the technical sections, so as to avoid technical answers that may by politically problematic.[280]

Restrictions on access to government activities results in the government not being

awarded maximum points on this indicator.

**ACCOUNTABILITY (LAW)**

*To what extent are there provisions in place to ensure that members of the executive have to report and be answerable for their actions?*

Score: 100

There are a number of provisions and arrangements that ensure that the government members shall be accountable for their actions. Today's parliamentary form of government in which the Storting is in possession of a number of control instruments, as well as the Office of the Auditor General is important in this respect. The same applies to the public hearing institution and the Freedom of Information Act.

The division of responsibility between the Storting, the government and the public administration is based on the principle of ministerial responsibility. The individual minister is answerable for all activity in his or her ministry and the subordinate agencies.[281] The strongest instrument the Storting possesses vis-à-vis the government is the motion of no confidence. The Storting may at any one time present a proposal for a motion of no confidence with respect to a member of the government, or the entire government as a collegiate. If the proposal receives a majority, the government/member must resign (Const. Article 15). Less forceful, but equally important control instruments available to the Storting are the possibility to put questions to the ministers and to call the minister to a control hearing in the Standing Committee on Scrutiny and Constitutional Affairs.[282]

The Office of the Auditor General is the Storting's most important controlling role vis-à-vis the government. Amongst other things the Auditor General has to carry out the annual auditing of the central government accounts (account audit), and implement systematic investigations on finances, productivity, achievement of objectives and effects (performance audit).[283] In this connection it is important to mention that the Office of the Auditor General is relatively free in how it undertakes the investigation of the government, and it also has very free access to information.[284]

The Norwegian hearing institution is extensive and ensures that the government cannot pass acts and provisions without the parties affected being given the opportunity to present their point of view. The legislative work starts with a study in which the need for the bill is examined and evaluated. The evaluation is generally undertaken by a special analysis committee, or by the ministry or in a working group from several ministries. Subsequently a bill is usually sent out for consultation where all affected agencies and organisations have the right to voice their

opinion before the ministry prepares a proposal for a legislative enactment with detailed qualifications, which the government presents to the Storting.

If members of the government have contravened their "Constitutional Duties" they can be held accountable by way of the Court of Impeachment (Const. Article 86). Possible cases of impeachment are first assessed by the Scrutiny and Constitutional Committee in the Storting. The committee may do this at its own initiative or at the request of external instances. Support from one third of the members is sufficient for the committee to assess a possible impeachment case. In order to bring charges a simple majority of votes in a plenary session of the Storting is required. The court of impeachment is composed of five high court judges and six laypersons. The laypersons are elected by the Storting. They cannot be members of government or Storting and are elected for six years at the time.[285]

**ACCOUNTABILITY (PRACTICE)**

*To what extent is there effective oversight of executive activities in practice?*

Score: 100

The election to the Storting has become more and more an election for or against the current government, while the selection of people for the individual government positions is in practice a case for the political parties.[286] As mentioned, the Norwegian government spends a lot of time together in meetings as compared with other countries. Draft government memos, which are dealt with at the weekly government conferences, are sent to the affected ministers before being dealt with, and their possible annotations are included in a final memo. To a certain extent this works as a form of "internal control".[287]

The most important check on the government is conducted by the Storting and the associated monitoring agencies. Since the first Stoltenberg (Prime Minister) government in the year 2000 four motions of no confidence have been put forward, none of which have obtained a majority in the Storting.[288] There is no doubt that the Storting has strengthened its control function vis-à-vis the government, as the present Storting possesses more controlling instruments than it did in the early 1990s viz: a special committee with particular responsibility for the controlling activity (the Scrutiny and Constitutional Committee), open control hearings and an open and spontaneous question time, to mention but a few.[289] But to what extent the Storting in reality exercises control of the government, is in the final analysis dependent upon the pragmatic political conditions, including the actual power of the opposition parties in the Storting and their willingness and interest in exercising control. A study found that former members of the government were somewhat divided in their view of the controlling activity of the Storting, but the disagreement

amounted to the view that the control was too wide and was too much focussed on details, not whether the control was too little or too "lax".[290]

The Office of the Auditor General is an active controlling agency that implements a thorough and real check on the government. The public hearing institution is an arrangement where affected parties are given the opportunity to give their opinions. Many proposed bills are sent on a round of hearings before the government submits its final recommendation to the Storting. In advance of the hearing process a broadly based committee is established which present their assessments and recommendations on the planned law. These committees ensure the quality of the bills, and at the same time as they influence the legislation.[291] The committees have a modifying influence on the government's power.[292] On its side the government influences the composition of the committee in that it determines its composition and mandate.

If members of the government breach their constitutional duties they are to be brought before a Court of Impeachment. The last time a case of impeachment was brought was in 1926. Following lengthy discussion among professionals, politicians and others, the arrangement with a court of impeachment was altered in 2007. It is too early to say whether the change will have any practical importance, but legal professionals have argued that the threshold for bringing a case before a court of impeachment is too high, and that it therefore does not function according to its purpose.[293]

**INTEGRITY (LAW)**

*To what extent are there mechanisms in place to ensure the integrity of members of the executive?*

Score: 75

There are provisions designed to safeguard the integrity of the members of government, but there has been criticism that not all of the provisions are adequate.

Ethical guidelines have been prepared for the Civil Service, which also apply for the members of the government and all politicians in the ministries.[294] These are intended to act as guidelines of a general nature that indicate legal standards. They include areas such as which gifts can be received, whistleblowing, loyalty requirements, freedom of speech for public sector employees and guidelines for behaviour towards the citizens. The manual on political leadership (2010) has comprehensive provisions and deals with e.g. receipt of gifts, remuneration, reporting of financial assets, positions and rules on quarantine. The political leadership shall not receive gifts or other reimbursements that may influence the actions of the person concerned (cf. the Civil Service Act, Section 20).

The provisions on impartiality in the Public Administration Act apply equally for members of the government, state secretaries and political advisors. But for members of the government they only apply when the member functions as the most senior officer in the ministry. That means when the ministry makes decisions, but the provisions on impartiality are not fully applicable when a case is decided in the government. Nonetheless the members of the government should also then adhere to the statutes on impartiality. General legal practice shows that a government decision may be declared null and void on the basis of the non-statutory requirements for a sound case processing, also if the personal interests of a government member have had a decisive significance for the result.[295]

In 2005 quarantine rules were introduced for politicians and an independent committee has been appointed (the Quarantine Commission) which decides who should be subject to quarantine rules/or be excluded from case processing. The Quarantine Commission was established by Royal Decree on 7 October 2005. The commission is composed of five members appointed by the Ministry of Government Administration, Reform and Church Affairs (FAD) and are elected for four years at a time, a maximum of eight years continuously. Politicians may be subject to up to six months quarantine or up to one year's exclusion from case processing, from the time of retirement. If quarantine is imposed the politician shall receive remuneration during the quarantine period corresponding to the net salary the person formerly received in addition to holiday pay. The politician shall unsolicited provide the Quarantine Commission with all necessary information on the position, at the latest three weeks before commencing the new position. If a politician breaches this duty of information, and the information is of such a character that quarantine or exclusion from case processing would have been imposed, the Quarantine Commission can impose on the politician liquidated damages. Maximum damages is equivalent to six months' salary.[296]

The political leadership in a ministry must wait for six months after departure before being allowed to return to their former position (ministerial advisor, director-general, or chief information officer) in his or her own ministry. Correspondingly, there is a three-month quarantine period for transfers to other ministries.[297] The quarantine provisions have been subject to criticism from politicians, legal practitioners and others, who have pointed out that the current provisions allow for a high degree of discretion and that they only in exceptional cases have consequences.[298] From the point of view of the legal profession the current sanctions are considered to be too lax.[299] This criticism is probably a contributing factor towards the government appointing a committee in October 2011 that will review experiences with the state's quarantine regulations.[300] Another point for criticism is that it took a long time before the provisions were adopted, and those formulating the rules were the same as those for whom the rules should apply. Furthermore, it is

thought-provoking that as many as 60 percent of the members of Bondevik I government did not see the need for such regulations, and roughly the same number of the ministerial advisors were of the same opinion.[301] This may suggest a lack of critical self-reflection on one's own role for some individuals in the political elite.

With respect to the recording of financial interests and positions, the Storting's rules also apply to a certain degree for the members of the government, but there is an essential difference – for the members of the government the registration is *voluntary.* The absence of mandatory registration is a serious weakness in an anti-corruption perspective. This, in combination with the criticism of the quarantine regulations, results in the government not being awarded maximum points on this indicator.

**INTEGRITY (PRACTICE)**

*To what extent is the integrity of members of the executive ensured in practice?*

Score: 75

The processes of establishing provisions to ensure the integrity of the members of the government have taken a long time. What points in a positive direction are the findings from the election surveys, which indicate that the voters' trust in the politicians has improved over the past decade.[302] Further, it must be said that the impartiality rules are quite well safeguarded as long as the government practices the principle that the Public Administration Act's impartiality rules also apply when they act as members of government.[303]

In the period 2005 – 2010 the Quarantine Commission dealt with a total of 67 cases where 29 resulted in exclusion from case processing and/or quarantine. In 11 of the cases a maximum quarantine period of six months was imposed.[304] In 2010 the commission first dealt with a case where there was a question as to whether the duty of information was breached. The committee concluded that that was the case, but found nevertheless that the subject matter did not provide a basis for the imposition of liquidated damages.[305] There are numerous examples from recent years of ministers and state secretaries who go on to new jobs in the private sector where conflicts of interest may arise.[306] Therefore, it is important that the quarantine rules leave little room for discretion.

Even though the ministers are not bound to report their financial interests and positions to the financial register of the Storting, all the members of the present government have done so. At the same time, the so-called gift-cases from 2010 show that individual ministers' practice regarding gifts and similar in some cases is unacceptable. After having investigated the gift traditions in several of the largest min-

istries, the newspaper VG found several unacceptable examples of ministers, who had received gifts on official foreign visits having brought them home for private use. The government members in question defended their position saying there was full transparency on what they had done and that they had followed the rules. It turned out that the prevailing regulations at the time were less strict than what applied for civil servants. The rules for politicians were subsequently changed so that the same applies for them as for government officials. There is reason to question why corresponding regulations that apply to civil servants should not also apply to the ministers. There is also reason to question the individual ministers' application of judgement in these cases. In light of the this, the government is not awarded maximum points on this indicator.

## ROLE

### PUBLIC SECTOR MANAGEMENT (LAW AND PRACTICE)

*To what extent is the executive committed to and engaged in developing a well-governed public sector?*[307]

Score: 100

The government possesses of a wide set of formal instruments and mechanisms vis-à-vis the public administration and the public sector in general: governance via regulations and instructions, the annual allocation letters, financial allocations, choosing how the public administration is to be organised and appointment of government officials to mention a few. Furthermore, it is an important point that the Norwegian politically administrative system is characterised by a high degree of reciprocal trust and common norms and attitudes between the political leadership and the leaders in the public administration.[308]

Recent years' developments point in the direction of a more differentiated public sector, in which the distance to the responsible minister has increased.[309] Important reasons for this has been to create a clearer division of roles and responsibilities between political and administrative levels, and to achieve a more effective political control. Opinion on whether one has succeeded in this is divided.[310] More and more public tasks are carried out by agencies, which by law or instructions have a certain amount of independence; this is especially true for the official agencies, such as the Insurance Court of Appeal, Immigration Appeals Board (UNE) and the Tariff Board.[311] In addition there are a number of agencies that have changed their organisation forms and as such now operate outside the central administration (state shareholding companies, state enterprises or companies by special statutes) and a number of areas of activity have been moved from ministries to directorates.[312]

**ANTI-CORRUPTION LEGISLATION**

*To what extent does the executive prioritise public accountability and the fight against corruption as a concern in the country?*[313]

Score: 75

The government has introduced a number of provisions in areas that are important from an anti-corruption perspective. However, several of the provisions have been criticized for not going far enough.

In 2002 the Bondevik II government commissioned Eva Joly to front a three-year project against financial and other profit-driven criminality, especially corruption and money laundering. In 2003 a special section in the penal code was adopted which dealt with corruption (Article 276) and the Money Laundering Act was adopted in the same year.[314] The Norwegian government has ratified all international agreements against corruption and made the necessary adjustments to the penal code in connection with this.[315]

In 2005 three sets of quarantine rules for politicians and the central administration, and one set of ethical guidelines were adopted. Although it is better to have quarantine regulations than not having them, the regulations have subsequently been criticized for being too lax. In October 2011 the government appointed a committee to go review experiences with the state quarantine regulations.[316] Furthermore, notification provisions were introduced in the Working Environment Act in 2007, and a new Freedom of Information Act came into force in 2009,and the same year the government established a working committee to propose measures to strengthen the municipalities' internal control. The committee made 85 recommendations, and the Ministry of Local Government and Regional Development is currently working on several of these.[317] In other words, a number of measures and provisions have been implemented in recent years. At the same time, several of the provisions have been criticised for being inadequate (the Freedom of Information Act, the notification provisions, the quarantine provisions) and this is the reason the government is not awarded the maximum score for this indicator.[318]

244 Andenæs and Fliflet (2006:188).

245 The signatures of the King and the Prime Minister are judicially both necessary to give the government's decisions legal validity (Andenæs and Fliflet 2006:193).

246 Interview with Christensen, 30/09/2011.

247 The newly established ministerial post at the Prime Minister's Office in 2009 may be seen as an effect of the increased need for internal coordination in the government.

248 Christensen and Lægreid (2002:65-66).

249 Ibid:75–78; Interview with Christensen, 30/09/11.

250 http://www.regjeringen.no/nb/dep/smk/dep/org/avdelinger.html?id=902. Last visited 09/08/2011

251 Statskonsult (1991; 1997).

252 Statskonsult (1997:15).

253 In the study, 19 of the 22 ministers who had served on the Bondevik I government(1997-2000) were interviewed. Christensen and Lægreid (2002:71).

254 Andenæs and Fliflet (2006:177). However the involvement of the King, by way of signing the resolutions passed by the King in Council of State, is judicially required (Cf. Structure and organisation).

255 Andenæs and Fliflet (2006:200). See also the chapter on the Storting.

256 Ibid:279.

257 Sejersted (2003:283).

258 This especially concerns the question whether or not the government has a legal obligation to implement the instruction (see for instance Doc. 14 (2002-2003:90-91); Nordby (2010:115-117).

259 There have however been some critical remarks about the close relationship between the Labour Party and the Norwegian Confederation of Trade Unions, LO, which is the largest labour organization in the country.

260 Andenæs and Fliflet (2006:280).

261 Ibid:200–201.

262 Ibid:285.

263 Difi (2010b:16–17). Also see NOU (2012) on Norway's agreements with the EU.

264 See p. 93 in *Om statsråd.* URL: http://www.regjeringen.no/upload/SMK/Vedlegg/Retningslinjer/2010/OmStatsrad_TS.pdf

265 Andenæs and Fliflet (2006:188).

266 See p. 42–44 in *Om r-konferanser Forberedelse av saker til regjeringskonferansene.* Guidelines prepared by the Office of the Prime Minister. URL: http://www.regjeringen.no/upload/SMK/Vedlegg/Retningslinjer/2010/OmR-Konferanser2.pdf Last visited 09/08/2011

267 Also see the Ombudsman's discussion of the topic in Document No. 4 (1999-2000:141-144).

268 Hove and Bernt (2009:54–55).

269 Cf. Freedom of Information Act, Section 22 and the Protection Instructions Sections 3 and 4.

270 Recommend. S nr. 282 (1995-1996).

271 The Storting's administration, e-mail of 8 August 2011.

272 Hove and Bernt (2009:53).

273 Interview with Smith, 29/08/11.

274 Letter from the Prime Minster Jens Stoltenberg to the Storting's presidium, dated 30 April 2001.

275 Letter from the Prime Minster Kjell Magne Bondevik to the Frøiland commission, dated 29 January 2002.

276 Norsk Retstidende. 1994 p. 1036.

277 Document no. 4 (1999–2000:142); Interview with Smith, 29/08/11.

278 See the chapter on the public sector.

279 Magnus (2007).

280 Statskonsult (2007:21).

281 Lægreid, Roness and Rubecksen (2006:237).

282 Also see the chapter on the Storting.

283 Cf. The Auditor General Act, Section 9.

284 Interview with Smith, 29/08/11. Also see the chapter on the Office of the Auditor General.

285 http://www.stortinget.no/no/Stortinget-og-demokratiet/Arbeidet/Riksrett/ Last visited 10/10/2011.

286 Andenæs and Fliflet (2006:200).

287 Christensen and Lægreid (2002:66).

288 Perspektiv (2010:12-13).

289 Also see the section on Control of government in the chapter on the legislature.

290 Christensen and Lægreid (2002: chap. 8).

291 Nordby (2004:178-184).

292 Interview with Christensen, 30/09/11.

293 Interview with Smith, 29/08/11.

294 Ethical guidelines for the civil service, of 7 September 2005.

295 Graver (2007:334).

296 Guidelines for duty of disclosure, quarantine and exclusion from case processing were approved by the Ministry of Modernisation 29 September 2005. Latest revision was by the Ministry of Government Administration, Reform and Church Affairs 2 September 2009.

297 *Retningslinjer for bruk av karantene ved overgang fra politisk stilling til departementsstilling* (Guidelines for use of quarantine on transition from a political position to a ministerial position). Implemented by the Ministry of Modernisation 4 January 2005.

298 Bjerkholt and Egede-Nissen (2005), Kristoffersen (2010), Rønning (2011).

299 Interview with Smith, 29/08/11.

300 See Utvalg skal se på statens karanteneregelverk [Committee to look into government quarantine regulations], URL: http://www.regjeringen.no/nb/ dep/fad/pressesenter/ pressemeldinger/2011/utvalg-skal-se-pa-statens-karanteneregel. html?id=661692 Last visited 15/02/2012.

301 Christensen and Lægreid (2002:114-115).

302 Listhaug and Aardal (2011:298).

303 Interview with Smith, 29/08/11.

304 See p. 5 of *Karanteneutvalgets årsmelding 2010 [Quarantine Commission 2010 Annual Report],* URL: http://www.regjeringen.no/upload/FAD/Vedlegg/Lønns-%20og%20 personalpolitikk/Karanteneutvalget/Karanteneutvalget_ aarsmelding_2010.pdf.

305 See Quarantine Commission, letter of 6 September 2010, URL: http://www.regjeringen. no/ upload/FAD/Vedlegg/Lønns-%20og%20personalpolitikk/Karanteneutvalget/Karantene utvalget_Stenseng.pdf.

306 Some examples: Former ministers Karita Bekkemellem and Bjarne Håkon Hanssen who became director in the Pharmaceutical Association and partner in the consulting company First House respectively, while former Minister for Oil and Energy Torhild Wildvey had five board positions shortly after leaving the Ministry, three of which were in companies supplying services and technology to the large oil companies. Former state secretaries in the Ministry of Finance Ole Morten Geving and Geir Axelsen who became director in the Savings Bank Association and Statoil respectively.

307 The formulation of the question is normative and can thus be difficult to answer. From the background documents for the NIS study it is evident that what is asked is whether or not the government is active in ensuring that the public sector is characterised by transparency and integrity.

308 Christensen and Lægreid (2005).

309 Tranøy and Østerud (2001).

310 Christensen and Lægreid (2002:220–223).

311 Hylland (2001:268).

312 Grønlie (2001:301–302).

313 The government's work in this area primarily takes place through the ministries, and it is therefore conceivable that efforts vary between ministries. This type of differentiation has not been carried out in answering the question.

314 Proposition to the Odelsting, No. 78 (2002–2003); Proposition to the Odelsting, No. 72 to the Storting (2002-2003).

315 See the chapter on Anti-corruption Work for a complete list.

316 See Utvalg skal se på statens karanteneregelverk [Committee to look into government quarantine regulations], URL: http://www.regjeringen.no/nb/ dep/fad/pressesenter/ pressemeldinger/2011/utvalg-skal-se-pa-statens-karanteneregel. html?id=661692 Last visited 15/02/2012.

317 Cf. http://www.regjeringen.no/nb/dep/krd/dok/rapporter_planer/rapporter/2009/85-tilradingar-for-styrkt-eigenkontroll-.html?id=588583.

318 Criticism of the Freedom of Information Act is under Transparency (Law) in the chapters on the government and the public sector. Criticism of the notification provisions is discussed in Anti-Corruption Work chapter, while criticism of the quarantine regulations is discussed earlier in this chapter.

# 3. The Courts/Judiciary

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**SUMMARY**

The ordinary courts in Norway may be said to function well with respect to most of the study's indicators. Norway achieves a high score in comparative studies of rule of law values[319] and the population reposes great trust in the courts. At the same time this study points to two weaknesses of today's Norwegian courts system. The first concerns the judges' independence. For ordinary judges independence is well safeguarded in today's legislation. The same cannot be said of the arrangement with acting judges, and the high proportion of assistant judges in the District Court (Tingretten). Indirectly this can be viewed as a resource problem as there are good reasons to believe that the use of acting judges and assistant judges would have been lower if the courts had had more resources. However, it may also have the effect of shaking confidence in the independence of these judges that their own interests or the interests of their own future job or position may be thought to influence their decisions. With the high proportion of temporary judges, trust in the independence of the courts may be impaired. The other weakness of the Norwegian courts system is that minutes or video recordings are not kept of defendant's statements and witness testimony given in court sessions. The result is that judges in the Court of Appeal, when processing appeals, do not have access to testimony from the District Court – beyond that which may be cited in the District Court's judgement. They should have this in the interest of the parties and the overruling.

The table below shows the total score for the judiciary. The qualitative assessments that form the basis of the score for each indicator is provided in the following pages.

| The Courts/Judiciary<br>Overall score: 92/100 | | | |
|---|---|---|---|
| | **Indicator** | **Law** | **Practice** |
| **Capacity**<br>**81**/100 | Resources | 100 | 75 |
| | Independence | 75 | 75 |
| **Governance and Management**<br>**96**/100 | Transparency | 100 | 75 |
| | Accountability | 100 | 100 |
| | Integrity mechanisms | 100 | 100 |
| **Role**<br>**100**/100 | Control of Government | 100 | |
| | Corruption prosecution | _[321] | |

**STRUCTURE AND ORGANISATION**

The general courts consist of three levels: The Supreme Court, the Appeals Court (second level) and the District Court (first level). The Norwegian organisation of the courts has, from an international perspective, a highly generalist character. For example, in Norway there is no constitutional court, or an administrative tribunal.

The courts give judgements in both civil and criminal cases. Most of the civil disputes are first dealt with in the conciliation boards which are to be found in every municipality and are composed of lay people. In addition to the general courts there are the tribunals, including the Labour Tribunal, Social Security Tribunal and the Land Conciliation Court. The tribunals have not been the subjects of investigation in connection with the study. Civil cases are brought before the courts by the parties involved whilst criminal cases are brought before them by the prosecuting authorities. Responsibility for the courts' administrative work, including preparation of budgets, development of court organisation, personnel administration, training and other skills development lies with the Courts Administration. The King in the Council of State (the government) can, in principle, direct the Courts Administration, but it is assumed to be done only in exceptional cases.[321]

The judges are independent in their decisions on individual cases and cannot be directed. A judgement can be changed by a higher court after the hearing of an appeal. A higher court cannot, on its own initiative, instruct a lower court in the treatment of individual cases. If however one of the parties wishes to go further with a case, the higher court can, instead of coming to a new decision, may determine that the lower court shall try the case again.

Assistant judges are lawyers who are employed in a court for a limited period of time. The arrangement is only used in the first level courts. The assistant judges lead negotiations in the court and take decisions like other judges, but there are some limits to the type of cases they can deal with.

## CAPACITY

### RESOURCES (LAW)

*To what extent are there laws seeking to ensure appropriate salaries and working conditions of the judiciary?*

Score: 100

The government's proposals for the budget concerning the courts is based on the budget proposals put forward by the Courts Administration (DA).[322] In the Storting's treatment of the budget bill annual guidelines are laid down for the DA's activities and administration of the courts.[323]

There are no legal regulations that regulate the judges' salaries. Today's practice is regulated under a special agreement from 1999 between the Norwegian Judges' Association (DnD), the Norwegian Confederation of Trade Unions (LO) and the Ministry of Government Administration, Reform and Church Affairs (FAD) and the judges are excluded from the basic collective agreement. According to the agreement the salaries will be regulated by observing the salary levels in the Supreme Court[324] and the development of managerial staff salaries in the public service. The judges' opportunities to take on assignments besides that of the judge are regulated by law, cf. chapter 6A of the Courts of Justice Act.[325]

### RESOURCES (PRACTICE)

*To what extent does the judiciary have adequate levels of financial resources, staffing, and infrastructure to operate effectively in practice?*

Score: 75

The government undertakes an independent assessment of what the courts' budget shall be, and the final budget is fixed by the Storting on the basis of proposals from the government. There are special sections for the DA, the District Courts, the Courts of Appeal and the Supreme Court. The DA distributes the funds between the different courts.

The judges' salaries are not a result of negotiations as they are fixed unilaterally by FAD each autumn after discussions with the DA. DnD has no place in this system as FAD only relates to the principal trade union. Paid external work requires approval from the DA.[326]

When salary levels for judges are compared with those of lawyers one must take into account the fact that a system of equal pay for judges on the same level is practised, with no allowance for age or experience. For lawyers on the other hand, there are possibilities for salary increases depending on experience and seniority, particularly in the private sector. Average annual earnings in 2010 were: Supreme Court judges NOK 1,423,000 [327], for judges of the Court of Appeal NOK 920,400 [328], for District Court Judges NOK 870,000 and assistant judges NOK 428,400.[329] The average salary for lawyers in managerial positions[330] was in 2010 for lawyers in the municipal sector NOK 756,000, state sector NOK 826,000 and the private sector (in 2009) NOK 942,000.[331] In light of this, the wage level for judges must be said to be competitive with the average salary for lawyers in managerial positions in both the public and private sectors. This must be qualified somewhat for the private sector, as there are somewhat major differences in salary in the private sector.

In Norway it has traditionally been a basic requirement for the recruitment of judges that the body of judges reflects the widest possible legal working background. Formally this principle continues to be a guiding one for the appointment of judges, and a conscious nomination policy is used so that the judges will come from a broad spectrum of positions.[332] Whether one has succeeded with this in practice is a more open question. In 2010, 60 percent of the appointed judges (a total of 31 positions) came from a judges office (permanent or acting), while approximately 20 percent came from a position as a private lawyer. In 2003 the distribution between the two professions was practically equal, with both at around 40 percent. In the period between 2003-2010, the proportion of appointed judges who came from a position in the private sector (not a lawyer) or the prosecuting authorities was marginal, while the proportion who came from other public positions has been between zero and ten percent, except for 2007 and 2010 where it was approximately 20 percent.[333] No one has priority in the application process and there are no internal career paths.[334] When it comes to training, it is limited to an initial course of five sessions (also see the section on Independence (practice)).[335]

The turnover of judges is very low.[336] In 2010 there were 722 judges employed in the ordinary courts and 921 employees in administration, including the DA.[337]
In 2010 a ban on recruitment was introduced in the courts because of a difficult budget situation. This led to some media coverage and in the revised budget the courts received an extra NOK 15 million which was transferred to the 2011 budget.[338]

Almost one third of the judges at the lowest level (District Courts) are assistant judges.[339] There is no formal requirement for prior training for assistant judges. Internal training is given in the court and centralised training is provided in the form of courses for assistant judges and study days under the auspices of the DA's Resource Centre. The nature and extent of this training varies widely, and a study undertaken by the Assistant Judges' Association among its own members shows that many of the members think that both the internal and the external training should be improved. Today assistant judges quickly move into a regular judging function. Furthermore many of the court tasks which were previously those of the assistant judge (for example, administration of an estate in the case of death or bankruptcy) have been delegated to parties outside the legal system.[340] This means that assistant judges today carry out many of the functions of established judges. The combination of the role becoming more and more like that of an ordinary judge, the extent of the number of assistant judges, that many of these are young, with limited working experience and inadequate training adds up in sum to a problem for the rule of law. A final point in this matter is that a study carried out by the DA in 2006 found that several courts distributed types of cases to assistant judges that many of them did not want to have responsibility for. This was done "of necessity as a consequence of the staffing situation".[341]

In five years there has been a 20 percent increase in civil litigation for the courts to process. In the largest Appellate Court, Borgarting Court of Appeal, trials are now scheduled for up to one and a half years in the future. [342] This is contrary to the provision of the Dispute Act that the date for the main hearing may only be more than six months after the date of submission of the writ of summons if special circumstances make it necessary (Section 9-4).[343] The increased case processing time for disputes in the Courts of Appeal and the large proportion of assistant judges prevents the courts from being awarded the maximum score for this indicator.

#### INDEPENDENCE (LAW)

*To what extent is the judiciary independent by law?*

Score: 75

The Supreme Court is grounded in the Constitution which states, among other things, that Supreme Court judgements of the last resort (Article 88), and the Supreme Court's judges cannot be appealed against (Article 90).[344] The independence of the Supreme Court is not mentioned in the Constitution but is regarded to be a common law, and is also enshrined in the Courts of Justice Act (Section 55, 3rd paragraph).

To change the Constitution's provisions on the Supreme Court the general requirements for changes in the provisions of the Constitution apply: a two thirds majority amongst the representatives to the Storting in two consecutive periods of the Storting (Const. Article 112).

A requirement of the Courts of Justice Act is that persons who are appointed to be judges should satisfy "strict requirements for professional qualifications and personal qualities". Furthermore the recruitment shall occur "amongst lawyers with different working backgrounds" (Article 55 2nd paragraph). The judges are appointed as officials who cannot be dismissed under the Constitution (Constitution Article 22). Nor can they be moved against their will, and can only be dismissed after legal proceedings and a judgement (Article 55 4th paragraph). Age limits are the same as for the rest of the government service, and in principle judges shall retire on reaching 70, but pensioned judges can work as judges up to and including the age of 73.[345]

The process regulated by law for the appointment of permanent judge positions is similar for all positions, independent of whether it is the post of judge in the District Court, the Court of Appeal or the Supreme Court.[346] Permanent posts shall be advertised publicly.[347] The applications shall be considered by the Appointments Council which consists of three judges, a lawyer employed in the public service and two members who are not lawyers.[348] The government through the King in the Council of State appoints those who shall serve as members on the Appointments Council. The appointment is for a period of four years with the possibility of re-appointment for one more period (the Courts of Justice Act Section 55a). The Appointments Council makes a reasoned recommendation of three qualified applicants in order of priority to all. On the basis of the recommendation one applicant is appointed to the post by the King in the Council of State (Section 55). Formally the government can choose any one of the three who are recommended. Furthermore the government *can* select a person who is not recommended, but the comments of the Appointments Council must then be sought. (Section 55c).

The regulations for employing acting judges are not so uniform. For appointments of up to one year, the decision is made by the Appointments Council, who can delegate constitution to the DA (Sections 55 e-f). When the appointment is for more than one year or applies to the Supreme Court, the decision shall be made by the King in the Council of State (the government) with the Ministry of Justice being the body responsible for the administration. Before the government makes a decision, a recommendation shall be sought respectively from the Appointments Council where it is a matter of ordinary courts, and from the Chief Justice of the Supreme Court where it is a matter for the Supreme Court (Section 55f) The requirement for public notice does not apply to constitutions of shorter duration than

6 months, see the Civil Service Act Section 6, No. 1, cf. Section 2.

Assistant judges are appointed following public announcement, and the positions filled following ordinary competition, cf. Ministry of Justice circular G-46/99. There are no formal requirements for preliminary training. They are appointed for up to two years at a time by the court director, who can prolong the appointment, but the combined time cannot basically exceed three years (Section 55g). Oslo City Court has a special arrangement whereby an assistant judge there can practise as an assistant judge for up to six years.

Basic ethical principles dictate that a judge must never allow that priority to their own position have an impact on his or her judicial activity. Assistant judges and acting judges are *temporarily* appointed judges, which has several problematic aspects.[349] If an acting judge/assistant judge wishes to extend the period of service or transfer to a permanent judge position, a binding to the appointing authority arises which may be problematic – there may be the risk that they want to make a good impression on the person/people with appointment authority in order to be reappointed. Another factor is that temporary judges may be on leave from another employer. As the government-appointed Courts Commission (1999) pointed out, it could "create loyalty bonds and motivation to take subjective considerations in the processing of cases where the employer is likely to have an interest without being a party to the case".[350] The same applies even if the person is not on leave because he/she may have plans for job applications when the judge appointment ceases. This particularly applies to assistant judges, who often are early in their careers. A possible consequence of this that the Courts Commission also pointed out is "that an assistant judge handles a case litigated by a lawyer with whom the assistant judge plans to apply for a position and whom he or she would like to make a good impression on."[351]

The courts and the ordinary judges' independence is guaranteed in legislation, while the independence of acting judges and assistant judges is not guaranteed to the same extent. Maximum points are therefore not awarded to the judiciary for this indicator.

**INDEPENDENCE (PRACTICE)**

*To what extent does the judiciary operate without interference from the government or other actors?*

Score: 75

The provisions which govern the functioning and organisation of the Supreme Court have been stable over a long period with one exception. Previously cases "of particular importance" were dealt with by the Supreme Court in plenary session.

Because this is highly resource-intensive a change was made to the law in 2008 which allowed for this type of case to be dealt with in a "Grand Chamber", consisting of eleven judges.[352] There are no known cases from recent times where other agencies have interfered unlawfully in the courts.[353]

All permanent posts and most acting posts with a duration of more than six months[354] are advertised publicly and the applications are dealt with by the Appointments Council. Then interviews are carried out by a group of four persons (two from the Appointments Council, one from the DA and the director of the court. A recommendation is made on the basis of the interviews and this is sent to the Ministry of Justice. The ministry accepts the recommendations in virtually every case and sends it on for processing to the King in the Council of State.[355] Today there is no overview of the extent of acting appointments in Norwegian courts[356], but in the period 2009–November 2011 the DA had made approximately 110 appointments of up to three months and approximately 120 appointments from three to six months (vacation appointments not included).[357] By comparison, in 2010 722 judges were employed in the ordinary courts.

The Appointments Council has delegated decision-making authority for short term appointments (less than six months) to the DA, but appointments between three and six months must be discussed with the head of the Appointments Council before a decision is made. The act does not provide for the DA to delegate decision-making authority to the court director, but in practice it is not unusual that the request for temporary constitution comes from the court director. In the case of appointments of less than six months is not common with announcements, and it occurs that the court director merely contacts the person who is asked to be acting judge. This also applies to the Supreme Court. This study cannot provide written documentation in evidence of the extent of this practice, but it is aware that many believe the practice is widespread. It is not uncommon that judges who have held short-term appointments subsequently become permanent judges, while others who have held short-term appointments experience the opposite, despite submitting several applications. There may be legitimate reasons for this. However, the current practice of limited transparency into short-term appointments and the close proximity between the appointing authority and the appointee raises questions concerning these judges' independence. In light of this, maximum points are not awarded for this indicator.

## GOVERNANCE AND MANAGEMENT

### TRANSPARENCY (LAW)

*To what extent are there provisions in place to ensure that the public can obtain relevant information on the activities and decision-making processes of the judiciary?*

Score: 100

Rules governing freedom of information in the administration of justice give, as a rule, the general public the right to information on scheduled hearings (the Courts of Justice act Section 122), to be present at hearings, to render public the proceedings of a hearing, rights to access and printed materials on court decisions and to publish such decisions. The reading out of judgements is always held in public (Section 125). At the same time there are some limitations to the above: the courts have the authority to restrict public access to court proceedings, including the interests of privacy and where special circumstances give reason to fear that public disclosure will complicate the elucidation of the case (Section 125). Anyone who wants can obtain access to information on the judges' salaries.[358]

The Public Administration Act and the Freedom of Information Act apply to the appointment of permanent and temporary judges. The lists of applicants for judges' posts are public and shall contain all applicants' names and ages and complete information on their education and experience in public and private sectors. The Appointments Council's recommendation without justification is also public (Section 55i).

The decisions of the supervisory committee for judges in disciplinary matters is made public but in anonymous form (Section 238, fifth paragraph). The committee's processing work is, as a rule, subject to the Freedom of Information Act, but in principle the committee's meetings are closed to the public. (Section 238 1st and 4th paragraph). The Public Administration Act and the Freedom of Information Act apply to the activities of the courts' administration (Section 33b), and any person who requests it has the right to become acquainted with the information in the External Work Registry[359] (Section 121 h).

**TRANSPARENCY (PRACTICE)**

*To what extent does the public have access to judicial information and activities in practice?*

Score: 75

Court proceedings are in principle open. As a general rule, everyone can obtain access to a legal decision, with certain limitations concerning family cases and such (on account of privacy and confidentiality). The requirement is that one can show some or other form of knowledge of the concrete case one wants access to.[360]

The website, Lovdata.no, contains the primary legal sources which regulate citizens' rights and duties. The information includes laws, central and local regulations, new Supreme Court and Court of Appeal decisions (decisions are available on the site for about four months). The information is continuously updated and is thus at any one time an updated version of the current Norwegian legislation.[361] The above-mentioned are available to all and sundry. However, for full access to Lovdata's sources, including all the decisions in the Court of Appeal and the Supreme Court, it is necessary to pay a month subscription of NOK 785 – a significant sum for most individuals. Nor is there a guarantee that public institutions have a subscription. As of today there are only six municipal libraries that have a subscription.[362] In other words, the subscription scheme constitutes a clear limitation of the opportunity people have to use their right of access.

The courts' web pages generally contain much information. The courts' structure, functioning and behaviour are described in detail with special sections on the independence of the judges, transparency in the courts and how to proceed if one wants to appeal against a judge or a court's decision. They also contain the different bodies' annual reports (see below) and the External Interests Register in its entirety.

The courts administration provides information in their annual reports on the courts' activities. These include basic statistics from individual courts on the number of cases and outcomes, processing time, budgeting and accounting, information about the Courts Administration's own internal activities such as courses, training measures, etc. In the same way the Appointments Council and the Supervisory Committee for Judges publish annual reports with information on their activities.[363] All of the Supervisory Committee's decisions are available on their website. The Appointments Council's website includes a policy memo which describes the council's practice and which criteria are given weight in the processing of applications, and there is an overview of those who have been appointed as judges. But it is thus not possible for the general public to know the justification for the decisions that the Appointments Council takes, these are not available to the public. For appointments regarding posts for less than six months access is limited

further (see Independence (practice)).

In dealing with cases in the courts there are two things that are important: the facts of the case and the laws that are applicable. For the first point, the establishment of the facts, it may be questioned whether current Norwegian legal practice is satisfactory. Currently the defendant's statements and witness testimony given in court proceedings is not documented, neither in the form of complete written minutes nor audio/video recordings. Court records are always kept as minutes of the hearing, but they function primarily as minutes of the proceedings in hearings.[364] The result is that judges in the Court of Appeal, when processing appeals, do not have access to testimony from the District Court – beyond that which may be cited in the District Court's judgement. Experience shows that witnesses do not always say the same in statements to the police as in testimony in the court, nor does a witness always give the same testimony in the different courts.[365] In sum this entails a risk that the two courts hand down sentences based on different testimonies – and this does not necessarily apply to new evidence that has been brought to light. Of consideration to the parties and overrulings it should be possible to ascertain what individuals have testified in the subordinate court. This is not possible under current practices. This, in combination with the subscription scheme to Lovdata, results in the judiciary not being awarded maximum points for this indicator.

**ACCOUNTABILITY (LAW)**

*To what extent are there provisions in place to ensure that the judiciary has to report and be answerable for its actions?*

Score: 100

Pursuant to the Criminal Procedure Act, court decisions as a rule must be justified (Section 39). If the decision is not unanimous, it must be stated which of the members of the court were not in agreement and on which points there was disagreement (Section 41). If a court decision lacks grounds, or if one of the parties believes that the decision is not sufficiently justified, then the line of attack is to appeal the judgement. There have been two exceptions to the requirement for justification. The first was appeal cases to the Court of Appeal and the Supreme Court where practice, up and until 2008, was that appeals could be dismissed without grounds. In July 2008 the United Nations Human Rights Committee in Geneva concluded that Norwegian practice was in conflict with the convention on civil and political rights and a Supreme Court judgement later in the same year stated that in all cases where an appeal was dismissed, justification must be provided.[366] In 2009, the Supreme Court's Grand Chamber concluded that appeals in civil cases may not be held inadmissible without justification. [367] The other exception from justification, which still applies, is rulings in jury cases. In those criminal cases with

sentences greater than six years which are dealt with by the Court of Appeal, it is generally the rule that it is a jury consisting of ten laypersons who decide whether the defendant is guilty (Sections 352 and 355). In trials by jury justification consists, as a rule, simply of a reference to the jury's ruling; a yes or a no (Section 40 1st paragraph). But this is not always the case. In a ruling from 2009 the Supreme Court interpreted a duty for professional judges to supplement the jury's verdict with a written justification to ensure verification.[368] There is reason to believe that the system will change in the near future. A committee appointed by the government which examined the current jury system were unanimous on one point – that persons who have been found guilty in trials by jury must know why they were found guilty.[369] This view also has a political majority in the Storting and is supported by the Higher Prosecuting Authority (Public Prosecutor).[370]

Judges do not enjoy immunity with regard to committing punishable offences.[371] Appeals against judges in the carrying out of their duties can be made to the Supervisory Committee for Judges. Parties, counsel and other participants in the trial are entitled to lodge appeals, but also others who believe they are directly affected by the judge's conduct, for example, lay judges and the media, may lodge appeals. The Supervisory Committee for Judges has the authority to exercise disciplinary measures on judges whom: "wilfully or negligently violate the duties of a position, or otherwise behave in breach of proper judicial conduct" (Section 236). Appeals in matters outside the service are reserved for the Ministry, the courts administration and the court director in the court with where the judge is associated (Section 237). If a party is not satisfied with the Supervisory Committee's decision, then that party, may, if there is legal authority, bring the case before the district courts through legal action (Section 239). In other words, appeals of the Supervisory Committee's decisions are not considered by another independent body, but by a judge in the ordinary courts. The appellant's identity is not concealed. This is so for practical reasons. The appellant must necessarily state which case the appeal concerns and it will often be obvious who the appellant is.[372] At the same tine, the Supervisory Committee has an "opposite" purpose: to uphold the rights of judges by clarifying whether the appeals that are forwarded are justified.

The Supervisory Committee for Judges will consist of two judges from the Supreme Court, the appeal courts or the District Courts, a lawyer and two members who are representatives of the general public. The same requirements for appointment and length of time to be served apply as for members of the Appointments Council. The government appoints members for four years, with a possibility for one new period of four years (Section 235)

**ACCOUNTABILITY (PRACTICE)**

*To what extent do members of the judiciary have to report and be answerable for their actions in practice?*

Score: 100

As described in the previous section, changes have taken place and are about to take place, which require that decisions in appeal cases will also have to be justified.

There are no cases from recent times where judges have been dismissed.[373] This must also be viewed in connection with current practice, as cases arise from time to time where this is under consideration. The director of the DA estimates this to amount to about one case every other year and that this type of case tends to be resolved "amicably", where the person in question resigns from his/her position.[374] There is reason to believe that some of these cases concern matters that may have been grounds for dismissal. Although it appears that such cases seldom occur, there may be reason to question whether the current practice is optimal.

The number of cases received in 2004-2010 has varied between 91 and 125 cases per year, while the number of processed cases has varied between 30 and 60 cases a year (see table). The number of cases which end up in disciplinary action are very few, and most of them end up in criticism which is milder in form than warnings. Neither criticism nor warnings have any legal effect. As a rule the appeals concern the conduct of judges, and in some cases slow processing or administrative matters.[375] Viewed in relation to the total number of cases that the courts deal with each year – in the first instance courts alone the total number of cases has been from 12,000 to 20,000 civil cases and between 9,000 and 17,000 criminal cases[376] – these figures must be regarded as very low. However, it is worth noting that there are few professionals (lawyers and prosecutors) who lodge appeals against judges, usually it is a party to a case who does so. As the Supervisory Committee's chairman has pointed out, there is reason to believe that the threshold for professionals to lodge appeals against judges is high because it "probably involves great discomfort."[377] In practice, it has proven to be the appeals from the professional parties that most often result in reactions to judges. In light of this there is reason to whether the number of cases, and reactions, reflects reality. There are few examples of the Supervisory Committee's decisions being brought before the courts. [378] This may be because there has been no basis for doing so, but it could also be because one has little confidence that a judge in the ordinary courts would go against a colleague who is supported by the Supervisory Committee.

**TABLE 3.1 CASES BEFORE THE SUPERVISORY COMMITTEE FOR JUDGES. 2004–2010.** [379]

| | 2004 | 2005 | 2006 | 2007 | 2008 | 2009 | 2010 |
|---|---|---|---|---|---|---|---|
| Number of reported cases | 107 | 103 | 123 | 120 | 91 | 98 | 125 |
| Number of processed cases | 55 | 45 | 60 | 54 | 37 | 30 | 44 |
| **Disciplinary measure** | | | | | | | |
| Criticism | 12 | 6 | 10 | 3 | 2 | 8 | 6 |
| Warnings | 0 | 1 | 0 | 0 | 0 | 1 | 0 |

Questions have recently been raised as to whether the employment protection conditions of the court director[380] are too strong, with the effect that it is too difficult to dismiss poor directors.[381] On the other hand, considerations toward the independence of the courts may favour maintaining the current arrangement. This problem is also currently being considered by the DA internally, but it will take a long time before any changes take place, as any legislation will have to be sent out to public hearing.[382]

### INTEGRITY MECHANISM (LAW)

*To what extent are there mechanisms in place to ensure the integrity of members of the judiciary?*

Score: 100

A number of changes have taken place on this point over the last 10 years, and today there appears to be sufficient regulations which safeguard the judges' integrity.

In 2002 the Supervisory Committee for Judges was established, and ethical principles for the behaviour of judges were adopted in 2010. The purpose of the principles is to ensure that the judges behave in a way that creates confidence in the courts and their decisions. In addition to the principles come the existing regulations for the judges' profession that are comprehensive and detailed, also as far as the judges' integrity is concerned.[383]

As far as the impartiality of the judges is concerned no considerable changes have taken place in the law's provisions (Courts of Justice Act, Chapter 6), but a significant intensification has in any event taken place as regards the laws requirements for impartiality. The critical assessment topic in decisions on the impartiality of judges in the past 15-20 years have been how matters appear outwardly – for the parties, the law-seeking public and the public in general.[384].

Furthermore in 2001 considerable limitations were introduced on the judges' ability to take on commissions or offices besides the work of a judge, through the establishment of the External Work Registry. The law defines external work as "membership, office or other engagement in or for companies, organisations, so-

cieties or bodies for central government, county councils or municipal councils" (Section 121a). The Act states that judges shall inform the registrar of all their external work, including what it consists of, who is the client, the extent of the work and whether the judge will receive payment (Section 121g), and the judges must as a rule seek the approval of the court administration (Section 121c).

### INTEGRITY MECHANISM (PRACTICE)

*To what extent is the integrity of members of the judiciary ensured in practice?*

Score: 100

The Norwegian judiciary and the courts have a high reputation among the public. Studies show that the population's trust in the courts (and the prosecuting authorities) is greater than for other central institutions in Norway, and the levels of trust within different population groups are fairly similar.[385] At the same time it should also be mentioned that previous research has shown that a consistent feature of all democracies has been that institutions concerned with public order like the courts enjoy a high degree of trust whilst elected institutions have less trust.[386]

The External Work Registry is available to the public on the courts' web pages. Anyone who wants to can look up the individual judge and will then get up the information that has been registered for the judge. Norwegian judges seeking positions in the private sector must apply to the Courts Administration for special permission.[387] Over the last three years no judges have resigned to take up another post outside the courts. [388] For a number of temporary judges, the opposite is true.

There are no formally established quarantine rules for judges, but pursuant to the Courts of Justice Act Sections 106 and 108 quarantine is practised for a variety of positions in the case of transition to the judging profession, such as police lawyers who are barred from work on criminal cases for the first six months after the transition to the judge's office and lawyers from the insurance industry who are barred from work on insurance cases for the first six months.

## ROLE

### EXECUTIVE OVERSIGHT

*To what extent does the judiciary provide effective oversight of the executive?*

Score: 100

The courts do not directly supervise the government, which would be in violation of the separation of powers principle. To the extent that the courts can be said to supervise the government it is through judicial review that the courts can overrule

administrative decisions with regard to matters of law, constitution, processing and fact. In some cases purely discretionary assessments can be reviewed.[389] The court's powers of judicial review can today be regarded as constitutional common law,[390] and is a very lively principle in our constitutional system.[391]

The courts' control of the administration has increased in intensity in the past decade, and the main rule today being that the courts have the competence to control the whole of the administration's application of the law.[392] On the other hand there are few administrative cases that are dealt with by the courts today, approximately a couple of thousand per year, which is low in relation to the number of cases the administration processes and the case load in the courts over the course of a year. Experts have pointed out that few administrative cases in the court system may have an unfortunate effect: the courts rarely encounter most types of cases arising from the administration, which may result in the rules of administrative law not being respected to the same degree as if one had had a more active court. [393]
In light of this, proposals to establish a separate administrative tribunal have been presented, without winning much ground so far. [394]

**CORRUPTION PROSECUTION**

*To what extent is the judiciary committed to fighting corruption through prosecution and other activities?*

Score: –

These questions are mostly questions that come under the domain of the prosecuting authority. It is the prosecuting authority's task, not the courts', to combat corruption by prosecuting in corruption cases. Points are therefore not given for this indicator.

There is no exhaustive publicly available statistics regarding prosecutions for corruption, and it is, on the whole, difficult and demanding to collect this information. The Norwegian National Authority for Investigation and Prosecution of Economic and Environmental Crime (ØKOKRIM) has an overview of "its" cases on its web pages, and Lovdata has its database where one can look for particular cases – but access is limited and to be able to find one's way to cases, requires knowledge on how to find your way about Lovdata's databases. Another possibility is by approaching individual courts, but this requires resources and requires that one has knowledge of the specific cases – so that the courts can provide the judgements. Since there are no comprehensive statistics in this area, Transparency International Norway (TI-N) have made a collection of judgements with an overview of all corruption judgements in Norway, from 2003, when we got our own corruption regulations in the Penal Code, up until today.[395]

319 Agrast, Boltero and Ponce (2011).

320 These questions are mostly questions that come under the domain of the prosecuting authority in Norway. Points are therefore not given for this indicator.

321 Proposition to the Odelsting, No. 44 to the Storting (2000-2001).

322 The Courts of Justice Act, Section 33c.

323 The Courts of Justice Act, Section 33 second paragraph.

324 The salaries of Supreme Court judges are set by the Storting's Presidium.

325 See Integrity Mechanisms (law).

326 The practice of external activities for judges discussed further under the Integrity Mechanisms indicator.

327 After several people in 2006, including the Minister of Justice, had expressed concern that there were few applicants for advertised posts as Supreme Court judges, they received a substantial salary increase in 2007, to be precise an increase of NOK 235,000 (Kolsrud (2006), Recommendation 161 (2010-2011)).

328 Figures from 2010 for this type of position were not available from Statistics Norway. The stated figure is the sum of the 2010 salary for District Court judges plus the pay difference between the Appeals Court and District Court judges in 2009.

329 The figures are based on the "monthly salary" variable retrieved from Statistics Norway's statistics bank, table 08571. "Monthly salary" is the gross monthly salary and includes basic salaries, variable additional allowances and bonuses. Overtime allowance is not included. URL: http://statbank.ssb.no/statis- tikkbanken/Default_FR.asp?PXSid=0&nvl=true&PLanguage=0&tilside=selecttable/ hovedtabellHjem.asp&KortnavnWeb=lonnstat Last visited 29/02/2012.

330 The stated figures are the average salary for lawyers in position type 1 according to the Lawyers' Association's categorization. Examples of position types in the category are: director, general manager, professor, chief officer, head of agency.

331 The figures and the categories are based on the Lawyers' Association's 2010 annual salary statistics. For the private sector the figures are from 2009. URL: http://www.juristforbundet.no/Global/Juristforbundet/ Dokumenter/Statistikk/L%C3%B8nnsstatistikk%202010%20offentlig%20sektor.pdf Last visited 29/02/2012

332 NOU (1999), Proposition to the Odelsting, No. 44 to the Storting (2000-2001).

333 See p. 5 of *Innstillingsrådet for dommere Årsmelding 2010,* URL: http://www.domstol.no/upload/DA/Internett/Innstillingsrådet/Årsmeldinger/Årsmelding%202010.pdf Last visited 11/03/2012.

334 Proposition to the Odelsting, No. 44 (2000-2001:133-134).

335 Interview with Langbach, 13/09/11.

336 See p. 53 in *Innstillingsrådets praksis/policynotat, [The Appointments Council's practice policy memo]* URL: http://www.domstol.no/no/ Enkelt-domstol/Innstillingsradet/PraksisPolicynotat/. Last visited 29/09/2011

337 See p. 28 in *Domstolene i Norge. Årsmelding 2010.*

338 See p. 30 in *Domstolene i Norge. Årsmelding 2010*, URL: http://www.domstol.no/upload/DA/Internett/da.no/Publikasjoner/Årsmelding/Aarsmelding%202010.pdf. Last visited 20/09/2011

339 See p. 28 in *Domstolene i Norge. Årsmelding 2010.*

340 See p. 1–2 of *Domstoladministrasjonens høringsbrev om dommerfullmektigordningen, brev av 19. juni 2009,*URL:http://www.domstol.no/upload/DA/Internett/da.no/Aktuelt/H%C3%B8ringer/H%C3%B8ringsbrev%20dommerfullmektigeordning.pdf. Last visited 25/09/2011

341 See p. 4 in *Domstoladministrasjonens høringsbrev om dommerfullmektigordningen, letter of 19 June 2009.*

342 Se *Stor økning i tvistesaker [Large increase in disputes]*, URL: http://www.domstol.no/no/Aktuelt/Nyheter/Stor-okning-i- tvistesaker/ Last visited 09/02/2012.

343 Exceptions can be made if "special circumstances make it necessary", but this does not refer to the staffing situation in the court, but rather to the circumstances of the individual case in question.

344 Here it is worth mentioning the Norwegian Criminal Cases Review Commission body. It is an independent body charged with deciding whether a person convicted shall be given a new hearing of his/her case in court. After an objective assessment the Commission shall decide whether conditions exist for re-opening the case. The Commission decides its own methods of working and cannot be directed.

345 See p. 56 in *Innstillingsrådets praksis/policynotat.*

346 Except in the case of a Chief Justice of the Supreme Court.

347 The Civil Service Act Section 2.

348 Establishment of this method of appointing judges is based on a trade-off between democratic, constitutional, personnel-related and general considerations. The legislator did not want a guild committee whereby the entire appointment process would take place within the courts, and neither did he want a corporate process within a body composed of representatives from the employers and the employees. This is discussed in detail in Official Norwegian Report NOU 1999:19 and Proposition to the Odelsting No. 44 to the Storting (2000-2001).

349 See e.g. the Courts Commission's report from 1999 (Official Norwegian Report NOU 1999) and *Dommerforeningens høringssvar av 01.10.09 [The Judges' Association's response of 01/10/2009],* URL: http://www.juristforbundet.no/ http://www.juristforbundet.no/Om-oss/Organisasjon/Seksjoner--Foreninger/Dommerforeningen/Horingssvar/011009- Dommerfullmektigordningen/ Last visited 09/02/2012. Cf. also interview with Smith, 29/08/11.

350 Official Norwegian Report NOU (1999:303).

351 Ibid.

352 Cf. The Courts of Justice Act, Section 5, 4th paragraph. The norm is 5 judges.

353 Interview with Langbach, 13/09/11; interview with Smith, 29/08/11.

354 The Appointments Council and the DA follow the general rule that acting posts for more than 6 months shall be advertised publicly, see p. 53 in *Innstillingsrådets praksis/policynotat.*

355 There have been seven to eight exceptions where the Ministry of Justice has made a recommendation different to that of the Appointments Council. The exceptions arose from matters concerning gender quotas. (Interview with Langbach, 13/09/11).

356 The Courts Administration states that "The DA has no overall statistics for the number of acting posts in the course of a year. All courts have case numbers in their files for short-term acting posts. To produce such statistics, all the case details for 72 courts would have to be processed manually. This would be a sizeable job which would not receive priority from the DA" (e-mail of 7th October 2011).

357 Cf. letter of 7 November 2011 from the head of the Appointments Council to the Judges' Association.

358 Interview with Langbach, 13/09/11.

359 The Register has information on the judges' offices, memberships and engagements in other organisations and societies – described in more detail in the Integrity Mechanism (law).

360 The electronic search system requires the name of a party or case number.

361 See www.lovdata.no.

362 Of institutions of higher education 21 university colleges have a subscription to Lovdata, in addition to the law faculties at all Norwegian universities (e-mail from Lovdata of 15/02/12).

363 The Supervisory Committee's website, URL: http://www.domstol.no/Enkelt-domstol/Tilsynsutvalget- for-dommere/. The The Appointment Council's website, URL: http://www.domstol.no/Enkelt-dom- stol/Innstillingsradet/ Both last visited 10/02/2012.

364 In confession cases where the defendant usually appears alone, this is somewhat different. Then the judge is accompanied by a keeper of records/court witness who takes down the main features of the defendant's statement in the court records. This is dictated by the judge.

365 Greve (2011); interview with Langbach, 13/09/11.

366 Hanssen (2008). There is no justification obligation for dismissal of appeals in child protection cases.

367 See p. 30 in *Domstolene i Norge. Årsmelding 2010 [The Courts in Norway. 2010 Annual Report]*

368 Rt. 2009, p. 1439. The justification obligation arises when a specific need for a justification becomes clear, because key points in the evaluation of evidence otherwise remain unexplained (Rt. 2010, p 865 paragraph 22). The obligation arises only in exceptional cases and is probably primarily practical in cases where the defendant has been acquitted in the district court and the jury finds the person guilty (Official Norwegian Report NOU (2011b):22-23).

369 Official Norwegian Report NOU (2011b).

370 Hegvold (2011). What the change will consist of is still unclear.

371 Interview with Smith, 29/08/11.

372 Interview with Langbach, 13/09/11.

373 Evensen (2011:5).

374 Interview with Langbach, 13/09/11.

375 One and the same complaint can relate to several conditions.

376 Skoghøy (2011:23).

377 See *Tilsynsutvalget for dommere – rekord i antall klager [The Supervisory Committee for Judges - record number of appeals],* URL: http://www.domstol.no/no/ Aktuelt/Nyheter/Tilsynsutvalget-for-dommere---rekord-i-antall-klager/ Last visited 29/09/2012.

378 The Supervisory Committee currently has no codes for statistical records of cases brought against the Supervisory Committee's decisions. A quick manual review by the Supervisory Committee's secretariat shows that at least four cases have been brought (a maximum of five to seven) since the Supervisory Committee was established in 2002. None of the cases have resulted in the overruling of the Supervisory Committee's decision (e-mail correspondence with Supervisory Committee chairman, 23/3/12).

379 See *Tilsynsutvalget for dommere Årsmelding 2006; 2008; 2010, [The Supervisory Committee for Judges Annual Reports 2006; 2008; 2010]* URL: http://www.domstol. no/no/Enkelt-domstol/Tilsynsutvalget-for-dommere/Arsmelding/. Last visited 09/09/2011

380 The court director is the director of a single court. The duties of the court director depend somewhat on the size of the court and which other managers are employed there, but generally speaking the court director is responsible for the organisation and operations of the court, personnel matters, a certain responsibility for financial matters and the budget and for the court's external activities (Evensen 2011:13-14).

381 Evensen (2011:68–69).

382 Interview with Langbach, 13/09/11.

383 Utgård (2010).

384 Skoghøy (2011:21).

385 Olaussen (2005); Listhaug and Aardal (2011).

386 Listhaug and Wiberg (1995).

387 Last year Dagens Næringsliv uncovered two cases of judges holding board positions without applying to the DA for special permission. Both were asked to step down, which they declined to do. The DA reported them to the Supervisory Committee for Judges where both were subjected to criticism. Case 32/11 and 39/11 at the Supervisory Committee, URL: http://www.domstol.no/no/Enkelt-domstol/Tilsynsutvalget- for-dommere/Avgjorelser/20111/ Last visited 20/03/2012.

388 The Court Administration, e-mail of 6 October 2011.

389 The courts can also test the legality of Acts. See the chapter on the Storting.

390 Andenæs and Fliflet (2006:345-349).

391 Smith (1993:278-283).

392 Boe (2006b:219–220).

393 Eckhoff and Smith (2010:540–541).

394 See e.g. chap. 18 of Official Norwegian Report NOU (2001a).

395 TI-N (2011).

# 4. The Public Sector

# 4. The Public Sector[396]

**SUMMARY**

In general the resource situation in the public sector is considered to be good, and unwarranted pressure or interference from political authorities, organisations or others do not appear to be a real problem. There are ample provisions to safeguard the integrity of public sector employees and to hold them accountable for their actions, but the practice cannot be said to be satisfactory. Transparency and adequate possibilities for access with reference to the Freedom of Information Act are often emphasised by the authorities as a strength of Norwegian society, but current legislation has been criticised for not going far enough. Furthermore, the practice of the access provisions is variable. A limited score on the role indicators must be seen partly in light of the fact that corruption is not a widespread problem in Norway in a comparative perspective. On the other hand, the majority of large corruption cases in Norway are linked to the public sector. The problem often arises at the intersection between public and private sector. One example is the public procurement process where we find several corruption cases. In light of this there is reason to question the current procurement practice and the enforcement of it. Here there seems to be a clear potential for improvement.

The table below shows the total score for the public sector. The qualitative assessments that form the basis of the score for each indicator is provided in the following pages.

| The Public Sector<br>Overall score: 82/100 | | | |
|---|---|---|---|
| | **Indicator** | **Law** | **Practice** |
| **Capacity 100/100** | Resources | -* | 100 |
| | Independence | 100 | 100 |
| **Governance and Management 79/100** | Transparency | 75 | 50 |
| | Accountability | 100 | 75 |
| | Integrity mechanisms | 100 | 75 |
| **Role 67/100** | Information and training on corruption | 50 | |
| | Cooperation with other actors in anti-corruption work | 75 | |
| | Corruption prevention work related to public procurements | 75 | |

*is not included in the assessment of the public sector.

## STRUCTURE AND ORGANISATION

The public sector is organized in two levels: state and county/municipal. The relationship between the central government (state level) and the political authorities is based on the principle of ministerial responsibility. This is to say that the minister is accountable to the Storting for all activities in his or her ministry and all subordinate governmental agencies, which come within the minister's political remit. The role and status of the county council is a recurring theme in the debate on social issues. The county council's main tasks are secondary education, operation of a number of cultural institutions and technical tasks (related to roads, power production, business development, etc.). The municipalities play an important role as service providers for the local population; especially welfare services and primary education and a number of services within the health sector. The constitution gives no provisions on the municipal administration; it is therefore for the legislature (the Storting) to decide which tasks fall to the municipality.[397]

## CAPACITY

### RESOURCES (PRACTICE)

*To what extent does the public sector have adequate resources to effectively carry out its duties?*

Score: 100

In an international perspective the Norwegian public sector has adequate resources and enjoys a unique position in that it has large operating profits measured in terms of net financial investments.[398] Besides, Norway is one the European countries which has come through the financial crisis best, by a long way, both in respect of balancing the budget and expected growth.[399]

The size of public administration in Norway is not especially large seen in comparison with other countries in terms of expenditure share of GDP. It should be mentioned here that the large incomes from petroleum activity contribute to increase GDP, and thus reduce the public expenses' share of GDP.[400] But the major welfare services, such as health and education are provided mainly by the public sector, and Norway, together with the other Nordic countries, is largest in terms of the public sector's share of the provided services.[401] Expenditures for regional and municipal authorities constitute a relatively large share of public expenditures compared with other OECD countries, and they are responsible for a number of key welfare tasks, especially within the education and health sectors.[402] At the same time central authorities have considerable power, around 90 percent of tax revenue comes from taxes determined at state level.[403] The resource allocation between central and local authorities, including local government share of public funds, is an on-going discussion. Local authorities are dissatisfied because they feel that the allocations they receive from central level are not in tune with the public tasks they are required to perform. The latest study on power and democracy (2003) also concluded that the local autonomy had lost much of its content as a result of rights legislation, government orders and budgetary restrictions.[404]

Challenges for the public sector are an increasing cross pressure and time squeeze. Knowledge and technology development contribute to increasing people's expectations to the quality of the public sector and its services, and an increase in monitoring capacity gives incentives to safeguard oneself against defects and weaknesses. POn the other hand, today's "media logic" allows the civil service and public sector increasingly shorter deadlines to "deliver".[405] Even though there are problems within the Norwegian public sector, and the media constantly report on things that do not work, the Norwegian public sector must be said to be well functioning. The country scores well on comparative rankings of "government effectiveness", and in general the population has great trust in public administrations.[406]

The wage level in the public sector is often slightly lower than for comparative positions in the private sector, but exactly how much lower depends on type of position. For example, the average income for engineering graduates in the private sector was NOK 416,000 in 2011, while in central and local government it was NOK 389,000 and 407,000 respectively.[407] There are also examples of the opposite. In the day-care sector the average income for municipal employees was NOK 350,000 in 2010, while it was NOK 324,000 for staff in private day-care centres.[408] Meanwhile, wage differentials in Norway are less than in many other countries. There is potential for more performance-based salaries also in the public sector, especially the system of state management remuneration contracts. Approximately 300 managers in the public sector have such contracts. [409] The scheme is controversial. Proponents maintain that the scheme has contributed to reduce the wage differential between managers in the public and private sectors, while opponents claim that it has increased differences between managers and ordinary employees in the public sector.[410]

It is estimated that around ten percent of all employees in Norway change jobs in the course of a year. Those who change position have a strong tendency to switch to another position within the same sector. About three-quarters of all employees in the state or municipal sector remain in the same sector when they change position. Studies on the Norwegian labour market suggest that the state's access to labour is affected by economic fluctuations, government employees increasingly transfer to the private sector when the economy is doing well. Therefore, the economic downturn caused by the global financial crisis could ease recruitment problems in the state in the short term. Expected recruitment challenges for the public sector in the future are securing enough health care workers and people with higher education.[411]

### INDEPENDENCE (LAW)

*To what extent is the independence of the public sector safeguarded by law?*

Score: 100

The independence of the public sector as it is understood within a parliamentary governing system, is largely well protected by law.

The distribution of responsibility between the Storting, the government and the public administration is based on the principle of ministerial responsibility. The individual minister is answerable for all activity in his or her ministry and the subordinate agencies.[412] The government has supreme authority in all areas which are not explicitly assigned to others. In other words the government has a kind of constitutionally protected management position.[413] All public administration is

under the remit of the government, and exceptions to this must have clear authority in legislation. The main rule of Norwegian public administration is that there is a strict hierarchy in which a superior body has an unlimited right to instruct its subordinate bodies.[414]

There are parts of the public sector, both at the organisational and the individual levels, which have a greater degree of independence than others. Some public agencies have a certain amount of independence by virtue of their function, where independence is granted in the form of statutes or regulations. At the individual level it is worth mentioning that the officials have a stronger employment protection than regular civil servants, which formally gives them extra protection against unwarranted interference by the political leadership.

It is generally accepted that the Government and the Storting can organise the state administration and instruct civil servants with authority in the Constitution's competence provisions and common law. The top municipal bodies have instructional and organisational authority over municipal bodies and employees within the framework of the Local Government Act, Sections 6 and 23 No. 1.[415]

The political responsibility for what takes place in the ministries is with the Minister. If the Storting raises criticism, it would be contrary to political etiquette if the Minister places responsibility on the ministry's civil servants. The Storting relates to the Minister, not to the civil service.[416] An exception to this occurred in the so-called "Furre case" in which two officials were summoned for a hearing in the Scrutiny and Constitutional Committee as a result of Prime Minister Jagland's statement to the same committee.

Employees of the state administration "must not have extra jobs, directorships or other paid assignments that can inhibit or delay their normal work unless by special order or permission."[417] There are also provisions that establish guidelines for the possibilities of civil servants and officials to sit on boards and committees. The provisions are primarily designed to prevent civil servants from occupying dual roles that could undermine confidence in their impartiality and thus in the administration.[418]

Recruitment of employees in the public administration is highly rule-based.[419] State employees are divided into two groups: senior government officials[420] and civil servants. The division is often a result of tradition and is also often dictated by law. Otherwise it is up to the individual ministry to decide whether a position is to be an official or a civil servant position.[421] All appointments shall be decided by a competent authority (Public Administration Act, Section 2), and state officials shall be appointed by the King, or if the King decides, by a ministry, a collegiate

board of an enterprise or group of enterprises or by an appointments council. The most common is the appointments council. In an appointments council there shall be an equal number of ordinary representatives for the civil servants as for the administration, which also appoints the chairperson.[422] The council's task is to select the best qualified (the qualification principle has the status of a law) and the representatives can be instructed by their organisations or their superiors with respect to the discretionary exercise they shall do in the recruitment.[423] The procedure in appointments is determined by regulations. For appointment in subordinate positions it is the relevant ministry that decides the question of appointments authority.

The Working Environment Act, chapter 13, has provisions that shall ensure equal treatment in the appointment process, including for instance, protection against discrimination because of political outlook and membership in a trade union.

An appointment decision is viewed as an individual decision in accordance with the Public Administration Act. Appointment decisions are however exempted from the regulations on justification, appeal and reversal.[424] This means that the applicants have no right of appeal on the appointment decision to the agency that made the decision. An appointment decision can however be brought before the parliamentary Ombudsman and LDO (the Ombudsman for equality and anti-discrimination) and be appealed via civil proceedings.[425]

Senior government officials cannot generally be dismissed without a court decision, and nor can they be transferred against their will. A court decision must either be justified by certain criminal acts, or by the official being persistently unable to attend to his office in a proper manner.[426] In recent years it has also become common to appoint senior government officials on a fixed term.[427]

There is no special agency with a particular responsibility to protect civil servants against arbitrary dismissal and political pressure. This type of problem is dealt with by the ordinary judicial system.

**INDEPENDENCE (PRACTICE)**

*To what extent is the public sector free from external interference in its activities?*

Score: 100

In general the public sector is shielded from external actors who might interfere in matters that public bodies are to evaluate and decide on.

Overall there is a clear hierarchy that applies to public administration, cf. the previous section, though this does not give an adequate picture of how the central

government works in practice. The Norwegian management system is in many ways a mixture of majority rule and technical rule in which the politicians have limited capacity in relation to the central government's considerable capacity for analysis and action.[428] Furthermore, the relationship between the political level and the public administration is characterised by consensus rather than conflict, and by a joint basis of norms and values.

Development trends in recent years point to a more differentiated public sector, in which the distance between the minister and ministry responsible and the subordinate bodies has increased.[429] More and more public tasks are carried out by bodies, which through legislation or instructions have a certain amount of independence, and this applies in particular to the court-like bodies, such as the Social Security Tribunal, the Immigration Appeals Board and the Tariff Board.[430] The number of bodies with a certain amount of independence has increased in recent years.[431] In addition there are a number of bodies that have changed their organisational structure and are thus organised outside the central administration (State limited companies, State-owned enterprises or Company by special statute)[432] and a number of subject matters have been moved from a ministry to directorates.

Several studies indicate that the dialogue between the political leadership and the management in the central administration in general is good.[433] Even though many leaders in the central administration perceive that the secretariat role for the political management is among the most challenging, it does not seem that the managers find the relationship with the political leadership especially conflict-filled or find their role problematic. In the survey among top executives in 2007 in the Ministry, 85 percent of respondents agreed fully or partly with the statement: *"my mandate and room for manoeuvre is satisfactorily clarified with the superior authority/political leadership"*.[434]

There is also little indication that unwarranted pressure from other external quarters is a widespread problem in the public sector. In a study where 500 leaders and security managers from the public sector participated, very few said that they had experienced threats (two percent) or actions (three percent) from activists or interest organisations.[435]

The number of political positions and appointments is low in Norway compared with some countries in Western Europe.[436] The political leadership in the ministries usually consists of one to four state secretaries and one political advisor, depending on the ministry's size and responsibilities. These must resign their positions at the same time as the minister when the minister steps down due a shift in political power in government. Career opportunities for public employees are generally well protected and advancement to higher positions is normally an automatic pro-

cess based on tenure. The control of the appointment process follows strict patterns where the management of the agency/body has the main responsibility, but where also the trade unions play an important role.[437] Decisions on appointments are not normally made by individual persons, but by the appointments council. The appointment decision must therefore be viewed as fairly robust. There is a certain room for manoeuvre for the one/those with the appointing authority on how they define the position (job description).[438]

### GOVERNANCE AND MANAGEMENT TRANSPARENCY (LAW)

*To what extent are there provisions in place to ensure transparency in financial, human resource and information management of the public sector?*

Score: 75

There are a number of provisions in place to ensure transparency in financial, human resource and information management in the public sector. However, criticism has been voiced that the provisions are not wide enough, and that today's legislation contains too many exemption clauses.

The Public Administration Act, the Archive Act and the Freedom of Information Act are the key laws relating to information in the public administration including the procedural work. The Local Government Act, together with the Public Administration Act apply generally to the activities of the municipalities. In a number of areas in the municipal administration there is special legislation that provides its own procedural rules.[439]

The Public Administration Act is the public administration's general procedural law and provides necessary rules with respect to the duty of confidentiality, processing of cases, justification, complaints, etc.[440] The basic principles within case law processing is the equality principle – that equal cases shall be processed in the same way (equal result), and that the case processing is sound and based on sound principles of public administration practice, including considerate and quick case processing.[441] What accounts for sound case processing must be clearly defined and may vary according to the nature and scope of the case, available resources etc.[442]

All procedures in the public sector must be filed and recorded under the provisions of Archives Act and Regulations, but which documents that are to be recorded is partly up to each agency to decide. According to the Archives Regulations Section 2-6, (author's emphasis) one must "record all incoming and outgoing documents that pursuant to the Freedom of Information Act Section 4 must be regarded as case documents for the agency, *if they are subject to proceedings and have value as documentation."* When it comes to internal agency documents, they must be

recorded "as far as the agency finds it expedient." This provides, de facto, significant room to manoeuvre for individual agencies in terms of the assessment of what should be recorded or not. It is difficult to request access to documents one does not know the existence of (because they are not in the record). From an anti-corruption perspective there is reason to question whether it is appropriate that recording of internal agency documents is voluntary.

The Freedom of Information Act basically grants everyone access to public case documents, journals and similar registers (Article 3) in activities within governmental, county and municipal bodies, and to independent legal entities in which the public has an ownership share amounting to more than half the votes in the legal entity's overall agency. There are however some exceptions to this: Publicly owned undertakings without administrative employees are exempt from Freedom of Information Act. As of February 2012 this entailed that 1,044 municipally owned companies were not subject to the Freedom of Information Act. As the newspaper *Kommunal Rapport* has documented, these companies had, according to the 2010 financial statements, NOK 24.9 billion in equity.[443] At the state level the same financial data indicates that the companies had well over NOK 500 billion in equity.[444] In addition to these companies, it follows from the regulations of the Freedom of Information Act that a further eight state companies are exempt from Freedom of Information Act, while there are exceptions for certain documents in a further 17 undertakings.[445] Several of these state undertakings manage large sums on behalf of society. From journalistic quarters it has been pointed out that the exemption clauses make it very difficult to obtain access to relevant documents.[446] There are also a number of exemptions from the general right of access to public case documents and similar (Sections 12–26)[447], and especially important are the provisions that the so-called body's internal documents (Section 14) and documents obtained from outside for the internal case processing may be exempt from public access (Section 15). Academic quarters have criticised the Freedom of Information Act for not going far enough with regard to providing access to government documents. The provision on additional access has no bearing on this.[448] The criticism can be summarised in three points: the law does not provide unlimited access to factual information, the law should go much further with regard to transparency in the administration's own documents, and the law should be expanded in scope where private agencies perform services on behalf of the public administration, as well as services where private agencies, by special permission, have a virtual monopoly.[449] The Ministry of Justice will evaluate the new Freedom of Information Act and how it is applied in the current period of the Storting (2009–2013).

The Freedom of Information Act does not apply to the courts' judicial activity, the police's work with criminal cases or the Storting and its bodies. The same applies

to publicly owned independent legal entities where consideration for the type of activity, competitive situation or other special considerations are involved.

The Civil Service Act sets out the scope of appointment processes and applies to all employed in service of the state. All positions shall be publicly advertised unless other conditions set out in regulations, rules or collective bargaining agreements apply (Section 2), and civil servants should generally be employed in a permanent position. Exemptions in the provisions on access can be made if there is a requirement for access in cases of appointments or advancement in the public administration, but exemptions do not apply to lists of applicants. On the expiry of the application deadline a list of applicants shall be made which contains the applicants' name, age, position/work title and municipality of residence or work (Freedom of Information Act Section 25).[450] The list of applicants will normally be available 2–3 business days following expiry of the deadline.[451]

The contracts for government executives (executive salaries contracts) are public and transparent under the general rule in the Freedom of Information Act (Section 3). This means that the executive salary contract will be made public when access is requested. There are few possibilities for exceptions.[452] More generally the Parliamentary Ombudsman has assumed as a general principle that there are no exemption rights for requirements to access into public officials' salaries. This is also confirmed by the ministry; anyone has the right of access into the pay conditions of public servants and furthermore right of access to payslips etc.[453] But the right of access does not apply to any incomes or remunerations public sector employees may receive from private work.[454] From a legal point of view there is some scepticism on the last point, and the expert on the Freedom of Information Act, suggests that such type of information should be accessible to the public.[455] As shown by the preceding paragraphs, current legislation includes several limitations to opportunities to access information that, from an anti-corruption perspective, should be publicly available. Maximum points are therefore not awarded to the public sector for this indicator.

**TRANSPARENCY (PRACTICE)**

*To what extent are the provisions on transparency in financial, human resource and information management in the public sector effectively implemented?*

Score: 50

As mentioned in the above chapter, criticism has been voiced in professional quarters that the present provisions on transparency in the public sector do not go far enough. The practice of the provisions also varies and has been the subject of criticism from several quarters.

The government spent a long time on the current Freedom of Information Act – a total of four years. The then Minister of Justice has subsequently stated that the work with questions of public access was essentially "a rather lonely affair" and that his strong commitment was not shared by his government colleagues.[456] Furthermore, the government proposition contained several amendments, compared with the legislative committee's study, and they generally went in the direction of less impact for the principle of public access.[457]

Those employed within the public administration make the daily assessments of the citizens', media's and other's requests for access to public documents. There is limited material, such as surveys, studies and the like, which tell us how the Freedom of Information Act works in practice, but what is available indicates that the practice is variable.[458] In his annual report the Ombudsman refers to the cases of general public interest that his office has dealt with in the preceding year. The number of cases of general public interest has in recent years been around 100 cases, of which approximately 30 have been related to the practising of the Freedom of Information Act. A survey made by the daily newspaper "Aftenposten" in 2008 showed that 22.3 percent of all requests for access to the ministries were refused, which was an increase of 2.8 percentage points from the previous year.[459] In 2010 the government opened the website "Public Electronic Post Journal" (OEP), which was meant to give "more democracy" as the post journals now became available in electronic form to the general public – the Prime Minister's Office and the Ministry of Finance, among the most powerful actors in the central administration, were both opposed to the move. An important reason was that they both wanted to avoid that parts of the contents of government memos should be made available to the public.[460] At the same time as the OEP became generally accessible, a number of possibilities for access that Norwegian journalists had had since 1995 were removed.[461]

Much of the communication in the public administration takes place via e-mail, and sometimes also via SMS, and generally it is public documents that shall be registered. With respect to this, there are often slip-ups according to the Ombudsman.[462] Here it must be added that the registration of internal documents is voluntary. There is reason to believe that the agencies that are "good" at recording internal documents will, with all else equal, have more access requests (and possibly more complaints) than agencies that rarely register internal documents. This may be be seen as an incentive for agencies to be careful with respect to which internal documents they register.

Studies of municipal practices also paint an unsatisfactory picture. In 2011 the Norwegian Press Association conducted a survey of the rules and practice for public access and transparency in Norwegian municipalities into their own operations.

Each municipality was assessed according to ten parameters where the maximum score was 18. Two municipalities scored 17 points, while the average score was 8.55, in other words less than half the maximum score.[463] The impression is also substantiated by findings from the Agency for Public Management and eGovernment's (Difi) annual citizen study, which concludes that there is a definite potential for improvement when it comes to getting access to documents.[464]

What lies behind the varying practicing of the Freedom of Information Act? An unfortunate attitude among employees in the public administration has been pointed out; that they regard their work in connection to the Freedom of Information Act as something additional to "what they really should be doing".[465] This is supported by the ministerial studies where only half the respondents replied that public access was an important, or a very important value in their own work.[466] Another aspect, which has been emphasised both by the Ombudsman and the law expert, is that it is complicated, as are the provisions on professional secrecy.[467] They point furthermore to a fear among public employees of breaching confidentiality, while holding back too much information is by and large free of risk.[468] For the public administration therefore the "simplest" and least troublesome solution is to deny access. The lack of possibilities for sanctions on breaches of the Freedom of Information Act is in the law professor's opinion, "a fundamental weakness in our law".[469]

The explanation for the variable practising of transparency in government is, as this suggests, complex. Some important factors are a negative attitude to the Freedom of Information Act and the principle of enhanced transparency among many actors in the public sector, a complex regulatory framework with considerable scope for discretion in applying the law, limited legal competence by case workers who handle requests for access, and no risk in the form of formal or informal sanctions related to declining access. A final factor that is that the media's interest and focus on the practice of transparency in the public sector is highly variable.[470] Every third request for access to documents in 2009 came from the Norwegian Broadcasting Service (NRK) and Aftenposten.[471] To achieve an improvement in transparency practices in the public sector it is important and necessary that the media put a critical spotlight on the theme. The preceding sections have shown clear indications that the practice of the Freedom of Information Act varies greatly in the public sector. Fro this reason the public sector is awarded only 50 points for this indicator.

**ACCOUNTABILITY (LAW)**

*To what extent are there provisions in place to ensure that public sector employees have to report and be answerable for their actions?*

Score: 100

In general there are ample provisions in place to ensure that public sector employees can be answerable for their actions in a proper manner.

A typical feature of the Norwegian political administrative system, especially in comparison with continental public service systems, is the low level of formality, which can be attributed to the high degree of reciprocal trust and joint norms and attitudes between the political leadership and leaders in the public administration. Many key role positions and relations are therefore customary and are relatively vague, non-statutory standards for sound public administration practice.[472]

But there are provisions on internal control in the public sector and there are a number of external control bodies. Within each agency the management shall carry out the overall supervision of how employees perform their work. For the municipalities the principle is laid down in chapter 12 of the Local Government Act. As a point of departure, corresponding requirements must also apply in other parts of the administration. [473] Furthermore the overall body shall carry out supervision and control with subordinate bodies within the sector in question. [474]

Examples of external control bodies which can be mentioned are the state's control of the municipalities through the County Governor and other governmental supervisory agencies, control by court-like public administration bodies, the Office of the Auditor General, the Parliamentary Ombudsman and finally the courts' control of the public administration. In addition there are public administration bodies that shall keep control both of private and public sector, such as the Data Inspectorate.

The Office of the Auditor General oversees ministries and subordinate agencies through financial audits and performance audits and oversees the management of the government's interests in undertakings (corporate control). The Auditor General can also initiate his own investigations on behalf of the Storting.[475] The public administration is required to submit the information required by the Auditor General at the time the Auditor General determines.[476] Similarly, at the municipal level audits shall be carried out of municipal operations and the auditing shall comprise both accounting and performance audits.[477]

All citizens have a general right to appeal individual decisions made by the public administration. The appeal must be directed to the public administration body which is immediately above the public administration body that has made the deci-

sion (Public Administration Act, Article 28). There are also appeal arrangements where the appeal is not directed to the immediately superior public administration body, but to a special appeals board.[478] If success is not obtained via the administrative appeal option, one may find out whether the appeal can be brought before a higher appeals body, such as the County Governor. If this is not successful an appeal may be directed to the Parliamentary Ombudsman – appealing to the Ombudsman is free of charge.[479] Persons who believe they have been victims of an unlawful administrative decision can take the matter to court and obtain a judgement, or claim damages if the decision is invalid. It is the relevant administrative agency that decides whether the person must try the administrative appeal first, before the person brings the case before the courts (The Dispute Act, Article 437).

Where provisions on disciplinary actions against public sector employees are concerned there are two alternative procedures. Public sector employees who practice "gross dereliction of duty" can be punished by the Penal Code (Sections 324 and 325), but the actions have to be very serious for the Penal Code provisions to apply. In cases where public sector employees act negligently because of incompetence, to protect others or for other reasons, there procedures service-related reactions such as disciplinary action or a written warning,and in the final consequence dismissal.[480]

It follows from the Constitution Article 100 that employees have the right to comment publicly on matters related to the business they work in, and this also applies to public sector employees.[481] The Working Environment Act Sections 2-4, 2-5 and 3-6 regulate the employee's right to notify. The law applies to all employees in all positions in the public and private sectors. Employers are required to establish internal routines for notifying (Section 3-6), but what the routines must include is however unclear.[482] The right to notify may only be restricted by law. The duty of confidentiality in instruction, regulations or similar that limits the right to notify is therefore illegal.[483]

The Penal Code includes specific provisions on fraud (Sections 270 and 271), misappropriation of funds (Sections 275 and 276), corruption (Section 276a and b) and trading in influence (Article 276c) – these apply to employees in the public as well as the private sector. The condition for being sentenced for corruption is that one gives/offers, or for oneself or others demands/receives/accepts, offers of an undue advantage to influence the performance of one's position, office or assignment.

**ACCOUNTABILITY (PRACTICE)**

*To what extent do public sector employees have to report and be answerable for their actions in practice?*

Score: 75

An important feature of the relationship between the political leadership and the public administration in Norway is that it is founded on reciprocal trust and a common basis of values and standards.[484] It is important to remember this as we look at the political control of the public administration, which may described as general and passive, and which leaves the public administration with much room for manoeuvre.[485] In general the control of the public administration's employees is good. The work being carried out is also subject to hierarchical control.[486]

The public sector has undergone significant restructuring in recent decades. The number of public companies has increased, and this is especially true for the municipal level where there are around 2,600 companies with an overall annual turnover of around NOK 100 billion.[487] These companies are separated out of the municipal organisation and are therefore not subject to the municipality's ordinary internal control. Corporate control is intended to compensate for this. However a number of studies have shown that the municipalities are passive and not very competent in their new ownership role and also to control and follow up the municipal companies.[488] The municipalities perform an average of 0.4 company checks annually.[489]

For the past 10-20 years there has been a development whereby handling of complaints has been taken out of the ministries and delegated to agencies or to special complaints tribunals. From 1992 to 2002 the number of public appeal tribunals doubled to 48. These appeal tribunals, together with the 60 directorates, handled just over 90 percent of all appeal cases in 2002.[490] In addition there are a number of municipal appeal bodies. To separate part of the regulation from the ministries can be positive because it provides distance to the ministries and thus reduces the risk of populist political decisions. At the same time developments have taken place without any broad prior principled assessment of the consequences this has for the citizens and the public administration. The view of legal experts is that the consequence is a fragmented and confusing plethora of complaints procedures that are the result of a long series of sector-specific individual decisions and that practice varies from tribunal to tribunal.[491] The legal basis for the appeal tribunals' independence is unclear, and the organisation of their work varies greatly.[492] The results of Difi's annual citizen survey supports this, where one of the conclusions was that "The responses indicate that many believe the public administration is complex and that it is difficult to know which body or person to contact".[493] Here it may be added that there are indications that the population has limited awareness of the Parliamentary Ombudsman and the appeals procedure via this.[494] It has

been argued that one should start a fundamental assessment of how the complaints procedures should be organised – including an assessment of a system of administrative courts.[495]

Present provisions on whistleblowing and the extent to which whistleblowers have real protection have been the subject of much debate in recent years. Criticism has come from several quarters that the situation for whistleblowers is unsatisfactory.[496] In a 2010 study of whistleblowing in Norway[497] only half of the employees stated that they were aware of the Working Environment Act notification provisions and only a third of respondents confirmed that written notification procedures had been prepared at the workplace. However, when looking at the distribution between the public and private sectors, the public sector comes out best, which *could* indicate that employers in the public sector have been better at informing their employees on the notification rules compared with employers in the private sector. Another possible explanation is that there are different attitudes towards whistleblowing in the public sector, for example as a result of a different type of responsibility and loyalty.[498] Another study looked at the situation at the municipal level. When asked whether written procedures had been prepared for when notification was appropriate and who to notify, 41 and 50 percent respectively among the municipal responded in the affirmative to the two questions, while 82 and 85 percent of HR managers said the same. This is also an indication that awareness of notification procedures is insufficient. In the aforementioned survey, 30 percent of the employees responded that in the notification case(s) they had knowledge of, notification had negative consequences for the notifier, while half of the employees stated that the notification had been followed by improvement measures.[499] Another aspect of this is the right of public employees' to make public statements in general. The Ombudsman has assumed that "Public employees have a wide scope – both in form and content – to publicly express their opinion, even if conditions in their own work, and even in their own workplace." [500] It has been reported from several quarters that public employees are afraid to publicly criticise their own employer in public for fear of reactions from their superiors. [501] For example, a survey among Norwegian teachers found that a great majority do not feel they can talk freely to journalists about conditions at their own school.[502] I another survey among employees at Oslo University Hospital, more than half expressed that there was a culture of fear at the hospital, and that employees did not dare to speak their minds.[503] A possible explanation of this, according to legal experts, is that some public sector managers have the misconception that the duty of loyalty of public employees to their employers (non-statutory principle) and the freedom of speech (constitutional right) are equal legal principles, which is not the case.[504]

There is no overview at the ministries of official sanctions that have been imposed on public officials. It is also doubtful whether the individual competent ministry

has such an overview for their subordinate businesses.[505] It is therefore difficult to say anything about the scope of service reactions against public employees as such. When it comes to corruption cases more specifically, since the corruption provisions were adopted in 2003, there have been 27 convictions.[506] In 15 of the convictions public sector employees an/or companies are amongst those convicted.[507]

Evidence that a complex set of appeals procedures and workplaces with working environments that to a varying degree facilitate criticism from employees, prevent the public sector from being awarded maximum points on this indicator.

#### INTEGRITY MECHANISM (LAW)

*To what extent are there provisions in place to ensure the integrity of public sector employees?*

Score: 100

Bribing a public servant is illegal and comes is subject to the corruption provision (Penal Code Section 276 a) which states that the person who for himself or others, demands, receives or accepts an offer of an undue advantage in connection with position, office or assignment, can be penalised for corruption. The same applies to whoever gives or offers anyone an improper advantage in connection with position, office or assignment. A similar provision exists in the Civil Service Act Section 20, which states: "No senior civil servant or civil servant may on behalf of himself or others accept a gift, commission, service or other payment which is likely, or which by the donor is intended, to influence his official actions, or which regulations forbid the acceptance of."

There are ethical guidelines for the public administration, including all state administrative bodies.[508] The guidelines are of a general character and are not to be considered as provisions that indicate legal standards. They include areas, such as which gifts can be received, whistleblowing, loyalty requirements, freedom of speech for public sector employees and guidelines for behaviour towards the citizens. They are intended as guidelines, which again require reflection by the individual. Furthermore, It is a prerequisite that on the basis of the guidelines the individual agency further develops and strengthens the ethical awareness among their employees.[509] With respect to the opportunity to be critical, it follows from the *Regulations for the ministries' organization and procedures* that "(...) the individual officer [has] the obligation and the right to present his view in such a way that it can be made known to the head of department" (Section 2, No. 3). Another important principle, embodied in the same regulations, is the provision on two-stage procedure, which means the no case which includes decisions can be assessed and processed by one officer alone (Section 12).

The Public Administration Act and the Local Government Act have provisions on impartiality. The impartiality provisions in the Public Administration Act do not only apply to government employees, but also to all other individuals when they undertake assignments in the public sector, irrespective of whether they are in a formal employment situation or are otherwise connected to it.[510] Those working for the government cannot deal with cases in which they themselves, or close family[511], are part of, or have a leading position in, or are members of a board or corporate assembly for a cooperative enterprise, association, savings bank, foundation or company[512] which is a party in the case (Section 6). In addition one is disqualified in a case if other "special circumstances" are present which are seen to weaken confidence in the individual's impartiality. What is decisive for assessing impartiality is how the world around perceives the case, not how the civil servant himself does so.[513] It has been asserted by professionals that the provisions on impartiality in the Public Administration Act are of a positive judicial character, and that they therefore are not necessarily intuitive.[514] The impartiality rules for the local government administration are stricter than the rules for the central government in some respects because the Local Government Act has some special rules for their employees which are supplementary to the provisions in the Public Administration Act (LGA Section 40, No. 3). The special rules apply first and foremost to the so-called office combinations, i.e. that a civil servant participates in the processing of the same administrative case in different bodies. At the municipal level, the official will in most such cases, be disqualified. There are no corresponding provisions in the Public Administration Act, something that has been subject to strong criticism from legal quarters and the Ombudsman.[515]

In 2005 rules were introduced for the use of quarantine and exclusion from case processing on transition from public administration to a position outside central government. It is the employer who decides whether quarantine/exclusion from the case processing should be imposed. The prerequisite for this is that a clause is included in the employees' employment contract. According to the guidelines there are very few situations where this would be relevant, as it is generally important with exchanges between the public and the private sectors. In cases where the employment contract contains a clause, the employee is obliged to notify his or her employer of all the new positions he or she considers accepting. The quarantine period itself can only be set at six months, and quarantine and exclusion from case processing can only be set at a maximum of one year after the individual has left his or her position. During the quarantine period the employee has a right to remuneration from the employer corresponding to the salary the individual had on leaving his position. If the employer acts in contravention of the rules on quarantine, exclusion from case processing or the duty to notify, the person can be fined (liquidated damages) corresponding to six months' salary.[516] The quarantine provisions have been subject to criticism, but this has primarily focused on the rules'

functionality and suitability in terms of transitions from a political position to a position in regular working life.

**INTEGRITY MECHANISM (PRACTICE)**

*To what extent is the integrity of public sector employees ensured in practice?*

Score: 75

It is difficult to say anything with any certainty in general on the focus on ethics and emphasis on this in practice in public enterprises: In the report to the Storting *Ei forvaltning for demokrati og felleskap [An administration for democracy and community],* the Government emphasized that employees must be trained in the ethical guidelines that apply to the state administration and in ethical dilemmas in general.[517] As mentioned several other places in this study the public institutions generally enjoy great confidence in the population .

The corruption provisions are wide ranging and the threshold for what is considered undue advantage in the public sector is strict. In 2008 a tax official was convicted pursuant to the corruption provisions after having received two payments of NOK 12,000 and NOK 5,000 respectively.[518]

It is difficult to assess the extent of corruption in the public sector in Norway and corruption in general. This is partly because there have been very few systematic investigations of the incidents in Norway[519], and partly because corruption is difficult to expose as it obviously does not occur openly. Subsequently it is also difficult to say anything certain about its extent.[520]

Norway does well on international corruption rankings, and national surveys carried out indicate that corruption in the public sector is not a big problem in Norway. The most commonly used international survey is Transparency International's *Corruption Perception Index,* which measures the respondents' perceptions of corruption in the public sector.[521] Throughout the 2000s, Norway has been ranked among the top 15, that is, among the 15 countries in the world where, according to the CPI index, there is the least corruption in the public sector. Since 2006 the Norwegian enterprises' security council has[522] conducted annually a KRISNO – survey in which managers and security officials from the public sector (500 persons) and from business and industry (2,000 persons) are asked questions on issues like financial crime. On the question as to whether anyone knows of efforts to bribe or "lubricate" anyone in their own enterprise or in their own sector to obtain a contract, the percentage of positive answers among the public sector employees in all surveys has been around 2-3 percent for knowledge of this in their own company and around 5 percent in their own sector. It should be added that when one looks

at the distribution of responses by type of sector, "public administration" with ten percent is the second highest and only "beaten" by "building and construction".[523] In a study[524] carried out in 2008 where municipal leaders were asked about their experience with corruption or similar, only 0.3 percent of the leaders replied that they themselves had been exposed to bribes, while 3 percent (48 out of 1760) knew of others in their municipality who had been offered bribes.

However, this does not not mean that corruption does not occur in the Norwegian public sector. What we know is that in recent years there have been several big corruption scandals in Norway, and most of the major cases have had a connection with the public sector and usually the municipal sector. The Waterworks case, the Undervisningsbygg cases and the Bærum case are examples of this. At the time of writing another corruption case is being unearthed in the municipal bus-company Unibuss AS, and as of February 2012 thirteen people had been indicted in the matter. It's too early to say anything certain about the case beyond that it appears to be another major corruption case in the municipal sector that may have offshoots in several directions. There have also been several corruption cases at the state level. The cases relating to state-owned Statoil a few years back, the Ullevaal Hospital case, the Store Norske case and psychiatrist/psychologist case are examples of that. [525]

Furthermore there may be reason to question whether surveys that ask for the extent of bribes is an appropriate way of investigating the extent of corruption. In the study mentioned above among local government leaders it was more common (than bribes) for the leaders to be offered benefits which are not directly illegal, but which may be perceived as unethical. About one quarter of the leaders said that they had experienced the type of offers of benefits from enterprises linked to building and construction activities (28 percent) and suppliers of ICT and computer systems (23 percent). Furthermore, even though few of the leaders said they knew of people in the municipality who had been exposed to bribes, this does not mean that unacceptable conditions do not occur in the same municipality – conditions which are unethical, perhaps also criminal in the legal sense. In 2006 in a major report series the newspaper Aftenposten focused on possible mixing of roles and relationships between politicians, employees in the municipality and other enterprises in more than 50 smaller municipalities[526] all over the country. The findings were to some extent very serious and were documented in a series of newspaper articles and reports. Examples of controversial mixing of roles, or suspicions of this were unearthed in nearly 40 of the 50 municipalities. [527] In 2010, the same newspaper focused on the how municipalities manage property and uncovered eleven contentious issues where local politicians in dual roles, lack of control of municipal companies and close ties to developers were recurring issues.[528] Folkvord (2011) documented several examples of extremely reprehensible practices in Oslo munic-

ipality, where close ties between politicians, public officials and others were recurring characteristics – without this necessarily being corruption in the legal sense.[529] This is a clear indication that there are corruption-related issues and challenges in Norway too, but that it may not be corruption in the form of "improper advantage" (cf. Penal Code Section 276 a and b) that is the greatest problem. Perhaps we need new and other concepts and other methods of approach in order to better capture Norwegian problems in a Norwegian rather than what we manage to do through the much-used surveys where one asks about knowledge of bribes and such like.[530]

At the municipal level a number of measures have now been initiated to strengthen the municipalities' ethical awareness and expertise. In the autumn of 2010 the Ministry of Local Government and Regional Development (MLGRD) and the Norwegian Association of Local and Regional Authorities (KS) established an ethics portal with relevant information, advice and guidance on ethical work in the municipal sector. The material is wide ranging and contains news on recent law amendments, an ethical guide, tools for ethical guidelines, check list for gifts, invitations and what is considered bribery, whistleblowing, guidance and a register. In the register it is possible to find out which offices and interests the people's representatives, board representatives and employees have in a municipality. The register is based on voluntary registration. It is first up to the individual municipality to decide whether they want to be in the register or not, and then up to the individual municipal politician, employee and board member whether or not they want to report their assets/interests. From the start in August 2007 and up to May 2011 approximately 80 percent of all municipalities had joined and around 8,400 individuals. The number of registered persons has been relatively stable since December 2009 and the number of companies that has registered is only 59.[531] In other words it is a long way to go before we can talk of a complete board office register. To achieve a further increase, more powerful methods are probably needed.

A survey of the use and extent of ethical guidelines at the state level, one year after the general ethical guidelines for public administration were introduced, found that the use of these were quite widespread among the employees. The ethical guidelines were considered to be more important among agency employees compared with the ministry staff. One possible explanation for this is that the agency staff's work has a more operational character and that they therefore face ethical issues and dilemmas more often in their work situation than the employees of the ministries.[532] In NIBR's analysis of the Ministry of Local Government and Regional Development's organization database in 2008, three out of four municipalities and 15 out of 17 county municipalities stated that they had ethical guidelines.[533]

The unveiling of a number of corruption cases related to the public sector in recent years, as well as indications that corruption-related challenges are evident in the public sector, the public sector does not score maximum points on this indicator.

## ROLE

### INFORMATION AND TRAINING ON CORRUPTION

*To what extent does the public sector inform and educate the public on its role in fighting corruption?*

Score: 50

In a strict sense, education/training on corruption and how to involve the public in combating it is not a priority. Nor are courses/training programmes run by the public sector aiming to educate the public about corruption and how to curb it. Based on a formal interpretation, this is a weak area, and the public sector therefore scores 50 points on this indicator. However looking at it in a broader sense, the population, comparatively speaking, have good access to information from the public sector and through a free and open press which keeps a critical eye on corruption-related cases (see media section).This allows the population to have a relatively good overview and understanding of the public sector in general and corruption-related issues more specifically.[534]

Gradually, we have adopted a stricter legislation against corruption, several corruption cases have been revealed and corruption is discussed in the media much more frequently today than it was ten and twenty years ago[535]. Therefore, there is reason to believe that people's awareness has increased, but that this is not due to education/training programmes under the public auspices. Do people know what they should do to prevent corruption? It is difficult to say anything certain about it, but studies have shown that many Norwegians go via official channels when they warn of unacceptable circumstances. At the same time the same study shows that the knowledge of what rights one has as a notifier, and how to notify, is quite limited.[536]

At the municipal level some work is conducted relating to information under the auspices of the Norwegian Association of Local and Regional Authorities' (KS) Ethics Portal where there are a number of handbooks and guides etc., dealing with corruption and related topics. Although the primary target audience is local politicians and employees in the municipal sector, it may indirectly contribute to an increased awareness in the population more generally.

### COOPERATION WITH OTHER ACTORS IN ANTI-CORRUPTION WORK

*To what extent does the public sector work with public watchdog agencies, business and civil society on anti-corruption initiatives?*

Score: 75

A number of cooperation efforts have been initiated between the various control agencies and between these and the police and prosecuting authorities, and there is some cooperation with the private sector.

Interaction between various public control bodies, especially between the police and the prosecution authorities and the control agencies in the fight against financial crime, including corruption, has received increased attention in recent years and interagency relations have been established and formalised.[537] Contractual control cooperation has been signed between the Tax Administration and Customs and Excise, the tax authorities and the Norwegian Labour and Welfare Organisation (NAV), the Fisheries Directorate, the Norwegian Agricultural Authority and the State Health Authority (HELFO). Of the cooperation between control agencies and the police and prosecutors, their cooperation with tax authorities is the most formal. Since 2009, the Labour and Welfare Organisation (NAV) has also been included in this partnership. In the securities area, there is a close collaboration between the Financial Supervisory Authority in Norway, Oslo Stock Exchange and the Norwegian National Authority for Investigation and Prosecution of Economic and Environmental Crime (Økokrim). The Financial Supervisory Authority and the Oslo Stock Exchange cooperate also with the police's local environmental teams.[538] Police and prosecutors and other government agencies are represented on the Business and Industry's Consultative Council.

Nonetheless, the Auditor General has pointed out that cooperation between the environmental teams and the control agencies could be better.[539] From the authorities' side it has been stated that there is a need for a joint forum between the ministries, police and prosecuting authorities and the private sector. The Ministry of Justice is presently preparing the options for such cooperation.[540] The limitations mentioned in this section prevent the public sector from being awarded maximum points for this indicator.

### CORRUPTION PREVENTION WORK RELATED TO PUBLIC PROCUREMENTS

*To what extent is there an effective framework in place to safeguard integrity in public procurement procedures, including meaningful sanctions for improper conduct by both suppliers and public officials, and review and complaint mechanisms?*

Score: 75

Annually the public sector buy in goods, services and construction works to a value of approximately NOK 390 billion, of which the central government accounts for NOK 170 billion, local government 130 billion and public business 84 billion.[541] This is around 15 percent of GDP which is also the average in OECD countries. Given that public procurement is a high-risk area for corruption, it is important that public procurement is subject to a transparent regulatory framework, and that the rules are complied with in practice. Overall we can say that current legislation is comprehensive, but that compliance is sometimes very inadequate. A complicated set of rules seems to be an important reason for this.

The Norwegian procurement regulations are largely based on EU directives.[542] The Public Procurement Act (LOA) and the Regulations on Public Procurement (FOA) are the key legal sources, but also regulations on procurement rules in the supply sectors and regulations relating to appeals for public procurement are important.

Procurements must as far as possible be based on competition. A basic requirement of the act is that the client shall ensure that the interests of predictability, transparency and verifiability are addressed through the procurement process (LOA Section 5). For all procurements over NOK 100,000 there shall be an acquisition protocol (FOA Section 3-2), and all procurements over NOK 500,000 shall be announced on the Doffin website (database for public procurement). Norwegian authorities and government agencies have been criticized for being passive when it comes to incorporating ethical requirements for suppliers in public procurements.[543] A positive aspect is that Norwegian authorities have introduced stricter threshold values than required by EU directives.

The general disqualification provisions that apply in the public sector also apply in the acquisition area. People who are employed by, or sitting on the board, in a business that has an interest in the outcome of a procurement process cannot make decisions on behalf of the client. Persons who are employed by the client cannot participate in the procurement process, or act as advisors, on behalf of a supplier. It follows from the case law that the disqualification provisions in competitive situations should be interpreted strictly. [544]

An important provision in this context is the regulation's provision on the client's duty to reject suppliers that the client knows have been legally convicted of corruption, fraud, money laundering or participation in a criminal organisation.[545] A factor in the negative direction in that regard is that because the tender refusal is quite definite it would seem that the threshold for imposing corporate penalties in accordance with the corruption provisions is relatively high.[546] Furthermore, the client has a right to reject suppliers where the client is aware that the supplier has been convicted for other relevant offences than those mentioned in the preceding sentence, and suppliers who have shown serious negligence with respect to the industry's professional and ethical standards.[547]

There are many difficult questions concerning the application of these provisions that are still unresolved. These include[548]:
- Should there be identification between companies within the same group or between companies and individuals?[549]
- How long should a supplier be excluded?
- Can a supplier avoid being excluded or be excluded for a shorter period by "cleaning up" of his company?

Norwegian legal practice in this area is limited. The questions are not clarified in EEA law and thus the above should rather be seen as an inherent challenge in the European system, rather than specifically for Norway.

It is a fact that there is a need for better data on public procurement, in order to make effective choices for alignment and monitoring of various priority areas, such as e-commerce.[550]

There is no dedicated agency with responsibility for supervising public procurements, but the OAG has for a number of years in its annual audit reports of the administration reported lack of compliance with procurement regulations in public administration, and upon presentation of the annual report in 2007, it was stated that "violation of procurement regulations remains a pervasive problem, and there are few signs of improvement".[551] Similarly, at the municipal level, municipal audit, focusing on public procurement. violations of procurement rules are not unusual to read about in the municipal audit reports. The Norwegian Municipal Auditors Association (NKRF) reviewed all 60 audit reports of municipal procurement from 2008 to 2010. 52 of the reports pointed to insufficient documentation and inadequate procurement protocol in procurements. In 46 of the reports NKRF pointed to violation of the Procurement Act's basic requirements, the most common violation was that the contract was not put out to tender at all.[552] A review of Doffin's database in 2007 showed that 29 Norwegian municipalities had not had a single announcement in two years.[553]

It is thus clear that some public sector entities' procurement practices are in violation of the regulations. The question is why this is so? In 2010, the Auditor General asked representatives of 32 government agencies and all ministries, what they thought were the causes of rule violations. The main explanation for the cause was a lack of knowledge about the rules. Other explanatory factors that were repeated among the respondents were the lack of internal procurement organisation and lack of focus by management on the agency's procurement practice.[554] In a second external survey done in 2008 on behalf of Difi, a lack of knowledge about the rules was also cited as the most important causal explanation, but also a lack of firm foundation of the procurement area within the business management.[555] Another aspect of this is that many local politicians say they prefer local suppliers – regardless. In a survey in 2011 49 percent of local politicians who participated in the survey said that it is right to choose local suppliers, regardless of whether the offer is the best.[556] If such an attitude is prevalent in the local political management it may influence the local administration in practice in a negative direction.

Through FAD and Difi the Government has initiated a number of human resource development measures to remedy some of these problems. The website www.anskaffelser.no has been established, and here, for example, guidance material for all phases of the procurement process can be accessed. Difi has also published a lot of information on public procurements and has through various measures contributed to an increased number of courses on the subject around the country. The Norwegian Association of Local and Regional Authorities (KS) provides a seven-day certification course in public procurement where the aim is to increase understanding and knowledge of the regulations and the professional purchasing aspect of the procurement.

The current national complaint system when it comes to public procurement is a two-track system[557]: Suppliers may choose to bring a case before the Complaints Board for Public Procurement (KOFA) or go directly to court. KOFA is an independent state agency consisting of ten members. KOFA's secretariat is subject to the Competition Authority. KOFA processes complaints on breaches of the PPA and associated regulations, while the Competition Authority's primary task is to enforce the Competition Act. In the case of illegal direct procurement KOFA may decide that the guilty party must pay an infringement fee of up to 15 percent of the contract value (KOFA Regulations, Section 13a). Beyond this KOFA´S decisions are not binding on the parties. In 2011 KOFA received 331 complaints and 86 cases were concluded to be breach of the rules. By comparison, the corresponding figures for 2006 were 152 and 77 respectively.[558] In other words, there is a tendency toward an increase in both the number of cases and violations. An evaluation of those affected by the commission in 2006 found that KOFA was perceived as a functional system and a low-threshold service that provided important

clarifications on questions of principle and that KOFA is an important supplement to the courts.[559] In November 2011 the government proposed move the option to impose fines on the defending parties from KOFA to the courts.[560] A majority in the Storting adopted the bill in March 2012[561]. The rules will be expanded and supplemented by new provisions and amendments in the regulations.[562] The proposal has generated negative reactions from various quarters, including from NHO and the Business Association who argue that small and medium enterprises will be reluctant to bring a case to the courts as it is too costly.[563]

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396 The public sector is large and complex. It is therefore difficult to provide general descriptions that are valid for the entire sector. In several areas there are variations between the different levels of administration (particularly state and municipal), between the different association types (central administration, directorates, supervisory authorities, undertakings, corporations, etc.) and between different sectors. A full picture of the diversity *within* the public sector is difficult to provide within the scope of this report. The focus here is on the general patterns that prevail in the sector.

397 Andenæs and Fliflet (2006:273).

398 Difi (2008:79); OECD *Government at a Glance 2011 Norway,* URL: http://www.oecd.org/dataoecd/59/6/48215466.pdf Last visited 13/02/2012.

399 OECD *Economic survey of Norway: Emerging from the crisis,* URL: http://www.oecd.org/document/16/0,3746,en_33873108_33873681_44704976_1_1_1_1,00.html Last visited 13/02/2012

400 Difi (2008:79).

401 Difi (2008:84).

402 Difi (2008:54).

403 OECD *Government at a Glance 2011 Norway.*

404 Official Norwegian Report NOU (2003:26).

405 Statskonsult (2007:2,12 og 35).

406 Bekke and van der Meer (2000), Difi (2010a); World Bank *Worldwide Governance Indicators,* URL: http://info.worldbank.org/Governance/wgi/sc_country.asp; *Sustainable Governance Indicators 2011. Norway Report.,* URL: http://www.sgi-network.org/pdf/SGI11_Norway.pdf Last visited: 13/02/2012.

407 See NITO's salary calculator, URL: http://www.nito.no/Lonn/Hva-tjener-en-ingenior/Lonnskalkulator/ Last visited 13/02/2012.

408 See Statistics Norway's wage statistics for employees in private health and social services, URL: http://www.ssb.no/ vis/emner/06/05/lonnhelse/art-2011-02-25-01.html, and wage statistics for employees in municipal undertakings, URL: http://www.ssb.no/emner/06/05/lonnkomm/tab-2011-03-16-03.html Last visited 13/02/2012.

409 See p. 2 of OECD *Government at a Glance 2011 Norway*

410 Bragelien and Mjøs (2009).

411 See p. 17–19 in *Utfordringer med å rekruttere, beholde og utvikle arbeidskraft i det statlige tariffområdet,* URL: http://www.regjeringen.no/upload/FAD/Vedlegg/L%C3%B8nns-%20og%20personalpolitikk/Rekruttering_rapport.pdf Last visited 13/02/2012

412 Lægreid, Roness and Rubecksen (2006:237).

413 Andenæs and Fliflet (2006:279).

414 Hylland (2001:252).

415 Graver (2007:220).

416 Andenæs and Fliflet (2006:185).

417 *State Personnel Manual,* Section 10.13.3.

418 *State Personnel Manual,* Section 10.14.

419 Interview with Bernt, 23/08/11; *State Personnel Manual* (2011).

420 Senior government officials are certain state employees, usually with a university degree and above a certain level of employment. In the ministries for instance Principal Official and above as senior government official. Permanent police lawyers and judges are also senior government officials.

421 *State Personnel Manual,* Section 2.2.3.

422 The Civil Service Act, Section 2 second paragraph.

423 *State Personnel Manual,* Section 2.4.1.2, cf. Section 2.4.2.

424 Cf. the Civil Service Act section 3, second paragraph, second sentence

425 Ibid:53.

426 A more detailed description of the potential for dismissal of civil servants is given in Accountability (law)

427 See *Store norske leksikon*, URL: http://snl.no/embetsmann Last visited 12/08/2011.

428 Christensen, Lægreid and Zuna (2001: 96-97).

429 Tranøy and Østerud (2001).

430 Other examples of public agencies which are independent by virtue of their technical nature are for instance Statistics Norway, the Data Inspectorate, Norges Bank, the Ombudsman for Children and the Ombudsman for Equality and Anti-discrimination.(Eckhoff and Smith 2010:171).

431 Hylland (2001:268).

432 Grønlie (2010:301–302).

433 Christensen and Lægreid (2002); Christensen and Peters (1999); Statskonsult (2007).

434 Statskonsult (2007:11).

435 KRISINO (2011).

436 Christensen, Lægreid and Zuna (2001:97).

437 See p. 10 in the UN's *Kingdom of Norway. Public Administration Report,* URL: http://unpan1.un.org/intradoc/groups/public/documents/un/unpan023320.pdf Last visited 12/10/2011.

438 Interview with Bernt, 23.08.11.

439 For instance within the sector of Health and Social Services (including the Act on Municipal Health Services, the Act on Social Services, the Child Protection Act, the Mental Health Care Act), the environmental sector and on the planning and building sector (the Planning and Building Act, the Pollution Control Act) the education sector, special regulations on the justification for and complaints on grades, etc.) (Graver 2007:316–319).

440 Graver (2007:312).

441 Graver (2007:110-111); Eckhoff and Smith (2010:60-61).

442 Woxholth (2011:240).

443 See Milliarder kontrolleres uten innsyn, URL: http://www.kommunal-rapport.no/artikkel/http://www.kommunal-rapport.no/artikkel/milliarder_kontrolleres_uten_innsyn Last visited 16/02/2012

444 Thanks to Halvor Henli for the loan of the figures *Kommunal Rapport* had obtained. In the stated total amount undertakings with negative equity are not included. The material has been taken from an overview prepared by using an overview from Statistics Norway of all companies which have public ownership of more than 50 percent of the shares, through direct or indirect ownership (figures from FORT: http://www.ssb.no/innrapportering/fort/). The organisation numbers were then compared with key figures from Brønnøysund Register Centre. All companies have in common is that they as of November 2011 did not have employees. This has been quality assured against the Employee and Employer register. It should be noted that some of the companies included in the overview may still be exempt, either directly in the regulation (see Section 1 a to h), or not subject to Freedom of Information Act because they are doing business in direct competition with, and on the same terms as private undertakings, cf. Freedom of Information Act Section 2, second paragraph.

445 Cf. regulations to the Freedom of Information Act Section 1 1st and 2nd paragraphs.

446 One concrete example is the newspaper Dagens Næringsliv's difficulties in obtaining access to Innovation Norway in connection with the so-called Ocas case. Annually Innovation Norway grants around NOK ten billion to Norwegian trade and industry through various schemes. fn See the Norwegian Press Association's, Norwegian Union of Journalists' and Norwegian Association of Editors' response Varto *Report Storting No. 7 to the Storting (2010–2011)* "Kampen mot organisert kriminalitet" (The fight against organized crime). URL: http://www.nj.no/filestore/2011-02-23-HringStortingetOrganisertkrim-MeldSt7-2010-2011.pdf Last visited 24/10/2011

447 The judicial committee which did the preparatory work for the new Freedom of Information Act gave a number of proposals for clarifications with respect to what could not be exempted of the public administration's own documents, but these were removed during the government's processing (Bernt and Hove 2009:53).

448 The provision states that if the enquiry on access comes within the scope of an exemption clause, the administrative agency is obliged to assess whether access can be granted to the whole or to parts of the document (Section 11).

449 Bernt and Hove (2009:51–55).

450 Applicants can ask to be excluded from the list of applicants. Complete lists of applicants will however become accessible to the public when the position has been filled.

451 The Parliamentary Ombudsman, case 95/1535.

452 *The State Personnel Manual* 2.2.9.1.

453 In December 2012 the Storting adopted an amendment to the act that entailed that some personal information and similar in the pay slip may be exempted from public access (Recommendation to the Storting No. 66 L (2011–2012), cf. Proposition to the Storting No. 125 L (2010–2011)).

454 Proposition to the Storting No.125 L (2010–2011:2).

455 Bernt (2011), e-mail of 14 November 2011.

456 Dørum and Meyer (2008:184–186).

457 Bernt and Hove (2009:49-50).

458 Erlandsen (2005).

459 Johansen (2008b).

460 Erlandsen (2005), Johansen (2010), Risan (2004).

461 Johansen (2010).

462 Johansen (2008a).

463 Wien, Gedde-Dahl, Øy, Venli, Ystad and Steinholt (2011).

464 Difi (2010a:18–19).

465 Bernt and Hove (2009:55).

466 The survey is undertaken every ten years and is sent to all civil servants in the ministries at advisor level and above with at least one year of service (response rate: 72). These data are from 1996, and reservations have to be made that the responses today might have been different. Christensen, Lægreid and Zuna (2001:112).

467 Document 4 (2008-2009:47).

468 Interview with Bernt, 23.08.11; Interview with Fliflet, 28.06.11.

469 Interview with Bernt, 23.08.11.

470 Erlandsen (2005).

471 Johansen (2010).

472 Christensen and Lægreid (2005); Statskonsult (2007:29).

473 Eckhoff and Smith (2010:521).

474 Ibid:522. Even though these principles are not explicitly set out in legislation it ensues from the chain of responsibility within the hierarchical public administration whose upper "knob" is to be found in the first six words in the Constitution, Article 3 (supplemented with rules on constitutional and parliamentary responsibility etc.). An example of the codifying of this can be found in the Rules on financial management in the state, Sections 14 and 15 (Smith 2011, e-mail correspondence with author).

475 The Auditor General Act Section 9.

476 The Auditor General Act Section 14.

477 The Local Government Act Section 78 From 2004 the onus has been on the individual municipality to decide whether the auditing shall be undertaken by a private company or by the municipality.

478 Eckhoff and Smith (2010:522).

479 See separate chapter on the Parliamentary Ombudsman.

480 The Civil Service Act Sections 14 and 15. Before termination or dismissal, the employer must have tried to remedy the situation through follow-up, courses, training, facilitation and possibly relocation, but if nothing helps, the individual may be dismissed due to poor work. That is work that is below the minimum required for the position.

481 In addition there are provisions in international law where the freedom of speech is ensured i.e. European Human Rights Commission, Article 10 and in the UN convention, Article 19 on civilian and political rights, which are incorporated into Norwegian legislation by the Human Rights Act, Article 2. Also see Boe (2006a:72–73), The Labour Inspection Authority (2011:6)

482 Eggen (2009:24).

483 The notification provisions are discussed in more detail in the Anti-corruption work chapter.

484 Christensen and Lægreid (2005); interview with Christensen, 30/09/2011.

485 Lægreid, Roness and Rubecksen (2007:388).

486 Interview with Christensen, 30/09/11.

487 At state level the number of companies has increased from 40 in 1987 to 62 in 2007. Most of the increase is in wholly owned public corporations, which increased from 16 to 30 in the period 2002-2007 (Difi 2008:24).

488 Econ (2004:70–71), Gjertsen and Magnussen (2006:4), Brandtzæg, Kili and Aastvedt (2008:53).

489 Clausen and Lier Madsen (2009:42).

490 Statskonsult (2002:20).

491 Ibid:48; Eckhoff and Smith (2010:527).

492 Bragdø-Ellenes (2009:43), Difi (2010b:15).

493 Difi (2010a:3).

494 See the chapter on 7. The Parliamentary Ombudsman

495 Statskonsult (2002:48).

496 Interview with Kvamme 04/10/2011; interview with Eriksen 09/11/2011, interview with Øy 14/10/2011, URL: http://www.byggaktuelt.no/node/983 Last visited 10/09/2011. See the Anti-corruption work chapter for a broader review

497 The study is based on a survey answered by 6,000 respondents from the public and private sectors.

498 47 percent of respondents in the private sector said they were not familiar with the notification provisions, while the corresponding share in the public sector was 34 percent. 37 percent of respondents in the private sector said they did not have written procedures, while the corresponding share in the state sector was 19 percent and in the municipal sector 24 percent (Trygstad 2010:40).

499 See *Varsling i kommunesektoren, [Whistleblowing in the municipal sector]* URL: http://www.ks.no/PageFiles/20694/KS%20 http://www.ks.no/PageFiles/20694/KS%20Varsling%20rapport%20TNS%20Gallup%20siste.pdf Last visted 13/02/2012.

500 Document no. 4 (2007-2008:112).

501 Boe (2006a), Madsen Simenstad (2011), interview with Eriksen 09/11/2011.

502 77 percent of those asked (a total of 983 respondents) said they were wholly or partly in agreement with the assertion: "I can speak freely to journalists on how I consider conditions at my school." See *Ytringsfrihet i skolen.* URL:http://www.norsklektorlag.no/getfile.php/Filer/Nyheter%20%28filmappe%29/hovedfunn-ytringsfrihetiskolen-femfylker-wbr-26052011.pdf Last visited 25/10/2011

503 2218 persons participated in the survey. They were asked to consider the following statement: "There is a culture of fear in OUS, and the employees dare not speak their minds." More than half said they were wholly or partly in agreement with the assertion. NRK 20/12/11, URL: http://www.nrk.no/nyheter/norge/1.7922758

504 Boe (2006a:68).

505 Ministry of Government Administration, Reform and Church Affairs (FAD) (2011), e-mail of 12 September.

506 See TI Norway (2011) for overview.

507 See the Corruption Profile chapter for a more detailed description.

508 Ethical guidelines for the civil service, of 7 September 2005. http://www.regjeringen. no/upload/kilde/mod/bro/2005/0001/ddd/pdfv/256519-etiske_retningslinjer_bokm.pdf. Last visited 20/11/2011

509 URL: http://www.regjeringen.no/nb/dep/fad/dok/Veiledninger_og_brosjyrer/2005/Etiske-retningslinjer-for-statstjenesten.html?id=88164 Last visited 20/11/2011.

510 Graver (2007:333–334).

511 Family or in-laws with a part in an ascending or descending line or at the same level as close as siblings or is/has been married/engaged to or is foster-father/mother/child of a part, or is/has been guardian/attorney for a part in the case.

512 Does not apply when the state employee works in a government company which owns the entire company that is party in the case.

513 Eckhoff and Smith (2010:226).

514 Graver (2007:340).

515 Interview with Bernt, 23.08.11, Graver (2007:346–347), Prop. to the Odelsting No. 4 to the Storting (1994-1995).

516 *Guidelines for quarantine and exclusion from dealing with cases in transition to a new position etc. outside the public administration.*

517 Report to the Storting No. 19 (2008-2009:48).

518 TI-Norway (2011:13).

519 TI-Norway (2011) has published a compilation of all enforceable corruption sentences (cases where individuals and / or companies have been convicted of corruption pursuant to Penal Code Section 276 a), b) or c)) in the period 2003-2011. Also see Gedde-Dahl, Magnussen and Hafstad (2008).

520 The question of extent is discussed in more detail in the Corruption Profile chapter.

521 http://www.transparency.org/policy_research/surveys_indices/cpi

522 From 2009 it is carried out every two years.

523 See *Kriminalitets- og sikkerhetsundersøkelsen i Norge, [The crime and security survey in Norway]*, URL: http://www.nsr-org.no/krisino. htm Last visited 13/02/2012.

524 The questionnaire was sent to 1760 municipal leaders with a response percentage of 44.

525 Also see the chapter Corruption Profile and TI-Norway (2011).

526 Most municipalities have less than 5,000 inhabitants.

527 Mauren and Eliassen (2006).

528 Gedde-Dahl and Haugnes (2010), ibid.

529 Folkvord (2011).

530 Also see the Corruption Profile chapter.

531 See news item on the KS website, URL: http://www.ks.no/portaler/etikkportalen/Apenhet- og-tillit/Gledelig-okning-i-bruken-av-styrevervregisteret/ Last visited 04/08/2011.

532 Christensen and Lægreid (2011:470-473).

533 Hovik and Stigen (2008).

534 Ringen, Sverdrup and Jahn (2011).

535 One single search on Retriever (search engine for all leading newspapers in the country) with the search word "corruption" has a hit of 3 755 cases in 2010, 1 037 cases in 2000, 316 cases in1988 (in 1989 and 1990 the figure was a good deal higher than the previous years and after, and there is reason to assume that this is related to the Oslo-scandal and as such a deviation from the general pattern).

536 Trygstad (2010).

537 All action plans against economic crime given by the government emphasise the importance of establishing such a cooperation in order to succeed in the fight against economic crime.(The Government 2011:14).

538 ibid.

539 The Office of the Auditor General (2009).

540 The Government (2011:22).

541 See SSB, URL: http://www.ssb.no/offinnkj_en/ Last visited 22/11/2011.

542 See e.g. p. 11 of *Veileder til reglene om offentlige anskaffelser, [Guide to the rules on public procurements]*
URL: http://www.regjeringen.no/upload/FAD/Vedlegg/Konkurransepolitikk/Anskaffelser/Veileder_reglene_offentlige_anskaffelser_komp.pdf Last visited 04/05/2012.

543 Hovland Steindal (2008).

544 Public Procurement Regulations Section 3-7 and Norsk Retstidende. 2007, p. 983.

545 Cf. FOA Sections 11-10 first paragraph, letter e and 20-12 first paragraph, letter e.

546 See the Anti-corruption Work chapter for a more detailed discussion of this.

547 Cf. FOA Sections 11-10 second paragraph and 20-12 second paragraph.

548 See p. 13 and 21 in FAD's letter of 12/01/2011 on *Avvisning av straffedømte leverandører mv. i forbindelse med offentlige anskaffelser* [Rejection of convicted suppliers, etc. in connection with public procurements], URL: http://www.regjeringen.no/upload/FAD/Vedlegg/Konkurransepolitikk/Anskaffelser/Fortolkningsuttalelse_avvisning_straffedomte_lev.pdf. Last visited 02/02/2012

549 However, it seems clear that the main rule should be that it is not be possible for the client to reject a supplier if the only completely subordinate staff without decision-making or control competence, has been convicted (FAD 2011:)

550 Report No. 36 (2008-2009:8-10). Also see Andvig and Todorov (2011:27–28).

551 Report No. 36 (2008-2009:26).

552 See Gedde-Dahl (2011). Two examples: In a review of 160 purchases in 13 companies in Oslo municipality the municipal audit found a number of, sometimes serious deviation from the procurement regulations (Oslo municipal audit 2009). In the municipality of Bærum the audit found after a review of 53 acquisitions in the municipality that 23 percent had never been advertised and 38 percent lacked acquisition protocol (Bærum municipal audit 2010).

553 Report No. 36 (2008-2009:26).

554 OAG (2010b:9–11).

555 AS (2008:31).

556 Gedde-Dahl (2011).

557 A third option is to complain to EFTA Surveillance Authority (ESA).

558 URL: http://www.kofa.no/no/Statistikk/ Last visited 04/05/2011.

559 Resource-partner (2006:4).

560 Proposition to the Storting No.12 L (2011-2012).

561 Legislative enactment 46 (2011–2012).

562 See *KOFA mister gebyradgangen – domstolene overtar [KOFA loses access to impose fines – courts take over]*, URL: http://www.nyheter.doffin.no/ http://www.nyheter.doffin.no/index.php?path=2&resource_id=4146 Last visited 29/03/2012.

563 Karlsen (2011).

# 5. Police and the Prosecuting Authorities

# 5. Police and the Prosecuting Authorities

**SUMMARY**

The general situation concerning resources within the police and the prosecuting authorities is sound, and case law can handle relatively small corruption cases. What gives rise to some concern are signals that the resource situation for those sections of the police that are engaged in investigating and prosecuting corruption and other financial crime is not satisfactory. Wrongful interference from other agencies in the police and the prosecuting authorities activities does not appear to be any significant problem in Norway. More generally, regulation of the police and prosecuting authorities activities appears to be satisfactory. A negative factor is the police's internal complaint and control systems and the application of these. Information to the public and the internal reporting culture can be improved.

The table below shows the total score for the police and the prosecuting authorities. The qualitative assessments that form the basis of the score for each indicator is provided in the following pages.

| Police and the Prosecuting Authorities<br>Overall score: 86/100 | | | |
|---|---|---|---|
| | **Indicator** | **Law** | **Practice** |
| **Capacity 100/100** | Resources | -* | 100 |
| | Independence | 100 | 100 |
| **Governance and Management 83/100** | Transparency | 100 | 75 |
| | Accountability | 75 | 75 |
| | Integrity mechanisms | 100 | 75 |
| **Role 75/100** | Investigation and prosecution of corruption | 75 | |

*is not included in the appraisal of this pillar.

**STRUCTURE AND ORGANISATION**

The prosecuting authorities consist of three levels: the Director of Public Prosecution (DPP), the Public Prosecutors and the Prosecuting Authority in the Police. Central duties for the prosecutors are to carry out investigations, bring charges and act as the prosecution in criminal cases. The prosecutors in the police decide most of the cases, but it is the public prosecutors or the DPP who possess the competence to bring charges for the most serious offences. The DPP has the overall management of all criminal cases, as well as responsibility for establishing goals and priorities, for providing instructions and following up the processing of criminal cases by the public prosecutors and in the police districts. It is the public prosecutor in the region[564] who provides the professional management for the prosecuting authorities.

The Police and Sheriff Department consists of the Police Directorate (POD), the 27 police districts and the police's seven Special Units. The Police's security services come directly under the Ministry of Justice. The Police and Sheriff Department in Norway has about 12,000 employees. Each police district is led by a chief of police who is responsible for all police services, the budget and results. The Ministry of Justice has the ultimate responsibility for police operations and sets out the framework for their plans, goals and funding. The Ministry has delegated large sections of this responsibility to the Police Directorate that is responsible for professional management, supervision, follow-up and development of the police districts and the police's Special Units. The Directorate is the overall authority for and closest supporter of the police districts and the Special Units.

The Norwegian National Authority for Investigation and Prosecution of Economic and Environmental Crime (ØKOKRIM) and the Criminal Police Central Unit (Kripos) act as support units for the police and comprise two of the police's seven special units.[565] ØKOKRIM is both a Special Unit in the police and a public prosecutor's office with national authority whose principal task is to combat financial crime and environmental crime. ØKOKRIM is to work for the best possible crime prevention through its treatment of criminal cases and financial investigations, and most of ØKOKRIM's resources are used on work in pursuing criminal cases. As a public prosecutor's office, ØKOKRIM comes under the DPP's Office. As a central police unit, ØKOKRIM comes under the Police Directorate for administrative and budgetary aspects. Kripos is the national unit for the fight against organized and other serious crime and is subject to POD. The management of Kripos has prosecuting authority and is subject to the DPP in criminal proceedings.

## CAPACITY

### RESOURCES (PRACTICE)

*To what extent do law enforcement agencies have adequate levels of financial resources, staffing, and infrastructure to operate effectively in practice?*

Score: 100

The general resource situation is regarded as satisfactory, but there appears to be resource issues within the area of financial crime.[566]

The police's budgetary situation is a subject of much debate within society. The figures show that the police's budget has risen from NOK 4,100 million (€ 500 million) in 1995 to NOK 11,1 billion (€ 1,420 million) in 2009, the number of police positions in the same period increased by 33% and the number of students enrolled by the Norwegian Police University College increased from 240 to 432 in the period from 2003 to 2008.[567] At the same time the Police Directorate pointed out that this budgetary increase should be viewed in relation to salary and price increases, new regulations concerning working hours and increases in workload.[568] ØKOKRIM had 126 permanent positions and six interns in 2003, whilst in 2010 they had a total of 145 person years. In 2003 Økokrim's budgetary allocation was NOK 118 million (€ 15 million) whilst in 2010 it was NOK 131 million (€ 17 million).[569]

The general budgetary situation for the police and the prosecuting authorities is adequate according to representatives who were interviewed in connection with this report. It is also pointed out that the resource situation is tight in terms of resources to fight corruption and economic crime, which means that they do not have the capacity to investigate and prosecute all cases reported or that they themselves have knowledge of.[570] Furthermore, there are some challenges associated with individual points relevant to this study. It is claimed that low salary levels, relatively speaking, create problems as regards finding well qualified applicants for the positions of public prosecutors, positions with ØKOKRIM and with the financial police teams in the police districts.[571] The public prosecutors lose in the competition with the positions for judges, whilst ØKOKRIM and the financial police come off badly when they are compared with the control agencies like, for example, the Norwegian Tax Administration and the private investigation bureaux. On several occasions the police have received harsh criticism from the OAG for not giving priority to investments in an ICT system, which has considerable upgrading requirements.[572] According to the Police Directorate funds have been set aside in the last two years' budgets to address this issue. The Directorate itself estimated in 2008 that coordinating and making the ICT system in the agency more

efficient would require investments of around NOK 1 billion (€ 128 million) over a five to six year period.[573]

The police have had significant budget increases in recent years, and representatives of the police and prosecuting authorities say that the overall budget situation is adequate. Several of the critical points described above mainly concern the part of the police and prosecuting authorities working with corruption and economic crime (also see the Investigation and Prosecution of Corruption indicator). The questions for this indicator concern the police and prosecuting authorities in general, and maximum points are therefore awarded for this indicator. At the same time, there may be reason, in light of the above, to question how the police and prosecuting authorities prioritize resources – it appears as though inadequate resources are set aside to fight corruption and economic crime.

### INDEPENDENCE (LAW)

*To what extent are law enforcement agencies independent by law?*

Score: 100

The independence of the police and the prosecuting authorities is well safeguarded in the legislation.

It is only the King in the Council of State[574] who can give binding orders on the execution of the DPP's office. The government has the authority to lay down general rules on the arrangement of the prosecution and the treatment of criminal cases. For his part the DPP is responsible for the overall management of the prosecution authorities.[575]

In contrast with many other countries, the prosecuting authorities in Norway (and in Denmark) are integrated into the police. By virtue of their positions, police lawyers as well as police superintendents, possess normal prosecuting authority.[576] The police lawyers constitute the majority of the prosecuting authorities within the police, and they direct the police officers' investigations, make decisions on questions on continued prosecution in individual cases and bring cases to court as prosecutors. Within the prosecution system the police lawyers are professionally subject to the public prosecutor, but as police officers they are administratively subject to the chief of police.

Like all administrative bodies, the Police Directorate is subject to its responsible Ministry. It is up to the Minister to establish the overall priorities for the police's activities within the framework established by the Storting.[577] The degree of instruction that the Police Directorate receives from the Ministry of Justice is not necessarily reflected from the Police Directorate down to the police districts. The

reason is the budgetary autonomy of each police district. The Police Directorate has required the police districts to set up financial police teams and set out some general requirements as to composition, location and protected resources.[578]

Recruitment of employees for the government administration is a highly regulated process, and this is also the case for the police and the prosecuting authorities.[579] Vacant permanent and temporary positions shall be made public and be filled through ordinary competition.[580] The text of the announcement shall be formulated so that it does not discriminate against any group.[581] Ordinary officers will be employed by an employment committee where the employees, the administration and the management are represented.[582] The director of police, the assistant directors of police, the heads of the police Special Units and the chiefs of police in the police districts are employed on a fixed term contract for a period of up to six years. After advertising of the post, the officer in question can be engaged for a further period of six years.[583] Persons who are employed in the Police and Sheriff department must have an impeccable record and employees in the general police authorities must be Norwegian citizens.[584] For the higher prosecuting authorities (the DPP and the public prosecutors) a law degree is required, and the DPP himself takes part in the interviewing of candidates to the post of public prosecutor.[585]

**INDEPENDENCE (PRACTICE)**

*To what extent are law enforcement agencies independent in practice?*

Score: 100

There is a broad consensus on the authorities' part that the politicisation of criminal justice is undesirable. This is a matter of principle to which the Storting has adhered over time.[586] The right to give instructions to the DPP in individual cases, for which a theoretical possibility exists in the legislation, is not used and therefore in practice does not constitute a threat to the prosecuting authorities' independence.[587] Where there does exist a potential source of conflict is in the professional management of the prosecuting authorities. Along with the overall management responsibility for the prosecuting authorities is also responsibility for making priorities. Thus a detailed list of priorities from the Ministry of Justice on the distribution of funds to the prosecuting authorities could upset the DPP's independence, but today there is little to indicate that this will happen.[588]

The representatives for the police and the prosecuting authorities who were interviewed for this study are aware that the question whether the police and/or the prosecuting authorities are exposed to undesirable influence is not a cause for concern in Norway.[589]

**GOVERNANCE AND MANAGEMENT TRANSPARENCY (LAW)**

*To what extent are there provisions in place to ensure that the public can access the relevant information on law enforcement agency activities?*

Score: 100

The prosecuting authorities' activities can be divided roughly into two main parts, that is the professional management and the processing of criminal cases.[590] For the processing of criminal cases it is the Criminal Procedure Act and the prosecution instructions which contain the most important provisions whilst the situation is more complex as regards the professional management.[591] The Public Administration Act and the Freedom of Information Act do not apply in cases which are dealt with under the Criminal Procedure Act.[592]

It is in the nature of things that there are strict rules for the duty of confidentiality, which apply when the prosecuting authorities are carrying out their investigation work.[593] However, duty of confidentiality rules shall not impede information from being made available to parties in a case, the aggrieved person or their representatives, or that "information shall be used when no legitimate interest dictates that it shall be held secret."[594] The aggrieved has the right to inspection of documents as long as this will not interfere with investigations or be to the detriment of third parties.[595]

In the case of processing criminal cases the indictment becomes public when it is notified to the person charged, whilst the evidence is not. The police and the prosecuting authorities will deliver the indictment at the request of the press when they regard it is prudent to do so.[596] The salary levels of the employees in the police and the prosecuting authorities are accessible to the public, as they are for all public servants.[597]

**TRANSPARENCY (PRACTICE)**

*To what extent is there transparency in the activities and decision-making processes of law enforcement agencies in practice?*

Score: 75

Those who primarily apply for access to the police's and prosecuting authorities' activities are the press. Through general directives the DPP has expressed the prosecuting authorities' fundamental position on freedom of information, and especially that of the press: One shall demonstrate an understanding of the press's function in society and create the best possible conditions for the press to be able to carry out its work. The prosecuting authorities state that responsibility for information to the public can be a difficult exercise since the information needs of the public must

constantly be weighed up against the considerations for the investigations and the privacy of those involved.[598]

The press and others have no legal right to access to the evidence. It is the prosecuting authorities that present the evidence in the courts, and it is the prosecutor present who, in practice, determines the degree of transparency. This applies to access and delivery of documentary evidence and photographs. The press have made it clear that this practice is not in keeping with the DPP's directives; the predominant attitude is negative, that it is safest to turn down requests for access because then, at least, one has not done anything wrong.[599] A different side of this is that evidence and other confidential information is occasionally leaked to the press during the course of the investigation. It is difficult to say anything about the extent of the problem, but one often finds stories in the media based on confidential investigative material – most recently in the press coverage of 22 July terror where a number of reports were based on confidential investigative material (witness testimony, etc.).[600] The leaks to the press in that case, and more generally, may originate from lawyers who have access to the material. However, there is also reason to believe that some of the leaks originate from police officers or employees of the prosecuting authorities (also see the section Integrity Mechanisms (practice)). Furthermore, it may be questioned what the motivation for this type of leak is. There may be "noble" intentions such as promoting one's views in a criminal case, but it is also possible that there are more reprehensible motives, for example that the individual does this because he/she will obtain some form of reward for it. There is little certainty as to the actual facts, other than that leaks to the press occur to a certain extent.

The Police Directorate has been criticised for being insufficiently active in keeping the public informed on the processing of complaints to the police and the extent and the results of these. [601] As a continuation of this it can be mentioned that the police's Internet pages obtain a score, which placed it in the category of "Partly Satisfied" in the Agency for Public Management and eGovernment's (Difi) annual inhabitant survey. [602] Leaks to the press and insufficient information on own complaints result in the police and prosecuting authorities not being awarded the maximum score on this indicator.

**ACCOUNTABILITY (LAW)**

*To what extent are there provisions in place to ensure that law enforcement agencies have to report and be answerable for their actions?*

Score: 75

There are a number of provisions that ensure that the police and the prosecuting

authorities must be held responsible for their activities, but there appears to be limitations to the current system of processing complaints. Maximum points are therefore not awarded to the police and prosecuting authorities for this indicator.

When deciding to issue an indictment the prosecuting authorities must state what penal provisions shall apply and give a brief but accurate description of what the indictment is about.[603] If the prosecuting authorities drop a case then the aggrieved parties and other victims who have reported the matter should be provided with a written feedback where information is given on how to make an appeal under the Criminal Procedure Act, Section 59a and what procedures shall be followed in an appeal.[604] There is no requirement that any further justification for dropping the case must be provided. Normally information must also be provided on the opportunity to bring a private prosecution.[605]

The law permits persons to take out a private prosecution if the prosecuting authorities choose not to do so due to insufficient evidence, capacity considerations etc.[606] During the processing of the case in the lower courts, the person can bring the case to court, but the case must be taken by a lawyer if it is taken up in the Court of Appeal.[607]

Decisions by the prosecuting authorities may be appealed to the next, higher prosecuting authority by the person the decision is directed against, others with legal interest (such as aggrieved party), an administrative agency if the decision directly applies to the administrative agencies field. Decisions which can be appealed are dismissals, waivers of prosecution, fines, prosecution decisions, enforcement orders and sentence deferrals. The deadline for appeals is three weeks from the time that the decision reached the appellant. The DPP's decision cannot be appealed.[608] Appeals against the decisions of the public prosecutors are handled by the DPP. Questions relating to whether the employees of the prosecuting authorities have committed crimes are investigated and prosecuted by the Special Unit for Police Matters.

Today's system of appeals is often terms as a "dual track system". This is due to the fact that if a private person wishes to make a complaint about a police officer or a police department, there are two ways of doing so: filing a report or making a complaint.[609] *Filing a report* against an officer is dealt with by the Special Unit for Police Matters, established in 2005. The legislator and the courts have set the bar high for what is regarded as a punishable offence for police officers.[610] The director of the Special Unit has the prosecuting authority equivalent to that of a public prosecutor and the authority of a chief of police in criminal investigations. The Special Unit is not a part of the police or of the ordinary prosecuting authority.[611] The unit is administratively within the Ministry of Justice (Civil Affairs Depart-

ment), and professionally under the DPP. The DPP can give instructions to the unit on starting up, carrying our or concluding investigative work. The DPP also deals with appeals against decisions made by the Special Unit.

The Special Unit can recruit people in terms of employment or official duties. Upon employment there is no quarantine period, but in the case of official duties there is a quarantine period of two years from previous employment with the police or prosecuting authorities.[612] *Complaints* regarding the police's work (individuals or activities/bodies) which one finds blameworthy, but not criminal, should be directed to the individual police district or the special body. As a rule the matter should be dealt with within a month from when the police received it.[613] There are no immunity provisions for the police and prosecuting authorities.

Doubts have been raised, in external quarters outside the police, as to whether today's complaints and appeals mechanisms are good enough. A major problem is that today's arrangement, the "Dual track arrangement" does not meet the requirements for independence set out by the Council of Europe's Human Rights Commissioner [614,] to a sufficient degree. Today there is no official independent control body with responsibility for dealing with matters which are clearly blameworthy, but which are not illegal. For example the Special Unit sends blameworthy cases for administrative consideration over to the individual police district, but has no system for reporting back on what has then been done with the case.[615] In 2001 a government-appointed working group reviewing the current control body (SEFO), proposed that a special complaints and supervision body be established and to have responsibility for dealing with complaints referring to blameworthy conditions, but which were not illegal.[616]

### ACCOUNTABILITY (PRACTICE)

*To what extent do law enforcement agencies have to report and be answerable for their actions in practice?*

Score: 75

The external control of the police appears to function, but the internal control and systems for complaints are not entirely satisfactory.

Generally speaking it is assumed that there is little corruption in the Norwegian police and few cases have been revealed in Norway.[617] In 2010 there were two cases where civilians previously employed in the police were found guilty of gross embezzlement, and both judgements are enforceable. In addition there were two judgements against one and two policemen respectively where the charges were of gross corruption. Both cases were processed in 2011 by the Supreme Court, which

held that in both cases was a matter of gross corruption, but in one case the Court of Appeal's sentence was somewhat reduced. [618] In the 2006-09 period one police officer was convicted of corruption, while two officials and one civilian employee were convicted of embezzlement.[619] But there have also been some cases where the question of corruption has been considered. These have been cases where police officers have passed on confidential information to persons associated with criminal backgrounds to make private gain, or stolen, for example, passport documents and delivered these to human traffickers for money. In cases like this police officers have been found guilty for violation of provisions in the criminal law other than those for corruption.

Over the last three years the Special Unit for Police Matters has received just over 1,000 complaints each year. Less than one tenth of these ended up as positive prosecuting decisions (charges, indictments, fines, waivers of prosecution etc.).[620] There are two rational interpretations of this. It can indicate that there are few cases where police officers have committed acts that are illegal. On the other hand the high number of complaints could be an indication that some acts that are committed are blameworthy but they are not illegal. The last point needs moderation since the Special Unit sent only 50 cases to the police for administrative assessment in 2010, and in 2009 the number was 47.

The Special Unit for Police Matters had 45 employees as of 31/12/2011. 34 of these were permanent employees, while 11 held office. Among the permanent employees, there are eight people in management positions and two legal advisers (all lawyers), six administrative employees and 18 investigators. Investigators are mainly recruited from positions in the police, and several of the lawyers have professional experience as employees of the prosecuting authorities in the police. Those holding office are lawyers with a private practice, and one psychologist.[621]

The control arrangements of the police were subject of an evaluation by a government appointed committee in 2009, as a result of the much-discussed Obiora case. The evaluation came with several critical remarks on the existing arrangements and how they are practised. The criticism was summed up under the following four main points:

- The control mechanism is not and does not appear to be sufficiently independent.
- No one body, either within the police or outside it, has an overview of how the control mechanisms in the police function as a whole.
- Event-driven and reactive control is converted, to too little extent, to national experience through learning and preventive control.
- The public has deficient knowledge of the control mechanisms used by the police, especially as regards the police's internal control mechanisms.[622]

In a representative selection of complaint cases from 2007 which the committee analysed, in only 13 percent of the cases was it stated in the letter of reply that the complaint could be taken further to the Police Directorate. The complaints system is also little known by the public, and partly badly known within the police itself.[623] In addition the media were criticised for not giving enough attention to the public's complaints against the police. The committee examined 218 complaint cases from 2007 and according to the police's own case documents only six cases had attracted the interest of the media.[624] In order for the current complaints system to work, it is important that police leaders take the complaints they receive seriously. The Special Unit has experienced that this is not the case. "certain police leaders are too rigorous with respect to information about their own employees before the information results in active follow-up."[625] The critical remarks about the current complaints system results in the maximum score not being awarded for this indicator.

### INTEGRITY MECHANISM (LAW)

*To what extent is the integrity of law enforcement agencies ensured by law?*

Score: 100

Ethical issues are dealt with in laws and regulations that apply to police and the prosecuting authorities. In addition the Police Directorate have prepared ethical guidelines which are meant to be an aid to individual police districts and Special Units in the execution of their work.

Representatives of the police and the prosecuting authorities who regard themselves as disqualified in a case shall withdraw from it and inform their superior officers. For the prosecuting authorities it is the same requirements for impartiality that apply for judges.[626] Police officers are required to behave, both in and outside the service, in such a way as to guarantee the necessary trust and respect of the citizenry.[627] To ensure that this in fact shall be the case, a continuous "suitability assessment" shall be carried out of students at the Police University College, where honesty and integrity are two of the criteria for assessment.[628] Persons with police authority must not have other duties or positions, which can raise doubts about the police officer's role and independence, and all duties shall be cleared by superior officers.[629] Police officers also have a duty to report, which implies a duty to report to a superior officer if one becomes aware that another policeman has committed illegal acts.[630] The ordinary quarantine provisions for officials and officers in public administration also apply to the police and prosecuting authorities, the provisions apply upon transfer to another position outside of public administration.[631]

**INTEGRITY MECHANISM (PRACTICE)**

*To what extent is the integrity of members of law enforcement agencies ensured in practice?*

Score: 75

A series of studies and investigations of the public show that people's trust in the police is high and has remained stable over time.[632] But what is the reason for this? A usual explanation in this type of study is that the high degree of trust in the police is to a large extent related to fundamental political and social features of Norwegian society – that Norway scores high at the positive end of the statistics relating to governance, security, living conditions, finance etc.[633] Another relevant issue from the studies of trust is that those who have the most positive image of the police are those who have least to do with them, which suggests the need for a critical interpretation of this type of study.[634] The police score high in studies of reputation, but there has been a decline in recent years.[635] From a professional point of view, it is claimed that the role of the police, and the Nordic police more generally, occupies a special position, relatively speaking: "They have a high status in society, they are regarded as professional and they enjoy great trust from the population.".[636] On the other hand the director of the Special Unit for Police Affairs pointed out that, compared with other Nordic and West European countries, the share of cases which lead to penal sanctions are relatively similar, and the contents of the cases are "more than serious enough".[637]

Studies show that experiences of immigrants' groups with the police often show signs that they (the immigrants) feel themselves subject to suspicion.[638] A citizens' survey showed that one in three young people with an immigrant background had little confidence in the police and the police point out that gaining more confidence within some youth and immigrant groups represents a challenge.[639]

Doubts were raised to what extent the police's duty to report on possible illegal acts perpetrated by colleagues was actually practised. In the ranks of the police the provision has been described as a "sleeping" provision.[640] Furthermore the duty to report concerns what to do when something illegal has happened – it does not say anything about what to do to prevent illegal acts taking place, an area where the Special Unit for Police Affairs says there exists room for improvement.[641] In this connection it is important to develop a working environment and working culture which allow for "whistleblowing" on unacceptable conditions, and that a "code of silence" is not permitted to spread.[642] Knowledge of the climate for "whistleblowing" in the police is limited, so that it is difficult to say anything with certainty. But the Special Unit reports that persons, who have taken it upon themselves to report on unacceptable conditions in their own workplace, have received negative reactions from their own working environment afterwards.[643]

A final critical point which should be mentioned here is the extent of leakages. In the period from 2005 to 2008 the Special Unit received 248 reports on breach of confidentiality. In 42 of the cases the reaction was fines or charges. Breaches of confidentiality are, whatever the motive, something that can break down the population's confidence in the police.

The so-called "embassy" case led to the DPP receiving an inquiry from the politicians which has put the subject of quarantine provisions on the agenda, but as of now, the DPP has no concrete plans to make any changes. The practice has been that public prosecutors who have leave to work as practising lawyers are not permitted to work on cases that have been before the DPP. With respect to this it may be mentioned that the ban on second jobs is dealt with in a special paragraph in the standard contracts for public prosecutors.[644]

Corruption in the police and distrust of the agency is prevalent in many countries.[645] It cannot be said to be a widespread problem in Norway, but challenges related to the duty to report and leaks result in this indicator not being awarded the maximum score.

## ROLE

### INVESTIGATION AND PROSECUTION OF CORRUPTION

*To what extent do law enforcement agencies detect and investigate corruption cases in the country?*

Score: 75

The police and the prosecuting authorities, including Økokrim experience that they are well equipped with formal tools for investigating cases of corruption.[646] In contrast with a series of other types of financial crime, the police and the prosecuting authorities, in the most serious corruption cases, can employ methods of communication control (bugging of rooms, wiretapping etc.) in their investigations. This is because gross corruption, in contrast to other financial crime has a maximum sentence of 10 years, which requires that the police shall have the right to carry out electronic eavesdropping.[647] On the other hand there are some problems when it comes to investigating possible corruption cases. The police state that it would be desirable with a better legal basis for the ordinary police.[648]

Another factor that should be mentioned is that the current leniency arrangements in the competition regulations limits Økokrim's room to manoeuvre.[649] If an undertaking that is also involved in other crime, for example corruption, applies for leni-

ency to the Competition Authority for breaches of the competition provisions, it is difficult for Økokrim to initiate investigations. This is because Økokrim has entered into an informal "agreement" with the Competition Authority that Økokrim should not initiate investigations in cartel cases under consideration by the Competition Authority where leniency may be appropriate.[650] As pointed out by Søreide and Eriksen (2012), a possible result of the "agreement" could be "that an undertaking could avoid Økokrim's scrutiny in relation to other forms of crime because the Competition Authority in practice handles the entire case related to possible illegal cartel activity [but looks only for breaches of competition provisions]. This may concern crime that has contributed to conceal cartel activities in addition to providing the undertaking with additional financial benefits through e.g. financial misconduct and corruption. Implicitly, the parties may end up achieving a de facto amnesty for crimes uncovered during the investigation of cartel activities." This informal practice contributes to a current law that appears as fragmented and inconsistent.[651]

It is difficult to provide descriptive statistics that in a straightforward and informative manner show the extent of corruption cases that have been considered by the police and prosecuting authority. On the basis of the register data from the Police Directorate, two tables are reproduced below that provide an impression of the situation. Also refer to the Corruption Profile chapter. The table below lists the number of reported cases under the Penal Code Section 276 a), b) and c) for the period 2008-2010. One recorded case in the table is actually considered as one matter. When an individual is reported it may concern several matters, and a registered matter may concern several individuals. It is therefore wrong to interpret the numbers in the table as the number of people charged with corruption in the years 2008-2010.

**TABLE 5.1 NUMBER OF REPORTED CASES PURSUANT TO THE PENAL CODE'S CORRUPTION PROVISIONS. YEAR 2008–2010.**[652]

| Number of reported cases | 2008 | 2009 | 2010 | Total |
|---|---|---|---|---|
| Corruption (Section 276A) | 38 | 5 | 10 | 53 |
| Corruption, Foreign (Section 276A) | x | x | x | x |
| Gross corruption (Section 276B) | 13 | 17 | 10 | 40 |
| Gross corruption, Foreign (Section 276B) | x | x | x | x |
| Trading in influence (Section 276C) | x | x | x | x |
| Trading in influence, Foreign (Section 276C) | x | x | x | x |

For reasons of anonymity, all boxes with 0-2 cases are replaced by the letter x.

The table below shows the number of decided cases pursuant to Penal Code Section 276 a), b) and c) for the years 2009 and 2010 that have resulted in fines, charges, indictments or dropping of the case – which are the most common outcomes when investigation of a matter is initiated. As for previous table the figures in each box refer to the number of matters, not the number of corruption cases. If the prosecuting authority initiates investigations of a possible corruption case, there are often several matters involved. The numbers should thus not be interpreted as the number of corruption cases the prosecuting authorities have investigated.

**Table 5.2 Number of decided cases under the Penal Code corruption provisions. Years 2009 and 2010.**[653]

| | Type of decision | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| | 2009 | | | | | 2010 | | | | |
| **Type of penalty provision** | a | b | c | d | total | a | b | c | d | total |
| Corruption (Section 276A) | x | 4 | 4 | x | 8 | x | x | x | x | x |
| Corruption, Foreign (Section 276A) | x | x | x | x | 0 | x | x | x | x | x |
| Gross corruption (Section 276B) | x | x | 34 | x | 34 | x | x | 6 | x | 6 |
| Gross corruption, Foreign (Section 276B) | x | x | 3 | x | 3 | x | x | x | x | x |
| Trading in influence (Section 276C) | x | x | x | x | x | x | x | x | x | x |
| Trading in influence, Foreign (Section 276C) | x | x | x | x | x | x | x | x | x | x |

For reasons of anonymity, all boxes with 0-2 cases are replaced by the letter x.

a Fine
b Charge (summary proceedings on the basis of a guilty plea)
c Indictment
d Dropping of charges

As also mentioned under Resources (Practice), it is claimed that low salary levels, relatively speaking, creates problems as regards finding well qualified applicants for the positions of public prosecutors, positions with ØKOKRIM and with the financial police teams in the police districts.[654] It further appears that there has been an imbalance in resource allocations to the police and prosecuting authorities compared to the control agencies in recent years. A strengthening of the budgets of the control agencies has led to a marked increase in the amount of cases from the control agencies to the police and prosecuting authorities and ØKOKRIM, without the police and ØKOKRIM having a comparative increase in funding to address these issues. This has previously been pointed out by several parties and is confirmed by the Økokrim and Police Directorate employees who were interviewed in connection with this study.[655]

In the 2006–2010 period Økokrim initiated investigations in five corruption cases. Both the rates for solving cases and for convictions for Økokrim have been high in the period (2006-2010). The percentage for solving cases was 82 in 2010 and 83 in 2008 and for the three other years the percentage was over 90. The percentage for convictions has been over 80 percent for all of these years, but never reached Økokrim's own goal, which was 90 percent (it has varied between 82 percent and 87 percent).[656] These are high percentage rates. At the same time one has to remember here that Økokrim, as the only police body, can itself "choose" which cases it wants to investigate.[657] All police cases, including corruption cases, belong in principle to the local police district. Økokrim's cases are increasingly complex and comprehensive. This means that Økokrim can take on fewer new cases,[658] which in turn means that the police districts themselves must take on more of the corruption cases, and other cases related to financial crime. It is therefore equally important to what extent the police districts and their financial teams manage solve their cases.

What does give cause for concern is the lack of resources to deal with financial crime. In 2008 the Office of the Auditor General evaluated the authorities' efforts against financial crime and concluded that police and prosecutors constitute a bottleneck in the follow-up of reported cases.[659] The percentage shelved due to lack of capacity had increased from 14 percent in 2004 to 30 percent in 2007 percent in 2007. In Oslo Police District, which has many of the bigger cases, the increase was 23 percentage points (from 25 to 58 percent) in the same period.[660] The legal director in Oslo Stock Exchange stated in 2007, after an evaluation, that Økokrim would have had to double its manpower o be able to take on all of the "insider" cases from the Stock Exchange where there was agreement that "these can certainly not be set aside".[661] Finally comes the skewed distribution of resources between the police and the control bodies – at least this is the way the police see it – which has led to an increase in the range of cases from them which means that the police are struggling to deal with other corruption-related cases and cases where there is suspicion of financial crime.

All police districts shall have their own financial crime team. There are a couple of police districts that have not completely established a financial crime team in line with the demands that (Police Directorate) POD make, but this is being worked upon. As far as the resource and competence situation in the financial crime teams is concerned, this is variable.[662] In Økokrim's threat assessment for 2011-2012 six of the nine police districts, which provided information on corruption, stated that they had insufficient basis to express an opinion on the parties behind the crime. Both lack of experience/competence and lack of resources to investigate this type of case were put forward as causes.[663] It also occurs that the police districts report to the Police Directorate that they are aware of corruption-related cases, but they do not have capacity to follow up.[664] The threshold for punishability in corrup-

tion cases is low. In case law there are examples of corruption convictions where the "undue advantage" has been in the order of a few thousand kroner.[665] In other words, as long as the resources are available to investigate the case, a corruption case does not have to be great in size for investigations to be started up and for charges to be brought.

564 The country is divided into ten regional public prosecutor offices. In addition there is a special public prosecutor for organised and other serious crime.

565 The five others are the National Police Immigration Service, the National Mobile Police Service, the National Police Computing and Material Service, the Norwegian Border Commissioner and the Norwegian Police University College.

566 This is discussed in more detail under Investigation and prosecution of corruption.

567 Helsingeng, Bakkeli and Solem (2010), cf. the Police University College's own statistics pages, URL: http://www.phs.no/no/Om-PHS/Fakta-og-tal/Opptakstatistikk/ http://www.phs.no/no/Om-PHS/Fakta-og-tal/Opptakstatistikk/ Last visited 06/11/2011

568 Dregelid (2010).

569 See *Årsrapport Økokrim 2008 og 2011*, URL: http://www.okokrim.no/artikler/arsrapporter-okokrim. Last visited 20/11/2011

570 Interview with Angell, 30/09/2011; interview with Magnussen and Vigeland, 07/10/2011.

571 Ibid. The Director General of Public Prosecutions himself wrote a letter to the Minister of Justice were he expressed concern regarding the district attorneys' salary situation.

572 The Office of the Auditor General (2010a).

573 The Police Directorate (2008:66).

574 That is to say a formal resolution by the government signed by the King in the Council of State.

575 The Criminal Procedure Act, Sections 56 and 62.

576 The Police Act, Section 20.

577 Also see the chapters on the Storting, the Government and the Public Sector.

578 Interview with Magnussen and Vigeland, 07/10/11.

579 See the Personnel Rules for the police districts, the special police units (excluding the central unit for the police's security services) and the frontier commission. Otherwise see the Chapter on the public sector.

580 See the Personnel Rules for the police districts, the special police units (excluding the central unit for the police's security services) and the frontier commission, Section 4.

581 Personnel Rules, Section 5.

582 Personnel Rules, Sections 10 and 12.

583 The Police Act, Section 19.

584 The Police Act, Section 18.

585 The Criminal Procedure Act, Sections 56 and 57; interview with Knudsen, 02/12/2011.

586 Recommendation to the Storting No. 181 (1987.1988:5); Recommendation to the Odelsting No. 89 (2001-2002:2).

587 Torgersen (2011:60).

588 Ibid.:60–61)

589 Interview with Angell, 30/09/11; interview with Magnussen and Vigeland, 07/10/2011, interview with Knudsen, 02/12/2011.

590 In addition comes the administrative work, where it is the Public Administration Act and the Freedom of Information Act that apply.

591 See p. 25 of the report *Statsadvokatene og mediene* (2000) prepared by a working group on behalf of the the Director General of Public Prosecutions, URL: http://www.riksadvokaten.no/ra/ra.php?artikkelid=99. Last visited 06/11/2011

592 Cf. Public Administration Act, Section 4b and the Freedom of Information Act, Section 2 fourth paragraph.

593 See Criminal Procedure Act, Section 61 a-e.

594 Cf. Criminal Procedure Act, Section 61b.

595 Cf. Criminal Procedure Act, Section 242.

596 Hanssen (2006:11).

597 See the chapter on the public sector.

598 Torgersen (2011:52–53).

599 Hanssen (2006:11–14); interview with Øy, 14/10/2011.

600 See news item from NRK *Politiet: – Flere kan ha lekket opplysninger, [The Police: – Several may have leaked information]* URL: http://www.nrk.no/nyheter/norge/1.7991995 Last visited 14/02/2012.

601 Official Norwegian Report NOU (2009a:15).

602 Difi (2010a:14).

603 Criminal Procedure Act, Section 252.

604 Cf. The Criminal Procedure Act, Section 73, second paragraph and prosecution instructions. Sections 17-2 and 17-3.

605 Official Norwegian Report NOU (2006:32).

606 Cf. the Criminal Procedure Act, chap. 28. 28 The Criminal Procedure Act, Section 410.

607 The Criminal Procedure Act, Section 410

608 The Criminal Procedure Act, Section 59a.

609 There is a third way, but this applies to a somewhat more limited area: complaints on the investigation of cases. This type of complaint is dealt with by the prosecuting authorities (i.e. the police, the district attorney or the the Director General of Public Prosecutions).

610 Finstad (2009:21).

611 Cf. the Criminal Procedure Act, Section 67, 5th paragraph.

612 The prosecution instructions Section 34-1 second paragraph.

613 Cf. Instructions on the treatment of reports on situations worthy of criticism within the Police Department Section 3.

614 *Opinion of the Commissioner for Human Rights concerning independent and effective determination of complaints against the police.* URL: https://wcd.coe.int/ViewDoc.jsp?id=1417857&Site=CommDH&BackColorInternet=F Last visited 08/09/2011.

615 Gjendem (2008:137), Official Norwegian Report NOU (2009a:13).

616 See p. 8 of *SEFO arbeidsgruppens rapport,* URL: http://www.spesialenheten.no/LinkClick.as px?fileticket=sHRBaT7t2dc=&tabid=6649&language=nn-NO Last visited 06/11/2011.

617 Interview with Magnussen and Vigeland, 07/10/2011; interview with Thomassen, 09/09/2011.

618 See p. 10–11 in *Årsrapport 2011. Spesialenheten for politisaker* (Annual Report 2011. Special Unit for Police Matters), URL: http://www.spesialenheten.no/Årsrapportstatistikk/tabid/5845/Default.aspx. Last visited 05/05/2012

619 Se Ny pensjonsordning for stortingsrepresentanter [New pension scheme for Storting representatives], URL: http://www.spesialenheten.no/ Avgjørelser/ Spesialenhetensavgjørelser/tabid/6784/Default.aspx. Last visited 05/11/2011

620 The exact figures for the past three years are: 49 in 2010, 71 in 2009 and 91 in 2008. See p. 16 in *Årsrapport 2010. Spesialenheten for politisaker.*

621 See p. 4 in *Årsrapport 2011. Spesialenheten for politisaker.* URL: http://www. spesialenheten. no/Aktuelt/tabid/4676/articleType/ArticleView/articleId/6651/language/ nb-NO/ Spesialenhetens-arsrapport-2011.aspx Last visited 22/03/2012.

622 Official Norwegian Report (2009:195).

623 Ibid:11-12.

624 Ibid:178.

625 See p. 13 in *Årsmelding for 2011 [2011 Annual Report]*, URL: http://www.spesialenheten. no/Portals/85/docs/ Spesialenheten_%C3%85rsrapport-2011.pdf

626 The Criminal Procedure Act, Sections 60 and 61; Prosecuting instructions, Sections 2-5 and 2-6; Police instructions Section 5-3.

627 Police instructions Section 4-1.

628 Regulations on Suitability assessment, expulsion, deportation and exclusion of students from the Police University College.

629 The Police Act, Section 22.

630 Police instructions Section 6-3.

631 See the chapter on the public sector for a more detailed discussion of the quarantine provisions.

632 Difi (2010a); Official Norwegian Report NOU (2009:39: Rudhovde (2010:193).

633 Thomassen (2010:87).

634 Larsson Ibid.:16); Official Norwegian Report NOU (2009:36).

635 Strype Ibid.:38–39).

636 Larsson (2010:14).

637 Presthus (2009:184).

638 Larsson (2010); Official Norwegian Report NOU (2009).

639 Official Norwegian Report NOU (2009:38); the Police Directorate (2011).

640 Wegner (2002:252).

641 Presthus (2009:186).

642 Nilstad (2005:232).

643 Presthus (2009:190).

644 Interview with Knudsen, 02/02/2011.

645 In Transparency International's annual *Global Corruption Barometer,* people are asked which institution people consider to be most affected by corruption. In many countries the police are among the institutions that are considered to be most affected by corruption. URL: http://www.transparency.org/policy_research/surveys_indices/gcb/2010 Last visited 14/02/2012.

646 Interview with Angell, 30/09/2011; interview with Kvamme, 04/10/2011; interview with Magnussen and Vigeland 07/10/2011.

647 Criminal Procedure Act, Section 216a.

648 Interview with Magnussen and Vigeland, 07/10/11.

649 In Norway in 2005, pursuant to the Competition Act Section 31, a regulation on leniency was established that gives the Competition Authority the authority to make "full or partial reduction of fines in connection with violation of the Competition Act Section 10" cf. leniency regulations Section 1, second sentence.

650 See *Uttalelse om unnlatelse av å anmelde i saker om lempning av 6. mars 2008,[Statement on the failure to report in cases regarding leniency of 6 March 2008]* URL: http://www.konkurransetilsynet.no/iKnowBase/Content/429251/080306_UTTALELSE_ANMELDELSE_LEMPNING.PDF Last visited 14/02/2012.

651 Eriksen and Søreide (2012).

652 Figures are at the national level and taken from the Police Directorate's STRASAK register. STRASAK is the register for the processing of criminal cases, and provides an overview and control of the proceedings and case closure for all criminal cases. STRASAK is case-oriented, not person-oriented.

653 Figures are at the national level and taken from the Police Directorate's STRASAK register.

654 Ibid. The Director General of Public Prosecutions himself wrote a letter to the Minister of Justice were he expressed concern regarding the district attorneys' salary situation.

655 Interview with Angell, 30/09/2011; interview with Magnussen and Vigeland, 07/10/2011, EMØK (2007:39–40), OAG (2009:14).

656 URL: http://www.okokrim.no/om-okokrim-statistikk. Last visited 26/11/2011

657 Økokrim's management considers which cases Økokrim is to investigate – cases that are large and complex and/or of principle are given priority.

658 The number of new cases to Økokrim was 19 in 2010, whilst in 2006 it was 32.

659 See *Myndighetenes innsats mot økonomisk kriminalitet: Stadig flere saker henlegges på grunn av manglende kapasitet – Dokument nr. 3:3 (2008–2009), [The authorities efforts against organized crime: More and more cases dismissed due to lack of capacity]* URL: http://www.riksrevisjonen.no/Presserom/Pressemeldinger/Sider/Pressemelding_Dok_3_3_2008_2009.aspx Last visited 22/03/2012.

660 The Office of the Auditor General (2010a).

661 Gedde-Dahl (2008).

662 EMØK (2007); The Office of the Auditor General (2009 and 2010). Cf. also "Ressurssituasjonen for kontrollorganene og politiet på skatt og avgifts- og trygdeområdet – problembeskrivelse og løsningsforslag" [The resource situation for control agencies and the police on tax and duties and the social security area – problem description and proposed solution]. *Internal memo, January 2010.*

663 Report to the Storting No. 7 (2010-2011:58).

664 Interview with Magnussen and Vigeland, 07/10/11.

665 Cf. the judgement of the Hålogaland Court of Appeal (2 March 2009), where an amount of NOK 3,600 is considered improper. Also see Stoltenberg and Schea (2007) and TI's compilation of convictions (TI-N 2011).

# 6. The Electoral System

# 6. The Electoral System

**SUMMARY**

In Norway, the national electoral administration is integrated in the government apparatus, where the Ministry of Local Government and Regional Development (MLGRD) is the supreme electoral body at the state level, while the individual municipalities, through their electoral committees, have the primary responsibility for the practical implementation of the elections. The Norwegian electoral system and electoral management bodies enjoy a high degree of trust within the population and amongst the parties, including amongst the small parties, which are not represented in the democratically elected bodies. Furthermore there have been few complaints registered in recent years, related to the conduct of elections. The overall assessment is that the Norwegian electoral system and the electoral management bodies are well functioning, but there are some weaknesses in the formal organization. In general this concerns two issues. The first concerns the organization of appeals. The Ministry of Local Government and Regional Development has a supervisory and advisory role toward the municipalities, while at the same time it is the appeal body for local elections. Norway has also been criticized from several quarters, both nationally and internationally, because appeals related to elections cannot be brought before the courts or a tribunal for dispute resolution. The second concerns the distribution of responsibilities and roles between the political leadership and the central electoral management body. This concerns that the relationship between the two levels to too great an extent is based on non-statutory norms and that these rarely provide answers on how to draw the line in specific cases. In practice, this has not posed any problem, but a "precautionary" principle argues for more detailed regulation of the relationship between the political leadership and the central administrative electoral body.

The table below shows the total score for the electoral system. The qualitative assessments that form the basis of the score for each indicator is provided in the following pages.

| The Electoral System<br>Overall score: 96/100 | | | |
|---|---|---|---|
| | **Indicator** | **Law** | **Practice** |
| **Capacity** 92/100 | Resources | -* | 100 |
| | Independence | 75 | 100 |
| **Governance and Management** 96/100 | Transparency | 100 | 100 |
| | Accountability | 75 | 100 |
| | Integrity mechanisms | 100 | 100 |
| **Role** 100/100 | Campaign regulation | _[667] | |
| | Administration of elections | 100 | |

*is not included in the assessment of the electoral system.

## STRUCTURE AND ORGANISATION

The electoral system is a central element in a representative democracy, and the electoral system one chooses to adopt is an important part of the democratic process.[667] The Norwegian Constitution contains some fundamental provisions on the elections to the Storting (Const. Articles 50-64). These refer, inter alia, to the conditions for, and loss of voting rights, the number of members of the Storting, the distribution of these between the counties, voting methods, eligibility criteria and testing the validity of the elections. The more detailed rules on the conduct of the elections, for the Storting, the county councils and the municipal councils are collected together in the Act of 28 June 2002, No. 57 on elections to the Storting, the county councils and the municipal councils (Representation of the People Act). In addition a regulation has been laid down with more detailed provisions for certain areas.

The electoral period is 4 years for all elections. Elections to the municipal councils and to the county councils are held at the same time and are held half way through the period of the Storting. The Ministry of Local Government and Regional Development (MLGRD) is the supreme electoral body, whilst the individual municipality, through its Electoral Committee, has the main responsibility for the election's practical implementation. The organization of the Norwegian electoral system, in other words, is an example of a governmental model if one were to place it within ACE's[668] three main types of electoral organization. [669]

The MLRGD is responsible for work on the regulations (development and administration of the Representation of the People Act) and exercises a guidance and advisory function for electoral workers in the municipalities and county council authorities (circulars, conferences and individual inquiries). In addition it has a number of tasks related to the practical implementation of the elections, of which some are as follows: as a secretariat for the National Electoral Committee for elections to the Storting, as an appeals body for municipal and county council elections, in the preparation of appeals to the National Electoral Committee in the case of elections to the Storting, the provision of information to the electors (advertisements, Internet etc.), to ensure the collection of election results on election day and the distribution and forecasting of the results after the election and approval of any trials in connection with the election, etc.[670]

*The Storting* is responsible for the approval of powers of attorney and approval of elections to the Storting. It handles any appeals related to voting rights in parliamentary elections.

In all elections it is the municipality which is responsible for the practical implementation. In each municipality there shall be an Electoral Committee elected by the municipal council. The Electoral Committee is responsible for the conduct of the election in the municipality. If polling is to take place in several locations within the municipality, the conduct of the election shall be directed by a polling committee consisting of at least three members. In the case of local elections, decisions of the Electoral Committee may be appealed to MLGRD.

In the case of parliamentary elections and elections to the county council, each county shall have a County Electoral Committee. The County Electoral Committee controls the implementation of the elections to the Storting and county council in each municipality in the county. Thereafter it conducts the electoral procedure at the county level, that is, for all municipalities in the county.

In the case of parliamentary elections there shall in addition be a National Electoral Committee with no fewer than five members. The National Electoral Committee is appointed by the King and is responsible for the calculations and distribution relating to the returning of the 19 seats at large. In addition they issue credentials to the members returned to the Storting. The National Electoral Committee shall also deal with appeals relating to parliamentary elections. MLGRD serves as the secretariat for the National Electoral Committee.[671]

## CAPACITY

### RESOURCES (PRACTICE)

*To what extent does the electoral management body (EMB) have adequate resources to achieve its goals in practice?*

Score: 100

MLGRD is in a process of assessing its own resource situation and is working out an alternative organisation of the electoral system at central level.[672] In election years MLGRD has a budget of NOK 46.7 million irrespective of the type of election, whilst its budget in years where there are no elections is approximately NOK 12 million The number of person-years available is about 10.[673]

The government meets the expenses of the municipal councils' and county councils' statutory obligations in the case of parliamentary elections (Representation of the People Act, Section 15-9). The financing of the local elections is considered to be covered through central government's transfers through the revenue system. A major cost for the municipalities is the electoral administration's data system (equipment) for carrying out the election, including the system for the electronic counting of ballots for the biggest municipalities, and including the purchase of different services associated with this. This is not compensated for through the revenue system, but neither is it mandatory to use such equipment.[674]

As stated, implementation of Norwegian elections is highly decentralised. This entails that the municipalities have the latitude to choose local solutions for the practical implementation of elections. The decentralized system has also in some cases led to different practices among municipalities in areas where a uniform practice is desirable, such as the design of ballot papers. MLGRD has addressed the latter by making the regulations more detailed.[675] In some small municipalities lack of competence can be a challenge. In the municipalities there are very few people in the administration who work with the subject, which makes them very vulnerable to turnover of staff.

The ministry uses considerable time and resources on counselling and advising the municipalities. The County Governors do the same. This takes place in the form of courses and conferences as well as correspondence by telephone and e-mail.[676] One problem with the infrastructure is that several different types of electronic computer systems are used in carrying out the election. Municipalities have been free to choose whether they want an administrative computer system and which provider they prefer. The systems are owned by private contractors. It has now been decided to establish a state-owned and managed electoral management computer

system for use in the practical implementation of elections. The system was tested in ten municipalities at the local and county council elections in 2011. The system will be implemented in all municipalities/counties in the 2013 elections. Whether its use is to become statutory will be considered later, first the system must be rolled out to everyone.[677] As of today, MLGRD also has a system for reporting and disseminating elections results which is carried out by Statistics Norway (SSB) on behalf of the Ministry.[678] This will eventually be implemented in the electoral management computer system. An election organization in which municipalities use different electronic computer systems compared to an organization in which municipalities use the same electronic data system for all tasks will, all else held equal, probably increase the risk of errors. Therefore, plans to introduce a common electoral management computer system for municipalities and counties is positive, and there is reason to believe that it can contribute to more uniform practices at the local level in those areas where this is desirable.

The review has shown some critical remarks on the resource situation, but the overall assessment is that the resource situation is good enough for the electoral management bodies to carry out their duties in a satisfactory manner.

### INDEPENDENCE (LAW)

*To what extent is the electoral management body independent by law?*

Score: 75

The Ministry's responsibility as supreme electoral authority is not laid down in law, but based on long government tradition. Establishing an independent electoral body independent of the Ministry does not seem to have been an issue in Norway. However, internationally it is not unusual national electoral management body is integrated in the government apparatus, particularly in countries with long traditions of democracy.[679] What has been discussed in Norway is the organization of the relationship between the political leadership of the Ministry and the subordinate administrative body. The Commission on the Electoral Law raised the question as to whether a permanent Electoral Commission should be established, a body outside the Ministry which has the responsibility for the practical, technical tasks.[680] The Ministry was of the opinion that the proposal failed to adequately respond to the Ministry's challenges and did not the recommendation for a new Representation of the People Act.[681] However, the issue has not been dropped, which was the reason that Agency for Public Management and eGovernment (Difi) on behalf of MLGRD in 2010 examined the possibility to establish a separate unit that could take over the Ministry's tasks related to the preparation and implementation of elections.

Difi stated that questions can be raised in terms of the lack of regulation of the relationship between the minister responsible and the central Civil Service as far as preparations for elections and overall conditions for elections are concerned. There exists a set series of norms for proper administrative procedures, but not laid down in the law, which dictate that the political leadership shall be reticent in getting involved in questions which should be decided on purely legal grounds. But these norms rarely give the answer as to where the boundary should lie in specific cases. Although the political leadership so far has not inappropriately interfered, a "precautionary" principle argues for more detailed regulation of the relationship between the political leadership and the central administrative electoral body. In comparison there are detailed legal provisions which regulate the procedures for the practical conduct which is transferred to the municipalities and the county councils.[682] Another objection is that MLGRD has a counselling and advisory role for the municipalities at the same time, as it is the court of appeal for local elections. This is an unfortunate mixing of roles, as, in theory, MLGRD can risk dealing with appeals which have originated in the advice it itself has provided.[683] The Difi report pointed to the following factors as important to limit the minister's formal control options: legal establishment of the electoral body's responsibility and role, curtailing of the Ministry's instruction authority in terms of individual decisions, use of an independent appeals body for complaints concerning local elections and grant allocations, a director appointed on a long-term fixed term contract without the possibility of renomination, articles of association stipulated by Royal Decree that mark the impartial role of the electoral body.[684] MLGRD is currently pursuing work on Difi's recommendations, and it is too soon to say what this work will result in.

The Electoral Committee in each municipality is chosen by the municipal council. If polling is to take place in several locations within the municipality, the conduct of the election shall be directed by a polling committee with no fewer than three members. The polling committees are selected by the municipal council, or by the Electoral Committee by proxy (Representation of the People Act, Section 4-2). From 1st January 2012 onwards persons on the list of candidates will no longer be eligible as members of the polling committees, and they cannot function as vote collectors or as electoral workers. The amendment is a strengthening of the electoral management body's independence. The reason for the change in the law is that it is in principle unfortunate that candidates, who are standing for election, come into direct contact with the voters in a voting situation.[685] Difi's critical remarks that there is inadequate regulation of the relationship between political leadership and electoral management, as well as the unfortunate mixing of roles in that MLGRD acts as both counsel and appeals body towards the municipalities prevent the maximum score from being awarded for this indicator.

**INDEPENDENCE (PRACTICE)**

*To what extent does the electoral management body function independently practice?*

Score: 100

There are no examples of inappropriate interference by politicians in the conduct of elections or appeals. Moreover, the conduct of the elections enjoys a high degree of legitimacy in the population. Both the population and the parties have great trust in the different administrative electoral bodies and the work they do – this also refers to the small parties which are not represented in the elected assemblies.[686]

In practice it is the Electoral Committee in the individual municipality which conducts the elections. Pursuant to the Representation of the People Act an Electoral Committee must be elected in each municipality. The Electoral Committee has the overall responsibility for implementation in the municipality. Much of the practical work is done by administration staff headed by the Electoral Committee.[687] In the parliamentary election in 2009 about 3,200 substitute boards were established. These are often manned by the parties on the municipal council.[688] As a result of a new amendment (see previous paragraph) the municipalities will have to recruit other persons (than candidates) to man the polling committees.

**GOVERNANCE AND MANAGEMENT**

**TRANSPARENCY (LAW)**

*To what extent are there provisions in place to ensure that the public can obtain relevant information on the activities and decision-making processes of the EMB?*

Score: 100

There is a large degree of transparency surrounding the conduct of Norwegian elections which affords the population good possibilities for obtaining relevant information on the activities and decisions of the electoral bodies.

The Representation of the People Act's provisions which pertain directly to freedom of information are:

- The posting of the voters' roll for public inspection (Section 2-6)
- The posting of the proposals for the lists of candidates for inspection as they come in (Section 6-6 first paragraph)
- Publication of approved electoral lists (Section 6-7)
- Duty of confidentiality regarding individuals' polling choices (Section 15-4 second paragraph, Section 8-4 first paragraph and Section 9-5 fifth paragraph)

- Ban on providing information on the consumption of ballots (Section 8-5 second paragraph and Section9-4 second paragraph)
- Access to the electoral roll and other electoral material (Section 15-3)
- Ban on publishing election results and forecasts which are made on the basis of investigations done on the Sunday or the Monday when the election takes place, before Monday at 21.00 hours at the earliest (Section 9-9)[689]

Electoral Committees and County Electoral Committees er are elected bodies in terms of the Local Government Act, and are thus regulated by the provisions on how matters are to be dealt with in that act (the Local Government Act, Chapter 6). This implies that any person in principle has the right to attend meetings in an Electoral Committee, given that the Electoral Committee has not decided to hold a closed meeting.[690] Meetings where the counting of votes take place are, in other words, in principle, open, but this does not mean that the general public shall have unlimited opportunity to be present at vote counting. Persons can be expelled if they behave in a manner which can be disturbing to the proper conduct of the counting process.[691]

**TRANSPARENCY (PRACTICE)**

*To what extent are reports and decisions of the electoral management body made public in practice?*

Score: 100

The legislation provides for a high degree of transparency in the electoral bodies' activities and decisions, and this is also complied with in practice.

The electoral roll and the lists of candidates are published for inspection. The meetings of the Electoral Committees and voting committees are open. In practice one can thus follow the vote counting in the individual polling station and the decisions made by the Electoral Committees. MLGRD is active in publishing information on the elections on its web pages, where, amongst other things, they have their own election portal with comprehensive information and links to the regulations and the handbook and such like where the main contents of the regulations are communicated in a straightforward manner.[692] Of the appeals that have arisen from the past four elections, not one has involved a lack of access to information or such.[693]

**ACCOUNTABILITY (LAW)**

*To what extent are there provisions in place to ensure that the EMB has to report and be answerable for its actions?*

Score: 75

Everyone with the right to vote has the right to make an appeal on the preparation or the conduct of an election. If the appeal has to do with the right to vote or access to voting, then also those who are not on the Voters' Roll, have the right of appeal. The appeal must be made in writing not more than seven days after the election day. Appeals regarding the results of the election must be made within seven days of the approval of the election results. Appeals regarding list proposals must be filed within seven days after the Electoral Committee's or County Electoral Committee's decision (Representation of the People Act Section 6-8).

In the case of a parliamentary election it is the Storting which is the court of appeal, but the appeal can be directed to the Electoral Committee, the County Electoral Committee, the County Governor, the ministry or the Storting's administration. The County Electoral Committee[694] must check the counting in the municipalities in the county both for county council elections and parliamentary elections. The check shall be carried out on the basis of the minute books of the Electoral Committees and the other election material which the Electoral Committees will send to the County Electoral Committee (Section 10.8). The County Electoral Committee may change any mistakes.

For the municipal and county council elections the appeals must be sent to the Electoral Committee in the respective municipality/county. The usual administrative legal principles are used in dealing with the appeal. The Electoral Committee/ County Electoral Committee will consider whether the appeal shall be allowed. If the appeals are not allowed then the case shall be sent on to the National Electoral Committee (in the case of a parliamentary election) or to the ministry (in the case of a local election) for a decision.

The ministry's decision in the case of appeals is final and cannot be appealed in the courts. This was regarded as the prevailing right of the ministry when the proposal for the new Representation of the People Act was worked out in 2001, and is now enshrined in the Representation of the People Act, Section 13-1 and Section 13-2. At first sight this may seem unreasonable. An important source of, and reason for the prevailing right is to be found in a ruling by the Supreme Court's appeal committee in 1962 when the subject was dealt with. The appeal committee concluded that the ministry's decisions in matters of appeal as regards the termination of a municipal election, are final, and cannot be brought before the courts. The appeal committee gave the following reasons: As a rule, treatment by the courts will have

no purpose, as one cannot expect a final decision before the municipal council's period of operation has fully, or has almost expired. Furthermore it is extremely important that it is quickly established whether the municipal council has been legally elected." [695]

The fact that appeals cannot be brought before the courts has been the subject of criticism from several quarters. Election researcher Frank Aarebrot has previously been critical to this, and Difi discuss the problem in their research study, OSCE and the Venice Commission have concluded in a joint statement that Norway should include the courts of law or bodies similar to the courts of law in the case of dispute resolution in matters related to elections, in order to meet international standards and demands.[696] The lack of this prevents maximum points from being awarded for this indicator.

**ACCOUNTABILITY (PRACTICE)**

*To what extent does the EMB have to report and be answerable for its actions in practice?*

Score: 100

In general there are few appeals in connection with the conduct of Norwegian elections, and the electoral system enjoys, as already mentioned, a high degree of trust within the population.

The table below shows the number of appeals that the ministry has registered as regards the conduct of the last four elections. All the appeals relate to fairly specific matters regarding the conduct of the election in a specific polling station, sometimes in a specific municipality. The backgrounds for appeals vary, but two things recur: opening times (polling stations which were open for longer than announced) and deficiencies which upset the principle of a secret ballot (a typical example is a ballot box which is not properly sealed, polling booths which are not properly screened. 11 of the total 64 appeals had to do with the former, whilst 15 of the appeals had to do with the latter. All appeals were dismissed. Here it is important to mention that the Ministry can only allow an appeal if it can be assumed that the error has led to a change in the distribution of seats between the lists and that it is not possible to rectify, cf. Representation of the People Act chap. 13. In other words, the fact that an appeal identifies unacceptable conditions is in itself not sufficient for the appeal to be allowed.

**TABLE 6.1 OVERVIEW OF THE TOTAL NUMBER OF APPEALS AND RESULTS FOR THE LAST FOUR ELECTIONS IN NORWAY.**[697]

| | Municipal and County Council '03 | Storting election '05 | County Council election '07 | Election to the Storting '09 |
|---|---|---|---|---|
| Total appeals | 28 | 13 | 19 | 4 |
| Result | All dismissed | All dismissed | 16 dismissals, three with other result[699] | All dismissed |

As previously mentioned there have been complaints that the existing appeals system is not sufficiently independent, but this study has found no actual examples that the formal limitations of the current appeals system constitutes a problem in practice. [699] Therefore, the indicator is awarded the maximum score despite weaknesses in formal organization.

**INTEGRITY (LAW)**

*To what extent are there mechanisms in place to ensure the integrity of the electoral management body?*

Score: 100

The Representation of the People Act accords extensive management of the procedures for the conduct of elections to the local level, which assists in reducing the risk that local electoral management bodies develop arrangements which are in conflict with the relevant legislation.[700] Furthermore it is the Public Administration Act's provisions that apply for the treatment of public documents, and the Freedom of Information Act's provisions that apply for the freedom of information in the administration's documents.[701] The Local Government Act's rules for procedures in permanent committees have a corresponding validity for Electoral Committees/ County Electoral Committees, which, inter alia, means that all meetings in the Electoral Committee are in principle open.

**INTEGRITY (PRACTICE)**

*To what extent is the integrity of the electoral management body ensured in practice?*

Score: 100

The ministry uses considerable time and resources on counselling and advising the municipalities. The County Governors do the same. This takes place in the form of courses and conferences as well as correspondence by telephone and e-mail. During the period from April to June 2011 the County Governors arranged 16 elec-

toral conferences where they provided the municipalities with advice and counsel as regards the conduct of the municipal elections for autumn 2011. Something called the *Electoral Forum* has also been established and this is a members' forum for the electoral management in Norwegian municipalities and county councils. The forum is a place to share experiences and to obtain advice on the conduct of elections. MLGRD uses the forum as an expert agency for the training of municipalities and counties.

The ministry has also established a grant scheme whereby the purpose is to increase knowledge of elections and/or to increase election participation. At the municipal and county elections in autumn 2011 the ministry distributed NOK 5 million to 24 organizations. The size of the grants is something that MLGRD considers every year, but according to them it is highly probable that the current scheme will be continued.[702]

## ROLE

### CAMPAIGN REGULATION

*Does the electoral management body effectively regulate candidate and political party finance?*

Score: –

This question is not relevant for Norway. The parties receive government support to the parties, but the support is not linked to any specific activities. One should also see the chapter on Political Parties for a more detailed description of how party financing works and how it is controlled and followed up.

### ELECTIONS ADMINISTRATION

*Does the EMB ensure the integrity of the electoral process?*

Score: 100

The Norwegian electoral system and the related electoral bodies enjoy a high degree of trust amongst the population and the parties (including the small ones) which is a clear indication that the bodies which direct and administer the electoral system are able to secure and safeguard the legitimacy of the elections.

Although the Norwegian electoral system and the bodies that administrate the conduct of elections have high legitimacy among the population and among the parties, the previous sections have shown that there is reason to question aspects of

current formal organization. This applies particularly to two factors: the question of whether the distribution of responsibilities and roles between the political leadership and the central electoral management body is well enough regulated, and the limitations to the independence of the appeals bodies. Those two factors have led to a points penalty on two other indicators and will therefore not be penalised here.

The OSCE followed the conduct of the Norwegian election to the Storting in 2009. The report pointed to a number of strengths of the Norwegian system, but also presented some critical remarks. The two most serious have already been mentioned, but in addition OSCE pointed to some minor matters with the technical conduct of the election which were unfortunate, for example that the ballot boxes were not sealed during the conduct of the election.[703]

Critical remarks have also been presented earlier when international observers have been here in connection with elections – for example that there was no requirement previously that voters must present identification and that list candidates could (up and including 2011) be eligible for voting committees. It may seem strange that the Norwegian authorities have not recognized these problematic aspects themselves. Here it should be added that the Norwegian government always welcomes international observers and that authorities largely implement the recommendations from the international election observers. However, the above can serve as an example of the importance that also institutions who enjoy a high degree of legitimacy in the population regularly are subjected to external scrutiny.

666 These questions are mostly questions that come under the domain of the prosecuting authority in Norway. Points are therefore not given for this indicator.

667 Aardal (2010:76).

668 ACE (ACE Electoral Knowledge Network, full title) is an international network that provides a lot of information and facts about elections and electoral systems around the world. ACE cooperates with a number of international organizations, and the Secretariat is managed by the International Institute for Democracy and Electoral Assistance (IDEA).

669 The other two types are 'independent model' and 'mixed model' (http://aceproject.org/ace-en/topics/em/ema/ema01). Last visited 07/01/2012

670 Proposition to the Odelsting, No. 45 (2001-2002:118-119).

671 www.valg.no Last visited 22/07/2011.

672 Solumsmoen and Vemundvik (2010); interview with Riise, 08/08/2011.

673 Interview with Riise, 08/08/2011.

674 Ibid.

675 Ibid.

676 Also see Integrity (practice).

677 See Nasjonal valgkonferanse – Framtidens valg, [National electoral conference – Elections of the future] URL: http://www.regjeringen.no/nb/ dep/krd/kampanjer/valg/for-valgmedarbeidere/nasjonal-valgkonferanse---framtidens-val. html?id=676368 Sist besøkt 30.04.2012.

678 Interview with Riise, 08/08/2011.

679 In 2006 IDEA surveyed the various organizational models in 214 countries and territories. 26 percent of countries had, like Norway, an integrated solution (IDEA (2006) cited in Solumsmoen and Vemundvik (2010:8).

680 Official Norwegian Report NOU (2001b:chap. 10).

681 Proposition to the Odelsting, No. 45 (2001-2002:176-178).

682 Solumsmoen and Vemundvik (2010:19–20).

683 Ibid.:31–32).

684 Ibid.:2).

685 Proposition to the Storting No. 64 (2010-2011).

686 OSSE (2009:1, 7).

687 Interview with Riise, 08/08/2011.

688 OSSE (2009:8).

689 See p. 118 of the *Election Manual,* last updated 01/07/2011, URL: http://www.regjeringen.no/en/dep/krd/information-campaigns/election_portal/for-valgmedarbeidere/election-manual.html?id=463405 Last visited 30/09/2011.

690 The Electoral Committee must hold a closed meeting when there is a legal requirement for duty of confidentiality, when the Board shall deal with a matter pertaining to an employee's service conditions, when regard for privacy requires it, and when weighty public interest require it (the Local Government Act, Section 31)

691 See p. 119–120 in *Valghåndboka.*

692 See www.valg.no.

693 Based on the author's review of a list of complaints from the '03-'09 elections received by e-mail on 25/08/2011 from MLGRD.

694 In Oslo the check is undertaken by the County Governor for Oslo and Akershus County

695 Retstidende 1962, p. 571, reproduced in Proposition to the Odelsting No. 45 (2001-2002:237).

696 Eikemo (2004), OSSE and the Venice Commission (2010), Solumsmoen and Vemundvik (2010:19).

697 Cf. e-mail of 25/08/2011 from MLGRD.

698 One appeal was based on the fact that it had not been announced in the local newspapers that immigrants with three years' residence in Norway could vote - the municipality apologised. One appeal had to do with the fact that a specific polling station was not denominationally neutral (the polling station was a chapel) - the suggestion was taken up for consideration in the review of the election. One complaint stated that some parties had not been invited to a debate before the school election - the complaint was sent on to the Directorate for Education and Training, since the complaint did not relate to the electoral system itself.

699 A possible objection to this is that we do not know what the situation would be with another formal organization of the appeals system, and that in theory it could be that the number of complaints would be different with different organization.

700 Solumsmoen and Vemundvik (2010:19).

701 See p. 118–119 in *Valghåndboka*.

702 Interview with Riise, 08/08/2011.

703 OSSE (2009).

# 7. The Parliamentary Ombudsman

# 7. The Parliamentary Ombudsman[704]

**SUMMARY**

The remit of the Parliamentary Ombudsman (Ombudsman)[705] is to control public administration – hereunder the government, counties and municipalities – on the basis of complaints received from the population. The processing of complaints is free, and the Ombudsman potentially has an important function and role in addressing legal protection of the citizens in facing the administration. The Storting has great confidence in the Ombudsman, including the Standing Committee on Scrutiny Constitutional Affairs, and the independence of the office is well protected in law and in practice. The Ombudsman possesses no sanctions, but his statements are usually followed by the administration. It may appear that the population's awareness of the Ombudsman's function and role is limited. The incumbent Ombudsman shares this view. So does the Storting, which through the Committee on Scrutiny and Constitutional Affairs has assumed that efforts to inform and educate on the Parliamentary Ombudsman's activities are intensified, without specifying who's responsibility this is.

The table below shows the total score for the Ombudsman. The qualitative assessments that form the basis of the score for each indicator is provided in the following pages.

| The Parliamentary Ombudsman<br>Overall score: 92/100 | | | |
|---|---|---|---|
| | **Indicator** | **Law** | **Practice** |
| **Capacity**<br>**100**/100 | Resources | -* | 100 |
| | Independence | 100 | 100 |
| **Governance and Management**<br>**100**/100 | Transparency | 100 | 100 |
| | Accountability | 100 | 100 |
| | Integrity mechanisms | 100 | 100 |
| **Role**<br>**75**/100 | Investigation | 75 | |
| | Promotion of good practice | _[707] | |

*is not included in the assessment of the Ombudsman.

## STRUCTURE AND ORGANISATION

The Parliamentary Ombudsman (hereinafter called the Ombudsman) is appointed by the Storting and his role is to check the public administration. The checking is carried out on the basis of complaints from the citizenry about injustice and errors that may have been made by the public administration. The Ombudsman deals with complaints concerning the government's, municipalities' or county councils' administrations. In addition, the Ombudsman shall ensure that human rights are adhered to. The Ombudsman can also raise cases on his own initiative. It is free of charge to make a complaint to the Ombudsman.

The Ombudsman has a very special position within our parliamentary system, and his role is difficult to place in relation to the traditional system of power sharing. He represents neither public administration authority, judicial authority, legislative authority, nor a parliamentary controlling body, but embodies all four areas.[707] In comparative terms, the Norwegian Ombudsman is regarded as an example of the "Basic Model", also called the "Classical Model".[708]

The role and activities of the Ombudsman are set out in the Norwegian Constitution Article 75 l, the Act concerning the Storting's Ombudsman for public administration of 22 June 1962 No. 8 (the Ombudsman Act), and Instructions for the Ombudsman for the Administration of the Storting (The Ombudsman's Instructions) of 19 February 1980 No. 9862.

## CAPACITY

### RESOURCES (PRACTICE)

*To what extent does an Ombudsman or its equivalent have adequate resources to achieve its goals in practice?*

Score: 100

The Ombudsman has adequate resources to implement his assignments and duties.

The Ombudsman finds that the Storting allocates the resources that are needed.[709] The representative for the Scrutiny and Constitutional Committee also infers that the Ombudsman's budgetary requests on the whole are met.[710] An analysis of the Committee's processing of cases from the Ombudsman in the period 1993–2005 showed that politicians in the Committee surpassed one another in praising the efforts of the Ombudsman, encouraging increased activity and emphasizing that the institution should have adequate resources.[711]

The Ombudsman has had the following budget allocations from the Storting in recent years (in NOK): 2008: 39.0 million; 2009: 42.3 million; 2010: 47.3 million; 2011: 49.9 million.[712] The Ombudsman has increased his staff by nine persons over the past nine years and as of 31 December 2010 the staff consists of a total of 46 employees, of whom 10 are administrative employees. As a result of increased casework, the office is vulnerable in cases of sick leave and in connection with transfers to other positions and new employees.[713]

### INDEPENDENCE (LAW)

*To what extent is the Ombudsman independent by law?*

Score: 100

The independence of the Ombudsman is clearly expressed in the legislation.

The Norwegian Constitution requires that the Ombudsman "is not a member of the Storting" (Article 75 l[714]), while the Ombudsman Act states that the Ombudsmann: "[shall discharge] his duties autonomously and independently of the Storting" (Section 2), within the general scope set out in the Ombudsman Instructions stipulated by the Storting.[715] The Ombudsman may proceed to deal with cases "either following a complaint or on his own initiative" (Section 5) and it is up to the Ombudsman to decide "whether there are sufficient grounds for dealing with a complaint" (Section 6). Furthermore the Ombudsman "shall personally take a position in all cases" (The Instructions Section 9). In other words the law goes a

long way to ensure the Ombudsman's independence; not only is the Ombudsman's independence emphasised as an independent body, but the Ombudsman is invested with a personal judgement in the selection of, and the definition of his own assignments.[716] The Ombudsman can voice his opinion in cases that are within his remit, including drawing attention to deficiencies in laws, legislation and administrative practice. With respect to discretionary administrative decisions, the Ombudsman has only limited scope in voicing criticism. The Ombudsman cannot himself make binding decisions or reverse decisions made by the public administration. Neither can he give instructions which are legally binding on the authorities (Article 10).

The Ombudsman decides whether there are sufficient grounds for dealing with a complaint (Section 6). This implies that this domain is exclusive to the Ombudsman. In other words, the intention is that the courts are not supposed to overrule the Ombudsman's decision. If a case the Ombudsman has rejected is brought before a court, it is the administration's circumstances of the case that shall be the concern of the courts – not the Ombudsman's hearing of the case itself. In practice, it is very rare that a case the Ombudsman has rejected is brought before the courts.[717]

The Ombudsman is elected by the Storting for a period of four years following a parliamentary election, but may lose his position if at least two thirds of the votes in the Storting support it. [718] The decision may not be appealed. The Ombudsman cannot hold other positions or duties without the consent of the Storting (Section 13). If the Storting's Presidium finds that the Ombudsman is disqualified in a case, the Storting elects a substitute Ombudsman to hear the case. In order to be elected as Ombudsman it is necessary to meet the qualifications required for a Supreme Court Judge (Section 1).

The Ombudsman's salary is determined by the Storting or whoever is given authority to do so (Section 13), while the pension is determined by law. Salaries, pensions and work conditions of other employees are regulated by the body of agreements and provisions that apply for government employees. [719] The staff at the Ombudsman's office are appointed by the Storting's Presidium on the basis of the Ombudsman's recommendation or in accordance with an appointments board (Section 14) selected by the Presidium. In practice it is the positions as office manager and administrative manager that are appointed by the Presidium, other positions are appointed by the Ombudsman in consultation with an appointments board. The Ombudsman sets out detailed instructions for his staff (Section 10 of the instructions). There are no immunity provisions for the Ombudsman.

**INDEPENDENCE (PRACTICE)**

*To what extent is the Ombudsman independent in practice?*

Score: 100

From the text of the act it follows that the Ombudsman shall have a very independent and autonomous role, which is also the actual practice.

Since the Ombudsman position was established in 1962 and up until today, the position has been filled by four different persons who have all been unanimously elected.[720] The present Ombudsman has held his position since 1990. Since all of those, who have held the position have been re-elected, this in itself is a declaration of confidence, and the fact that the present Ombudsman has held his position for over 20 years speaks for itself.[721]

It is not unusual for representatives to the Storting to contact the Ombudsman on behalf of citizens who have applied to them, but the Ombudsman has yet to experience any form of pressure from politicians or the administration. Neither he nor his predecessors have been dismissed, or been threatened with dismissal or anything similar while holding the position.[722] The representative from the Scrutiny and Constitutional Committee also emphasised that the Ombudsman is allowed to carry out his work very independently of the Storting, and that there is wide political consensus on this.[723]

As previously mentioned, the Ombudsman has no independent power of decision, but his suggestions, comments and recommendations are nearly always supported public administration.[724] A prerequisite is that the Ombudsman at all times has the confidence of the administration, and that he justifies his views and recommendations in a way that is understood and accepted. This may be one reason why the Ombudsman expresses himself with care and usually leaves it to the administration to consider the consequences of his legal positions. In 2010 there was one case in which the Ombudsman found cause to advise the appellant to take legal action.

In questions of impartiality it is, in practical terms, a matter for the Ombudsman himself to assess his own impartiality from case to case. If he believes questions may be raised in respect of his impartiality, he informs the Presidium of this in writing, upon which a substitute Ombudsman is elected for the individual case. According to the present Ombudsman, this occurs approximately once or twice a year.[725]

The practice is that the Ombudsman's salary is determined by the Storting through the Presidium. The Storting does not intend the Ombudsman's position to be part of a career, and he is therefore provided a salary that may be considered competi-

tive. Practice in the last 20 years has been that the Ombudsman's salary follows that of the Supreme Court justices.

### GOVERNANCE AND MANAGEMENT TRANSPARENCY (LAW)

*To what extent are there provisions in place to ensure that the public can obtain relevant information on the activities and decision-making processes of the ombudsman?*

Score: 100

There is sufficient transparency to allow the public access to the Ombudsman's activities and decisions. The Ombudsman's documents are basically open to public scrutiny unless there are other provisions of confidentiality.[726] There are however some exceptions:

- The Ombudsman's case documents may be exempted from public access when special reasons demand it
- The Ombudsman's internal documents may be exempted from public access
- Documents that are exchanged between the Storting and the Ombudsman which concern the Ombudsman's budget and internal administration may be exempted from public access (The Ombudsman Instructions Section 11).

The access provisions are based on the same principles that apply to public administration, but the first of the aforementioned exceptions is specific to the Ombudsman. There are no similar exemption provisions for public administration. These exemption provisions are founded on the special role of the Ombudsman, including scrutiny of the public administration's practice in administering the Freedom of Information Act. The present Ombudsman points out that it would be inappropriate if the Ombudsman's criticism of the Freedom of Information Act should have a direct impact on the Ombudsman's own activities. The Ombudsman has other considerations to take account of compared with the public administration.[727] In addition administrative documents submitted to the Ombudsman are not available to the public, as they are not considered to be the Ombudsman's case documents. This implies that the general population, in the true sense of the word does not have full access to the activities of the Ombudsman, but this has to be viewed in connection with the Ombudsman's wide right of access vis-à-vis the public administration.

**TRANSPARENCY (PRACTICE)**

*To what extent is there transparency in the activities and decision-making processes of the ombudsman in practice?*

Score: 100

The Ombudsman office has its own website with public access to all annual Reports to the Storting (*Document 4*), special reports to the Storting, where the Ombudsman informs the Storting about some of the studies that have been conducted on his own initiative, statements the Ombudsman has made in connection with his own cases, which he deems to be of public interest, and a public journal containing publicly available information on documents sent to or from the Ombudsman. For reasons of security the journal is not accessible for more than ten days from the date of publication.

The annual reports – *Document 4* – contains e.g. statistics, which show the number of appeals and enquiries, the results of the cases, procedural time of the cases and the distribution of cases by administrative body and geographical area.

During the hearing of appeal cases the Ombudsman keeps the appellant informed by way of letter. This also applies if the Ombudsman chooses to make some enquiries and requests further information from the administration.[728]

**ACCOUNTABILITY (LAW)**

*To what extent are there provisions in place to ensure that the ombudsman has to report and be answerable for its actions?*

Score: 100

The Ombudsman is the controlling body of the Storting, is appointed by the Storting and is responsible to the Storting. The Ombudsman shall report to the Storting on an annual basis on his activity in the preceding year – *Document 4.* The annual report shall be submitted by 1 April every year and shall contain an overview of the hearing of the individual cases that the Ombudsman deems to be of general interest and reference to cases in which he has drawn attention to deficiencies in laws, administrative provisions or administrative practice, or on which he has given special notification. In the mention of cases where the Ombudsman has voiced criticism, the mention must also include an account of what the relevant administrative agency or official has stated about the complaint. Furthermore, information shall be given on the work of checking that the public administration respects and safeguards human rights (Instructions Section 12).

It is the Office of the Auditor General that audits the Ombudsman's accounts, as set out in the National Auditing Act Section 9.[729]

**ACCOUNTABILITY (PRACTICE)**

*To what extent does the ombudsman report and is answerable for its actions in practice?*

Score: 100

The representative from the Scrutiny and Constitutional Committee has stated that he is very satisfied with the Ombudsman's reporting to the Storting.[730] The same sentiment is expressed regarding the committee's discussions on the Ombudsman's annual reports in recent years.[731] The annual reports are always subject to discussions in the committee, but the extent varies from one year to another.

The annual reports are submitted in time and contain:
- a report on the work and the case processing at the office including administrative conditions,
- statistical information on the distribution of cases and the case processing,
- an account of all the cases in which deficiencies in laws, provisions or administrative practice are indicated,
- an overview of cases of general interest in the reporting year.
- an assessment of which problems are recurring in the public administration's dealings with the citizens[732]
- information on the staff, the organisation of the office and subject matter as allocated to the sections,
- an overview of meetings and visits that took place in the reporting year.

The Ombudsman's accounts are kept by the Norwegian Government Agency for Financial Management. This is a practical arrangement to relieve the Ombudsman's administration, which is limited in size.[733] The Storting appoints an auditor who reviews the accounts.[734]

There is no agency that may overrule the Ombudsman's decisions. It has occurred that appellants, who have been refused by the Ombudsman, have appealed to the Storting. These are always told that the Storting does not interfere with the Ombudsman's rulings.[735]

**INTEGRITY MECHANISM (LAW)**

*To what extent are there provisions in place to ensure the integrity of the ombudsman?*

Score: 100

The Ombudsman Act[736] includes provisions that concern the employees' duty of confidentiality (Section 9), employees' salaries, pensions and work conditions (Sections 13 & 14) as well as giving the Ombudsman authority to set out more detailed instructions for his staff (Section 2 and the Instructions Section 10). The duty of confidentiality in the Ombudsman's office is extensive. It concerns all information of a personal nature, as well as operating and business secrets – it also applies after employment at the Ombudsman's office is terminated. The duty of confidentiality does not only apply to the general public, but also to the Storting. This is important; precisely because it enables the Ombudsman to apply checks also where the public administration works behind closed doors.[737]

The stipulation of salaries, pension and working conditions is in accordance with current agreements for government employees. The office of the Ombudsman has prepared its own ethical guidelines concerning such aspects as impartiality, openness and receipt of gifts etc. Under no circumstances shall an employee receive gifts or other advantages that may influence their execution of service. The same applies to extra jobs and second jobs, and there must be full transparency as to the jobs an employee may hold. There are also examples of what may be considered to be insignificant gifts – gifts an employee may accept without them violating the ethical guidelines.[738] The Ombudsman has also prepared routines for whistleblowing that provide information on what may be notified on and how to notify. An employee is encouraged to make an internal notification to his or her closest superior or to the Ombudsman, but he or she may also notify via his or her representative or the Health and Safety representative.[739]

**INTEGRITY MECHANISM (PRACTICE)**

*To what extent is the integrity of the ombudsman ensured in practice?*

Score: 100

The office of the Ombudsman has its own ethical guidelines for its employees and internal notification routines. Both were put into writing only in 2009. On the introduction of the written ethical guidelines, these, and a wider understanding of ethics were themes for ensuing office seminars. The guidelines were also followed up with group discussions where there was a focus on the practical ethical issues confronting the individual at the Ombudsman's office, and a review was carried out for the entire office.[740]

All new employees at the Ombudsman's office are allocated a mentor who has special responsibility for training and follow-up of the fresh employee. Amongst the things the mentor will provide information on are the ethical guidelines and notification routines.[741] More generally, the Ombudsman has as a principle that there must always be two persons to assess the cases, this being in order to ensure safe and fair equitable processing.

## ROLE

### INVESTIGATION

*To what extent is the ombudsman active and effective in dealing with complaints from the public?*

Score: 75

The Ombudsman is active and effective in dealing with complaints from the public, and the Ombudsman's comments are generally supported by the public administration. The Ombudsman currently has broad access to public administration, it is only government memoranda he may not access. There are reasons to believe that the population's awareness of the Ombudsman could be improved. Further, there appears to be uncertainty as to whose responsibility this is.

The present Ombudsman is also active in the sense that he bases his reasoning on a wider interpretation of the understanding of "errors and omissions" in the legislation, and to what extent municipally owned companies are to be seen as part of the municipal administration and thus within the remit of the Ombudsman's work.[742]

The number of cases of complaints and enquiries received by the Ombudsman from the citizenry has increased steadily since 2007. In the same period there has been about an even balance between the number of new cases and the number of terminated cases.[743] In the last three years (2008–2010) the processing time for rejected cases has varied between 15 and 18 days. For cases terminated without having been raised with the public administration it has been between 39 and 41 days, while processing time for cases terminated after having been raised with the public administration has varied between 170 (2010) and 203 days (2008).[744]

The increased caseload has consisted mainly of cases that have been rejected, which is a possible explanation for the fact that the increased caseload has not entailed a particular increase in the processing time.[745] It has to be added that the Ombudsman has greatly facilitated conditions for making complaints. On the Ombudsman's website there is an interactive complaint form and there are information

pages in German, Finnish, Polish, Spanish, Russian, Urdu, Arabic and Chinese. Furthermore, it is possible to phone the Ombudsman for advice and guidance if you find it difficult to formulate a complaint.

In recent years the number of complaints the Ombudsman has raised on his own initiative has varied. In 2010 the number was 35, while in the four preceding years they were 25[746], 23[747], 41 and 40[748]. The Scrutiny and Constitutional Committee expressed in a Committee recommendation in 2010 their wish that the Ombudsman consider the possibility of implementing more systematic investigations (cases raised on his own initiative).[749]

This in itself is an indication that the Storting is satisfied with the quality of the investigations the Ombudsman has initiated on his own accord. The Ombudsman was cautious in his response to the Committee's request on this matter. He pointed out that this type of investigation is resource-intensive, and that the increased amount of scrutiny and control routines in the public administration, and the establishment of the Auditor General's performance audit are an indication that the public administration's own systematic studies and the scrutiny of them have increased in recent years.[750]

The present Ombudsman has the impression that the knowledge of his office amongst the general population and the general public varies. Findings from Synnovate's annual profile surveys substantiate the claim. When questioned about their overall impression of the Ombudsman, 63.9 percent answered "neither good nor bad overall impression." A possible interpretation is that the respondents answer in this way because they have no knowledge of the Ombudsman.[751] The Ombudsman tries as far as possible to accommodate the media and others. The Ombudsman has an important role to play in society, and thus it is important that as many people as possible have knowledge of his office. But active marketing may create unreasonable expectations in the general population of what help and assistance the Ombudsman can provide. The dilemma holds a challenge in terms of increasing people's awareness of the Ombudsman and his role. The Storting has also emphasised the importance of the population's awareness of the office, and has assumed that information about it is intensified without specifying this further.[752] Based on expectations and the role of the Ombudsman, the current Ombudsman is of the opinion that it would be best if others undertook the task of promoting the Ombudsman's work.[753][1]

There is currently one limitation in the Ombudsman's right of access.[754] Public administration has been reluctant to give the Ombudsman access to government memoranda, something the present Ombudsman believes he should be entitled to.[755] In the processing of complaints it is important that the Ombudsman has full

access to the basis for the administration's decisions in order to have the best possible basis for assessment. The Ombudsman has a duty of confidentiality in respect of the Storting, in other words there is no reason to fear that the Storting will obtain knowledge of internal matters in the government against the will of the government even if the Ombudsman was to be given access to government memoranda. This study can therefore see no compelling reasons for why the Ombudsman's right of access does not apply to government memoranda.

### PROMOTING GOOD PRACTICE

*To what extent is the ombudsman active and effective in raising awareness within government and the public about standards of ethical behaviour?*

Score: –

No score has been awarded for this indicator as the question concerns undertakings that are not included in the Ombudsman's remit under the Ombudsman Act. The Ombudsman's duty is basically to prevent the citizens from being subjected to unfair treatment (the Ombudsman Act, Section 3), and he can indicate e.g. whether a decision is "clearly unreasonable, or that it clearly conflicts with good public administrative practice", (the Ombudsman Act, Section 10 second paragraph). To some extent this may be deemed to contain standards for ethical behaviour, and is mostly referred to through the ongoing processing of actual individual cases. Apart from the processing of individual cases, either with basis in complaints from individuals or in cases raised on his own initiative, the Ombudsman has no active role in promoting standards for ethical conduct in society. In this respect the Ombudsman's opinion is that his Office is more comparable to a court than with e.g. the ombudsmen of the public administration. The public administration ombudsmen, such as the Ombudsman for Children and the Gender Equality Ombudsman have a more active role in promoting the relevant interests they are appointed to protect in society, cf. the Act on Ombudsman for Children Section 3 and the Act on Gender Equality Ombudsman Section 3.[756]

704 In general there are few studies, research, reports or similar that deal with the activities of the Ombudsman. Therefore, this chapter is based on somewhat limited documentation.

705 In Norway there are also other Ombudsman offices: The Ombudsman for the Defence Forces, for the Consumers, for Gender Equality and for Children. These are outside the framework of this study.

706 No score has been assigned for this indicator as the question concerns undertakings that are not included in the Ombudsman's remit under the Ombudsman Act.

707 Ingebrigtsen (2007:5).

708 Kucsko-Stadlmayer (2008:61–62).

709 Interview with Fliflet, 28/06/2011.

710 Interview with Foss, 16/06/2011.

711 Ingebrigtsen (2007:68).

712 E-mail from the Ombudsman's administration of 27 May 2011.

713 Document 4 (2010-2011:20).

714 The parliamentary arrangement with an Ombudsman was set out in the Constitution in 1995.

715 When nothing else is indicated the listed statutory provisions refer to the Ombudsman Act.

716 For reasons of efficiency the Ombudsman may now in recent times confer authority on certain colleagues to terminate cases, which obviously have to be rejected (Section 9). See also Fliflet (1993:33).

717 Interview with Fliflet, 28/06/2011.

718 In order for the decision to be valid, at least half of the representatives of the Storting must participate in the vote.

719 This has been the practice for some time, but it was not until May 2012 that the employees of the Ombudsman formally were included in collective agreements, and they are also listed as a separate category in the government pay scale.

720 Ingebrigtsen (2007:41).

721 It may be questioned that the same person can be the Ombudsman for 20 years because this, in principle, may make the institution vulnerable in that he abuses his position of power. On the other hand, proposals to dismiss the current Ombudsman have never been brought before in the Storting, and as already mentioned, the Storting may dismiss the Ombudsman at any time if it so desires.

722 Ibid.

723 Interview with Foss, 16/06/2011.

724 Document 4 (2010-2011:10).

725 Interview with Fliflet, 28/06/2011.

726 The Ombudsman's duty of confidentiality is extensive (see Integrity Mechanisms (law)).

727 Interview with Fliflet, 28/06/2011.

728 Document 4 (2010-2011:11).

729 E-mail 1 September 2011.

730 Interview with Foss, 16/06/2011.

731 Recommendation to the Storting No. 391 (2010–2011); Recommendation to the Storting No. 264 (2009:-2010).

732 This point is a new one of 2011. The intention is to provide the citizens and the politicians a possibility to view the complaints contiguously and to point to trends in the range of the complaints and other conditions.

733 Formerly the Storting carried out this task, but since the Auditor General pointed out that this was unfortunate, this has been changed.

734 Interview with Foss, 16/06/2011.

735 Ingebrigtsen (2007:38).

736 The act also contains provisions on impartiality, referred to under the headings Independence (law) and Independence (practice).

737 Document 4 (2010–2011:13).

738 *Etiske retningslinjer for sivilombudsmannen [Code of ethics for the Ombudsman],* internal document received by e-mail.

739 *Rutiner for varsling [Notification procedures],* internal document received by e-mail.

740 E-mail 1 September 2011.

741 Ibid.

742 Ingebrigtsen (2007:79); interview with Fliflet, 28/06/2011.

743 Document 4 (2010-2011:21).

744 Document 4 (2010-2011:13).

745 In 2010 the number was 2,959 compared to 2,126 cases in 2007, which represents an increase of 39 percent. However, the number of rejected cases has increased almost proportionally, while the increase in the number of processed cases is not as great.

746 Recommendation to the Storting No. 391 (2010-2011:21).

747 Document 4 (2008-2009:14).

748 Document 4 (2007-2008:20).

749 Recommendation to the Storting No. 264 (2009-2010:12).

750 Recommendation to the Storting No. 391 (2010-2011:21).

751 Strype (2010:30).

752 Recommendation to the Storting No. 391 (2010-2011:17).

753 [1] Interview with Fliflet, 28/06/2011.

754 In December 2011 a unanimous Storting voted to repeal the Ombudsman Act Section 7 second paragraph, which indicated that information subject to a statutory duty of confidentiality initially was exempt from the Ombudsman's right of access (Document 8:161 L (2010–2011)). The provision allowed the administration to refuse the Ombudsman access on several occasions, but this potential limitation has now been removed. It may be added that the Ombudsman usually has obtained access in any case, but that the process can be time consuming. On occasion the Ombudsman has had to ask Parliament to impose the administration to provide the Ombudsman access. See e.g. Document 4:2 (2008-2009).

755 Interview with Fliflet, 28/06/2011.

756 E-mail 1 September 2011.

# 8. The Office of the Auditor General

# 8. The Office of the Auditor General

**SUMMARY**

The Office of the Auditor General (OAG) is the Storting's most important control body. Through its audits and controls it uncovers a number of unacceptable conditions in public administration. The OAG has authority in the Constitution and its independence is emphatically set out in the legislation and followed up in practice. The audit institution enjoys a generous budget, appears to have wide support in the Storting and the dialogue with the ministries and their subordinate bodies is good. In order to improve, the OAG would do well to exercise its guiding role for the administration. It may be questioned whether the OAG, given its role as a key control body, should establish points of contact with the police and other regulatory agencies. As of today, the OAG has only a casual relationship with Økokrim where representatives of the two meet at irregular intervals.

The table below shows the total score for the OAG. The qualitative assessments that form the basis of the score for each indicator is provided in the following pages.

| The Office of the Auditor General<br>Overall score: 94/100 | | | |
|---|---|---|---|
| | **Indicator** | **Law** | **Practice** |
| **Capacity**<br>**100**/100 | Resources | -* | 100 |
| | Independence | 100 | 100 |
| **Governance and Management**<br>**100**/100 | Transparency | 100 | 100 |
| | Accountability | 100 | 100 |
| | Integrity mechanisms | 100 | 100 |
| **Role**<br>**83**/100 | Effective auditing | 100 | |
| | Detecting and sanctioning misbehaviour | 75 | |
| | Improved financial management | 75 | |

*is not included in the assessment of the OAG.

## STRUCTURE AND ORGANISATION

The OAG is the controlling body of the Storting and is managed by a Collegiate of five national auditors. The national auditors and their personal deputies are appointed by the Storting for five years at a time. The Collegiate is headed by one of the appointed national auditors in a full-time position. Normal practice is that the political party with the largest majority in the last parliamentary election is allowed to decide who is to lead the national auditor Collegiate. The national auditors have one vote each. Decisions made by the Collegiate demand the vote of at least three national auditors.

Through auditing, control and guidance OAG shall be an instrument in making sure the State's incomes arrive as planned, and that the funds and assets are used and managed in a way that is financially justifiable and in accordance with the resolutions and intentions of the Storting. The role and tasks of OAG are set out in the Constitution Article 75 k, the Act on National Auditing of 7 May 2004 No. 21 (The National Auditing Act) and instructions on OAG's activities of 11 March 2004 (The National Auditing Instructions). All government activities fall under the OAG control area.

## CAPACITY

### RESOURCES (PRACTICE)

*To what extent does the audit institution have adequate resources to achieve its goals in practice?*

Score: 100

The OAG has access to adequate resources.[757] On the whole OAG receives the funds required from the Storting[758], and the allocations have steadily increased in recent years (Table 1). Also when compared to other countries, the Norwegian OAG appears to have a generous budget (NOK 463.9 in 2011) – in comparison the Swedish OAG has a budget of slightly less than SEK 300 million.[759] However, it should be taken into consideration that there may be differences between the auditing agencies' tasks and mandate.

**TABLE 1 ALLOCATION OF OPERATING EXPENSES BY THE STORTING FOR THE OAG 2008-2011** [760]

| Year | Allocation, operating expenses |
|---|---|
| 2011 | 463 900 000 |
| 2010 | 446 700 000 |
| 2009 | 420 400 000 |
| 2008 | 361 800 000 |

There is bipartisan agreement that OAG has an important role in the Norwegian political system[761], and that it therefore must have a generous budget. The Auditor General Collegiate promote their budget proposal to the Storting (Section 8[762]), and the Storting alone decides OAG's budgetary framework. This is necessary to secure the independence of OAG, and to ensure that OAG is not in any way financially dependent on the executive authority or the administration. If the OAG requires more funds during the fiscal year, it may ask the Storting for this and will get it, provided that there is a reasonable basis for it. According to the member of the Standing Committee on Scrutiny and Constitutional Affairs, this rarely happens in practice.[763] It is relevant to mention in this connection that the Norwegian Parliamentary Intelligence Oversight Committee, which requested extra allocations in the winter of 2010-2011 in connection with the examination of the Treholt case, which was something the Presidium, and later on, the Storting in plenary supported.

Resources as far as staffing is concerned are seen as good. The OAG has approximately 500 employees with a wide range of auditors, lawyers, economists, political scientists and several other professions. OAG has a number of highly qualified applicants for its positions, and there is also a good spread of professions amongst the applicants. [764] All new employees start on a two-year training programme. Every year all employees must complete at least 35 hours of work-related capacity-building measures.[765]

**INDEPENDENCE (LAW)**

*To what extent is there formal operational independence of the audit institution?*

Score: 100

The independence of OAG is not specifically set out in the Constitution (Article 75 k), but is clearly expressed in the Auditor General Act where it is stated that OAG shall perform its tasks "autonomously and independently" and "[itself] decide how the work is to be adapted and organised" (Section 2). It also became evident in the connection with the work on the present act that the Storting and OAG had a common perception that OAG is fully independent within the boundaries set out by the Storting, to decide on its own how to perform its auditing activities. [766]

The Storting may, by way of plenary resolutions, instruct the OAG to undertake "special investigations" (Section 9 seventh paragraph), but during the legislative process of the provision, it was emphasised that that this right of the Storting to instruct be used carefully. [767] It was further pointed out that it is indisputable that the Storting in plenary has the right to give OAG general instructions on how the institution is to perform its activities and instruct the OAG to initiate investigations in individual cases or special investigations, but that it is at the discretion of OAG to decide how to follow up inquiries from committees and individual persons. [768]

The national auditors and their personal deputies are appointed by the Storting for five years at a time. Composition must reflect the parliamentary situation in the Storting. This is not enshrined in legislation, but is considered an unbreakable part of state practice.[769] The head of the Collegiate may not take on other duties without the consent of the Storting. The other members of the Collegiate may not take on other duties or obligations that "may come into conflict with the role as auditor general." Whether or not they do is for the Collegiate to decide (Section 4).

The employment capacity with respect to managers with the OAG is with the Collegiate (§ 5). Other officials are appointed by an appointments council. All applicants to, and employees in OAG have the same rights and worker protection as other state employees (the Civil Service Act Section 1). There are no special provisions for immunity for employees in the OAG.

**INDEPENDENCE (PRACTICE)**

*To what extent is the audit institution free from external interference in the performance of its work in practice?*

Score: 100

The statutory function of OAG as an independent control authority is followed up in practice.

The representative for the Presidium of the Storting and OAG respectively are both of the opinion that OAG shall be an independent office, not an executive office for the Storting. This is why the Storting in practice is restrictive in using their right to instruct vis-à-vis OAG.[770] OAG informs us that they have to go all the way back to 2005 in order to find the last example of the right to instruct having been used. [771]

The appointment of new members to the Collegiate is made at the proposal from the Presidium, which in turn has conferred with the various parties to collect proposals. For the appointments the proportionality principle and the circulation principle apply which one of the small parties shall have a representative in the Collegiate has to circulate.[772] Since 1981 OAG has had three different directors[773], all the changeovers have taken place in connection with parliamentary elections. Concerning the rest of the Collegiate there are no examples from recent history of members having been deposed against their will.[774] It is established practice that impartiality issues are discussed and assessed on a case by case basis, and it occurs that one or several of the members step down in the processing of individual cases for impartiality reasons.[775]

OAG enjoys a good dialogue with the central administration.[776] User surveys further indicate that the central administration is of the same opinion.[777]

**GOVERNANCE AND MANAGEMENT**

**TRANSPARENCY (LAW)**

*To what extent are there provisions in place to ensure that the public can obtain relevant information on the relevant activities and decisions by the OAG?*

Score: 100

In general it applies that "everyone may at the OAG familiarize themselves with the public content of documents in a particular case when the document is received by or sent from the OAG" (Section 18, first paragraph). At the same time the principle of "delayed public disclosure" (Section 18 second paragraph) applies.

The principle of delayed public disclosure implies that documents linked to cases under processing at OAG are only available in the public domain when the case has been processed and submitted to the Storting. In practice right of access arises to cases that are not submitted to the Storting from the same time.[778] The intention of the provision is practical – to alleviate the administration. Formerly the administration had to spend a lot of time on the media, which made opinion pieces on the basis of the correspondence between the OAG and the administration, but in which the articles in the media might be perceived as if OAG already had concluded. The purpose of such correspondence would be to shed light on or clarify case circumstances in the best possible way before a conclusion is drawn or a report is submitted to the Storting.[779] The provision was new when the new act on national auditing was adopted in 2004 and involves a limitation of public access. The provision caused a debate in the Scrutiny and Constitutional Committee where the Progressive Party and the Socialist Left Party raised arguments against what has turned out to be the current legislation regarding this point.[780]

In the assessment of this study, what is most important here is that there is transparency regarding the OAG's reports and its conclusions, and the OAG is therefore awarded maximum points here.

**TRANSPARENCY (PRACTICE)**

*To what extent is there transparency in the activities and decisions of the audit institution in practice?*

Score: 100

There is a large degree of openness within OAG's activities and work.

All reports from OAG are easily accessible in the public domain through its home pages, from where they may be downloaded (it is also possible to have them sent by post). In addition there are annual reports, strategy plans, results of the annual user survey, which are sent to a selection of all audited enterprises – all this is accessible on OAG 's home pages. On the home page there is also an updated overview of which reports have been recently submitted to the Storting, and thus no longer exempt from the public domain. Furthermore there is information on work in progress at OAG and how the office can be contacted etc.

The number of inquiries about access (disclosure requests) to OAG has been almost halved during the last three years, from 349 in 2008 to 170 in 2010. Access is allowed in around half of the cases, while the rest have been declined because they concern documents that are covered by the principle of "delayed disclosure" (see

Transparency (law)) or information that is exempt from disclosure, that is to say information of a personal nature and operating and trade secrets (Section 15), and secret information (Section 16). In the course of the last three years (2008-2010) there have been eight complaints about refusals in total. Of these, only two have been admitted.[781] A possible explanation of the reduction in the number of disclosure requests is that the media gradually has become aware of the principle of delayed disclosure and therefore does not present as many requests for disclosure as previously.[782]

**ACCOUNTABILITY (LAW)**

*To what extent are there provisions in place to ensure that the OAG has to report and be answerable for its actions?*

Score: 100

There are a number of provisions in place that ensure that the OAG must report on and be answerable for its actions vis-à-vis the Storting.

It follows from the Constitution that the OAG is accountable to the Storting, not the executive authority or the administration (Constitution Article 75 k). In accordance with the act and regulations on the OAG, the OAG must report to the Storting on its own activities and accounts annually (Document 2) as well as on the results of its own audit and control (Document 1 and 3). The law does not put any other formal requirements to the report concerning its own activities and accounts other than that the report shall contain a "general overview of previous years' activities and accounts" (the instructions Section 17). The accounts of OAG shall be audited by an external auditor appointed by the Storting (Section 8). Reports with the results of implemented audit and control shall be submitted to the minister in charge for comments before being submitted to the Storting (Section 11). The OAG shall annually submit the report to the Storting - Document 1 – on the result of the financial audit, performance audit, corporate control, the ministries' follow-up of former cases that have not been resolved in a satisfactory manner and other issues of importance for an assessment of the ministry's overall administration (The Regulations Section 15). Furthermore OAG shall report continuously to the Storting on implemented performance audits – Document 3 – (the instructions Section 16). The law does not specify when the reports (Documents 1-3) must be submitted to the Storting.

**ACCOUNTABILITY (PRACTICE)**

*To what extent are there provisions in place to ensure that the OAG has to report and be answerable for its actions?*

Score: 100

In practice the OAG must be accountable to the Storting in accordance with the act's reporting requirements, and today's practice indicates a close dialogue with the audited undertakings where comments are allowed.

The representative for the Scrutiny and Constitutional Committee is of the opinion that the members of the Storting seem to be satisfied with the amount of detail in the OAG's annual reporting to the Storting on its own activities. If the Storting is dissatisfied, it may submit written questions to the OAG or summon the OAG for a hearing. There is great variance in the amount of interest and discussion that ensue in the Storing as a result of the reports from OAG, however the general tendency in recent years has been for an increased interest.[783] There are several explanations for this. Following the establishment of a separate Standing Committee on Scrutiny and Constitutional Affairs in the Storting in 1993 there was a body which has as one of its special responsibilities to process the OAG's reports. In 1996 performance audit was introduced, which may be assumed is of greater interest to the Storting Parliament than the traditional accounts audits. Beginning in 1994, the OAG started to submit important individual cases as separate reports (the Document 3 series), which led to tens of audit cases every year being subject to separate parliamentary processing, with a separate recommendation and debate.[784]

The Storting's Presidium selects an external auditor to undertake the auditing of the OAG's accounts. The external auditor submits his annual report to the Presidium. There is normally no dialogue between the external auditor and the Presidium during this process, but according to the representative for the Storting's Presidium the external auditor very rarely has any comments.[785]

2011 was the first time an external peer review of the OAG in its entirety was conducted.[786] The report included findings and recommendations while also identifying area where the OAG has established examples of good practice.[787] The OAG is positive to establishing external peer review as a fixed routine on a periodic basis.[788]

The OAG gives priority to maintaining communications with audited businesses throughout the auditing process. Contact meetings should be held between the OAG and ministries/undertakings where one reviews audit findings, risk assessments and plans for upcoming audit year, among other things. At the start of performance audit projects the OAG has a meeting with the audited undertaking in

which they agree on the audit criteria, amongst other issues. In the report with findings from the annual financial audit (Doc 1) the written replies from the ministries are rendered in their entirety.

### INTEGRITY MECHANISM (LAW)

*To what extent are there mechanisms in place to ensure the integrity of the audit institution?*

Score: 100

Mechanisms are largely in place to ensure the integrity of OAG.

The issue of the impartiality of the employees is dealt with in the act (Section 19), while there is a special provision that controls the possibilities of the Collegiate to take on office in other public or private businesses. The chairman of the Collegiate cannot do this without the agreement of the Storting, while for the other members of the Collegiate it is the Collegiate itself, which must make a discretionary assessment in each individual case (Section 4).

Furthermore, the OAG has prepared special ethical guidelines, which are informative and detailed.

The ethical guidelines describe the problems concerning partiality and how important it is to handle this in a professional manner. A separate routine for handling questions concerning partiality in OAG has been established, and all employees must sign an impartiality statement. Questions of impartiality shall also be a separate item in the annual performance appraisal. In addition, the guidelines point out the necessity for awareness in the transition from employment in an audited enterprise, and there is a relatively detailed description of what types of gifts and other fringe benefits etc. that the employees may, and may not, receive within (and outside) their work. The guidelines emphasise the right of the employees to notify the employer about internal unacceptable conditions. [789] In 2008 special rules were prepared for notification.[790]

**INTEGRITY MECHANISM (PRACTICE)**

*To what extent is the integrity of the audit institution ensured in practice?*

Score: 100

The OAG enjoys a positive reputation in the population and in the main the central administration is satisfied with the auditing that is undertaken.

In a survey conducted by Opinion AS on behalf of the OAG,84 percent of respondents stated that the OAG "has high credibility and integrity."[791] In the *Reputation Institute's* annual reputation survey the OAG was ranked as number four among a total of 50 public undertakings.[792] This is an indication that the institution enjoys a high level of confidence among the population. The internal notification group has not received any notifications since it was established in 2008.[793] Annually the OAG spends approximately five percent of resources on developing expertise.[794] Established practice in the OAG is that auditors recruited from public administration are never allowed to audit former colleagues. In the annual appraisal interview one of the issues is whether the employee has held positions, assignments or similar during the period that could affect the employee's impartiality in his work. This is updated annually and information is archived internally.[795]

One complaint concerning the integrity of OAG is that as of today there is no internal mobility arrangement for the employees, which is an important requirement in international auditing standards. This may result in the fact that employees work for the same businesses year in year out, which is unfortunate in that questions may be raised concerning the auditor's independence vis-a-vis the audited undertaking.[796] This issue is not considered to be serious enough to merit a deduction in points, and the OAG is therefore awarded the maximum score for this indicator.

**ROLE**

**EFFECTIVE FINANCIAL AUDITS**

*To what extent does the audit institution provide effective audits of public funds (public expenses/public investment)?*

Score: 100

On the whole OAG provides effective audits of public expenditure and their findings and reports receive ample attention, both within the media, amongst politicians and in the general public.

Over the past five years, the distribution of resources between financial audit, performance audit and corporate control remained relatively stable. Financial audit has comprised approx. 70 percent while performance audit and corporate control has constituted 25 and 5 percent respectively (see table 2).

**Table 2. Audit efforts distributed for the various audit types. 2006-2010 (in percent)** [797]

| Audit type | 2006 | 2007 | 2008 | 2009 | 2010 |
|---|---|---|---|---|---|
| Financial audit | 73 | 70 | 67 | 67 | 68 |
| Performance audit | 23 | 26 | 29 | 28 | 26 |
| Corporate control | 4 | 4 | 4 | 5 | 6 |

In the annual user surveys where representatives for the audited business are asked how they perceive the quality of the audit and its relevance, the audit institute receives an average score of more than three on most questions (maximum score is four) which is an indication that the quality is generally high.[798] There are also a number of examples that the OAG's reports uncover unacceptable conditions in public administration. Here are a few examples: a review of the Armed Forces' internal control revealed e.g. that in 2010 the Armed Forces had made purchases of NOK 10.4 billion without following their own procedures to ensure reasonable internal control that procurements take place in accordance with applicable statutes and regulations for procurements.[799] In the financial year of 2008 the audit institution found so many omissions within the accounts of the Norwegian Labour and Welfare Service (NAV) that the institute could not validate the audit – this relates to accounts that make up one third of the national budget.[800]

There is little doubt that awareness of OAG has increased in recent years.[801] This is partly owing to actual findings by OAG, but there have also been discussions around the methodology – this relates mainly to the performance audit. The peer review-report emphasises that the audit institution does not always describe how the results, whether one has succeeded or not – are assessed against the fixed auditing criteria.[802] In the user survey distributed to the audited businesses, the audit institution scores lowest (2.6) on the question as to what extent are actual conditions presented in a balanced and adequate manner in the performance audit reports.[803] The representative for the Scrutiny and Constitutional Committee also manifests that the performance audits cause more dispute than the traditional financial audits, at the same time pointing out that the committee is normally very satisfied.[804]

**DETECTING AND SANCTIONING MISBEHAVIOUR**

*Does the audit institution detect and investigate misbehaviour of public officeholders?*

Score: 75

In accordance with the law the OAG shall, through its audit, help prevent and expose irregularities and errors (Section 9). The audit institution has ample right of access to the administration. Audited undertakings must provide the audit institution full access to their own activity and their own IT-system (Sections 12 and 14). Exempt from the provision are government memos, agendas, protocols, minutes, drafts for government memos and hand-written memos prepared for the ministers for matters listed on the agenda in the government conferences. In other words, the government's conclusions are accessible for inspection, while the prior phases in the decision-making process are not accessible. Whether or not this limitation is appropriate opinion is split amongst the informants[805], and the matter also caused discussions in connection with the processing of the legislative proposal.[806]

As of today OAG has two and a half positions dedicated to dealing with irregularities and auditing as their speciality field. This applies to developing methods, counselling, assistance in carrying out audits and more. In addition, an expert group has been established with individuals from each of the auditing departments who undertake preliminary investigations when there are tip-offs to the OAG on possible irregularities. The expert group also runs internal courses to build competency in the field inside the organisation. All new employees receive internal training in the auditing of irregularities.[807]

The audit institution also has its own tip-off channel on its homepage. In 2010 the OAG received 220 tip-offs. The OAG experiences the vast majority of these as useful and therefore pursues them. 30 of the tips resulted in separate investigations because there were indications or suspicion of irregularities.[808]

What the audit institution experiences as a challenge when it comes to exposing irregularities is competency – how to detect and interpret the "red flags" of possible irregularities through auditing work, etc. [809] Another potential area of improvement is establishing cooperation with other control bodies, as allowed for in law (Section 15, fourth paragraph). As of today the OAG only has informal cooperation with Økokrim, in that they at irregular intervals have had meetings where the audit institution provides information on what it is working on in relation to the public sector, and where it has requested advice in cases where the OAG is unsure wheth-

er a case it has been working on should be closed or whether further investigations should be carried out. Cooperation is described by the representative of the OAG as "not very comprehensive." The OAG has also been in contact with certain control agencies to explore any cooperation opportunities.[810] Detecting misbehaviour among public officials is a demanding task. It appears as though the OAG prioritizes this in its work, but limited collaboration with other control bodies prevent it from being awarded the maximum score for this indicator.

### IMPROVING FINANCIAL MANAGEMENT

*To what extent is the OAG effective in improving the financial management of government?*

Score: 75

The OAG may help to improve the financial management of government through pointing out discrepancies and deficiencies, and by providing advice and guidance.[811] As previously indicated, the OAG's financial audits largely appear to be effective. The detection of discrepancies and deficiencies could contribute to an improvement of the financial management of government. The feedback from user surveys in recent years is that the administration would like OAG to have more of a guiding role.[812] The peer review-report also calls for greater clarity regarding recommendations in the performance audit-reports and the corporate control.[813] The OAG has been criticised from several quarters for focusing too much on the controlling perspective in its audits of public management systems, and too little on the training and development perspective.[814]

The representative for OAG believes that some of the explanation for lack of guidance may be fear of "meeting one's former self," that is to say that the auditor becomes responsible for what one subsequently must audit. This may partly be because one does not want advice to be provided on the basis of deficient information and that advice provided earlier led to unfortunate consequences, and partly a fear that administration may blindly trust the advice from the OAG and thus neglect to perform an independent assessment, which they are obliged to do. However, the task of guidance should not cause problems if it is limited to providing information on rules and regulations, and any choices and practices that may be relevant to consider. In any case, the administration must decide what must be done and take responsibility for the decisions.[815] It currently seems that the OAG could improve in its role as advisor, and the above issues prevent the OAG from being awarded maximum points for this indicator.

757 This perception is shared by all informants who have been interviewed in connection with this pillar: the representative for OAG, member of the Scrutiny and Constitutional committee of the Storting and Presidency in addition to a professor of political science with expertise in the field.

758 Interview with Foss, 16/06/2011.

759 TI-S (2012:241–242).

760 This is original framework for the various years and compensation for the effects of national wage settlements and granted transfer of unused resources from previous year are not included in the figures (e-mail from OAG of 23 June).

761 Recommendation to the Odelsting No. 54 (2003-2004:8).

762 When nothing else is indicated, the listed statutory provisions refer to the Auditor General Act.

763 Interview with Foss, 16/06/2011.

764 Interview with Foss, 27/06/2011.

765 Document 2 (2010-2011:28).

766 Law and procedure on OAG – with comments (2004:8).

767 Doc 14 (2002–2003:63).

768 Recommendation to the Odelsting No. 54 (2003-2004:9).

769 Doc 14 (2002–2003:64).

770 Interview with Foss, 16/06/2011, interview with Hansen, 27/06/2011.

771 In 2005 the Storting requested OAG to present the annual audit of the accounts of the Ministry of Defence in the spring rather than in the autumn because the Storting was in doubt whether the financial management in the Ministry was adequate. In addition, OAG was asked to investigate the Ministry of Defence's administrative practice and prepare an assessment of the traceability of the technical recommendations provided. See Recommendation to the Storting No. 145 (2004–2005) items 5 and 14.

772 Interview with Foss, 16/06/2011. Also see Doc 14 (2002–2003:63).

773 Petter Furberg (1981–1990), Bjarne Mørk Eidem (1990–2005), Jørgen Kosmo (2005–present).

774 Interview with Foss, 27/06/2011.

775 Ibid.

776 Ibid.

777 Document 2 (2010-2011:9).

778 See p. 22 of *Lov og instruks om Riksrevisjonen – med kommentarer [Act and instructions for the Office of the Auditor General – with comments], URL:* http://www.riksrevisjonen.no/SiteCollectionDocuments/Vedlegg/Lov_og_instruks_om_Riksrevisjonen_med_kommentarer.pdf. Last visited 02/08/2011

779 Interview with Foss, 27/06/2011.

780 Recommendation to the Odelsting No. 54 (2003-2004:18-19).

781 Document 2 (2010–2011:25), Document 2 (2009–2010:20).

782 E-mail from Hansen, 07/09/11.

783 Interview with Foss, 16/06/2011.

784 Doc 14 (2002–2003:61).

785 Interview with Foss, 16/06/2011.

786 Peer review of the OAG was conducted by representatives of the European Court of Auditors (ECA), as well as the Finnish and Austrian OAG.

787 *Peer Review* (2011).

788 Interview with Hansen, 27/06/2011.

789 See *Etiske retningslinjer for Riksrevisjonen [Ethical guidelines for the OAG],* URL: http://www.Riksrevisjonen.no/ OmRiksrevisjonen/etikk/Sider/etikk.aspx. Last visited 15/06/2011

790 Document 2 (2007-2008:19).

791 Ibid:9.

792 See *Rep Trak Offentlig 2010,* URL: http://www.forbrukerombudet.no/asset/3928/1/3928_1 .pdf Last visited 20/06/2011.

793 Document 2 (2010-2011:28).

794 Ibid:8.

795 Interview with Hansen, 27/06/2011.

796 See p. 20 of *Peer review* (2011).

797 Document 2 (2010-2011:9).

798 Ibid.

799 The Office of the Auditor General (2011a).

800 Appendix 2 for Document 1 (2009-2010).

801 A simple search on Retriever for articles in printed newspapers that contained the words "Auditor General" or "Office of the Auditor General" shows this. In 2010, the number of articles was 349, in 2008 - 288, in 2006 - 112 and in 2004 - 41.

802 See p. 9 of *Peer review* (2011).

803 Document 2 (2010-2011:9).

804 Interview with Foss, 16/06/2011.

805 The representative for the Presidency of the Storting does not consider this a problem and points out that it is defined as political documents, while the representative for OAG, and the Ombudsman are of the opinion that in some cases it would be an advantage to have access to these documents also.

806 Some would argue and refer to that the OAG does not have access to government memorandums, etc. (See previous footnote). For example, this was maintained by a minority when the bill was under consideration (Recommendation to the Odelsting No. 54 (2003–2004:14–15)).

807 Document 2 (2010-2011:15).

808 Ibid.

809 Interview with Hansen, 27/06/2011.

810 Interview with Hansen, 27/06/2011.

811 The guiding role of OAG is set out in the Act's Section 9.

812 Interview with Hansen, 27/06/2011.

813 See p. 15 of *Peer review* (2011).

814 Andreassen (2011), Killengren (2011).

815 Interview with Hansen, 27/06/2011.

# 9. Political Parties

# 9. Political Parties

*Written by Anders Ravik Jupskås, PhD student at the University of Oslo.*

**SUMMARY**

The Norwegian legal system and society at large facilitates the participation of individuals in political activities within the context of political parties. Very few criteria must be satisfied in order to establish a political party and to stand for election in Norway. Political parties in Norway also have very good and stable public financing. This applies both to parties in power and parties in opposition, and public financing thus contributes to efficient competition between the parties. The independent position of the parties is not explicitly laid down in the constitution, but the Supreme Court in plenary session has indicated that the current right to form political parties follows from constitutional common law. There does not appear to be any issues related to government interference in internal party political affairs, and thus the parties operate freely in Norwegian society. As of 2006 the parties have had to report income to a central register of political parties. A new bill that is soon to be presented to the the Storting will, if adopted, oblige the parties to also report their expenses, and to provide information on income in the time before the election. It remains to be seen how any amendments will work in practice and to which degree the parties will comply with the new guidelines. However, the mandate of the Political Parties Act Board will be extended so that possible irregularities may be investigated in more detail. With respect to the parties' internal democratic processes, these are well regulated through the parties' own articles of association. Representative surveys among the parties' own members also indicate that internal democracy works in practice. The Norwegian party flora is varied and currently consists of seven parties in the Storting, in addition to a further six parties that received more than 0.1 percent of the votes at the last election to the Storting. Admittedly, the seven parties that make up the Storting today have lost a significant number of members in the last twenty years, but they still represent several social groups. Even more political parties are represented in municipal and county municipal bodies. With respect to the political parties' focus on fighting corruption, it should be noted that several of the major parties do not discuss this to any great extent in their programmes, and among those that do so, very few specific proposals are forwarded.

The table below shows the total score for political parties. The qualitative assessments that form the basis of the score for each indicator is provided in the following pages.

| Political Parties<br>Total score for the pillar: 89/100 | | | |
|---|---|---|---|
| | **Indicator** | **Law** | **Practice** |
| **Capacity**<br>**100**/100 | Resources | 100 | 100 |
| | Independence | 100 | 100 |
| **Governance and Management**<br>**92**/100 | Transparency | 75 | 75 |
| | Accountability | 100 | 100 |
| | Integrity mechanisms | 100 | 100 |
| **Role**<br>**75**/100 | Interest aggregation and representation | 100 | |
| | Anti-corruption commitment | 50 | |

## STRUCTURE AND ORGANISATION

Elections to the Storting are every four years, next in 2013. Municipal and county councils are also elected every four years, next in 2015. The Sami Parliament is elected in the same year as the Storting. It is elected by and among the Sami population. At the elections to the Storting 2009, 25 parties stood for election in at least one county (constituency). 12 stood for election in all counties.[816] Seven parties were elected to the Storting. 18 parties are registered in the party register and thus have a protected party name.[817] At the municipal and county council elections in 2011, 210 parties and groups stood for election.[818] The membership figures of most of the major parties have declined significantly over the past twenty years. Previously, approximately 15 percent of the population were members of political parties, but this share has dropped to 8 percent in surveys from 2001 and 2005.[819] In recent years, however, there has been a slight increase in membership figures for several parties.

The election system in Norway is based on proportional representation, and the new election system that was adopted in 2003 has led to the Storting "becoming more party-politically proportional than previously, while at the same time the geographical distribution of the mandates has become more systematic and less skewed than previously."[820] In short, this means that the share of votes to a greater degree corresponds to the share of representatives in the Storting. It is nevertheless a fact that "in Norwegian elections there have […] been several cases where a parliamentary majority does not represent a majority among voters.".[821] In practice it is not possible to influence which persons are elected from the ranked party list.[822]

## CAPACITY

### RESOURCES (LAW)

*To what extent does the legal framework provide an environment conducive to the formation and operations of political parties?*

Score: 100

Conditions must be said to be good for establishing new parties in Norway. Although neither freedom of assembly nor freedom of association are constitutional in Norway, the principles are fully recognized in practice. The Supreme Court has in plenary session indicated that the right to establish political parties follows from constitutional common law.[823] More specifically, in relation to founding a party, we must distinguish between standing for election on the one hand, and registration and protection of the party name on the other. The Representation of the People Act stipulates five criteria that must be fulfilled in order to submit list proposals: (1) It must specify to which election it applies; (2) It must have a heading which specifies the party or the group that has put the proposal forward; (3) It must specify which candidates are standing for election on the list; (4) It must be signed by at least 500 persons from the county where the party/list is standing for election (in the case of municipal elections, requirements are even lower); (5) It must contain the name of a representative and an alternate.[824] These five criteria must be fulfilled before the deadline for list proposals more than five months before the election (the exact date is 31 March), unless the party is already registered in the Register of Political Parties (see next section) and received at least 500 votes in one county or 5,000 votes nationally in the previous election. For such parties, it is "... sufficient that the list proposal is signed by at least two of the board members in the party's local branch in the county or the municipality in which the list applies".[825]

A political party can, however, apply to register the party in the Register of Political Parties. The conditions for this are somewhat more stringent than for submitting list proposals: (1) transcript of the minute book for the meeting at which the party was constituted, (2) information concerning the persons who have been elected to membership of the party's central executive committee, (3) the resolution laying down which body in the party elects the central executive committee, and (4) a declaration from no fewer than 5,000 persons who are entitled to vote at parliamentary elections that they wish to have the name of the party registered. [826] Even though the requirement for declarations from 5,000 persons who are entitled to vote at parliamentary elections may be a significant obstacle on the route to party registration, these requirements must be said to be relatively restrained. [827] In addition to these four requirements, the party name must not be confusable with any other existing parties. If the registration application is rejected, the decision

may be appealed to the Political Parties Act Board, and the Board's decision may in turn be brought before the courts. The board consists of five members, whereof three represent the political parties.[828]

There are no regulations with respect to how the parties organise their campaigns or how they organise their internal party democracy, beyond the requirement that the leadership must be elected in some way or another. As in other Nordic countries, there is no regulation of the amount of funds used by the parties in election campaigns.[829] Nor are there any constraints in terms of the ideological platforms of political parties.

**RESOURCES (PRACTICE)**

*To what extent do the financial resources available to political parties allow for effective political competition?*

Score: 100

The political parties in Norway receive significant public party support that facilitates efficient competition for government power between the parties. Party support is reserved for registered political parties including the underlying organization.[830] A study from 2004 – Demokratifinanseringsutvalget [the Democracy Financing Committee] – confirms that "public party support in Norway is extremely generous in an international context".[831] In a competition perspective, it is most important that the opposition parties are afforded the opportunity to challenge the incumbent government parties. Norway must be said to comply with this requirement. For example, in 2010 the major right wing opposition parties (the Conservative Party and the Progress Party) received 7.6 percent more public funds than the dominant left wing party (the Labour Party) in 2010.

"Voter support is paid as an equal amount per vote received in the last election to the Storting".[832] A corresponding distribution mechanism also exists at the county and municipal levels. Both new and smaller parties will therefore have poorer finances, but this is a result of rarely achieving significant support among voters. The parties obtain their income from several different sources: various forms of public support (governmental, municipal, county municipal and other public support), own activities (membership fees, lotteries and capital income), as well as contributions from individuals and organizations. As a result of increased public support, declines in membership figures and a weak tradition for donations from individuals, public support constitutes the largest source of income by far for all of the parties.

In 2010 public support comprised 74.3 percent, own activities 19.2 percent, while contributions from other sources made up a mere 2 percent of the combined income.[833] Some differences do however exist between the parties.[834] The relationship between the different sources of financing change in election years. For example, income from individuals and other organisations are significant, almost three times as large to be more precise, in election years than in the years between elections.[835] In recent years this particularly applies to the incumbent government (the Labour Party, the Centre Party and the Socialist Left Party) and the two major opposition parties, the Progress Party and the Conservative Party.

In Norway it is not the financial resources that determine directly how much exposure the parties receive on television. Political TV advertising is banned[836], so that participation in debates, question times and duels are the only way for the parties to reach voters via TV. The media, on the other hand, are free to prioritise the issues and parties they find interesting. There is no regulation of the parties' access to TV exposure, and there is therefore a tendency to favour the larger parties. The largest Government party and the largest opposition party often receive more attention than the other parties. Analyses of the election broadcasts on NRK and TV2 from the 2009 election campaign confirm this.[837] The differences in exposure for the different parties are nevertheless moderate.

For those parties that are without representation in the Storting, however, there are very few opportunities to present their message on television. The exception is the Red party, which, despite only one session in the Storting (1993-1997), has largely been present for party leader question times and party leader debates. However, because it is not only the Red party that stands for election in all counties, the other minor parties have been very critical of this editorial policy.[838] When the Pensioner's Party (which is one of the very small parties) took Norway to the European Human Rights Court in Strasbourg (EMD), the instructions to NRK were amended: "NRK must have broad and balanced coverage of political elections. All parties and lists above a certain size will ordinarily be mentioned in editorial coverage." What this will result in in practice is still up to NRK to decide, however, and there is little evidence that they pay any more attention to the smaller parties. In any case, it is once again important to emphasise that it is not financial strength that is the reason for the parties not being given coverage on television. Rather, the smaller parties are affected by a media logic that favours well-known, influential and topical politicians.[839] As the current head of the news section in NRK stated in connection with the 2009 elections: "[...] there are no parties with a free pass to NRK. In all of our election reports and debates we consider which parties that are interesting in relation to the matter we are discussing". There are also certain practical limitations which make it impossible for all party leaders – both within and outside of the Storting – to participate in the same debate.

**INDEPENDENCE (LAW)**

*To what extent are there legal safeguards to prevent unwarranted external interference in the activities of political parties?*

Score: 100

Because of the acceptance of the parties' free and independent position in Norway, for a long time there was little legislation that specified the parties' autonomy. The Political Parties Act, which came into force on 1 January 2006, observes that the purpose of the Act is "to facilitate the (...) [Representation of the People Act] through a public registration system for the political parties".[840] In any case, as previously mentioned, the Supreme Court has in plenary indicated that the current right to establish political parties follows from constitutional common law.[841]

It is very difficult for government authorities to ban a political party. If a party is banned, it is because the party is in breach of general provisions of the Penal Code. For example, it is "[...] punishable by law to establish or participate in an association with illegal purpose, or to enter into "association" with others with the purpose of carrying out certain criminal acts, likewise to establish or participate in private organizations of a military character".[842] Political parties can therefore be banned pursuant to Norwegian law if they explicitly encourage criminal acts, but it is not sufficient that central figures in the organisation are criminals.[843] The most relevant debate in Norway concerns to which degree a directive such as the *Data Retention Directive* enables political surveillance.[844]

**INDEPENDENCE (PRACTICE)**

*To what extent are political parties free from unwarranted external interference in their activities in practice?*

Score: 100

There are no examples of the banning of political parties in Norway in recent times. Even though regulations allow for banning different types of extremist parties (both right and left wing), this has not happened in recent times. Also, as recently as the elections in 2009, several more or less right-wing extremist parties took part. However, in 1997 the leader of the party Hvit Valgallianse [White Electoral Alliance], Jack Erik Kjuus, was sentenced for spreading a message for "ethnic cleansing" through his party's platform. The appeal was dismissed by the Supreme Court by 12 to 5 votes. Because statements on repatriation, sterilisation and abortion were very central to the platform, it was claimed that punishing Kjuus for the party platform's statements was tantamount to banning the party's ideological basis. [845] This judgement therefore illustrates some of the complex compromises between the Constitution's Article 100, which protects freedom of speech, and the

Penal Code's Article 135a, which is intended to protect against discriminatory and hateful expressions.

Nor are there any examples of governmental interference into party-political activities, but several Norwegian politicians constantly receive threats from private individuals due to their activities.[846] All parties are treated equally by the authorities, and no member of a political party has been arrested due to political activity in recent times.[847] With respect to political surveillance, there is no basis to maintain that this occurs today. However, in the so-called Lund report, which was published in 1997, it emerged that PST had carried out widespread illegal political surveillance: "of SF's candidates and representatives in the 1960s, of schoolchildren with links to the Marxist-Leninist movement in the 1970s and of Marxist-Leninists and communists in the 1980s".[848] This report led to harsh criticism of the security services' surveillance activities. The disclosure that PST (then known as POT) had initiated investigations against one of the Commission members while the Lund Commission's work was in progress further reinforced criticism of PST.

PST currently monitors various forms of extremism, which includes "extreme Islam," "right-wing extremists," "anti-Islamic parties" and the "extreme left.".[849] Some of these groups will likely claim that they are monitored due to their political viewpoints, but PST maintains that it is the groups' "extremism", i.e. their propensity for violence, that is the reason for monitoring them.[850]

## GOVERNANCE AND MANAGEMENT

### TRANSPARENCY (LAW)

*To what extent are there regulations in place that require parties to make their financial information publicly available?*

Score: 75

Since 2006 legislation has existed that regulates access to the parties' sources of income. Until now it has not been possible to obtain any details of the parties' expenses, but with a new bill that is soon to be submitted to the Storting, their expenses shall also be available. The parties must regularly report to Statistics Norway (SSB), which subsequently publishes the information.

The Political Party Act Section 18 stipulates that "all political parties, including organisational units of parties that are covered by this Act, shall submit annual reports on their income." This report must "…contain a complete overview of the income received by the party or the party organisation, categorised by different sources of

income. The main groups are public grants, income from own activity and external contributions. The income report must also include an overview of major donors and any donors that the party organisation has entered into written, political or commercial agreements with".[851] For a long time it was somewhat vague what the intention of the act was with respect to such "agreements" – a vagueness for which Norway was criticised by GRECO. This has now been significantly improved – and specific guidelines have been published at www.partifinansiering.no.[852] The parties are also obliged to disclose other contributions than monetary contributions. For some time it was unclear as to how this valuation should take place[853], but now it is stipulated that other contributions than monetary contributions must be valued at market value and reported as income.[854]

Funds used for campaigns are subject to the Political Party Act and must thus be reported in the same manner as all other forms of income, but such contributions do not constitute a separate item. Because the deadline for reporting is 6 months, Norway has been criticised because various groups' contributions to the parties' campaigns have not been made public during the period when it is most important for the public to have insight into such contributions.[855] Therefore, in a new bill all parties will be obliged to report all "monetary and non-monetary donations" above the value of NOK 30,000 (somewhat less for county council and municipal levels) that are received between 1 January and the Friday before election day.[856] The act further stipulates that a donor's identity must be disclosed if "during the period a donor has made one or more donations to the party's head organisation to a total value of 30,000 kroner or more.[857] As of May 2012 the bill is being processed by the Ministry of Justice and the Police and is expected to be completed in the near future. If the bill is passed, there will be an increased transparency of party income in election years.

All parties are obliged to make public their income reports in a "central register". This register shall "compare the information concerning the party's income and sources of income and make this available to the public in an appropriate manner, for example by electronic means." The Political Parties Act Regulations[858] specifies this further. Statistics Norway (SSB) shall "prepare standardised forms for reporting and make these available in electronic format for entities that are obliged to report" and "make the compared information concerning the parties' income and sources of income electronically available to the general public".[859] This is currently done through partifinansering.no. It is also specified that the information must be electronically available for five years from the reporting date.

However, there is no specific legislation for parties that require parties to also disclose their expenses. In an evaluation report prepared by GRECO, Norway is criticised because one does not require that parties (1) present an overview of their expenses, (2) publicise information on their assets and debts, and (3) establish a standardised format for presenting such information.[860] In their consultative statements to a new bill, both Norwegian press organisations and SSB are positive to mandatory disclosure of expenses by the parties. The press organisations say that it is "essential with transparency at 'both ends' – i.e. both on where the money comes from and what it is spent on."[861] SSB is of the opinion that such reporting will "improve data quality."[862] In their reply to GRECO, Norwegian authorities reiterate that the parties already make public their "expenses (in addition to equity and debt, and other financial information) in accordance with the Accounting Act," and in a new proposal to the Political Parties Act, parties will be obliged to disclose "complete accounts in accordance with the principles of the Accounting Act," which includes "income, expenses, debt and assets."[863]

It appears as though the government has followed the GRECO recommendations in its consultation proposal for new amendments to the Political Parties Act, both in terms of disclosure of expenditure and more transparency on income in election years. It is also expected that the bill will be passed by the Storting, but as of May 2012 it has not entered into force. Maximum points are therefore not awarded for this indicator.

**TRANSPARENCY (PRACTICE)**

*To what extent can the public obtain relevant financial information from political parties?*

Score: 75

Based on the parties' reporting, SSB publishes a summary of the parties' income. These overviews highlight public, private and own income in a lucid and easily understood manner. The parties take no further action to make this information available, but it is very easy to obtain for anyone with an interest in the matter – for example via the partifinansiering.no website. Moreover, the parties are not unaccustomed with making public their expenses related to campaigns in various newspapers.[864] If the new proposal is adopted, SSB will also be responsible for comparing and publicizing an overview of the parties' expenses. At the same time, access restrictions in legislation (of party spending and disclosure of income in election years) mentioned in the previous section are also applicable in practice. Maximum points are therefore not awarded to the political parties for this indicator.

**ACCOUNTABILITY (LAW)**

*To what extent are there provisions governing financial oversight of political parties by a designated state body?*

Score: 100

Statistics Norway (SSB) is the registrar for reporting of party income and sources of income. The parties may either report their income through a standardized, electronic reporting tool developed by Statistics Norway or, when this is not possible, use "paper-based report that is signed."[865] The parties are however only required to report to Statistics Norway once yearly – more specifically six months after the end of the fiscal year. Until now the parties have only reported the income part (including non-monetary donations) to SSB, but when the new wording of the act is adopted, expenses will also be reported to SSB.

In the new wording of the act it is also intended that the mandate of the Political Parties Act Board be extended. Even though the Board is subject to the Ministry of Government Administration, Reform and Church Affairs, the Ministry cannot instruct the Board in individual cases or reverse the Board's decisions, something that is intended to ensure the Board's independence. By way of an extended mandate the Board may, on suspicion of irregularities, demand the disclosure of all accounts information from those party units that are suspected of being in breach of the rules.[866]

Sanctions are currently limited to the Ministry's opportunity to "withhold support": "The Ministry can impose conditions on payment of public funds to a party or party unit, that these have reported income in accordance with the regulations".[867] GRECO's evaluation report recommends that "suitable (flexible) sanctions be introduced for all types of breaches of the Political Party Act, in addition to the current selection of sanctions".[868] GRECO pointed out that the limited opportunities for sanctions could result in the "right" reaction in some cases not being proportionate to the severity of the breach. The new proposal opens for different sanctions: (1) formal warnings, (2) withholding of parts of support, and (3) administrative confiscation in the case of illegal donations. GRECO thus concludes that their "recommendation [has been] partly implemented".[869] The reason GRECO "only" says partly implemented is that four of the six proposed measures this applies to – pending the Storting's adoption of the proposed amendment – have not entered into force. The proposals that will be submitted in the amendment, and which the Ministry of Government Administration, Reform and Church Affairs has submitted to GRECO, is considered by GRECO to fully satisfy all six recommendations.

**ACCOUNTABILITY (PRACTICE)**

*To what extent is there effective financial oversight of political parties in practice?*

Score: 100

Almost all party branches with an income above NOK 10,000 report their income annually to Statistics Norway. Statistics Norway's website – and partifinansering.no – publicise the parties' income every year. The basis for the statistics that are presented is last year's reports for all party branches. The reporting deadline was 1. July, and by this deadline 93 percent of all party branches had responded.[870] For the major parties, the response figure is even better.[871] In addition to not all party branches reporting their income, there is some uncertainty related to the material's reliability. This is mainly related to whether "income has been declared correctly" but it is also "uncertain whether all income has been declared in the form".[872] Moreover, party branches with income of less than NOK 10,000 are not required to declare their income. The overview's totals are therefore somewhat lower than they are in reality. However, the overview provides a relatively accurate picture of the parties' incomes.

Everything indicates that the regulations are carefully followed in practice. The parties that fail to comply with the deadlines for reporting lose party support. In 2010 this happened to 111 party branches.[873] In October, "… based on information from SSB" a warning of "a possible decision to withhold party support to 102 branches" was distributed. The rules are strictly enforced, so "only 4 branches provided explanations that led to the cases being dropped". Thus "first 98 party branches were informed in December 2010, before a further 13 were notified on 9 February 2011," which represents an increase of 2 party branches from the previous year.[874] The fact that so many party branches lost support was published in several newspapers.[875] It is also possible to identify the party branches at the *Political Parties Act Board* website.[876]

**INTEGRITY (LAW)**

*To what extent are there organisational regulations regarding the internal democratic Governance of the main political parties?*

Score: 100

All of the Norwegian parties have articles of association or regulations that to a varying degree regulate the parties' activities, such as election of party leader, nominations and other internal democratic processes, e.g. in connection with preparing the party programme.

The national congress is the party's highest authority in all Norwegian parties in the Storting.[877] The national congresses comprise delegates that primarily have been dispatched from their respective county branches. In some parties representatives from other party bodies attend, as well as the parties' Storting representatives and any cabinet ministers. A party leader is elected at these national congresses following a proposal from a nomination committee.

Until 2002 Norway was one of few countries that had a separate statute – first the Nomination Act of 1920, which then was included in the Election Act of 1985 – for nomination rules.[878] Currently the "parties' nomination meetings […] regulated through the parties' articles of association".[879] This applies to nomination to municipal, county and parliamentary elections. The regulations deal with both practical and fundamental aspects of the nomination process.[880] In the case of nominations for local elections, all members have access to these meetings, but some parties require that one has been a member for a certain period of time before being eligible to vote at the nomination meetings. At parliamentary elections, delegates are first elected locally, who subsequently participate at nomination meetings at the county level. Compared to a number of other countries, the Norwegian nomination schemes emerge as "excluding," because it is delegates (rather than members and voters) who actually nominate, and "local" because the nomination process takes place locally.[881]

In terms of authority to decide the party programme, this is with the national congress for all parties. At the national congress delegates who either represent the county branches or hold other positions on behalf of the party attend (e.g. cabinet ministers or parliamentary representatives). This is specified in detail by all parties. However, with respect to the process that leads to the national congress voting on a new programme, this is described with varying degrees of detail in the parties' articles of association. Some parties describe the process in minute detail (the Centre Party, the Liberal Party, the Labour Party), while others are somewhat less detailed (the Christian Democratic Party, the Socialist Left Party, the Conservative Party and the Progress Party).

**INTEGRITY (PRACTICE)**

*To what extent is there effective internal democratic governance of political parties in practice?*

Score: 100

It is difficult to assess the degree of internal democracy in the political parties. We know that non-members have made sceptical comments on the character of the parties' internal democracy.[882] However, Norway is one of few countries where

research-initiated party member surveys have been carried out on a regular basis. The most recent member survey was carried out in 2009. Here, members were asked to consider a number of questions related to their respective parties' internal democracy. The results, however, do not provide any clear answers. On the one hand there are relatively few who are of the opinion that the party leadership has too *much* power or that the party leadership does not pay enough attention to its members.[883] No parties have more than approximately 20 percent who believe this. On the other hand, a large proportion of members "agree" or "somewhat agree" that "personal contacts" are "essential… to influence decisions by the central party leadership". Well over half of all members in all parties are of this opinion. We should nevertheless take caution when interpreting these figures. After all, the question has dealt with the opportunity to influence decisions in "central party leadership," which is something else than the opportunity to influence the parties' programmes, election of a party leader and nomination of the party's candidates.

In terms of nominations in practice, it has been claimed that "it is not uncommon that groups in the party present motions from the floor at the meeting that disrupt the committee's ranking. […]" The conclusion has therefore been that "… the Norwegian nominations are democratic in the sense that they are "responsive" to the preferences of local branches. Attempts at intervention from central quarters are not well received".[884]

How the party programmes are developed in practice and to which degree such a process complies with the ideal of well-functioning internal democracy, are difficult to determine. In Norway this has been studied in connection with welfare cases in general and pension and poverty policy more specifically. It is emphasised that a majority of parties had "formalised consultation routines" both within and outside of their own organisation.[885] Eventually a final, revised proposition is presented to the national congress. If we delve deeper into the actual process prior to consideration by the national congress, there is a varying degree of member influence on important welfare policy issues. For example, according to Allern, Bay and Saglie, the "technical nature" of the pension reform caused the grass roots of the parties to be partly excluded from the process.[886] Thus the "government apparatus" and experts for the parties not in government" had a disproportionate influence.[887] However, on the poverty issue there was far more grass roots involvement, so that it is difficult to paint a uniform picture of the parties' quality of internal democracy. The fact that some policy fields emerge as very complex may in any case pose a threat to real democratic support in the parties' own member organisations. However, this is not unique to Norway and Norwegian parties.

## INTEREST AGGREGATION AND REPRESENTATION

*To what extent can the parties be said to aggregate and represent relevant social groups and political opinions?*

Score: 100

The extent to which political parties aggregate and represent relevant social groups and political opinions in Norwegian society is, in common with the previous question, a complex one to answer.

However, recent research indicates that the parties' ability to articulate and execute policy (policy-capacity) has increased, and that the party organisations still act as an instrument to aggregate differing interests.[888] Even though the parties' total membership figures have dropped from around 400,000 to around 160,000 over the course of the past twenty years and very few members participate in "study circles" organised by the parties, the parties' capacity for policy articulation has been reinforced in recent years thanks to the strengthening and professionalising of the parties' central organisational bodies.[889] Several of the parties also use opinion polls to survey voters' views on a number of contentious political issues, and they also contact different interest groups when drawing up new party programmes. This may be interpreted as though the parties are responsive toward voter views, but it may also be viewed as though the parties fail to aggregate preferences by themselves and thereby are reduced to a medium for "special interests."

With respect to the representation of different social interests, a relatively pluralistic party system leads to numerous social groups being represented in the party political decision process and public life. It may nevertheless be considered a problem that no new parties have managed to establish themselves in the Storting since 1973. This may either mean that the position of the dominant parties complicate or even preclude real competition for voters, or it may be interpreted such that the dominant parties are capable of adapting to the voters' opinions. The fact that there are few indications of ideological convergence among the political parties viewed as a whole, supports the latter assertion.[890] The voters thus have a broad range of political package solutions to choose between when the parties run for election. However, there are exceptions in parts of the economic policy and more recently in foreign policy issues. While the Progress Party and the Socialist Left Party have moved towards the centre in economic issues from the far right and far left respectively[891], the Socialist Left Party's participation in government has also caused opposition to foreign policy to be neglected in political debate and in the elected assembly. For example, in an opinion poll from 2008, 45 percent responded that they were opposed to the participation of Norwegian soldiers in the conflict in Afghanistan, but this attitude is not distinctly expressed by any of the parties in the Storting.[892] Nevertheless, it must be concluded that the Norwegian parties to a great extent facilitate the representation of different social groups in party politics.

**ANTI-CORRUPTION COMMITTMENT**

*To what extent do political parties give due attention to public accountability and fight against corruption?*

Score: 50

The fight against corruption is not prominent in Norwegian political debate. The reason is probably because no parties feel that corruption issues are among the greatest challenges facing Norwegian society. GRECO's recommendations in relation to more insight into party financing as a measure to combat corruption were nevertheless well-received by Norwegian authorities.[893]

Combating corruption is not completely absent from the parties' programmes and manifestos, but there are some differences between the parties. In the government platform of the incumbent centre-left government, the fight against domestic corruption is not afforded much attention. Here it is mentioned only in relation to the situation in other countries. More specifically, it is stated that the government has "zero tolerance towards corruption" and that it will "contribute to strengthen the ability of poor countries to implement the international regulations against corruption in national legislation".[894] A review of the party platforms also reveals that the main focus is on corruption in poor and developing countries.

All of the parties seem to be more concerned with fighting corruption in countries that receive aid from Norway – so-called "recipient countries" – than with fighting corruption at home. The Labour Party wants international efforts "to a greater extent [must] be linked to… work against corruption and demands for democracy reforms in recipient countries".[895] Corresponding wordings are found with the Conservative Party, which states that the party will "tighten requirements towards the development of democracy and the fight against corruption in recipient countries".[896] The Christian Democratic Party is of the opinion that "it is important that there is good control of all aid, and [that] corruption must be combated".[897] The Centre Party claims in the section on the United Nations that "corruption at all levels is one of the greatest obstacles in the work against poverty and for more equitable distribution".[898] The Socialist Left Party also emphasises corruption as one of several reasons for poverty.[899] The Liberal Party links the fight against corruption to a well-functioning constitutional state. The Progress Party mentions the struggle against corruption only once, and this is in connection with the party wanting to "prevent Norwegian aid from contributing towards corruption," without being more specific on how this is to be achieved.[900]

Some of the parties are however significantly more specific than others. Several measures are proposed in connection with this. None of the three largest parties – the Labour Party, the Conservative Party or the Progress Party – are very specific.

Least specific are the parties to the right, where there is barely a single practical proposal. This may however be due to the parties using differing levels of detail in their programmes. The Christian Democratic party believes that "budget support must be given with conditions on openness and transparency" defined as e.g. "actual parliamentary consideration and broad publication of the government budget".[901] The Centre Party mentions several measures to deal with corruption; (1) "secure welfare states are vital to dismantle a culture of corruption," (2) ensure that Norway "remains a driving force for efficient measures against corruption, money laundering and tax havens" and (3) "work for open information on capital movements and binding guidelines for corporate social responsibility for corporations to prevent corruption through foreign corporations".[902] The Socialist Left Party is of the opinion that corruption can best be fought through entering into bilateral aid agreements with the government to "demonstrate a clear attitude towards the corruption issue".[903] The party is also opposed to tax havens because these "act as enablers for corruption." Work should therefore be carried out at an international level to implement "global regulations for public insight into tax havens".[904] The party also wants Norway to "work to commit countries, corporations and international organisations to combat corruption, not least in connection with oil and other exploitation of natural resources in poor countries".[905] The Liberal Party also focuses on tax havens, and the party will therefore "intensify the battle against tax havens that do not practice transparency".[906] This will take place by "intensifying anti-corruption work in developing countries through developing and strengthening national auditing agencies and through strengthening the Extractive Industries Transparency Initiative (EITI)"[907], so that aid funds are assessed based on the recipient countries' "willingness to introduce democracy […] and to fight corruption".[908]

Compared to fighting corruption in other countries, even less space is dedicated to domestic corruption. Here too there are some exceptions and variations between parties. Corruption issues and proposals for fighting corruption are most widely discussed in the programmes of the Christian Democratic Party, the Socialist Left Party and to a lesser degree of the Labour Party. The Christian Democratic Party, for example, calls for "intensifying efforts against corruption in society" as one of several issues in the section on challenges facing Norwegian democracy.[909] The party writes that "all forms of corruption must be exposed and counteracted," and the party states earlier on in the programme that "corruption and economic crime are a problem in all areas of society".[910] The measures that are proposed in various places in the programme to counteract this are a strengthening of "investigation of economic crime", "transparency and access to information in administration…," protection of freedom of speech and stimulation of "public debate… through providing the media with good framework conditions. The party also proposes increasing "government support to the political parties" in order to "counteract unfortunate links between individuals, busi-

nesses, trade unions and the political parties." The Socialist Left Party states that "work in the black economy, laundering of money, corruption and tax and duty evasion is theft from society"[911], and that it thus represents "a serious problem".[912] The party therefore wishes to "strengthen efforts against economic crime"[913], "by strengthening courts"[914], and "ensuring protection for whistleblowers"[915] and "banning secret golden handshakes".[916] The importance of ensuring "protection for whistleblowers" was emphasised in a report prepared by consultants PriceWaterhouseCoopers in 2009.[917] The Socialist Left Party is also the only party that includes "corruption" in the programme index. To be sure, a number of these items concern international conditions, but it nevertheless demonstrates the importance of this issue to the party. Below the paragraph on "values and entitlements," the Labour Party states that the Party will "intensify the fight against corruption both domestically and internationally"[918]. Among other things, this will be achieved by "intensifying the fight against work in the black economy, the informal sector, organised crime, corruption and tax and duty evasion by strengthening expertise and cooperation between the police, tax authorities, labour inspection authorities and NAV".[919] However, this is not specified further. The Centre Party and Liberal Party programmes do not discuss corruption to any great extent. The Centre Party mentions it only in connection with the need for "good control routines to prevent corruption and a negative culture" in the Armed Forces.[920] The Liberal Party emphasises combating corruption, as previously mentioned, in connection with the struggle for "a liberal social system". According to the Liberal Party, such a system will contribute to the "distribution of power and transparency on the exercise of power," which in turn will prevent "authoritarian policies, the abuse of power and corruption".[921] Neither the Conservative Party nor the Progress Party discuss domestic corruption directly in their programmes.

816 "25 lists proposed for the parliamentary election," *NRK.* URL: http://www.nrk.no/nyheter/1.6567196. Last visited 30/11/2011

817 *Register of Political Parties.* URL: http://w2.brreg.no/partireg/. Last visited 30/11/2011

818 See the website of the *Ministry of Local Government and Regional Development*. URL: http://www.regjeringen.no/upload/KRD/Kampanjer/valg2011/Generell_Statistikk_til_PM_16082011.pdf. Last visited 30/11/2011

819 Allern (2010).

820 Aardal (2010).

821 Rasch (2010).

822 Heidar (2008).

823 See Norsk Retstidende 1997 p. 1821 (statements on p. 1833 and 1837)

824 Representation of the People Act Section 6-1 No. 2.

825 Representation of the People Act Section 6-3 No. 1.

826 Act of 17/06/2005 No. 102: Act on certain aspects relating to the political parties (the Political Parties Act).

827 In Denmark, for example, the signatures of 1/175 of the number of electors in the last parliamentary election is required, which corresponded to 19,769 signatures in 2011. See "Opstilling til valget", information at Folketinget.dk, URL: http://www.ft.dk/Undervisning/Folketingsvalg.aspx. Last visited 19/01/2011

828 Political Parties Act Board, URL: http://www.partilovnemnda.no/hovedEnkel.aspx?m=50553. Last visited 28.11.11.

829 Official Norwegian Report NOU (2004:12).

830 That is, the party's central youth, county, county youth and municipal organizations. The condition is that the party organization (or parent party organization for youth organizations) has received votes at the last election. Support is paid from the first vote. Unregistered groups/lists do not receive support regardless of the number of votes.

831 Ibid:12.

832 Allern (2010).

833 Statistics Norway, URL: http://www.ssb.no/partifin/ Last visited 31/08/2011.

834 The Christian Democratic Party generates almost one third of its own income, while the Progress Party obtains only 10 percent of its financial means from own activities. Also, the Christian Democratic Party does not receive any significant contributions from external sources, while the Labour Party receives almost 4 percent from external sources (primarily the Norwegian Confederation of Trade Unions, LO).

835 See table "Kun hovedorganisasjonen. Bidrag fra organisasjoner, foreninger, foretak og lignende 1998-2010. 1 000 kroner." *Statistics Norway.* URL: http://www.ssb.no/partifin/tab-2011-08-31-03.html Last visited 31/08/2011.

836 See e.g. "Fortsatt forbud mot politisk TV-reklame i Norge." [Continued ban on political TV advertising in Norway] *Press release.* 11 March 2009. No.: 31/09. URL: http://www.regjeringen.no/nb/dep/kud/pressesenter/pressemeldinger/2009/fortsatt-forbud-mot-politisk-tv-reklame-.html?id=548607

837 Allern (2011:310).

838 Brække and Pedersen (2009)

839 Krogstad (2004).

840 Act of 17/06/2005 No. 102: Act on certain aspects relating to the political parties (the Political Parties Act).

841 See Norsk Retstidende 1997 p. 1821 (statements on p. 1833 and 1837)

842 About the freedom to form a union. In *Store norske leksikon*, URL: http://snl.no/foreningsfrihet Last visited 11/09/2011

843 Also see Haugen (1995).

844 Jon Wessel-Aas, lawyer and board member of the International Court of Justice's Norwegian section (ICJ-Norway), stated the following in a feature in 2009: "Even the 'legal' potential for misuse is obvious, both in relation to impacting many innocent citizens through 'mistakes', and in the worst case through more or less conscious political surveillance." (Wessel-Aas (2009))

845 Ystad (1997).

846 This does not mean that Norwegian politicians do not experience threats as a result of their political activities in daily life. A summary in *Aftenposten* on 15 August 2011 – "Vil ikke la seg isolere" [Refuses to be isolated] – showed that 11 politicians – several of them party leaders – have received threats of violence or murder.

847 It is true that Turid Thomassen, the leader of Red, was arrested on charges of civil disobedience on 6 July in connection with a demonstration against the building of pylons in Hardanger. She and a number of other activists were fined by the police after "preventing Statnett's pylon workers from getting to work". However, Thomassen appeared to be aware of the consequences this campaign would have, and she told Dagsavisen that she was "extremely proud of participating in the campaign" and that she felt obliged to use such "strong measures" because "the decision to build pylons … [was] neither democratic nor based on facts." See story "Ni aksjonister tatt i Hardanger" [Nine protesters arrested in Hardanger] in *Dagsavisen* 7 July 2011, p. 14.

848 Document no. 15 (1995-1996:1127).

849 See Åpen trusselvurdering 2012. Politiets sikkerhetstjeneste, [Open threat assessment 2012. Police security service] URL: http://www.pst.politiet.no/Filer/utgivelser/trusselvurderinger/PSTsTrusselvurdering2012.pdf. Last visited 19/01/2012.

850 According PST the term extreme refers to "... the attitude towards the use of violence. An extreme person or group accepts the use of violence to achieve political, religious or ideological objectives. Extremism therefore reflects only the choice of means and not the goal. " See p. 4 in *Åpen trusselvurdering 2012*.

851 The only ones exempt from this obligation to report are "parties or party branches" who had total income of "less than NOK 10,000 following deduction of all public support.

852 URL: http://www.partifinansiering.no/retningslinjer.pdf. Last visited 28/11/2011 GRECO also concludes that the "recommendation […] has been satisfactorily implemented" in its follow-up report. Greco RC-III (2011) 2E. Tredje evalueringsrunde. Oppfølgingsrapport om Norge. [Third evaluation round. Follow-up report on Norway.] URL: http://www.regjeringen.no/upload/FAD/Vedlegg/Partifinansiering/ GRECO_oppfolgingsrapport_no.pdf. Last visited 28/11/2011

853 "Tredje evalueringsrunde. Evalueringsrapport om Noreg om transparens/innsyn vedrørande partifinansiering" [Third evaluation round. Evaluation report on Norway concerning transparency/insight concerning party financing] prepared by the *Directorate General of Human Rights and Rule of Law* (GRECO). URL: http://www.regjeringen.no/upload/FAD/Vedlegg/ Partifinansiering/Greco%20Eval%20III%20Norway.pdf, p. 21. Last visited 28.11.11

854 The Political Party Act Section 19, fourth paragraph.

855 Ibid.

856 See p. 4 in "Greco RC-III (2011) 2E. Tredje evalueringsrunde. Oppfølgingsrapport om Norge. [Third evaluation round. Follow-up report on Norway.]

857 Ibid.

858 Regulations on certain aspects relating to the political parties (The Political Parties Act Regulations).

859 Ibid.

860 See p. 23-24 of Tredje evalueringsrunde. Evalueringsrapport om Noreg om transparens/ innsyn vedrørande partifinansiering" [Third evaluation round. Evaluation report on Norway concerning transparency/insight concerning party financing] prepared by the *Directorate General of Human Rights and Rule of Law* (GRECO).

861 "Endring av partiloven som følge av Europarådet v/GRECOs evaluering av partifinansieringen i Norge – høringsuttalelse" [Amendments to the Political Parties Act as a result of the Council of Europe c/o GRECO's evaluation of party financing in Norway – consultation statement] authored by the Norwegian Union of Journalists, the Norwegian Press Association and Mediebedriftene. URL: http://presse.no/content/download/2075/16728/file/ hørings- uttalelse%20NP,%20NJ,%20MBL.pdf, p. 1. Last visited 28.11.11.

862 See Statistics Norway consultative statement «Forslag til endringer i partiloven som følge av Europarådet v/GRECOs evaluering av partifinansieringen i Norge. Høringsuttalelse til Fornyings-, administrasjons- og kirkedepartementet» [Proposed amendments to the Political Parties Act as a result of the Council of Europe c/o GRECO's evaluation of party financing in Norway. Consultative statement to the Ministry of Government Administration, Reform and Church Affairs.] URL: http://www.ssb.no/omssb/ horing/2011-02-10-01.htm. Last visited 28/11/2011

863 See p. 67 in *Høringsnotat – forslag til endringer i partiloven (lov 17.6.2005 nr. 102) som følge av Europarådet v/GRECOs rekommandasjoner Departementets forslag til endringer i loven, [Consultation memo – proposals for amendments to the Political Party Act as a result of the Council of Europe's c/o GRECO's recommendations. The Ministry's proposals for amendments to the act]*, URL: http://www.regjeringen.no/upload/FAD/Vedlegg/ Partifinansiering/Partiloven_ Greco_notat.pdf Last visited 22/03/2012.

864 See e.g.> "Sp har lavest valgkampbudsjett" [The Centre Party has the lowest campaign budget] in *Dagsavisen* 3 June 2011, p. 10.

865 Regulations on certain aspects relating to the political parties (The Political Parties Act Regulations).

866 See Greco RC-III (2011) 2E Tredje evalueringsrunde. Oppfølgingsrapport om Norge. [Third evaluation round. Follow-up report on Norway.]

867 Regulations on certain aspects relating to the political parties (The Political Parties Act Regulations).

868 See p. 24 of *Tredje evalueringsrunde. Evalueringsrapport om Noreg om transparens/ innsyn vedrørande partifinansiering" [Third evaluation round. Evaluation report on Norway concerning transparency/insight concerning party financing]* prepared by the Directorate General of Human Rights and Rule of Law (GRECO).

869 See p. 3 See *Greco RC-III (2011) 2E Tredje evalueringsrunde. Oppfølgingsrapport om Norge. [Third evaluation round. Follow-up report on Norway.]*

870 See website *Politiske partier, finansiering, 2010,* URL:http://www.ssb.no/partifin/ Last visited 31/08/2011. For the major parties it is almost 100 percent, but only in the Progress Party have all the party branches submitted the report. The lowest is in the Labour Party with 95.9 percent.

871 For the larger political parties it is almost 100 per cent, but it is only the Progress Party that has the reports from the local departments. The lowest score come from the Labour Party with 96,9 per cent.

872 See pages "5. Feilkilder og usikkerhet – 5.1. Måle- og bearbeidingsfeil» på SSBs hjemmesider. URL: http://www.ssb.no/vis/partifin/om.html. Last visited 24/11/2011

873 Political Party Act Board: "111 partilag mister partistøtten i 2011" [111 party branches lose party support in 2011]. URL: http://www.partilov- nemnda.no/fagom.aspx?m=58860&amid=3476239. The document was published 21/12/2010 and updated 01/03/2011.

874 Ibid.

875 Including in *Dagbladet's and Dagens Næringsliv's* online editions: "102 partilag mister partistøtte", and in the paper edition of *Kommunal Rapport* (10/11/2010).

876 See http://www.partilovnemnda.no/fagom.aspx?m=58860&amid=3476239. Last visited 24/11/2011

877 *Articles of association 2011,* Adopted at the Progress Party's national congress 13 - 15 May 2011*; The Christian Democratic Party statutes,* amended at the Christian Democratic Party's national congress 30 April - 3 May 2009; *The Centre Party's articles of association* (Adopted at the 1975 national congress, amended at the national congress in 2011.)*; The Liberal Party's articles of association.* Adopted by the Liberal Party national congress 6-8 March 1981 and last revised at the 2011 Liberal Party national congress 2011; *Articles of association for the Socialist Left Party/ Sosialistalaš Gurotbellodat*. Adopted at the national congress 2011; *Articles of association for the Labour Party. Adopted by the Conservative Party's 1970 national congress. Last amended by the 2008 national congress.of Labor.* Articles of association and guidelines adopted by the Labour Party's 63rd ordinary national congress 2011; *The Conservative Party statutes.* Adopted by the Conservative Party's 1970 national congress. Last amended by the 2008 national congress.

878 Narud (2008:16).

879 Christensen, Midtbø, Ringkjøb and Aars (2008:68).

880 Ibid:68.

881 Narud (2008:14).

882 Allern (2010).

883 Unpublished figures from the 2009 member survey provide some answers. With regard to the statement that it was a problem for the party that the leadership was too strong, there were relatively few who agreed or were somewhat agreed with this. Figures for all parties are between 21,7 percent (the Liberal Party) and 7 percent (the Socialist Left Party). When asked whether the central party leadership is good at listening to ordinary party members' views on various issues, skepticism is greatest in the Conservative Party (16.4 percent) and least in the Centre Party (3.9 percent) and the Progress Party (5.1 percent).

884 Narud (2008:17).

885 Allern, Bay and Saglie (2009:50-51).

886 Ibid., p. 61

887 Ibid., p. 61

888 Allern (2010:153).

889 Ibid:149.

890 Ibid. p. 153

891 See e.g. Valen and Narud (2004:38).

892 NTB (2008). The Socialist Left Party's chief whip did however state in a debate in the Storting on 26 April 2011 that "… The Socialist Left Party … is of the opinion that Norway should discontinue its military participation as soon as possible". The point is that this view is rarely presented in Norwegian society in the interests of cooperation in the current government.

893 The then Minister of Government Administration and Reform Heidi Grande Røys said in 2009 that "Several of the demands GRECO has presented contribute… to consolidate democracy." URL: http://www.regjeringen.no/nb/dep/fad/pressesenter/pressemeldinger/2009/parti- regnskap-skal-bli-apnere.html?id=557334. Last visited 28/11/2011.

894 *Political platform for the majority government composed of the Labour Party, the Socialist Left Party and the Centre party, 2009 – 2013*, p. 10.

895 *The Labour Party party programme 2009-2013*, p. 58.

896 *Muligheter for alle [Opportunities for all]*, The Conservative Party's parliamentary election programme 2009–2013, p. 64.

897 *The Christian Democratic Party: Political programme 2009-2013.*, p. 47.

898 *The Centre Party's platform and action programme 2009 – -2013*, p. 133.

899 *The Socialist Left Party's working programme for the 2009-2013 period*, p. 94

900 *The Party of Progress action programme 2009-2013*, p. 30. The Party does however mention that research has shown that aid promotes corruption, but there is no information on what this research is based upon.

901 *The Christian Democratic Party: Political programme 2009-2013.*, p. 47

902 *The Centre Party's platform and action programme 2009 – -2013*, p. 133-34

903 *The Socialist Left Party's working programme for the 2009-2013 period*, p. 95

904 *The Socialist Left Party's working programme for the 2009-2013 period*, p. 97

905 *The Socialist Left Party's working programme for the 2009-2013 period*, p. 99

906 "Frihet og ansvar: Et sosialliberalt samfunn" [Freedom and responsibility. A social-liberal society.] The Liberal Party's parliamentary election platform 2009-2013., p. 92

907 Ibid:93.

908 Ibid:93.

909 The Christian Democratic Party: Political programme 2009-2013., p. 96

910 Ibid:24.

911 The Socialist Left Party's working programme for the 2009-2013 period, p. 24

912 Ibid:39.

913 Ibid:24.

914 Ibid:39.

915 Ibid:46.

916 Ibid:46.

917 "Det meste av korrupsjonen i Norge foregår i det offentlige" [Most corruption in Norway is in the public realm], URL: http://www.anskaffelser. no/nyheter/2010/08/det-meste-av-korrupsjonen-i-norge-foregaar-i-offentlig-sektor. Last visited 28/11/2011

918 *The Labour Party party programme 2009-2013*, p. 62

919 Ibid:48.

920 *The Centre Party's platform and action programme 2009 – -2013,* s. 122.

921 "Frihet og ansvar: Et sosialliberalt samfunn" [Freedom and responsibility. A social-liberal society.] *The Liberal Party's parliamentary election platform 2009-2013*. p. 71.

# 10. Media

# 10. Media[922]

**SUMMARY**

There is a wide range in what the Norwegian media offer, at least when viewed against the size of the country's population. Government interventions such as support to the press and limitations on ownership of the media are important tools which assist in safeguarding the breadth of what is on offer, in an increasingly tough competitive situation for the media. This particularly applies to the printed media. Furthermore the independence of the Norwegian media is well secured both formally and in practice. The independence of the media also applies when we look at the control of the media, and the Norwegian system is characterised by a high degree of self-control through the Press's Professional Committee (PFU). A complaint against Norwegian media is that they scrutinize each other only to a limited extent. It may also be noted that the media's own Code of Conduct says very little about what should be transparent regarding the newspapers' editorial policy and in what way (on the website, annual report, etc.). As the "fourth estate", the Norwegian media appear as both good and bad according to the criteria which are relevant in this study. The Norwegian media work well in the sense that they have played an important role in putting the subject of corruption in Norway on to the agenda, revealing cases of corruption and increasing people's awareness of the subject, while the coverage of political affairs and government activities can be improved. There is a great deal of focus on the individual personality rather than the matter in hand, and coverage sometimes gives an impression of the herd mentality rather than applying their own approaches. For the Norwegian media to continue to be able to reveal cases of corruption and to operate sound investigative journalism in general, it is important to ensure good framework conditions. Strengthening of the Freedom of Information Act and the rights of the whistleblower will be important measures in these cases.

The table below shows the total score for the media. The qualitative assessments that form the basis of the score for each indicator is provided in the following pages.

| Media<br>Overall score: 96/100 | | | |
|---|---|---|---|
| | **Indikator** | **Law** | **Practice** |
| **Capacity 100**/100 | Resources | 100 | 100 |
| | Independence | 100 | 100 |
| **Governance and Management 96**/100 | Transparency | 100 | 100 |
| | Accountability | 100 | 100 |
| | Integrity mechanisms | 100 | 75 |
| **Role 92**/100 | Investigation and exposure of corruption cases | 100 | |
| | Informing the public of the effects of corruption | 100 | |
| | Informing on the activities of the authorities | 75 | |

## STRUCTURE AND ORGANISATION

Today's Norwegian media are largely independent of the government. The exception is within broadcasting where there is one government-owned channel, the Norwegian Broadcasting Corporation (NRK). Furthermore the government, through its licensing institute, controls who can operate a broadcasting service. For the press media there is complete freedom of establishment. Moreover there are legal provisions which limit increases on the ownership side in the Norwegian media. Within the broadcasting and newspaper markets today there are four major owners. Control of the Norwegian media is primarily characterised by self-policing through the Press's Professional Committee (PFU). The Norwegian Media Authority supervises the market and ownership conditions in the daily press and broadcasting and ensures that these are in conformity with the Media Ownership Act and the Broadcasting Act.

## CAPACITY RESOURCES (LAW)

*To what extent does the legal framework provide an environment conducive to a diverse independent media?*

Score: 100

The legal framework provides a sound basis for a diverse and independent press.

It follows from the Norwegian Constitution that the government shall arrange for an open and informed dialogue (Article 100). In this respect the requirement for

general broadcasting, support to the press and control of ownership of the media are important government instruments. The administration of these is seen as a part of government's responsibilities.[923] The legal provisions on freedom of speech, notification, and the Freedom of Information Act also contribute to ensuring a critical and independent press.

A licence is required to operate terrestrial (analogue and digital) broadcasting and local broadcasting services, except for the Government Broadcasting Service (NRK).[924] There are no corresponding provisions for the newspaper media and they have full freedom of establishment. A fundamental reason for the licensing institute is that conditions are laid down for the issue of licences, whereby the general broadcasting channels (TV2, P4 and Radio Norway) commit themselves to offering a varied menu of programmes in which a series of different types of programmes shall be represented.[925] The Media Ownership Act gives the government, through the Norwegian Media Authority, powers (Section 9) to intervene in the purchase of ownership in companies which operate newspapers, television or radio where the purchaser alone, or in cooperation with others has or will have a considerable share of the ownership[926] in the national or regional media market, and this is in conflict with the Act's Section 1 which is "to promote freedom of expression, genuine opportunities to express one's opinions and a comprehensive range of media".

Government support to the press is an important instrument for ensuring the diversity of opinion in the media landscape. The main elements of the support to the press are: grants for production for smaller newspapers, newspapers which are in second place in their place of publication and so-called newspapers of opinion with a circulation below a certain limit. In addition the newspapers are generally exempted from the payment of Value Added Tax.

In 2010 the government appointed media support committee issued an analysis of today's arrangements for support. A general conclusion was that government's responsibility for infrastructure and the failure of the market continue to legitimise an active government media policy where measures of support are thus necessary to ensure that the population has wide access to news and pubic debate of a high quality. A question on which the committee was divided was whether the exemption from Value Added Tax for printed newspapers should be continued or not, or whether VAT on printed newspapers and a new support scheme based on editorial costs should be introduced. The committee therefore forwarded two comprehensive proposals for future media support that differed in this respect.[927] As of March 2012 the politicians have not amended the current system.

No conditions have been attached to the support that the newspapers receive. For public broadcasters there is a Public Broadcasting Council which assesses the TV companies' programmes and gives advice on them to the Ministry of Culture.

**RESOURCES (PRACTICE)**

*To what extent is there a diverse independent media providing a variety of perspectives?*

Score: 100

Given that Norway is a small country, there is reason to state that the range in its media diversity is wide, both on the ownership and the business sides.

Norway is amongst those countries in the world with the highest density of newspapers, and few other people, if any, use as much time on reading newspapers.[928] In a study from 2007, with 30,000 respondents, 82 percent replied that they read at least one newspaper daily and the average was 1.9 per person.[929] The Media Ownership Act has a preventive effect in that the biggest media concerns do not extend their ownership beyond the limits set by the Act. It is reasonable to believe, for example, that Schibsted would have bought considerable parts of the Norwegian market had it not been for the Act, but instead they have made investments overseas.[930] Schibsted's establishment of Media Norge[931] in 2008 is a recent example that the law works. A condition was imposed that Schibsted would have to sell out its shares in the Adresseavisen Newspaper Group and reduce its share to 40% in the Harstad Tidende Group in order to establish Media Norge.[932]

A tendency within Norwegian television channels is that the purely commercial channels are increasingly characterised by fiction and entertainment whilst the companies with a public broadcasting profile are pre-occupied with ensuring a certain degree of diversity and giving viewers a real possibility of choice.[933] This suggests that it should be a political goal to ensure that channels with a public broadcasting profile can continue to exist in the future, to ensure that the medium of television does not become a purely entertainment channel - something that has also been pointed out by the Media Support Committee.[934] In 2010 TV viewers were largely distributed between four channel owners: NRK (41 percent), TV2 (23 percent), SBS (9 percent) and MTG (10 percent). Similarly the media groups' ownership share of the press market was distributed between four groups as follows: Schibsted (30 percent), A-press (18 percent), Edda Media (10 percent) and Polaris Media (10 percent). In other words, 33 percent of the newspaper market is outside of the four largest media groups. When one looks at things on a regional level there is also a degree of diversity. The Norwegian Media Authority has divided the country into ten regions and with two exceptions there is no owner who

has over 60 percent ownership of the regional editions – national newspapers are not included here. In total there are over 1,000 newspapers, radio and TV stations and owners registered in the Norwegian Media Authority's media register.

Norway has a politically diverse media, which is also reflected in the newspapers' basic values as they themselves have defined them.[935] Even although the financial crisis led to few closures in the Norwegian media, conditions for Norwegian media organisations have become tougher, and an important reason is the falling-off in advertisement revenues and another is falling revenues from subscriptions. In 2009 between 500 and 600 journalist jobs disappeared and this corresponds to between 5 and 10 percent of the entire stock of Norwegian journalists. The total savings in 2009 probably approached NOK 2 billion (€ 250 million) corresponding to about 8 percent of the media industry's total turnover.[936] A study of the relationship between the media groups and the newspapers concluded that in the eyes of the media groups, the editorial staff should be reduced to an item of expenses which should be kept as low as possible without losing too many readers or advertisers.[937] An increasingly tough market situation with major cuts will necessarily be of significance for the quality of the media coverage, and potentially it will also threaten the width of the coverage. Current support to the press and the provisions regarding limitations on ownership contribute to limiting the effects of this development.

In 2010 and 2011 the Norwegian Union of Journalists (NJ) and the Norwegian Association of Editors conducted joint investigations into how Norwegian journalists and editors experienced the journalistic quality and other things.[938] In 2010 two thirds of respondents stated that the workforce had been cut in the course of the last year. Among these a third stated that the proportion of editorial content had decreased, while a third that said that editorial content had increased. In other words, there does not appear to be any clear change in the share of editorial content, but production volume is not necessarily a reliable measure of quality. On the whole, measuring the quality of what the media delivers is a challenging task. In 2011 74 percent of respondents said that less than one-tenth of the editorial products they produce did not meet what they perceive to be the editorial criteria for good quality. It should be noted that this is the journalists' own quality assessments of their own work.

It is difficult to generalise on the level of competence amongst journalists, but the media expert and the media representative are under the impression that the general picture is a good one. At the same time the media representative points out that there is a clear potential for improvement within certain professional disciplines and the law and finance were highlighted as concrete examples.[939] There are also more recent studies that support this, particularly in terms of financial journalism.[940]

**INDEPENDENCE (LAW)**

*To what extent are there legal safeguards to prevent unwarranted external interference in the activities of the media?*

Score: 100

Overall there are plenty regulations which shall safeguard the media against unwarranted external pressure. Freedom of expression is enshrined in the Norwegian Constitution Article 100, which, amongst other things, gives the general public a general right of access to the activities of the public sector and a ban on precensorship. In the new Penal Code a provision is being introduced regarding the penalties for those who, by way of force, violence, threats or other illegal means intervene in important social institutions' behaviour, including the media.[941] The criminal limitations to journalists' freedom of expression are the racism paragraph, provisions on libel[942] and violations of privacy.[943]

The press's protection of sources is enshrined in the Criminal Procedure Act, Section 125 and the Dispute Act, Section 209 (a) in addition to the European Human Rights Convention, Article 10. But the press's protection of sources is not unlimited. If there are "weighty social interests" that suggest information should be given and that it is of "considerable significance in the clarification of the case" then the court can require that the witness gives the name of the source.[944] New technology and legislation - especially the legislation on terrorism - have however given the police new possibilities for revealing sources that have been promised anonymity by journalists. Thus the Norwegian Union of Journalists and the Association of Norwegian Editors, amongst others, have argued that the protection of sources should be strengthened through more far-reaching provisions on the right of anonymity for sources in journalism, confidentiality and bans on investigations. The government-appointed Method of Control Committee's report of 2009 goes a long way to support this viewpoint.[945]

Editorial freedom has been established practice in Norway for a long time. The Editor poster, which is a statement of an editor's code of conduct and responsibility, came into being in 1953. It also embodies the principle of editorial freedom.[946] In 2008 this was formalised in the Act relating to editorial freedom. The Act states that the owners cannot instruct or overrule the editor in editorial questions, nor familiarise themselves with material before it has become generally available (Article 4 second section). But at the same time there is a limitation in the same paragraph, first section - editorial freedom is valid "within the framework of the fundamental beliefs and basic purpose of the undertaking." The Editor poster has a similar wording.[947] And it is these - the undertaking's fundamental beliefs and purpose - which are determined by the owners. Editorial freedom is valid, in other words, according to the law, within an external framework laid down by the owners.

**INDEPENDENCE (PRACTICE)**

*To what extent is the media free from unwarranted external interference in its work in practice?*

Score: 100

In Norway there is a strong tradition that the owners shall not intervene directly in the editor's daily business, and Norwegian media are by and large free from unwarranted pressure from outside.[948] However, as pointed out in the previous section, the owners have influence in that they lay down the framework for the editor's freedom of operation, hereunder financial and strategic decisions for the undertaking. Furthermore some structures do exist which can indirectly affect how the media can operate. The media companies operate in a market where they are completely dependent on advertising and sponsorship revenues. The owners often impose requirements for profit from the editorial management which also influence the editors' room for manoeuvre.[949] These are issues that are not specific to Norway, but which apply to a greater or lesser extent in many other countries as well. In a study from 2004 amongst Norwegian editors, 70% answered that this conflict between God and Mammon (Stock Exchange and Cathedral) is the one that is going to characterise the Norwegian press in the next ten years.[950]

The journalists' protection of sources currently has a strong position in Norway.[951] The media representative nevertheless mentions that it was not until statutory amendments in the 1980s and 1990s and with the Supreme Court decision in the so-called Edderkoppen case in 1992 that the principle was genuinely accepted in case law.[952] In 2004 the prosecuting authorities demanded that two journalists break their agreement of protection of sources, after the journalists had received confidential information from sources within the police. The case went right up to the Supreme Court and the prosecuting authorities did not win in any of the courts.[953] As mentioned in the previous section a discussion is taking place at the moment on whether protection of sources should be further strengthened, as a result of new technology and legislation. In a case where the police made a seizure from a newspaper journalist in connection with a routine security check, the Ombudsman directed strong criticism against the behaviour of the police in the case in question, and referred, inter alia, to the journalists' protection of sources enshrined in Article 10 of the European Human Rights Convention.[954] This may be taken as an indication that the principle of journalists' protection of sources is still well founded in case law.

## GOVERNANCE AND MANAGEMENT

### TRANSPARENCY (LAW)

*To what extent are there provisions to ensure transparency in the activities of the media?*

Score: 100

Pursuant to the Media Ownership Act Section 13 every person has a duty[955] "to provide the Media Authority and the Media Appeals Board with the information required by these authorities in order to be able to perform their functions pursuant to this Act, among other things in order to (…) contribute to creating greater openness about, awareness or knowledge of ownership in the Norwegian media."

There can be little transparency on what guidelines the owners lay down for the editor's activities, but this is a general feature that is not unique to Norway.

It is difficult to say anything with any certainty on the individual media owners' and media editors' own rules on transparency. The VVP poster and the code of conduct drawn up by the press itself do not specify any constraints on what there shall be transparency about in the newspapers' editorial policy, and in what manner (on websites, annual reports etc) apart from saying that transparency will be shown on the conditions which can influence an editorial staff member's impartiality (point 2.3). The Norwegian Union of Journalists states that in this, there is an expectation that transparency shall be shown as regards the editorial staff members and for the media as a whole.[956]

### TRANSPARENCY (PRACTICE)

*To what extent is there transparency in the media in practice?*

Score: 100

In general terms there is great transparency regarding ownership and financial conditions in the Norwegian media. One area where Norway goes much further than countries further south in Europe is in media companies' revenues from advertising. There is transparency on these in Norway, but media companies' advertising revenues are regarding as a company secret in several European countries.[957]

The Norwegian Media Authority issues a publication every year on ownership in the Norwegian media. As a rule this is finalised at the end of March each year. In addition the authority operates an online database (www.medieregisteret.no) with an overview of ownership conditions within the Norwegian media and this is publicly available for all. The information on ownership in the Media Register is based on

an annual collection of information from Norwegian media companies. The Norwegian Media Authority updates the database on a regular basis.

But when it concerns information on the newspapers' editorial policy (publishing platform, articles of association and mission statement in this respect, editorial profile etc.) it seems that there is some variation between the media houses as to how easily available this information is. The Secretary-General in the Norwegian Press Association (Norsk Presseforbund) has argued on several occasions that there should be as much transparency as possible on this and it would be to the advantage of the newspapers if they could make this information more easily available.[958] Similar signals have also come from the owners.[959]

### ACCOUNTABILITY (LAW)

*To what extent are there legal provisions to ensure that media outlets are answerable for their activities?*

Score: 100

Control of compliance with legislation is through the courts, while the media has a self-policing system that focuses on the ethical framework for media activities. An important reason for this is that the media shall be completely free of government interference. A committee on media responsibility appointed by the government, which studied the regulation of the system of responsibility within the media field, came with its report in June 2011. Some of the committee's recommendations have been met with criticism, and it is thus uncertain today to what extent the recommendations will be followed up by the government. As of today, editors have special responsibility under the Penal Code, Section 431. A majority of the committee argue that this provision should be removed. The proposal has met criticism from, amongst others, the media industry associations, and it is uncertain whether today's provisions will lapse. Whether the owners of media companies will be able to be punished financially (corporate penalties) for editorial choices has also generated discussion. The provision on corporate penalties has been continued in the new Penal Code (which came into force on 1 January 2012), but the threshold for imposing corporate penalties has been, and will remain high.[960]

Government control of the media is limited to supervision of the market and ownership conditions in the daily press and broadcasting – to ensure that these are in conformity with the Media Ownership Act and the Broadcasting Act. This control function is exercised by the Norwegian Media Authority. The media companies are required to report annually on the ownership conditions to the Authority, and in addition they have a duty to provide information to the Norwegian Media Authority (Media Ownership Act, Article 13).

The most important body for supervision of the Norwegian press is the Press's Professional Committee (PFU). The PFU was established by the Norwegian Union of Journalists and its purpose is to monitor and promote ethical and professional standards in the Norwegian press. The Committee consists of seven permanent members where the press is represented by two editors and two journalists and the three others are from outside the press. Both the committee's chairperson and its other members are appointed by the board of the Norwegian Union of Journalists.[961] The Committee handles complaints against all media forms - including the government national broadcasting service (NRK) and releases statements which are made public. As guidelines for its work the committee uses as its basis the Ethical Code of Practice for the Press (VVP) poster, the Advertising Text poster and the Editor poster. Anyone who is affected by the press cover and the work of journalists may complain to the PFU if they think the press has breached the ethical guidelines contained in the VVP poster. In each case the PFU makes a decision as to whether the media being complained about, has followed or overstepped the rules for the ethical code. The Committee's conclusion is published in the form of a statement. The VVP poster contains several provisions on what responsibilities the media have: that the editor has the complete responsibility for the contents of the media (point 2.1), to strive after a wide span and relevance of sources (point 3.2) and erroneous information shall be corrected, and an apology should be published as soon as possible (point 4.13), but no formal requirement for how the apology shall be formulated is set out.

**ACCOUNTABILITY (PRACTICE)**

*To what extent can media outlets be held accountable in practice?*

Score: 100

Today's system of self-policing works in that PFU's decisions are taken into account by the media, but there has been criticism that the PFU has too limited an area of operation.

The Committee for responsibility in the media concluded that today's system of self-policing functions well and that it is an important tool in safeguarding the individual's privacy in their encounters with the media covered by the system, that is the media managed by editors.[962] Furthermore the media representative claims that it is very seldom that the legal provisions on correction and the like are utilised, which shows that the self-policing system works here on this point - the media comply with the PFU's comments.[963]

According to media representative the media industry established PFU as an appeal body in specific cases. Several media researchers have criticized PFU for having a too *limited* area of operation.[964] A review of PFU decisions from the au-

tumn of 2004 to 2007 showed it is very seldom that the PFU deals with complaints which have to do with the media's social mission, see chapter 1 in the VVP poster, but they are very frequently referred to chapter 1 in the acquitting ruling.[965] In light of this it has been claimed from research quarters that PFU today interprets the social mission as a rights and not as an obligation.[966] One can also find support for such a conclusion in a statement from the PFU in connection with a complaint, where some fundamental grounds are set out as follows:

The self-policing which the press operates is, first and foremost, meant to protect the *individual* against offensive and damaging publicity (…) in addition the committee wishes to remind the public that the press has no *duty* to print (…) only a *right* to inform the public what is happening in society. Hence follows the right to opt out, and the right to decide oneself what is worth a review".[967] This can appear to be in contradiction with point 1.2 in the VVP poster which says: "The press safeguards important functions such as information, debate and criticism of society. The press has a special responsibility to ensure that different views can be expressed".

The Secretary-General of the Norwegian Union of Journalists has maintained that the combination of an increasing workload and limited capacity constitutes a major challenge for PFU and its secretariat.[968] Calculations undertaken in a thesis in 2009 concluded that the secretariat which prepares cases has about two working days for dealing with each case, whilst the committee members who have to take a decision on the individual case, have on average about fifteen minutes to deal with each case.[969] The PFU very rarely adopts a position on who is right in a case where there are different versions of the facts. The committee's processing is therefore more characterised by whether or not all parties have had their say, rather than clarifying the facts in the case. PFU is not intended to be an investigative body and nor does it have any opportunity to investigate. In principle the committee can criticise one side in the dispute without the facts of the case first having being established.

There is no tradition in Norway for the media having their own media ombudsman in the individual organisation. Of Norwegian newspapers only Bergens Tidende has had such an ombudsman in the yearsbetween 2004-2010. According to the media representative there has been a general attitude among Norwegian editors that it is they themselves who must stick their necks out and accept inquiries and complaints from the public, and that way of thinking is quite dominant in the Nordic countries.[970] The prevalence of ethical "house rules" also appears to vary. A 2007 study examined 301 Norwegian news media (newspapers, TV and radio) and it turned out that only 27 percent of them had their own written code of conduct. Meanwhile, more than half of the newspapers with a circulation of over 10,000, two of the three national television channels and all national radio

stations have codes of conduct. Furthermore, the review showed that many were recent, which may indicate that more and more news media write down their own codes of conduct. The study points out that there is varying transparency on codes of conduct and that some media companies consider their code of conduct to be a trade secret.[971]

### INTEGRITY MECHANISM (LAW)

*To what extent are there provisions in place to ensure the integrity of media employees?*

Score: 100

There are adequate regulations designed to safeguard the integrity of the employees in the media.

The VVP poster constitutes the ethical foundation for work in the Norwegian press. (printed matter, publications on the Net and radio and TV). Chapter 2 in the VVP contains provisions which are to safeguard journalists' integrity. It is maintained that editorial staff cannot have tasks, offices, financial or other ties which can create conflicts of interest in relation to their editorial work. (point 2.3). Nor can they be " ordered to do anything that contradicts their own convictions" (point 2.5). Furthermore the importance of having distinct lines of demarcation between advertisements and editorial contact is underlined (points 2.6 and 2.7), and one must not permit the sponsoring of editorial activity affect editorial activity, content and presentation (point 2.8)

Many media concerns have their own internal rules which are to be normative for the activities of their employees. In recent years there has been an increased focus on, and an increased awareness of dual roles in the Norwegian media.[972] On the other hand the media industry's own studies show that there is great variation in the degree to which editorial teams have ethical discussions and the like internally, and whether arrangements are made for them. What is a positive feature, in a sense, is that there seems to be a certain correlation between the extent of ethical discussion internally and the size of the editorial team meaning that the bigger the editorial team, the greater the extent of discussion.[973]

**INTEGRITY MECHANISM (PRACTICE)**

*To what extent is the integrity of media employees ensured in practice?*

Score: 75

In a ten-year perspective there has been a clear increase in the number of cases being dealt with by the PFU. Just over 200 cases a year was the norm at the beginning of the 2000s, whilst this has increased to almost 300 by the end of the decade. Despite this increase the number of statements which conclude in a breach of the press's ethical code has remained stable at around 50 a year. The same is true for the number of statements where criticism is made, which is about 10 cases a year.[974]

Generally speaking Norwegian media have a good and broad approach to things. In connection with a study of Norwegian press policy in 2000 a content analysis of ten Norwegian newspapers was made and the conclusion was that: "matters such as information on society, cultural affairs, opinions and debate occupy a central position in Norwegian newspapers. The press, including the small local newspapers, are serious and engaged over a wide field".[975] There also exist informal norms regarding caution as regards public figures' private life which are much stricter than, for example, in England and Germany, and so-called chequebook journalism does not appear to be widespread in Norwegian newspapers.[976] On the other hand, there are examples that journalists on foreign assignments have paid bribes to cover a story.[977] There is reason to question whether there are any types of stories where the end justifies the means, and if so, which ones. Implied: it is so important to get press coverage of the case, that payment of bribes may be justified.

Several professionals and others have directed strong criticism at the media's inability to conduct serious press criticism of each other[978], something that is enshrined as an important element in the role of the press within society, by the media themselves.[979] This is criticism to which the representative from the media to a large extent agrees with.[980] One example is the lack of debate on the media's new political role as directors of the political wordplay in the public domain.[981] At the same time researchers have indicated that this tendency may be about to change.[982]

In a continuation of this, an important and fundamental criticism has been raised against PFU as to how PFU only focuses on individual cases; important and more fundamental questions are not broached and discussed. For example, no assessments in principle, have been made on the media's role in "media drive" situations.[983] The media's varying ability to criticize itself prevents the media from achieving the maximum score for this indicator.

## ROLE

### INVESTIGATION AND EXPOSURE OF CORRUPTION CASES

*To what extent is the media active and successful in investigating and exposing cases of corruption?*

Score: 100

It has to be said that Norwegian media are active and successful in investigating and exposing cases of corruption. The question is rather to what extent conditions are favourable for the media to undertake this type of activity.

Many of the major cases of corruption, fraud and related issues have been uncovered as a result of skilful journalistic work, either by the journalists themselves or by tip-offs from individuals.[984] Cases relating to recent corruption scandals in Norway within the public and private sectors are examples of this.

The representative for the media points to The Foundation for a Critical and Investigative Press (SKUP) as important for the development of the investigative journalism in Norway. SKUP works to improve journalists' competence in investigative journalism, e.g. through its annual conference and other professional courses and arrangements. The annual SKUP prize given by the Norwegian press for excellent investigative journalism is assumed by the media representative to raise the status of investigative journalism within the profession.[985]

The Professor of Journalism interviewed in connection with this study has the impression that there are plenty of journalists with adequate competence in investigative journalism. The question is rather whether there are enough editorial leaders who "dare" prioritise it and invest enough resources in it.[986] Limited resources are, if not one of, perhaps the biggest threat to the conditions for existence of investigative journalism. In a study from 2009 nearly all editors and journalists in the newspapers studied, expressed bad conscience in that too few resources were being allocated to investigative journalism. The most important explanation for this was the increased requirements for productivity from owners, which result in newspapers having few or no resources for investigative journalism.[987]

Another question is whether the legal framework allows the media adequate instruments to undertake investigative journalism, including bringing corruption to light. Here two concepts are central: access – the Freedom of Information Act and tip-offs – the provisions relating to notification. The media and the general opinion totally depend on having a broad right of access in order to disclose suspicious cases. Today's right of access is limited in various aspects and the practical ap-

plication of it varies from one public institution to the next.[988] Many of the media's cases on disclosure start with tip-offs from individuals. It is therefore important that our legislation is such as to provide good protection for notifiers and rules that secure the right to remain anonymous and protect sources. The current notification provisions have been criticized from several quarters, and representatives of the media industry believe that the position of the right to remain anonymous and the protection of sources should be strengthened in legislation.[989]

### INFORMING THE PUBLIC OF THE EFFECTS OF CORRUPTION

*To what extent is the media active and successful in informing the public on corruption and its impact on the country?*

Score: 100

Even though the Norwegian media do not have special programmes with explicit objectives to inform the population on corruption and what impact it has on society, there is good reason to assert that the media succeed well in informing the population about this. As pointed out in the previous section, Norwegian media have been an important actor in a Norwegian context when it comes to disclosing corruption cases. Through the revelation of corruption cases the media have contributed to placing corruption on the agenda as a *national* problem. It is also important that the spotlight is on gray areas, matters that are clearly unacceptable but where it is unclear whether corruption has taken place in the criminal sense.

Local media potentially has an important role in putting the spotlight on unacceptable matters in local communities, matters that not always reach the national media. There are several good local newspapers in Norway, while there has also been criticism that some local newspapers are too sympathetic towards local authorities, the business community and others. A 2007 survey of 70 local newspapers concluded that local newspapers do not do their job with respect to their responsibility towards society – there was little debate and coverage of political matters, while a lot of space was dedicated to "soft news" and free publicity for individual events.[990]

### INFORMING ON THE ACTIVITIES OF THE AUTHORITIES

*To what extent is the media active and successful in informing the public on the activities of the government and other governance actors?*

Score: 75

Norwegian media to a varying degree active and successful in informing the population about the decisions made by the government and other governance agencies.

The media play an increasingly important part in the execution of politics and political debate. There is talk about the medialised politics in the sense that the coverage of politics by the media takes place on the journalists' terms.[991] An important question is thus how the journalists use this power.

The situation is not unconditionally positive if the media is required to provide a wide and knowledge-based coverage of political issues and questions, as well as taking account of the decisions reached by public authorities and the consequences of these. Such a requirement does not seem unreasonable on the basis of the media's own ethical requirements.[992]

The media's coverage of elections is dominated by episodic and game-based news frames, rather than discussions of themes and issues.[993] In general, individual personalities, strategies and games have gained more attention over time.[994] In a continuation of this there has also been criticism that the media's coverage of politics and relevant social issues is characterised by a herd instinct, and that the media are more interested in individuals and entertainment value rather than the contents of the political issues.[995] Criticism has also been voiced that the media put a disproportionate focus on what goes on in the Storting, and to a lesser extent what goes on in the government and the teamwork between the government and the public administration. Journalists often give the reason for this that to work on issues relating to public administration is demanding, the amount of data (public archives and post journals) is large and it is necessary to have a "political nose" in order to know where to look.[996]

Another institution on which there has been little focus and discussion, is the courts and their role.[997] On the other hand, the media contribute in putting the spotlight on issues that are important to society and rarely hesitate in pursuing a news story, regardless of whom it may concern.

922 In the following, the media refers to: national television and radio channels as well as daily and weekly newspapers.

923 Report to the Storting No. 57 (2000-2001:5).

924 Cf. The Broadcasting Act, Section 2-1

925 Syvertsen (2006:88).

926 A significant ownership position is defined in the Act as the fulfilment of one of the following conditions: 1. in the case of control through a share of 1/3 or more of the total daily circulation for the daily press, the total viewing figures for television or total listening ratings for radio. 2. in the case of control through a share of 30 percent or more in one of the aforementioned media markets and 20 percent or more in one of the other media markets. 3. in the case of control through a share of 20 percent or more in one, 20 percent or more in another and 20 percent or more in a third of the media markets. 4. when an enterprise controlling 10 percent or more in one of the media markets becomes owner or part-owner of an enterprise forming part of another grouping controlling more than 10 percent or more within the same media market (cross ownership (Media Ownership Act, Section 10). The Act also provides regional ownership restrictions.

927 Official Norwegian Report (2010:12–13).

928 Bang (2006:91).

929 See e.g. "Vi leser og vi leser" [We read and we read], URL: http://www.kommunikasjon.no/fagstoff/fagbladet/medier/vi-leser-og-vi-leser;jsessionid=0C1C14DC9D9BC552DF6BF9AF14E3A4B6 Last visited 09/09/2011.

930 Interview with Allern, 22/09/2011.

931 A merger between the newspapers: Aftenposten, Bergens Tidende, Stavanger Aftenblad and Fædrelandsvennen with associated local newspapers

932 See p. 11 of 2010 Annual Report of the Norwegian Media Authority. http://www.medietilsynet.no/Documents/Om%20Medietilsynet/Aarsmeldinger/links_Medietilsynet2010.PDF. Last visited 22/09/2011

933 Ihlebæk, Syvertsen and Ytreberg (2011:235–236).

934 Official Norwegian Report NOU (2010:12-13).

935 Official Norwegian Report NOU (2000:124-125).

936 See p. 7 of 2010 Annual Report of the Norwegian Media Authority.

937 Østbye and Kvalheim (2009). Also see Official Norwegian Report (2003:49).

938 *Kvalitetsundersøkelsen 2010 [The 2010 Quality Survey]*, URL: http://www.nj.no/Presentasjon+av+Kvalitetsunders% C3%B8kelsen.b7C_xlvMW7.ips Last visited 02/02/2012. *Kvalitetsundersøkelsen 2011,* URL: http://www.google.no/url?sa=t&rct=j&q=kvalitetsunders%C3%B8kelsen%2Bnorsk%20journalistlag&source=web&cd=6&sqi=2&ved=0CElQFjAF&url=http%3A%2F%2Fwww.nored.no%2Fcontent%2Fdownload%2F2185%2F11152%2Fversion%2F1%2Ffile%2FKvalitetsunders%25C3%25B8kelsen%25202011%2520-%2520presentasjon.pdf&ei=e4oqT460J4uQ4gTjlfmqDg&usg=AFQjCNEy4YOtmaOheTclUlAsdZklqHCbPw. Last visited 02/02/2011

939 Interview with Allern 22/09/2011; interview with Øy, 14/10/2011.

940 See e.g. Slaatta and Kjær (2007), Eide and Simonsen (2009), Lie (2009).

941 Proposition to the Odelsting, No. 8 to the Storting (2007-2008).

942 The Penal Code provision on defamation, Section 135a, was abolished in the new Penal Code, which entered into force on 1 January 2012. The Act relating to compensation in certain circumstances was amended at the same time so that compensation and damages were given a more central role as a statutory sanction against defamation. Most punishable statements may still be punishable under other legislation. Examples include provisions on hateful statements, reckless conduct, violation of privacy and offending a public official (See government press statement 19/12/2008, URL: http://www.regjeringen.no/nb/dep/jd/pressesenter/pressemeldinger/2008/ytringsfriheten-styrkes--straff-for-arek.html?id=541159; Proposition to the Odelsting No. 22 (2008-2009:155-168).

943 Cf. Penal Code Sections 247 and 390.

944 Civil Procedure Act, Section 209(a)

945 See opinion piece in the *Dagens Næringsliv* (24/06/2010) written by representatives of the Norwegian Union of Journalists, URL: http://www.nj.no/Kildevernreglene+m%C3%A5+bli+bedre.b7C_xl HW2E.ips. Last visited 22/09/11; Official Norwegian Report (2009:15); interview with Øy, 14/10/2011.

946 *Editor poster*, URL: http://www.fagpressen.no/id/1930.1 Sist besøkt 02.02.12.

947 "An editor is expected to share his medium's fundamental views and aims", see *Editor poster.*

948 Interview with Allern 22/09/2011; interview with Øy, 14/10/2011; Østbye and Kvalheim (2009:44).

949 Interview with Allern 22/09/2011; Official Norwegian Report; Østbye and Kvalheim (2009).

950 Wiese (2004).

951 Gedde-Dahl et al. (2008:222).

952 Interview with Øy, 14/10/2011.

953 Heum (2005:10).

954 See the Ombudsman Case 2011/436. "Politiets behandling av en pressemedarbeider i forbindelse med sikkerhetskontroll i Oslo tingrett – pressens rett til kildevern" [Police treatment of a press official in connection with a security control in Oslo District Court – the press' right to protection of sources].

955 The act applies to enterprises which operate daily newspapers, television, radio or electronic media, and to enterprises which as owners exercise an influence on such enterprises, cf. the Media Ownership Act Section 3

956 Norwegian Press Association (2011), e-mail of 25 October

957 Interview with Allern, 22/09/2011.

958 Norwegian Press Association (2011), e-mail of 25 October

959 In a comment from the editorial council for Polaris Media on the editorial annual report from Polaris Media, it is recommended that the moral standpoint should be highlighted in the media's annual reports: "The Council proposes that those media which have an overall vision of a political nature, should also highlight these values in future reports. (...) In reality this is an important part of the public debate where one has media which dare to take a standpoint, which transmit values and are a standard-bearer for attitudes." See p. 27 of *Redaksjonell årsrapport Polaris Media*, URL: http://www.polarismedia.no/ Sist besøkt 06.02.12.

960 Official Norwegian Report NOU (2011c:111–112).

961 The Articles of Association for the Press's Professional Committee, Article 3

962 Official Norwegian Report NOU (2011c:12).

963 Interview with Øy, 14/10/2011. Also see Official Norwegian Report (2009b:108).

964 Bjerke (2010); Interview with Allern, 22/09/2011.

965 When the Press's Professional Committee (PFU) comes with damning statements reference is made in the justification to one or several points in the "Ethical Code of Practice for the Press" poster. In the period 1999-2010 there were only two occasions on which a justification referred to one of the points in Chapter 1 in the "Ethical Code of Practice for the Press" poster In the period from autumn 2004-2007 reference was made to Chapter 1 in 45 percent of the acquitting statements Bjerke (2009:213) (Bjerke 2009a:213).

966 Bjerke (2010:87).

967 Case 280/09.

968 NTB (2007).

969 Bjerke (2009:296–297).

970 Interview with Øy, 14/10/2011.

971 Dahlstrøm (2007).

972 Interview with Allern, 22.09.11, Oltedal (2006):47–49).

973 Interview with Øy, 14/10/2011.

974 See "Fellende PFU-uttalelser. 1999–2010" [Damning PFU statements 1999-2010] at the Norwegian Press Association's website, URL: http://presse.no/Statistikk/2010. Last visited 12/10/2011.

975 Allern (2000:315).

976 Heum (2006:59).

977 A recent example is when a TV2 journalist bribed a judge in the Congo in order to record footage in a trial headed by the judge. See *Dømt til døden av en korrupt dommer* [Sentenced to death by corrupt judge], URL: http://blogg.tv2.no/fredrik/2009/09/13/domt-til-doden-av-en-korrupt- dommer/ Last read 22/03/2012.

978 Schiøtz (2004), Gripsrud (2011), Heum (2005:84–88), Schiøtz (2004).

979 Cf. The Ethical Code of Practice for the Press poster, point 1.4: "It is the duty of the press to point a critical spotlight on how the media themselves fill their communal role".

980 Interview with Øy, 14/10/2011.

981 Jenssen and Aalberg (2007).

982 Eide (2010:215).

983 Political scandals in which the media, through their coverage, contribute to boost and develop the extent of the scandal.

984 Gedde-Dahl et al. (2008:218) Report No. 7 to the Storting (2010-2011:57).

985 Interview with Øy, 14/10/2011.

986 Interview with Allern, 22/09/2011.

987 Østbye and Kvalheim (2009:42-46).

988 See the chapter on the public sector, particularly the section on Transparency.

989 Interview with Øy, 14/10/2011. Also see the chapter on the Anti-corruption work.

990 Haave (2008). Also see *Mye kos og lite politisk glød [A lot of cosiness and little political passion]*, URL: http://www.mediebedriftene.no/index.asp?id=72666 Last visited: 06/02/2012.

991 Jenssen and Aalberg (2007), Official Norwegian Report (2003:48–50).

992 Cf. The Ethical Code of Practice for the Press poster, point 1.2: "The press safeguards important functions such as information, debate and criticism of society. The press has a special responsibility to ensure that different views can be expressed".

993 Waldahl and Narud (2004), Aalberg and Brekken (2007), Thorbjørnsrud (2009).

994 Tønsager (2001).

995 Allern (2001:chapter 7; 2007), Allern and Pollack (2009), Aalberg and Jenssen (2007).

996 See for example statements from key media personalities quoted in Allern (2001:270-272).

997 Interview with Øy, 14/10/2011; interview with Smith, 29/09/2011.

# 11. Civil society

# 11. Civil Society[998]

**SUMMARY**

Several issues concerning civil society primarily concern whether the conditions are conducive for an active and well-functioning civil society, rather than on how the NGOs and associations work themselves. Norwegian civil society is characterised by a high degree of participation, both in the form of membership and voluntary efforts. In most aspects, the picture is positive, but civil society cannot be said to be a driving force with respect to anti-corruption work – even though there are a few exceptions. Non-governmental organisations (NGOs) are by and large open and transparent, but there are few available instruments when it comes to handling unserious operators. Norwegian NGOs are not afraid to raise criticism of public authorities and neither are they completely dependent on support from the authorities.

The table below shows the total score for Civil society. The qualitative assessments that form the basis of the score for each indicator is provided in the following pages.

| Civil society<br>Samlet poengsum: 83/100 | | | |
|---|---|---|---|
| | **Indicator** | **Law** | **Practice** |
| **Capacity 100/100** | Resources | 100 | 100 |
| | Independence | 100 | 100 |
| **Governance and Management 75/100** | Transparency | -* | 75 |
| | Accountability | -* | 75 |
| | Integrity Mechanisms | -* | 75 |
| **Role 75/100** | Holding the Government accountable | 100 | |
| | Policy reform | 50 | |

*is not included in the appraisal of this pillar.

## STRUCTURE AND ORGANISATION

Civil society (also called civil sector, ideal sector, third sector) comprises a large and multifaceted field, and it is therefore difficult to treat it as one category as prescribed by NIS methodology. This study has concentrated on NGOs understood to be associations and organisations that are non-profit based, which are owned and operated by the participants and their members, and which in principle can be closed down without consent from the government. There are roughly 2,200 countrywide organisations and 120,000 local associations in Norway.[999] Variation between these organizations and associations is great in terms of their size, purpose and financing. For example, almost 60,000 of these organizations have less than 50 members, no employees and annual turnover of less than NOK 50,000. Around 50,000 of these come under the category Culture and Sport, which include sports associations, brass bands and tourist associations.[1000] This is stark contrast to the "five big ones" (Save the Children, Norwegian People's Aid, the Norwegian Refugee Council, the Red Cross and Norwegian Church Aid), whose annual turnover is in the range of NOK 800–1,270 million, and where public grants make up more than half of the income of several of these organizations. The voluntary sector is to a very limited extent regulated by law, and compared to other Western countries, public funding represents a small share (35 percent) of the income of Norwegian NGOs. As mentioned above, there are nevertheless large variations between organisations.

## CAPACITY RESOURCES (LAW)

*To what extent does the legal framework provide an environment conducive to civil society?*

Score: 100

Norwegian right of association is basically non-statutory. There are very few general rules set out in law that apply to all NGOs. That is why general legal rules on associations must emanate from legal practice and unwritten laws.[1001] The principle of freedom of association applies as a general principle in Norway. Furthermore, freedom of association embodied in the European Convention on Human Rights (ECHR) and the UN Convention on Civil and Political Rights, both of which are Norwegian law.[1002] Freedom of association is however not enshrined in the Constitution, but has special protection in Norwegian law.[1003] If there is any conflict between these conventions, such as freedom of association and the provisions of other laws, the conventions prevail.[1004]

It is very easy to establish an association; the only formal requirements being that the organisation must have a business registration number and a bank account number.[1005] In the past decade the financial framework conditions for NGOs have

changed in a positive way. There are a number of special provisions within the legislation relating to taxation and fees which were mainly introduced around the Millennium. NGOs are in principle exempt from income and wealth tax.[1006] There are no limitations concerning the type of organisation, the organisation's structure and such like; the decisive issue is that the organisation does not "have acquisition as an objective". However, some of the organisations' activities may be subject to taxation, principally activities that are not linked to the implementation of the organisation's ideal objective. Furthermore, there are provisions that limit the NGOs' duty to pay employment tax, and tax deductions are made for gifts of up to NOK 12,000 (€ 1,500) to certain types of NGOs .[1007] In 2008 tax deduction for gifts of money amounted to almost NOK 1.7 billion. In 2010 special regulations for VAT exemption for NGOs were adopted.[1008] The government has promised a stepwise increase in the VAT compensation up to NOK 1.2 billion in 2014. The promise has not been followed up on in the national budget for 2012, something that has generated a lot of discontent amongst NGOs.

**RESOURCES (PRACTICE)**

*To what extent do CSOs have adequate financial and human resources to function and operate effectively?*

Score: 100

The most important source of income (56 percent) for NGOs are incomes generated by themselves through sales, lotteries, memberships, etc. 35 percent of their incomes come from the government and nine percent are gifts. There are great variations between the organizations, public grants made up more than half of annual income in 2010 for several of the "five big" NGOs (in terms of annual turnover).[1009] In other words, contrary to what is sometimes asserted, it is not true to say that the voluntary sector in Norway is very dependent on the public sector. In comparison public funds make up an average of 58 percent of the income base for the European welfare partnership countries[1010], while self-generated incomes only make up one third.[1011] At the same time it has to be said that there has been a considerable increase in public allocations to the NGOs. One study estimated that the allocation to NGOs had increased by fourfold over the past 25 years, and by threefold in the past 15 years.[1012] The product of the voluntary sector, including the voluntary work, makes up four percent of Norway's GDP, according to Statistics Norway.[1013]

The share of households in Norway which give money to NGOs has increased considerably. In 1997 the share was 57 percent, while it had increased to 75 percent in 2009. However it does not appear that they were digging deeper into their pockets than before. An important explanation for the increase is the ever increasing professionalization of the work of collecting funds. (page 17-18).

For a long time the extent of voluntary work[1014] in Norway has been very high in an international context, while paid work makes up a small part (69,000 man-years in 2007).[1015] The voluntary effort in the NGOs corresponds to 115,000 man-years. In 2009 48 percent of the population (above 16 years of age) contributed with voluntary work in the NGOs. The voluntary sector is totally dependent on the organisations' "plodders". Volunteers who put in work amounting to more than one hour per week make up more than 90 percent of the total effort.[1016]

Many of the Norwegian organisations are small. Of the more than 115,000[1017] groups and associations in Norway almost 60,000 have less than 50 members, no employees and less than NOK 50,000 in annual turnover.

Voluntary organisation in Norway has been characterised by a broad member base and democratic structure. One estimate is that there are roughly 10 million memberships in NGOs in Norway. Almost 3 million of these are members of an organisation within the category "Culture and leisure". Around 80 percent of the population are members of at least one organisation, 60 percent are in two organisations and just under 40 percent are members of three organisations or more.[1018] Almost 50 percent define themselves as "active members".

The government's support for NGOs through the ministries by way of grant schemes for 2009 made up around NOK 4.7 billion (€ 600 million), divided amongst 81 schemes.[1019] Approximately NOK 1.1 billion was earmarked for infrastructure for civilian (and other) activities. Fifty-four of the grants were reserved exclusively for civilian actors and this made up around NOK 2.7 billion (€ 350 million).[1020] Between the ministries there are great variations as to how the grants are composed. Around NOK 3 billion of the allocations were made on the basis of predetermined, mechanical criteria, without any form of assessment. The objectives for the grants are mainly related to the governmental agency's professional assignments and reflect activities which this agency wishes to implement. One effect of this is that the NGOs in some cases become instruments of the authorities in attaining political goals set out by the authorities.[1021]

**INDEPENDENCE (LAW)**

*To what extent are there legal safeguards to prevent unwarranted external interference in the activities of CSOs?*

Score: 100

As of today there are few provisions that interfere with the independence of the organisations.

Freedom of association is as previously mentioned not enshrined in the Constitution, but has special protection in Norwegian law (see Resources (law)). It further follows from the legality principle, which is a general, non-statutory principle within the Norwegian legal system to the effect that any restrictions in the freedom of organisation must be set out in law. At present there are very few such restrictions. The exception is the Penal Code, Article 330, which stipulates a penalty for whoever participates in an association which is prohibited by law. [1022] Furthermore, there is broad political consensus that the authorities shall not interfere directly with the activities of the voluntary sector.[1023]

There are no formal limitations as to what and who can establish an NGO or association, nor are there formal requirements to what constitutes an NGO. The limited legal regulation is related to the broad political desire that it should be easy to become organised in the voluntary sector and that the voluntary sector shall be independent of the government. In principle two people can start the association "friends of the cup of coffee" and go out into the street to collect money for the association on the same day.[1024] In other words, it is very simple for those so wishing, to establish associations/organisations in the Norwegian civil society, which is an obvious strength. On the other hand there is some frustration with respect to the governmental support arrangements, which are characterised by great variations in their requirements.[1025] Public authorities, through the ministries, wish to put their support where it suits them.[1026] At times they wish to include more actors than the NGOs (for instance commercial actors, public enterprises etc.), but at other times they wish narrower limits. From the organisations' point of view they want less gradual transitions, a more defined demarcation of what is voluntary sector and a more streamlined structure of the public support arrangements, as this will define more clearly the framework conditions for the voluntary sector.[1027]

**INDEPENDENCE (PRACTICE)**

*To what extent can civil society exist and function without undue external interference?*

Score: 100

By and large, Norwegian NGOs have the experience of being sufficiently unfettered and independent from public authorities. Neither do NGOs experience any pressure or similar if they come out with criticism of the political authorities.[1028] As mentioned above, however, political authorities use the NGOs for their own political purposes. This is with particular reference to the structure of the financial support arrangements.[1029] The field in which this is most evident is within development assistance. The field is characterised by a high degree of institutionalisation[1030] and has been criticised for giving little room for criticism of the system.[1031]

## GOVERNANCE AND MANAGEMENT

### TRANSPARENCY (PRACTICE)

*To what extent is there transparency in CSOs?*

Score: 75

To what degree there is transparency is for the NGOs to decide, and transparency among the large and serious actors is generally good. In recent years provisions have been put in place which are meant to promote increased transparency, but the provisions are largely based on voluntary efforts.

The general impression among informants is that transparency is good among NGOs. The serious actors often publish annual reports and accounts accessible on their web pages.[1032]

In 2008 the Register of NGOs[1033] was established. This was partly in order to improve cooperation between the public authorities and the NGOs, and partly to ensure systematic information designed to strengthen the legitimacy for, and knowledge of the NGOs. All NGOs, here understood to mean organisations which operate activities which are non-profit driven, have the right to register, but as of today there is no obligation to do so.[1034] But in order to benefit from the public arrangements with VAT exemption and the *Grass root share*[1035] the government requires that the organisation be listed in the NGO Register. All in all there are very few obligations linked to registration in the NGOs' register alone. If there is a board, then information on this shall be registered, as well as the names of the board members.[1036] All entities must attach statutes on registering in the NGO Register, but it is up to the individual organisation to decide whether or not they will send in new statutes if they are amended. If one chooses to submit account information there is also an obligation to submit annual accounts.[1037] By 31 October 2011, 23,872 entities were registered in the NGO Register. Twenty four percent of these were registered for updating of their statutes, while only seven percent of the entities submit annual accounts.[1038]

One possible explanation for the lack of registration is that there are no (financial) incentives for registering. Many of the NGOs experience that registering in the Register for NGOs entails more work that gives little in return. Therefore many of them suggest that there be financial incentives for registering information on the organisation (for instance that there be VAT compensation for those reporting their annual accounts), but they do not want this to be a legal obligation as they feel this would interfere with their independence.[1039]

Norway has been described as an Eldorado for fundraisers, and the fundraising market amounts to an annual sum of NOK 2.2 billion. Until 2009 there was no direct statutory regulation of this market. In practice this meant that anyone could start collecting money without there being any control on the use of this money. The Act on registering of collection, which came into force in 2009, was meant to remedy this situation. The act stated that a voluntary register should be established for organisations which collected money for altruistic purposes. On registering, the organisations are duty bound to adhere to specific accounting rules and submit to external control. Furthermore there is a requirement that a minimum of 65 percent of funds raised (public support is not included in this) goes in full to the cause in question. But the registering is voluntary and as of October 2011, 87 members were registered. Besides, the checking of an NGO is done with very limited means – the budget being around NOK 1.3 million. In several editions in the past year the newspaper "Bistandsaktuelt" (Development Assistance News) has revealed several examples of uncommitted actors in the market, and most people agree that today's control arrangement is not effective.[1040] In the first place the controlling agency has very few means and its mandate is too narrow – it can only control the organisations that are listed in the registry. The uncommitted actors are not registered there.

**ACCOUNTABILITY (PRACTICE)**

*To what extent are CSOs answerable to their constituencies?*

Score: 75

As an overall rule Norwegian organisations are characterised by a democratic structure in which the management boards are accountable to the members of the organisation. If the board in an NGO finds itself in a situation with financial or criminal responsibility the provisions on boards' responsibility in the Limited Liability Companies Act will apply.[1041]

The common procedure is that the board is manned by members of the organisation. The general impression of our informants is that the control exercised by the membership-based organisations is good. fn [1042] But the picture is complex. A researcher with knowledge of the field points out that especially within the development aid sector and the missionary movement there are a number of organisations with a small number of members relative to the amount of funds the organisations administer. He points out that these organisations are very much member-controlled and that the boards have little say in the management's decisions, and that there is a danger that the boards do not have the competence that is needed to ask the right questions.[1043]

The representative for the NGOs reports that a number of organisations who operate on behalf of certain groups (such as children and youth, the elderly, immigrants) have problems in recruiting people with suitable qualifications to their boards (accounting, report-writing, filling in of official forms etc.).[1044]

One recent problem has been NGOs that have cheated on their membership figures to obtain increased public support. The biggest case goes some time back when extensive cheating on membership figures amongst youth organisations was revealed in the mid-1990s[1045]. There are also examples of cheating on membership figures from recent years. It is usually the media which have unearthed the cases after having received tip-offs on possible illegality.[1046]

A greater area of concern, at least potentially, is the development assistance sector. Criticism has been voiced by the Office of the Auditor General's of deficiencies in the Ministry of Foreign Affairs administration of the development assistance funds, and of the fact that unacceptable conditions in the recipient countries entail no penalties.[1047] At the same time there have been measures implemented in the area. The Ministry of Foreign Affairs (UD) in 2007 established a central control unit with the aim of combating fraud and such like with the ministry's funds. Norwegian aid amounts to around NOK 27 billion annually. In 2010, approximately NOK three billion was awarded to NGOs.

**INTEGRITY MECHANISM (PRACTICE)**

*To what extent is the integrity of CSOs ensured in practice?*

Score: 75

The integrity of NGOs is primarily ensured through self-regulation. This must be seen in connection with the concept of independence that applies to the voluntary sector. The informants say that the main impression is that the voluntary sector enjoys a great amount of trust in the population.[1048]

There is no code of conduct or similar that applies to the entire sector, but the Association of NGOs in Norway[1049] has, at the request of its members, prepared some overall principles for procurement of goods and services for their member organisations.

The NGO Register and the Collection Register are measures that are meant to contribute to greater transparency in the sector and help ensure that the integrity of the sector is taken care of, however, as these arrangements function today they cannot be said to work as intended. Maximum points are therefore not awarded to civil society for this indicator.

## ROLE

### HOLDING THE GOVERNMENT ACCOUNTABLE

*To what extent is civil society active and successful in holding government accountable for its actions?*

Score: 100

The relationship between the NGOs and public authorities has been described as a reciprocal power relationship where neither of the parties is without power and influence.[1050] There are two factors that are important in connection with this: Norwegian NGOs are not afraid to raise criticism of public authorities and neither are they completely dependent on support from the authorities.[1051] They are therefore relatively free to hold the authorities responsible by exercising criticism or pressure.

Norwegian NGOs have ample opportunities to influence the political development both through formal and informal channels. Of the formal channels the hearing or consultation is the most important one. In the preparation of laws and regulations the NGOs act as consultation agencies, at times they participate in the government-appointed committees which do the preparatory work. In addition they can advance their opinions when bills and other types of political proposals are sent on a so-called round of hearings. The committees in the Storting also often arrange open hearings in which NGOs and others are given the opportunity to put forward their points of view about the cases at hand.[1052] But neither representation in committees nor participation in the hearings, give any guarantee that their point of view will have any decisive impact on the formulation of the bill. Influence through informal channels takes place where NGOs can exert personal influence/ lobbying. This may take place through professional lobbying, through actions and other ways of influencing opinion where the organisations make their voice heard through "pressure groups". This has been especially the case with respect to environmental issues and issues relating to alcohol and language.[1053]

With the exception of the Norwegian division of Transparency International (two man-years) there are few, if any, NGOs in Norway which can be said to be heavily committed to anti-corruption work, irrespective of whether there is talk of information, lobbying vis-à-vis the authorities and other key actors, reform initiatives, etc.[1054] In addition to TI-N, the international organizations Publish What You Pay and Tax Justice Network can be mentioned , which both have branches in Norway (PWYP-N and TJN-N) and who work with anti-corruption (also see Politisk reform).

NHO (The Confederation of Norwegian Enterprise) and KS (The Norwegian Association of Local and Regional Authorities) have done some work in the field. NHO has prepared manuals and other information material for their members on the subject, as well as arranging courses for their member enterprises. KS has established the "Ethics portal", an electronic portal that contains a number of guides and other information material related to anti-corruption work and similar themes, in addition to arranging courses, seminars etc. under the auspices of the portal.

**POLICY REFORM**

*To what extent is civil society actively engaged in policy reform initiatives on anti-corruption?*

Score: 50

In a Norwegian context there are few reform initiatives relating to anti-corruption. Most of the reform development in recent years has taken the form of amendments in the Penal Code provisions in connection with ratification of international conventions in the area. Similarly there has been very limited involvement by NGOs when it comes to corruption and anti-corruption work. There are three exceptions to this. Transparency International (TI), Publish What You Pay (PWYP) and the Tax Justice Network (TJN), all of which have branches in Norway. Transparency International has anti-corruption as the primary goal of its operations, and has in recent years become more widely known in this country.[1055] PWYP works especially in relation to the extractive industries and strives for greater transparency and accountability in that sector. The main contributors to PWYP-N are Norad[1056] and the Norad programme Oil for development.[1057] Among other things, TJN works toward informing on the harmful effects of the secrecy offered by tax havens. TJN-N has no major financial contributors, but twelve CSOs are are paying members.[1058] Another exception here are the development aid organisations which have been and are preoccupied with anti-corruption work, but this is mainly linked to their cooperation and dialogue with the recipient countries.

998 The appraisal of the Civil Society in this study has focused on NGOs.

999 Lorentzen (2010:308).

1000 See *Nøkkelfakta om frivillighet*, [Key facts on voluntary work] URL: http://www.frivillighetnorge.no/ N%C3%B8kkelfakta+om+frivillighet.b7C_wlHY1A.ips Last visited 14/02/2012.

1001 Woxholth (2008:24).

1002 The Human Rights Act, Section 2.

1003 Woxholth (2008 45–47). Nevertheless a rather wider protection applies in a few areas, e.g. the right to establish political parties and the parties' right to stand in elections, the permission to establish religious faith communities. Currently there is much discussion on whether the human rights declaration, or parts of it, should be enshrined in the Constitution, but at the time of writing a final decision has not been taken on this.

1004 The Human Rights Act, Section 3.

1005 Also see Independence (law).

1006 Cf. the Taxation Act, Section 2-32

1007 Cf. the Taxation Act, Section 6-50 Also see Report to the Storting No. 39 (2006-2007:173-174).

1008 Cf. Regulation on VAT compensation for NGOs.

1009 See e.g. the annual accounts of the Norwegian Refugee Council, URL: http://www.flyktninghjelpen. no/?aid=9095412 and Norwegian People's Aid, URL: http://www.folkehjelp.no/no/om_oss/ resultatrapport/ Last visited 14/12/12.

1010 The welfare partnership countries are comprised of the EU countries Austria, Belgium, France, Germany, The Netherlands, Ireland, Italy and Spain in addition to Israel.

1011 Wollebæk and Sivesind (2010:16).

1012 Lorentzen (2010:66).

1013 From *Fakta om frivillighet* at the Association of NGOs in Norway, URL: http://www.frivillighetnorge. no/N%C3%B8kkelfakta+om+frivillighet.b7C_wlHY1A.ips Last visited 20/10/2011.

1014 By voluntary work is meant voluntary, non-paid work for NGOs, as well as cultural and welfare services run by NGOs. Ordinary membership activity, such as membership meetings is not included. For a full definition see Wollebæk and Sivesind (2010:21).

1015 Wollebæk, Selle and Lorentzen (2000), Sivesind (2007).

1016 Selle and Sivesind (2009:280–282); Wollebæk and Sivesind (2010:21–33).

1017 In this figure local associations which are part of a national organisation have been included.

1018 Sivesind (2007:29).

1019 Grants intended for use abroad (development aid) and grants intended for individual cultural institutions, state church institutions and crisis centres etc. are not included in the calculation.

1020 Lorentzen (2010); Report No. 27 (1996-1997).

1021 Interview with Brekke, 07/10/2011; Enjolras and Waldahl (2009:26–27).

1022 The exception is associations: "whose purpose it is to perform or encourage the performance of criminal acts, or whose members agree to unconditional obedience to anyone" (Penal Code, Article 330).

1023 Report No. 39 (2006-2007:11).

1024 Interview with Brekke, 7/10/11.

1025 Lorentzen (2010).

1026 Enjolras and Waldahl (2009).

1027 Interview with Brekke, 7/10/11.

1028 Interview with Brekke, 7/10/11

1029 Interview with Brekke, 07/10/2011; Enjolras and Waldahl (2009), Tranvik and Selle (2003:170–171).

1030 The public support for aid agencies has increased significantly (from approximately NOK 1.2 billion in 1991 to approximately NOK 2.4 billion in 2001) at the same time as the requirements for the organisations' own efforts and own financing has decreased (10 percent in 2001) (Tvedt 2009:57-67).

1031 Liland and Kjerland (2003:259), Østerud (2006:309), Tvedt (2009).

1032 Interview with Brekke, 07/10/11, interview with Sivesind, 20/09/11.

1033 See www.brreg.no/frivillighet/

1034 The Act relating to the registering of NGOs Section 3.

1035 The arrangement with Grass root share implies that anyone playing on one of Norsk Tipping's games can elect to allow up to five percent of their stake to benefit a certain NGO.

1036 Cf. The Business Registration Act Section 6 and the Act relating to the registering of NGOs Section 5.

1037 The Act relating to the registering of NGOs Section 6.

1038 The Brønnøysund Register (2011), e-mail of 9 November.

1039 Interview with Brekke, 7/10/11.

1040 See e.g. "Norge – et eldorado for pengeinnsamlere" [Norway, an Eldorado for fundraisers], URL: http://www. bistandsaktuelt.no/nyheter-og-reportasjer/arkiv-nyheter-og-reportasjer/norge-et- eldorado-for-pengeinnsamlere; "En lov som ikke virker" [A law that does not work], URL: http://www.bistandsaktuelt.no/kommentar/arkiv-kommentarer/en-lov-som-ikke-

1041 Woxholth (2008).

1042 Interview with Brekke, 07/10/11, interview with Sivesind, 20/09/11.

1043 Interview with Sivesind, 20.09.11.

1044 Interview with Brekke, 7/10/11.

1045 Solberg (1995).

1046 At present a court case is ongoing against SOS-Rasisme. In 2009 TV2 revealed cheating in Norway's biggest immigrant organisation, and in the same year four Norwegian-Pakistani newspapers lost their government support because they could not document the number of subscribers.

1047 Salvesen and Gedde-Dahl (2011); The Auditor General (2011b).

1048 Interview with Brekke, 07/10/11, interview with Sivesind, 20/09/11.

1049 The Association of NGOs in Norway is a cooperative forum for the entire NGO sector, comprised of 250 organisations representing a total of 50,000 groups and associations in the entire country.

1050 Enjolras and Waldahl (2009).

1051 Interview with Brekke, 07/10/2011, interview with Sivesind, 20/09/2011; also see Resources (Practice).

1052 See the chapter on the Storting.

1053 Woxholth (2008:33).

1054 Interview with Brekke, 7/10/11.

1055 One indication of this is to search on the keyword Transparency International in the Retriever search engine (archive containing all printed newspapers). In the period from 2005-2010 there are 153-183 hits, while the figures prior to 2002 were below 20 hits.

1056 Norad is the Directorate for Development Cooperation and is under the Ministry of Foreign Affairs.

1057 http://www.pwyp.no/ Last visited 15/02/12.

1058 http://www.taxjustice.no/ Last visited 15/02/2012.

# 12. The Business Sector

# 12. The Business Sector

**SUMMARY**
Several issues concerning the business sector primarily concern whether the conditions are conducive for an active and well-functioning business sector, rather than on how the enterprises work themselves. Establishing a business in Norway is well facilitated. Norwegian businesses cannot be said to be subjected to unwarranted interference by others in particular, and there are a number of provisions to ensure corporate integrity. In terms of complaints, it is particularly the resource challenge related to combating financial crime that is cause for concern. Other issues are that the application of the Money Laundering Act, which came into force in 2004, seems to be inadequate, and their is potential for improvement in the regulation of Norwegian businesses' activities in so-called tax havens.

The table below shows the total score for the business sector. The qualitative assessments that form the basis of the score for each indicator is provided in the following pages.

| The Business Sector<br>Overall score: 96/100 | | | |
|---|---|---|---|
| | **Indicator** | **Law** | **Practice** |
| **Capacity**<br>**100**/100 | Resources | 100 | 100 |
| | Independence | 100 | 100 |
| **Governance and Management**<br>**88**/100 | Transparency | 75 | 100 |
| | Accountability | 100 | 75 |
| | Integrity mechanisms | 100 | 75 |
| **Role**<br>**100**/100 | Policy Work within anti-corruption | 100 | |
| | Support to civil society | 100 | |

## STRUCTURE AND ORGANISATION

Norwegian business is diverse. Although the oil and gas industry has become increasingly important, most people are employed in other industrial and service industries. Over 1.6 million people are employed in private companies, and over 70 percent of the value creation occurs in the private sector. Small and medium-sized enterprises constitute the bulk of Norwegian industry. Over 99 percent of the companies in Norway have 100 employees or less.[1059]

## CAPACITY RESOURCES (LAW)

*To what extent does the legal framework offer an enabling environment for the formation and operations of individual businesses?*

Score: 100

The legislation takes measures to facilitate the establishment of individual companies and their activities. The main methods for the establishment of small businesses are: limited companies/public limited companies (AS/ASA[1060]), general partnerships (ANS/DA[1061]), sole proprietorships[1062] and cooperatives. There are few formal requirements for the establishment of new companies. There are no special rules or any special act relating to a sole proprietorship, as the owner decides everything in the enterprise. Sole proprietorships may register for free in the Central Coordinated Register (CCR) and will then receive an organisation number. For partnerships it is required that the owners create a partnership agreement (The Partnerships Act, Section 2-3), while cooperatives must make a memorandum of association with articles of association for the entity (Cooperative Societies Act, Sections 8, 9 and 10). General partnerships and cooperatives must be registered in the Companies Register and the owners can be both physical and legal persons. Corresponding provisions apply to limited companies, in addition share capital of at least NOK 30,000 is required.[1063]

There are also some more detailed, formal requirements in the statutes, including the organisation and composition of the Board and the CEO, etc. (Section 2-2).

Rules on the business name are set out in the Business Name Act. The right to the business name is obtained by taking in use the name of the entity or by registering it in the Register of Business Enterprises (Section 1). The right means an exclusive right to that name, as well as a protection against other records or user names that are likely to be confused with it. There are certain restrictions on what kind of business names that can be used. The business name must not "be likely to deceive or be contrary to the law or be likely to arouse indignation" (Sections 2-3 and 2-5). The business name should disclose what kind of company it is. For sole proprietorships, it is a requirement that the holder's family name is made part of the business

name (Section 2-2).

There are a number of statutory provisions to safeguard the individual person's / company's intellectual property rights, which in Norway are divided into intellectual achievements (copyright, patents, etc.) and the Trademark Law etc. Norwegian intellectual property law is strongly affected by international conventions, particularly rules and case law within the EU system.[1064]

**RESOURCES (PRACTICE)**

*To what extent are individual businesses able in practice to form and operate effectively?*

Score: 100

Although there are a number of regulations and legislation[1065] that one should know before establishing a company, the process is relatively simple and inexpensive.

The process of establishing a company will to some extent vary according to the company form in question. In principle, all forms of organisation could be registered by submitting a form to Brønnøysund Register Centre (Coordinated Register Notification), but for limited companies, there are several measures that must be made in advance of registration, including: the company must be established by the shareholders, statutes must be in place, the share capital must be paid and confirmed by an auditor. When it comes to processing, this also varies slightly, but the online registration through the website portal Altinn will generate an organisation ID/number about one day after the fully and correctly completed form is submitted. If you register the business by sending the registration form in the mail, it could take about a week before registration is completed.[1066] Registration costs for the establishment of the company are not large, but will depend on the legal form. Depending on the organisational form, it costs NOK 5,320 or NOK 2,127 to register with the Register of Business Enterprises.[1067] Registration of sole proprietorship made in the Central Coordinating Register is free, but if the one-man enterprise is engaged in commerce, the company must be registered in the Register of Business Enterprises. It should also be mentioned that the registration of annual accounts is free.[1068]

Comparatively speaking, it is relatively easy to establish and operate enterprises in the Norwegian business community. In the World Bank's annual assessment of countries' regulation of private business and whether regulations facilitate business operations or if they make them difficult,[1069] , Norway came out eighth of a total of 183 countries.[1070]

The government is currently working to simplify the rules further, but so far the results have been limited. In 2006 for the first time the government made a survey of the administrative costs for companies, i.e. the costs incurred in connection with public information requirements. A total of 337 laws and regulations were comprised in the survey and over 1,600 information requirements were found in these rules. It was estimated that total costs for the companies was in excess of NOK 54 billion. When the survey was done again three years later it was found that the administrative costs had been reduced overall by NOK 288 million in the three-year period, which corresponds to 0.52 percent, or 0.18 percent per year. In other words, a very small reduction considering the government's ambition for reducing the burdens on the Norwegian business sector by NOK 10 billion by the end of 2015. The reduction is also small compared with countries like Sweden, Denmark and the Netherlands, where one has succeeded in reducing costs by up to 25 percent in a four to ten-year period.[1071]

There are a number of provisions that regulate corporate intellectual property rights, but research that has been made suggests that awareness and knowledge about the importance of patents and other intellectual property rights is inadequate among Norwegian companies.[1072] Issues related to contractual matters are handled in a satisfactory manner by Norwegian courts.

**INDEPENDENCE (LAW)**

*To what extent are there legal safeguards to prevent unwarranted external interference in activities of private businesses?*

Score: 100

Norwegian right of establishment has traditionally been very open, and became even more open in this area as a result of the EEA Agreement. The prevailing view within the Norwegian law since the '90s has been that there should be predictable and objective conditions for the establishment.[1073] There are some licensing and permit systems that deviate from this. Generally, there is little room for discretion for public officials in the establishment of companies. More broadly, it is also little room for the individual officer to exercise discretion or for him to be able to abuse this power with respect to businesses and companies. This follows from the so-called Authority Misuse Doctrine.[1074] The term is a generic term for the control the courts undertake as to whether the administration's discretion has been influenced by extraneous considerations, arbitrary, unfair discrimination or ended in a grossly unreasonable result.[1075] These non-statutory law principles have manifested themselves through case law, and the legal situation today is that it is difficult for public officials to exercise administrative discretion unlawfully.[1076]

If companies feel they have been subjected to unlawful interference from external authorities, be they government or other, there are two possibilities. The companies can take the matter to the ordinary courts, or, if it is the public administration that is a party, one may also appeal to the superior administrative body. If a company brings a case before the courts, the company can make a party tort liable or criminally liable depending on the key issue.[1077]

**INDEPENDENCE (PRACTICE)**

*To what extent is the business sector free from unwarranted external interference in its work in practice?*

Score: 100

Unwarranted interference from public officials does not appear to be particularly widespread in Norway. The same applies for unwarranted interference from other outside agencies. Findings from the Krisino (survey of criminality and safety issues in Norway) survey support this. Only five percent of the 2,000 private businesses that participated in the survey said they had been subjected to threats, attacks and smear campaigns from interest groups or activists.[1078] At the same time, criticism is occasionally directed at the public sector's regulation and contact with the business sector. One example may be that requirements are imposed in the development of commercial property that the developer must also build for public purposes.[1079]

In the previous section, it was mentioned that there are some licensing and permit schemes where there is a certain element of discretion. The scheme where the most money is involved is without doubt the licensing scheme in the oil sector. However there are also licensing schemes in other areas, for example hydropower, aquaculture and windmills. According to the legislation the granting of a licence shall be done on the basis of factual and objective criteria.[1080] According to an expert in corporate law, it is quite impossible to bribe someone in the general sense, in the granting of concessions, but he points out that there is a certain degree of discretion involved. This is because there are many criteria, so even if they are objective, discretionary consideration will be needed when assessing the overall picture.[1081]

## GOVERNANCE AND MANAGEMENT

### TRANSPARENCY (LAW)

*To what extent are there provisions to ensure transparency in the activities of the business sector?*

Score: 75

As a general rule, all companies are legally bound to maintain accounting records (The Accounting Act, Section 1-2) and all financial obligations are initially subject to external audit (The Auditor Act, Section 2-1).[1082] The companies' annual accounts, report and auditors' report are public documents the content of which everyone has the right to familiarize themselves with, either with the person who is legally bound to keep the accounts, or in the Account Register (The Accounting Act, Section 8-1).[1083]

The Financial Supervisory Authority of Norway oversees, amongst other things, all banks, finance companies, and auditors. There is a statutory duty to provide information to the authority i.e. to provide the information the authority may desire at any one time on any activities that fall under the Finance Authority's jurisdiction.[1084] Auditors also have an obligation to report to the authority of suspicious circumstances.[1085]

Listed companies must comply with the International Financial Reporting Standards (IFRS) in the consolidated accounts. New in 2011 is the requirement that all listed companies must follow IFRS even if they are not consolidated, and if they are, then the parent company's financial accounts apply. All other companies may choose to keep accounts under IFRS, but are not required to do so by law.[1086]

Norwegian authorities have been criticised for being cautious toward Norwegian companies in demanding that they explain the finances of their foreign subsidiaries, better known as country-by-country reporting. One consequence of this is that Norwegian companies who so wish, can avoid transparency in large parts of their operations by establishing subsidiaries in tax havens[1087] – states where foreign individuals and companies are given good opportunities to conceal information about their own operations and the ability to bypass a number of national and international regulations. This makes it possible for Norwegian companies to avoid taxes, but also to conceal the proceeds of criminal activities.[1088]

The Norwegian Tax Administration has stated that the new reporting standards on country-by-country basis would make the Tax Administration's efforts to identify and expose tax evasion easier. The Transocean case, referred to as Norway's

largest tax case, took seven years to investigate, which is a clear indication that the investigation of such cases is difficult under current regulations. The subject has begun to arouse international political attention. In the autumn of 2011 the European Commission launched a proposal for country-by-country reporting for certain companies that will also mean that large companies in the extractive industries and the forestry industry on an annual basis must report on payments to governments in the countries where such operations are conducted.[1089] Norwegian authorities have sent the proposal out for consultation to obtain comments for "the dialogue the Ministry [of Finance] may have with these institutions [the Council and the European Parliament] in connection with the matter".[1090] As of today Norwegian authorities emerge as undecided on the matter of increased requirements toward country-by-country reporting for Norwegian companies.[1091] NHO warns against Norway going it alone in this area, because they believe that a solitary requirement for country-by-country reporting from Norwegian authorities (toward Norwegian businesses) will lead to a weaker competitive position for Norwegian enterprises.[1092] In a Report to the Storting on corporate social responsibility in 2009 the Government expressed an expectation that "undertakings exercise the greatest possible degree of transparency in capital flows".[1093] The most specific example of this is that the authorities encourage Norwegian oil and gas companies to comply with the EITI principles[1094] to report the payment of taxes and duties to authorities in different countries. All companies that have licenses on the Norwegian continental shelf comply with EITI reporting.[1095]

Another complaint regarding transparency in companies is the ability to establish a Norwegian-registered branch of a foreign company, better known as a NUF. This is a form of organization that according to the Tax Administration has helped give criminals an instrument for social security fraud and VAT and tax evasion. There are low start-up costs and negligible share capital requirements for this form of company.[1096] From legal expert quarters it has been pointed out that the Norwegian authorities' implementation of the 11th company directive has been inadequate on this point and that "enterprise registration legislation and practice are partially very unsuccessful".[1097] On the other hand, the Ministry of Justice and the Police (MJP) is currently working on simplifying the Limited Liability Companies Act, hereunder some amendments that deal with the rules on the supply of capital to the company, the maintenance of capital and capital flight from the company. In the study of the question of simplifying the Limited Liability Companies Act, it is assumed that the proposed amendments (some of which have already entered into force) will make the Norwegian limited company form more attractive in competition with foreign limited company legislation, and may therefore contribute to counteracting that Norwegian businesses choose to organize activities as a foreign company ("NUF")".[1098]

From an anti-corruption perspective, extended country-by-country reporting is an important measure to combat economic crime in Norwegian and international business. The lack of such regulation results in the business sector not being awarded maximum points for this indicator.

### TRANSPARENCY (PRACTICE)

*To what extent is there transparency in the business sector in practice?*

Score: 100

There are some points of criticisms, but in general transparency must be considered to be good.

Through the corporate register and CCR, which are electronically accessible to the public, it is easy to get access to a number of details of Norwegian companies, be it: updated information on who holds the various roles in the firm, changes in share capital, merger and demerger plans, whether an entity has been sent to the Probate and Bankruptcy Court for compulsory winding up or liquidation, or is undergoing bankruptcy proceedings, etc.

There is no requirement for third-party control of the companies' accounts., but the Norwegian Tax Administration conducts regular random audits of companies' accounts, while the Financial Authority, as already mentioned, supervises the financial sector and the auditing industry. The NGO, Norwegian Church Aid, reviewed the annual reports of the ten largest companies listed on the Oslo Stock Exchange, which showed that NOK 212 billion of the companies' turnover (corresponding to 49 percent of the companies' total turnover) were not accounted for to the tax authorities. With the exception of Statoil, which voluntarily states (since 2005) in its annual reports how much it earns in, and pays in taxes to, those countries in which it is represented, reporting for the nine other companies is deficient.[1099] In 2011 the Tax Administration uncovered NOK 29 billion that was not declared for taxation in its control of companies and private individuals who use tax havens to avoid paying tax, which is an indication that some Norwegian companies use the opportunities provided by tax havens to partake in economic crime.[1100]

Since 2001 the number of NUF companies has grown each year, and in the period between 2006 and 2009 NUF was the registration type that in relative terms increased the most in the Companies Register.[1101] However, in 2011 there was a marked change in the trend, as 23 percent fewer NUF companies were registered compared to the previous year.[1102]

The companies' focus on community involvement (CSR – Corporate Social Responsibility) has apparently increased in recent years with increased focus on it in annual reports, web sites, etc. A recent doctoral study concluded that the Norwegian companies' awareness of CSR has increased, resulting in more reporting on their social commitment, but this does not necessarily entail that the company changes its practices to become more socially responsible. The content of the activities that the companies now report on under CSR are not *new* activities according to the doctoral thesis, but things they have been doing for a long time.[1103]

### ACCOUNTABILITY (LAW)

*To what extent are there rules and laws governing oversight of the business sector and governing corporate governance of individual companies?*

Score: 100

There are a number of provisions for corporate governance and company management (for instance the Companies Act, the Public Limited Companies Act, the Commercial Bank Act, the Savings Banks Act, the Financial Institutions Act and the Insurance Act).[1104] Norwegian company law is designed on the basis of EU law requirements and makes it clear to whom one should report.[1105] All limited companies and financial institutions shall have a board[1106] and a general manager[1107], and the law specifies what responsibilities lie with the various bodies. An interesting feature of Norwegian company law, which distinguishes it from the U.S., is that what is understood to be the *company's* interest is broader than the sum of shareholders' interests. It is based on an idea that corporate interest is a compromise in which the shareholders' interests are only one of several other interests to be protected, for example employees, local communities, environment, etc. Which other interests that should be involved is however a major technical discussion.[1108]

There are several public bodies to oversee various aspects of the business and finance sectors. The Financial Authority carries out public supervision of financial institutions and financial markets and has a broad mandate.[1109] The Financial Authority shall ensure that the institutions under its supervision operate in an appropriate and satisfactory manner and in accordance with prevailing legislation. The authority shall examine the institutions' accounting and operations and otherwise make the investigations the authority deems necessary. The institutions are obliged to give the authority such documentation and information as the authority may require.[1110] The Stock Exchange Appeals Committee is an appeals board to decide appeals against the board and the Stock Exchange Council's decisions pursuant to the Exchange Act.

As part of efforts to increase oversight of the financial sector and enhance the fight against financial crime, in 2003 the Money Laundering Act was adopted (and came into force on 1 January 2004).[1111] As a result of the introduction of the third EU Money Laundering Directive, and partly for educational reasons, a new Money Laundering Act was introduced in 2009 (which came into force on 15 April): Act relating to measures against money laundering and terror financing, etc. The Act applies to most of the financial market and a number of other undertakings (Section 4). The purpose of the act is to combat the laundering of proceeds from criminal activities. The act involves a number of obligations that reporting entities are required to comply with, including a duty to investigate (Section 17) on suspicion that a transaction is related to the proceeds of a criminal act – investigations shall be performed to confirm or disprove the suspicion - and a reporting obligation - suspicious transactions should be reported to the Financial Intelligence Unit (FIU) in Økokrim (The Norwegian National Authority for Investigation and Prosecution of Economic and Environmental Crime) (Section 18). Økokrim receives annually over 6,000 such notifications. Violations of the Money Laundering Act can result in fines, or in particularly aggravating circumstances, imprisonment for up to 1 year (Section 28). If the reporting entity is part of a money laundering operation, either negligently or intentionally, they may be punished for money laundering, cf. Penal Code Section 317.

In 2005 a regulation on leniency was established that gives the Competition Authority the authority to make "full or partial reduction of fines in connection with violation of the Competition Act Section 10" cf. the Leniency Regulations Section 1. This was done on the grounds that "rules on leniency will be effective in cartel cases".[1112]

**ACCOUNTABILITY (PRACTICE)**

*To what extent is there effective corporate governance in companies in practice?*

Score: 75

It is difficult to answer adequately whether there is effective ownership governance and this is partly because the answer depends on what one considers to be good and effective governance. The supervisory bodies seem to work well, while the money laundering act currently works, and is practised to varying degrees.

The Financial Supervisory Authority presents criticism in its audit reports and can also take strong action. For example, the Financial Supervisory Authority can revoke auditor approval, which was done in 24 cases in 2010.[1113] The Norwegian Competition Authority has been proactive in several cases where there has been talk of practices that have been in breach of competition rules. By far the biggest

case has been the detection of illegal price fixing in the asphalt industry in the period 2005-2008. The Competition Authority's preliminary assessments mean that the company NCC is to pay NOK 165 million in fines, while the Veidekke Company will possibly get off because the company itself reported the matter.[1114] From professional quarters it has been maintained that the current leniency arrangement has some unfortunate side-effects.[1115] If an undertaking that is also involved in other crime, for example corruption, applies for leniency to the Competition Authority for breaches of the competition provisions, it is difficult for Økokrim to initiate investigations. This is because Økokrim has entered into an informal "agreement" with the Competition Authority that Økokrim should not initiate investigations in cartel cases under consideration by the Competition Authority where leniency may be appropriate.[1116] International experience and economic literature indicate that there is reason to believe that cartel cases are often related to corruption, but there are no examples of this from Norwegian case law.[1117]

On the report to the Storting on corporate social responsibility, the government expressed an expectation that "undertakings actively combat corruption through established notification schemes, internal policies and information work".[1118]

The new Money Laundering Act has only been in force for a short period, but the reporting obligation also existed in the act of 2003. It is therefore reasonable to expect that the reporting entities are aware of the reporting obligation and accordingly report to the FIU (in Økokrim) if they become aware of suspicious transactions. In practice it appears that this only partially is the case. It should be added that the new act of 2009 imposed more and more extensive duties on the reporting entities. The number of STRs (suspicious transactions) reached a peak in 2008 with 9,026 transactions, while "normal" have been six to seven thousand STRs reports annually.[1119] In 2010 the financial supervisory authority conducted site inspections of a sample of financial institutions relating to compliance with this act. The findings showed that Norwegian banks and financial institutions have not followed the new rules in a satisfactory manner, and the inspections triggered a series of improvements in the institutions.[1120] At the same time the banking sector, insurance companies and companies for payment transactions are highlighted by Økokrim in positive terms when it comes to so-called STR-reporting. However there are other sectors where there is every reason to believe that there is a significant under-reporting. Auditors, accountants, lawyers and brokers reported in 2010 respectively 86, 59, 6 and 15 STRs to the FIU.[1121] Since 2006, only one percent of the nation's lawyers, two percent of accountants and ten percent of the auditors have sent in notifications.[1122] In the light of their central roles in terms of accounting (accountants), control of accounts (auditors) and development and execution of transactions for clients (lawyers and brokers) these are weak figures, which Økokrim among oth-

ers has criticized for several years.[1123] In 2008, the supervisory auditor in Økokrim pointed to two factors that were likely reasons for the alleged under-reporting, that is: "lack of knowledge about what the reporting system for the money laundering act really is" and "knowledge of, and attitude to, the role that you as the auditor is assigned in this connection".[1124]

Another and more serious cause for concern is the lack of resources to deal with financial crime. In 2008 the Office of the Auditor General evaluated the authorities' efforts against financial crime and concluded that police and prosecutors constitute a bottleneck in the follow-up of reported cases. The percentage shelved due to lack of capacity had increased from 14 percent in 2004 to 30 percent in 2007. In Oslo police district that has many of the major cases the increase was 23 percentage points (from 25 to 58 percent)(skal ikke dette være 48?///) in the same period.[1125] The Legal Director at the Oslo Stock Exchange said in 2007, after an evaluation, that Økokrim would have to have doubled its workforce to handle all the insider trading cases from the exchange that they had agreed "absolutely could not be put aside".[1126]

The Money Laundering Act is a concrete example of an initiative from the authorities for increased transparency and access to information relevant on the basis of anti-corruption purposes.

The decision for the audit requirement for small businesses to be removed, however, can be seen as a step in the wrong direction. Starting in 2011, limited liability companies with operating revenues of less than NOK 5 million, with a balance sheet total of NOK 20 million where the average number of employees do not perform more than 10 man-years of work may opt out of the audit.[1127] On the other hand, the decision contributes to reduce costs for small businesses and thus provides more effective governance. The decision is controversial and illustrates the potential conflict of objectives between the scope of control and effective management. The challenge for both the government and the management of the businesses is to find the appropriate balance between prevention and control measures and measures that facilitate effective governance.

The resource situation related to combating economic crime and the deficiencies in the practice of the Money Laundering Act prevent the maximum score from being awarded for this indicator.

**INTEGRITY MECHANISM (LAW)**

*To what extent are there mechanisms in place to ensure the integrity of all those acting in the business sector?*

Score: 100

The Norwegian corruption provisions apply to both private and public sectors. Furthermore, the courts can also apply the provisions to matters that take place abroad.[1128] For the prosecution of foreigners it is not required that the relationship is punishable in the relevant country. According to the Norwegian Penal Code, it is also illegal for Norwegian companies to engage in trading in influence at home and abroad (Section 276c). Both individuals and corporations can be criminally liable. The key question for assessing whether an act is corrupt, or if illegal trading in influence has been committed, pursuant to the Norwegian Penal Code provisions, is whether the action involves an *improper* advantage. The improper advantage requirement is not as strict for the private sector as it is for the public sector, especially concerning what can be received by way of gifts and such like, without being considered to be improper. From preparatory work on the law it is evident that where the line goes depends on an overall assessment in which several factors will be important, and any internal guidelines in business or industry will be of particular importance to the private sector.[1129] Furthermore, it is pointed out that local cultures should play a role in the assessment of impropriety. In the Ministry's view, it cannot be unaffected by the conditions in a country where the bribe is received or paid, or where the passive briber has his employment.[1130] In light of the implementation of the UN Convention against Corruption, which established a global standard for the criminalization of acts of corruption, Økokrim assumes that local cultural differences will have less importance for the assessment of impropriety.[1131] In the rounds of hearings in the preparatory work on the law NHO stated that the law was not clear enough in defining the boundaries "between the legal measures for information, relationship building, customer contact, introductory sales etc. and corruption".[1132] From interviews in connection with this study, comments have been made on opportunities for getting companies convicted pursuant to the corruption provisions and the implications of this. Comments point in different directions, but show that there may be a need for adjustments to the current legislation for companies in this area.[1133]

In 2006 Oslo Stock Exchange signed the agreement on the establishment of a European standard[1134] for securities settlement (*European Code of Conduct for Clearing and Settlement*). The standard covers three aspects: 1. Full public disclosure of the infrastructure operator's fees, accompanied by examples. 2. Rules on cross-border cooperation, and the technical connection between infrastructure operators. 3. Unbundling of linked services and separate accounting.

The legislation makes it a requirement that tenderers for public contracts must have ethics programs, codes of conduct or similar. There are no ethical guidelines or similar for the entire industry. Appointment of a Chief Compliance Officer seems to be reserved the major companies, while small and medium sized businesses rarely have one.[1135]

In 2009 TI-N did an investigation of corruption prevention measures in Norway's 25 largest listed companies based on the companies' websites and subsequent e-mail correspondence.[1136] The results were not unambiguously positive. Five of the 25 surveyed companies had no information on values, ethical rules or programmes to combat corruption on their websites. Thirteen of the companies announced the ethical rules on their websites, while 11 of the companies revealed information which indicated that they had a programme to combat corruption or elements of such a programme. It would seem that very few of the companies had extensive programmes.[1137] In 2006 NHO made a survey among its members, and 54 percent of the companies then answered that they had policies on gifts and entertainment expenses, while 31 percent had plans to develop, review or update the guidelines. Subsequent to this NHO prepared a special guide which is to guide companies in developing their own guidelines for what is acceptable customer care, gifts, etc. The guide, according to NHO, has been in demand and their impression is that many companies have tightened their own practices in this area in recent years.[1138] A survey among Norwegian business leaders gives support to the claim; in the period 2005-2007 14,000 Norwegian companies dropped giving gifts to their business partners in connection with Christmas. Large law firms also report high demand from business executives who wonder where the line goes as to what they can give and receive of gifts.[1139] This suggests an increased awareness of this in Norwegian companies and it also shows that many people find it difficult to know where to draw the line for what is legal and not.

### INTEGRITY MECHANISM (PRACTICE)

*To what extent is the integrity of those working in the business sector ensured in practice?*

Score: 75

In the period 2003-2011 there have been 27 cases in the Norwegian courts that have ended in final judgements where one or more persons and/or companies have been convicted of corruption (25 cases) or trading in influence (two cases). In twelve of the cases, only persons employed in the private sector were convicted, while in seven of the cases persons from both the public and private sectors were convicted.[1140] It should be added that there were several cases where persons from both the public and private sectors were involved, but employees in only one of the

sectors were convicted. This shows that the number of cases that we are familiar with, and where the judgement is final, is divided fairly evenly between the public and private sectors and, in isolation, suggest that corruption challenges are equally prominent in both sectors.

Since 2006 The Confederation of Norwegian Enterprises' Security Council has annually[1141] conducted the Krisino survey where managers and security managers from the public sector (500 people) and business sector (2,000 persons) are asked questions about financial crime (hereinafter referred percentages apply to percentages of private sector employees). When asked if they know of attempts to bribe or induce anyone in their business to get a contract, the percentage of positive answers in all surveys remained at about 2-3 percent. When the question was changed to apply to knowledge of specific examples of corruption in their own industry the percentage is 8–10 percent.[1142] The highest proportion is in construction, where the percentage has varied between 13 and 17 percent in the last three surveys. 28 percent said in this year's (2011) survey that they or others in the industry had participated in social events, paid by the supplier. This is a slight increase from 2009 (23 percent) but lower than 2006 when 41 percent answered affirmatively to the question. The building and construction industry is the sector where this is clearly the most prevalent - in 2006, the proportion was 60 percent, while in 2011 it was 38. A final issue that should be mentioned is price-fixing. 16 percent of respondents say they know that there is price-fixing.[1143]

In 2004 and 2009 Statistics Norway (SSB) investigated the scope of economic crime among Norwegian companies. The data material is extensive. Both studies consisted of 2,000 businesses with five or more employees, extracted at the company level from Statistics Norway's corporate and business register (BoF). In both studies the participation rate was very high, with 92 and 94 percent respectively.[1144] Based on the results of the surveys it was assumed that around 20 percent of undertakings were exposed to economic crime in 2003, compared to around 15 percent in 2008. The decline of around five percentage points is statistically significant and suggests that the prevalence of economic crime among Norwegian companies has declined somewhat in recent years.

In today's globalised world international trade makes up a significant part of many companies' operations and Norwegian companies are no exception in this respect. A characteristic feature of Norwegian business' international activities is that they take place on a large scale in a number of sectors which, according to Transparency International Bribe Payers Index, are the most vulnerable to corruption: the oil and gas sector and the power sector. The fact that Norwegian oil and gas companies are corruption prone has been evident through several examples in the past decade.[1145]

A study of the experience of 82 Norwegian firms doing business in countries where corruption is a widespread problem found, among other things, that nearly 70 percent of respondents thought they had lost a contract as a result of corruption, while 41 percent said they rarely (24 percent), sometimes or often (17 percent) made use of trading in influence (facilitation payments). When asked directly, very few (6 percent) said they accepted corruption, while there was an equally small percentage who said they would make a formal complaint if they met a competitor they suspected of having paid bribes to win the competition - as many as 45 percent said they would do nothing in such a situation, and the majority of them agreed with the statement "corruption is part of the game."[1146] The results are an indication that doing business in foreign countries is a risk area for Norwegian companies. This is confirmed by the NHO representative who points out that some companies report uncertainty as to how to deal with corruption provisions internationally, in practice when operating in cultures where practices and expectations are different.[1147]

It is difficult to say anything for certain about the extent to which firms' internal code of conduct and the like are effectively implemented in companies. But in the previous section reference was made to surveys which indicate that there has been an increased awareness of the field within trade and industry. Similarly, it is difficult to say anything generally about notification procedures. In the Krisino survey 68 percent of the companies said that they had systems to ensure that employees could notify on irregularities or serious errors, which was significantly lower than among those employed in the public sector (94 percent). Findings from a larger study of notification in Norway indicate that awareness of the notification provisions and information about internal notification routines is better in the public sector compared with the private sector.[1148] The corruption cases from Norwegian trade and industry, the indications of varying attitudes toward corruption internationally and the varying practising of the notification regulations prevent the maximum score from being awarded for this indicator.

## ROLE

### ANTI-CORRUPTION POLICY ENGAGEMENT

*To what extent is the business sector active in engaging the domestic government on anti-corruption?*

Score: 100

NHO has previously expressed dissatisfaction that the corruption provisions are not clear enough to clarify the distinction between inducement and legal customer care.[1149] In a survey, 90 percent of member companies said that they wanted NHO

on board when it comes to inducements and where to draw the boundaries.[1150]

The government has established a consultative body – KOMpakt – for issues related to corporate social responsibility. The body consists of 33 representatives from various stakeholder groups: authorities, trade and industry, trade unions, civil society and academia. KOMpakt will strengthen the government's basis for policy formulation and decisions related to corporate social responsibility, with an emphasis on international issues, and strengthen the dialogue between the government, trade and industry, NGOs and academia in key issues relating to corporate social responsibility.[1151]

58 Norwegian companies have undertaken to comply with the UN *Global Compact* (UNGC), 30 of them have signed up within the last two years. UNGC consists of ten principles related to labour rights, human rights, the environment and anti-corruption.[1152]

### SUPPORT TO CIVIL SOCIETY

*To what extent does the business sector engage with/provide support to civil society on its task of combating corruption?*

Score: 100

There are very few actors within civil society working to combat corruption in Norway, but trade and industry are involved with those that exist.

On the whole, there is really only one organization in Norwegian civil society that can be said to work actively with the fight against corruption. This may partly be because corruption does not seem to be such a widespread problem in this country compared to some other countries.[1153] The most prominent civil society organization working to combat corruption is Transparency International Norway (TI-N).[1154]

TI-N's experience is that businesses show great interest and commitment for its work. TI-N and the business sector have had a partnership collaboration where companies from the business community have contacted TI-N for advice and co-operation in the development of anti-corruption programs and courses and training in anti-corruption efforts around the workplaces. In addition, the business community contributed actively in the preparation of the TI-N's *Guide to Anti-corruption for the Norwegian Industry*.[1155] In addition to TI-N, the international organizations Publish What You Pay and Tax Justice Network can be mentioned , which both have branches in Norway (PWYP-N and TJN-N) and who work with anti-corruption. PWYP N works especially in relation to the extractive industries and strives

for greater transparency and accountability in that sector. The main contributors to PWYP-N are Norad[1156] and the Norad programme *Oil for development*.[1157] Among other things, TJN works toward informing on the harmful effects of the secrecy offered by tax havens. TJN-N has no major financial contributors, but twelve CSOs are are paying members.[1158] IIn addition, there are all the aid and relief agencies working in aid and development in developing countries. In many of these countries corruption is a major problem and anti-corruption efforts are therefore a natural part of development work. The NHO representative who was interviewed in connection with this study says that the business sector might have had a closer relationship with them, more dialogue and exchange of experiences, since they face many of the same issues and challenges when it comes to international business.[1159]

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1059 See Fakta om norsk næringsliv [Facts on Norwegian business] at the Ministry of Trade and Industry, URL: http://www.regjeringen.no/nb/dep/nhd/tema/norsk-naringsliv.html?id=481737 Last visited 21/11/2011

1060 A public limited company (ASA) is a limited company with limited liability for participants (owners). Unlike the ordinary limited company, the requirement is that a public limited company must have share capital of at least NOK one million. For normal limited companies the requirement is NOK 30,000. The public limited company form of organization is designed for companies with many shareholders.

1061 In a general partnership (ANS) all participants have a personal responsibility for all liabilities (joint and several liability). What a participant cannot pay may be claimed entirely from any of the others. In a partnership with shared liability (DA), the participants collectively have a personal responsibility for all corporate debt, but each participant can only be charged up to the value of his/her ownership share.

1062 Is not really considered as a company, but belongs to a description of the main forms of ownership in business (Langfeldt, Bråthen and Gundersen (2011:115)).

1063 Previously, the requirement was NOK 100,000, but it was reduced to 30,000 in Proposition to the Storting 148 (2010-2011), and entered into force on 1 January 2012.

1064 Langfeldt, Bråthen and Gundersen (2011:87).

1065 The body of law for the private sector contains 123 laws and regulations (ibid).

1066 See *Saksbehandlingstider* [Case processing times] at the Brønnøysund Register, URL: http://www.brreg.no/saksbehandlingstider/ Last visited 21/11/2011.

1067 Prices apply to online registration. Paper registration is slightly more expensive, respectively NOK 6,382 and NOK 2,660.

1068 See *Gebyr for registrering og tinglysing [Charge for registration and recording]*, at the Brønnøysund Register, URL: http://www.brreg.no/reg_gebyrer/ Last visited 21/11/2011.

1069 The assessment covers regulations affecting eleven aspects of corporate activities: starting a business, processing of construction permits, registering property, obtaining credit, protecting investors, paying taxes, trading across borders, enforcing contracts, closing a business, electricity and employment.

1070 See p. 5 of The World Bank's *Doing Business Report 2011*, URL: http://www.doingbusiness.org/reports/global-reports/doing-business-2011/ Last visited: 15.0.12.

1071 See *Tallfestet reduksjonsmål for næringsforenklinger* [Quantified reduction targets for simplification for business] at the Minstry of Trade and Industry, URL: http://www.regjeringen.no/nb/dep/nhd/pressesenter/fakta-ark/ tallfestet-reduksjonsmal-for-naringsfore.html?id=653735 Last visited 21/11/2011.

1072 Report No. 7 to the Storting (2008-2009).

1073 Interview with Mestad, 01/12/2011.

1074 In legal theory it is argued by some that the term is misleading because it gives the impression that there must be a matter of contention, but practice shows that it usually revolves around whether the government has perceived its competence wrongly (Eckhoff and Smith 2010: 427, Graver 2007:113). This is a technical discussion of little practical importance in this context.

1075 Aulstad (2008:273).

1076 Interview with Mestad, 01/12/2011.

1077 In tort liability there is a distinction between compensation within or outside contractual relations (Langfeldt, Bråthen and Gundersen 2011:443).

1078 See NHO's Security Council website on the KRISINO survey, URL: http://www.nsr-org.no/krisino.htm Last visited 13/02/2012.

1079 A recent example is from last winter (2011/2012) when the Aker company wanted to expand its planned office space at Fornebu. It was required from the municipality that Aker make money available to a foundation that could buy Telenor Arena on terms that made it possible for the football club Stabæk to play their league matches there in the upcoming seasons. See *Røkke må gi Stabæk hjelp for å få kontorplass [Røkke must assist Stabæk in return for office space],* URL: http://www.aftenposten.no/okonomi/Rokke-ma-gi-Stabak-hjelp-for- a-fa-kontorplass-6745382.html Last visited 29/03/2012.

1080 Act relating to petroleum activities Section 3-5.

1081 Interview with Mestad, 01/12/2011.

1082 Limited companies with less than NOK 5 million in annual turnover, total assets under NOK 20 million and where the employees perform less than ten man-years, are now exempt from auditor duty. (Proposition to the Storting No. 51 L (2010–2011)).

1083 Does not apply to foreign companies which participate or are involved in business in this country, and who are liable for tax to Norway pursuant to Norwegian domestic law.

1084 The Financial Supervision Act Section 3.

1085 Ibid. Section 3a.

1086 The Accounting Act, Section 3-9.

1087 The term is imprecise, but is often used in the media and in everyday speech. Tax havens refers to states that stand out in the way they have adapted their secrecy rules and the strength of the protection of these rules Official Norwegian Report (2009c :14-16).

1088 Gustavsen (2011), Schjelderup (2011). Also see Official Norwegian Report (2009c).

1089 See the European Commission's proposal for a new consolidated accounting directive of 25 October 2011, URL: http://www.euo.dk/upload/application/pdf/e752d81a/COM_2011_684_EN_ ACTE_f.pdf Last visited 15/02/2012.

1090 See Høring – forslag til bestemmelser om land-for-land rapportering [Consultation – proposal for provisions on country/by/country reporting], URL: http://www. regjeringen.no/nb/dep/fin/dok/hoeringer/hoeringsdok/2011/horing---forslag-til- bestemmelser-om-lan/horingsbrev.html?id=665687 Last visited 15/02/2012.

1091 In the government's action plan against economic crime, it is stated that the government believes it makes sense to await developments in the EU, but that it will also consider whether it might be possible to introduce such rules in Norway on an independent basis.

1092 See Forslag om rapportering av utbetalinger land-for-land, prosjekt-for-prosjekt [Proposal for reporting payouts country-by-country, project-by-project], URL: http://www.nho.no/skatter-og-avgifter/forslag-om-rapportering-av-utbetalinger- land-for-land-prosjekt-for-prosjekt-article24300-178.html Last visited 29/03/2012.

1093 Report No. 10 (2008-2009:20).

1094 EITI is an acronym for the Extractive Industries Transparency Initiative and is a cooperative effort between authorities, business and civil society with an aim to increase transparency into capital flows from the oil, gas and mining industries. In countries implementing the EITI standard, the companies in these industries must disclose how much they pay in taxes, and the authorities must disclose how much they receive. These figures are compared and compiled in an EITI report. The International Secretariat of EITI has since 2007 been facilitated by the Norwegian Foreign Ministry, and is based in Oslo.

1095 Cf. e-mail from EITI's secretariat of 15/02/2012.

1096 Mauren og Lynum (2009).

1097 Bugge Reiersen and Sjåfjell (2010:460).

1098 See p. 11 of the report Forenkling og modernisering av aksjeloven [Simplification and modernisation of the Limited Liability Companies Act], URL: http://www.regjeringen.no/upload/JD/Vedlegg/Rapporter/Forenkling_av_ aksjeloven_web.pdf Last visited 29/03/2012.

1099 Gustavsen (2011).

1100 See Skatteetaten fant 29 mrd som ikke var oppgitt til beskatning i 2011 [Tax Administration found 29 billion that was not declared for taxation in 2011] URL: http://www.taxjustice.no/ressurser/skatteetaten-fant-29-mrd-som-ikke-var- oppgitt-til-beskatning-i-2011/ Last visited: 15/02/2012.

1101 Bugge Reiersen and Sjåfjell (2010:426–427).

1102 See *11 759 nye foretak [11,759 new enterprises],* URL: http://www.ssb.no/vis/emner/10/01/foretak/main.html Last visited 29/03/2012

1103 Ditlev-Simonsen (2011).

1104 Interview with Mestad, 01/12/2011.

1105 Bråthen, Langfeldt and Gundersen (2010:115).

1106 Companies Act Section 6-12 and the Public Limited Companies Act Section 6-12, Commercial Bank Act Section 9, the Savings Banks Act, Section 14, the Financial Institutions Act Section 3-9 and the Insurance Act, Sections 5-1 and 7-6, see Section 8-3 first paragraph.

1107 Companies Act Section 6-2, the Public Limited Companies Act Section 6-2, Commercial Bank Act Section 9, second paragraph, the Savings Bank Act Section 14, third paragraph, the Financial Institutions Act Section 3-9 third paragraph, the Insurance Act, Sections 5-2 and 7-6, second paragraph, cf. Section 8-3 first paragraph.

1108 Interview with Mestad, 01/12/2011.

1109 Official Norwegian Report NOU (2011a:101).

1110 The Financial Supervision Act Section 3.

1111 Act on measures to combat the laundering of proceeds etc. (Act No. 2003-06-20-41).

1112 Proposition to the Odelsting, No. 6 (2003-2004:126).

1113 See p. 75 of *Annual Report 2010* from the Financial Supervisory Authority, URL: http://www.finanstilsynet.no/Global/ Venstremeny/Rapport/2011/Finanstilsynet_Arsmelding_2010.pdf Last visited: 25/11/2011.

1114 Other recent examples are the studies done in connection with suspicion of collusion in the poultry industry and the decision that the dairy company Tine will pay NOK 45 million kroner in fines for having abused its market power (the final verdict is not available as yet) Also see Meyer (2011).

1115 Eriksen and Søreide (2012).

1116 See Uttalelse om unnlatelse av å anmelde i saker om lempning av 6. mars 2008,[Statement on the failure to report in cases regarding leniency of 6 March 2008] URL: http://www.konkurransetilsynet.no/iKnowBase/Content/429251/080306_ UTTALELSE_ANMELDELSE_LEMPNING.PDF Last visited 14/02/2012.

1117 Eriksen and Søreide (2012).

1118 Report. No. 10 (2008-2009:20).

1119 Finneide (2008:35); p. 24 of *Annual Report 2010* from Økokrim, URL: http://www.okokrim.no/
artikler/arsrapporter-okokrim Last visited: 22/11/2011.

1120 See p. 11 of *2010 Annual Report* from the Financial Supervisory Authority.

1121 See p. 22 of *Annual Report 2010* from Økokrim.

1122 Dugstad (2011).

1123 Interview with Angell, 30/09/2011; Dugstad (2011); Finneide (2008).

1124 Ibid.

1125 The Office of the Auditor General (2009).

1126 Gedde-Dahl (2008).

1127 Proposition to the Storting No. 51 (2010-2011).

1128 This is pursuant to the Penal Code Section 12, first paragraph, No. 1 and No. 4 letter a

1129 Preparatory work on the law mentions the following appropriate assessment factors: the economic value of the advantage, the parties' position or office, the purpose behind the contribution, the degree of openness in relation to the recipient's employer or client, whether any organization's internal policies, etc. is violated, what is customary in the current life or business area, whether any guidelines, etc. from a professional body is broken.

1130 Official Norwegian Report (2002:39); Proposition to the Odelsting No. 78 (2002-2003:53-55).

1131 Schea and Stoltenberg (2007:83).

1132 Proposition to the Odelsting, No. 78 (2002-2003:31).

1133 See the Anti-corruption Work chapter for a more detailed discussion of this, hereunder what the various comments entail.

1134 The standard has been prepared by the associations of infrastructure operators in the European securities market: Stock Exchanges (FESE), CSDs (ECSDA) and Clearing Houses (EACH). It is available at the FESE website, URL: http://www.fese.be/en/ Last visited 12/01/2012.

1135 The study has no figures on this, but is based on the informants' estimates. Interview with Halvorsen 21/09/2011, Kvamme 4/10/2011 and Bjerkomp 13/02/2012.

1136 The companies' size was based on the companies' market value on the Oslo Stock Exchange 31/12/2008.

1137 TI-Norway (2009).

1138 Interview with Lundeby, 25/10/2011.

1139 Eriksen, Haarde, Høie and Ravn (2007).

1140 This section is based on a simple compilation the author has made of the cases as described in the collection of sentences done by TI-Norway (2011).

1141 From 2009 it has been carried out every two years.

1142 This is true only up to 2008. Questions posed in 2006 and 2007 were too imprecise to be comparable with those numbers.

1143 See NHO's Security Council website on the KRISINO survey, URL: http://www.nsr-org.no/krisino.htm Last visited 15/02/2012.

1144 see Ellingsen and Sky (2005) and Ellingsen (2010).

1145 In the 1995-2005 period four corruption convictions were handed down on employees or former employees (two of the cases) of the oil company Statoil. In the biggest of these cases Statoil was given and accepted a fine of NOK 20 million. U.S. authorities also investigated the case and imposed an additional 120 million in fines (Gedde-Dahl et al. 2008:255–258).

1146 Søreide (2006a:389–390, 397–399).

1147 Interview with Lundeby, 25/10/2011; ibid.

1148 Trygstad (2010b). Also see the chapters on the Public Sector and Anti-corruption work.

1149 See Integrity Mechanisms (law).

1150 Lundeby (2006).

1151 See *KOMpakt,* URL: http://www.regjeringen.no/nb/dep/ud/tema/naeringslivsamarbeid_samfunnsansvar/n_samfunnsansvar/kompakt.html?id=633619 Last visited 15/02/2012.

1152 http://www.unglobalcompact.org/index.html Last visited 15/02/2012.

1153 Transparency International's annual corruption index (www.transparency.org) is one indication of that. Also see the chapters on corruption profile and anti-corruption activities.

1154 Also see the chapter on Civil Society.

1155 It must be mentioned that TI-N receives the majority of their money from the business and it can therefore be argued that they align themselves uncritically to business - an issue they also mention. At the same time the fact that many of the TI-Ns members are business enterprises is seen as an indication that the business is involved.

1156 Norad is the Directorate for Development Cooperation and is under the Ministry of Foreign Affairs.

1157 http://www.pwyp.no/ Last visited 15/02/12.

1158 http://www.taxjustice.no/ Last visited 15/02/2012.

1159 Interview with Lundeby, 25/10/2011.

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# VEDLEGG 1 – OVERSIKT OVER INFORMANTER

Under er en oversikt over hvilke personer (navn og stilling) som ble intervjuet i forbindelse med denne studien. Alle intervjuene, med unntak av to, er gjort ved personlig fremmøte. Intervjuene varte 60-90 minutter. Alle informantene fikk oversendt aktuelle spørsmål og et informasjonsbrev i forkant, og samtlige har fått mulighet til å kommentere i form av gjennomlesing av kapittelutkast.

| | |
|---|---|
| Arne Fliflet | Sivilombudsmann |
| Arnt Angell | Førstestatsadvokat, Økokrim |
| Arvid Halvorsen | Selvstendig konsulent, tidl CSR direktør i Hydro, tidl styremedlem i TI-N |
| Bernt Aardal | Forsker I, Institutt for samfunnsforskning, Professor II v/Universitetet i Oslo |
| Birgitte Brekke | Generalsekretær i Frivillighet Norge |
| Birthe Eriksen | Stipendiat, Juridisk fakultet, UIB |
| Eivind Smith | Professor, Institutt for offentlig rett, UIO |
| Eivind Vigeland | Politiinspektør, Politidirektoratet |
| Erik Lundeby | Etikkansvarlig, NHO |
| Gunnar Thomassen | Forsker, Politihøgskolen |
| Hans Brattestå | Direktør, Stortinget |
| Hans-Conrad Hansen | Ekspedisjonssjef, Riksrevisjonen |
| Helge Kvamme | Partner, PWCs granskingsenhet |
| Jan Fridthjof Bernt | Professor, Juridisk fakultet, UIB |
| Jens Christopher Andvig | Seniorforsker, NUPI |
| Karl Henrik Sivesind | Forsker I, Institutt for samfunnsforskning |
| Marianne Riise | Fagdirektør på valgområdet, Kommunal- og regionaldepartementet |
| Nils E. Øy | Generalsekretær i Norsk redaktørforening, Dosent II i journalistikk ved Høgskulen i Volda |
| Ola Mestad | Professor, Senter for europarett, UIO |
| Per-Kristian Foss | Andre visepresident i stortingets presidentskap (2009-2013), medlem av kontroll- og konstitusjonskomiteen siden 2005. |
| Sigurd Allern | Professor, Institutt for medier og kommunikasjon, UIO |
| Sverre Bjerkomp | Rådgiver, TI-N. Tidl. jobbet med samfunnsansvar i Hydro |
| Tina Søreide | Seniorforsker, Christian Michelsen Institutt |
| Tom Christensen | Professor, Institutt for statsvitenskap, UIO |
| Tor Henning Rustan Knutsen | Statsadvokat ved Riksadvokatsembetet |
| Tor Langbach | Direktør, Domstoladministrasjonen |
| Torgeir Magnussen | Politiinspektør, Politidirektoratet |
| Trond Nordby | Professor, Institutt for statsvitenskap, UIO |

# VEDLEGG 2 – NIS INDICATORSHEET

## 1. Legislature

### Capacity

**Resources (law)**
To what extent are there provisions in place that provide the legislature with adequate financial, human and infrastructure resource to effectively carry out its duties?
*What are the legal provisions re: resource allocation for the legislature? Does the legislature determine its own budget or is it up to the discretion of another institution?*

**Resources (practice)**
To what extent does the legislature have adequate resources to carry out its duties in practice?
*Resources include financial, infrastructure and staff. Items to consider are whether journals are published regularly and on time, house resources are adequate (clerks, research, library), committee resources are adequate (facilities, clerks, research), legislators' and factions' resources are adequate (office, staff, equipment, travel, salary, constituency budget), training is adequate.*

**Independence (law)**
To what extent is the legislature independent and free from subordination to external actors by law?
*Can the legislature be dismissed? If yes, under which circumstances? Can the legislature recall itself outside normal session if circumstances so require? Does the legislature control its own agenda? Does it control the appointment/election of the Speaker and the appointments to committees? Can the legislature appoint its own technical staff? Do the police require special permission to enter the legislature? Do legislators have immunity for speeches conducted during the exercise of their duties? Can only the legislature lift immunity?*

**Independence (practice)**
To what extent is the legislature free from subordination to external actors in practice?
To what extent is the legislature able to practice its rights and carry out its responsibilities as described under 1.1.3?
*Are there examples of attempted interference by external actors, particularly the government or judiciary, in the activities of the legislature? How many bills passed by the legislature originate from it rather than from the executive? Are there examples of the legislature passing bills against the explicit will of the executive? Are there examples of the speaker or individual legislators accusing the executive of undue interference? Have these cases been addressed adequately?*

## Governance

**Transparency (law)**
To what extent are there provisions in place to ensure that the public can obtain relevant and timely information on the activities and decision-making processes of the legislature?
*How open and accessible to the media and the public are the proceedings of the legislature and its committees required to be by law? Do all voting records have to be made public? Are the agendas of legislative sessions and committee hearings required to be published ahead of time? How free from restrictions are journalists in reporting on the legislature and the activities of its members? Does the law require verbatim records of floor sessions to be recorded? Are TV companies allowed to broadcast legislative sessions free of charge? Does the law allow members of the public access and attendance at legislative sessions? Is the legislature required to receive citizens and respond to their queries? Is the legislature required to produce and publicize reports about its activities? Are draft bills discussed by the legislature required to be made public? Are legislators' asset disclosures required to be made public?*

**Transparency (practice)**
To what extent can the public obtain relevant and timely information on the activities and decision-making processes of the legislature in practice?
*How effective is the legislature in informing the public about its work, through a variety of channels? How easy is it for the media and the public to obtain information on the activities of the legislature and its committees in practice? Can TV companies broadcast legislative sessions free of charge? Are all bills published before being debated? Are the agendas of legislative sessions and committee hearings published ahead of time? Is the legislature budget published in full? Are verbatim records of floor sessions recorded? Are reports to the legislature on government performance published and debated? Are Hansard/Journals for House and committees published and available? Are all voting records available in due course? Are individual budgets and balance reports on expenditures published? Are legislators' asset disclosures made public? Can members of the public access and attend legislative sessions in practice? Does the legislature respond to citizens' queries?*

**Accountability (law)**
To what extent are there provisions in place to ensure that the legislature has to report on and be answerable for its actions?
*Is there a constitutional review system of legislative activities? Are there provisions for public consultation on relevant issues? Are there mechanisms to handle complaints against decisions/actions by the legislature or its individual members?*

**Accountability (practice)**
To what extent do the legislature and its members report on and answer for their actions in practice?
*Does the legislature engage in public consultation on relevant issues? Does the legislature support public oversight by proactively providing information? Does the legislature report regularly with appropriate justifications to the relevant state bodies and public? To what extent can citizens complain against the legislature/individual MPs in practice? To what extent are immunity regulations used in practice to avoid MPs from being held accountable?*

**Integrity (law)**
To what extent are there mechanisms in place to ensure the integrity of members of the legislature?
*Are there codes of conduct for legislators? Are the legislature or independent bodies required to deal with the legislature ethics? Are there rules on gifts and hospitality for legislators? Are there post-employment restrictions for legislators? Are legislators required to record and/or disclose contact with lobbyists? Are there conflicts of interest policies for legislators? Are legislators required to fill out and publicize asset declarations?*

**Integrity (practice)**
To what extent is the integrity of legislators ensured in practice?
*Are existing codes of conduct, gift and hospitality regulations, post-employment restrictions, conflict of interest policies, integrity bodies, etc. effective in ensuring ethical behavior by legislators? Have legislators been found to be in violation of the code of conduct or other ethical standards? If yes, what sanctions were levied against them?? Do legislators record and/or disclose contact with lobbyists in practice? Are legislators' asset declarations published and scrutinized?*

## Role

**Executive Oversight**
To what extent does the legislature provide effective oversight of the executive?
*Does the legislature have the power to set up committees of inquiry? What is the scope of authority of these committees in investigating alleged executive misbehaviour? Does the legislature have the power to influence and scrutinize the national budget, through all its stages? Does the legislature have the power to scrutinize appointments to executive posts, and hold their occupants to account? Does the legislature have the power to impeach or censure officials of the executive branch, or express no-confidence in the government? Is the legislature able to play a role in the appointment process for the ombudsman, head of the supreme audit institution, electoral management body? Does the law include political control mechanisms via the legislature to monitor public contracting by the executive? How effective are specialist committees in carrying out their oversight function? Is the legislature's power to set up committees of inquiry effectively enforced? To what extent does the legislature have mechanisms to obtain information from the executive branch sufficient to exercise its oversight function in a meaningful way? Is the legislature's power to impeach or censure officials of the executive branch, or express no-confidence in the government effectively enforced?*

**Legal reforms**
To what extent does the legislature prioritise anti-corruption and governance as a concern in the country?
*What legislation in the field of anti-corruption has been passed by the legislature in recent years? To what extent has the legislature passed legal reforms that strengthen the integrity, åpenhet og innsyn and accountability of the country's governance system? What is the quality of this legislation? What international legal instruments have been passed/ratified?*

## 2. Executive

### Capacity

**Resources (practice)**
To what extent does the executive have adequate resources to effectively carry out its duties?
*Does the executive have the appropriate human resources at its disposal? Technical resources? Financial resources?*

**Independence (law)**
To what extent is the executive independent by law?
*Are there any provisions which restrict the independence of the executive in its decision-making and allow encroachment of other branches of government?*

**Independence (practice)**
To what extent is the executive independent in practice?
*Are there examples of other actors (e.g. military, legislature) unduly interfering with the activities and decisions of the executive?*

### Governance

**Transparency (law)**
To what extent are there regulations in place to ensure transparency in relevant activities of the executive?
*Are the activities of the executive required to be recorded in a government information system? If yes, what does it cover? Does the law require assets of executive branch officials to be disclosed? Who has the legal power to enforce disclosure? Must the government budget be made public?*

**Transparency (practice)**
To what extent is there transparency in relevant activities of the executive in practice?
*To what extent does the government information system work in practice? Is the government budget made public? Are cabinet meeting minutes made public? Are assets disclosed in practice? Are they made public? In past year, how often has the government rejected a Freedom of Information Act-based request? Does the government systematically translate procedures and regulations in plain language to ensure that average citizens understand them?*

**Accountability (law)**
To what extent are there provisions in place to ensure that members of the executive have to report and be answerable for their actions?
*What laws/rules govern oversight of the executive? Do the reporting requirements of the executive ensure that it is answerable for its actions? Are members of the executive obliged by law to give reasons for their decisions? Is the executive obliged to consult with the public and/or special groups? Can members of the executive be held accountable for wrongdoing?*

**Accountability (practice)**
To what extent is there effective oversight of executive activities in practice?
*To what extent are oversight rules effectively implemented in practice? Does the government report on its activities as required by law? Is the executive audited and the results presented to the legislature? Is there any interference while the office of the Auditor General is completing the audit? Is the executive audited on an annual basis? Are the requirements for public consultations followed in practice? Are sanctions/prosecution mechanisms re: members of the executive effective?*

**Integrity (law)**
To what extent are there mechanisms in place to ensure the integrity of members of the executive?
*Are there codes of conduct for members of the executive? Do codes of conduct include anti-corruption provisions? Are there rules on conflict of interest? Rules on gifts & hospitality? Restrictions on post-ministerial employment? Restrictions on "revolving door" appointments? Are there comprehensive provisions on whistleblower protection?*

**Integrity (practice)**
To what extent is the integrity of members of the executive ensured in practice?
*Are the existing codes and rules effective in ensuring ethical behavior on part of the executive? In the past year, how many examples of conflict of interest cases were there implicating a member of the executive? To what extent is the symptom of the "revolving door" (i.e. executive officials moving back and forth between big business and government positions) a concern? Are existing provisions on whistleblower protection effective in practice?*

## Role

**Public Sector Management (law and practice)**
To what extent is the executive committed to and engaged in developing a well-governed public sector?
*Does the executive have the appropriate mechanisms and bodies to effectively supervise and manage the work of the civil service? Do ministers/DGs provide effective supervision over their respective staff? Does the executive provide incentives for the public sector to conduct its activities in a transparent, accountable and inclusive way, e.g. via transparency awards, financial incentives, monitoring systems/scorecards?*

**Legal system**
To what extent does the executive prioritise public accountability and the fight against corruption as a concern in the country?
*What legal and administrative reforms in the field of anti-corruption and accountability have been drafted by the executive? What public announcements by relevant ministers and/or the head of state have been made regarding the fight against corruption?*

## 3. Judiciary

### Capacity

**Resources (law)**
To what extent are there laws seeking to ensure appropriate salaries and working conditions of the judiciary?
*What are the legal regulations governing judicial salaries? Are there provisions against income reduction of judges? What is the process for determining salaries of the judiciary (by superior judges, constitution, law)? Is there a mechanism securing salary adjustment with regard to inflation? According to the law, how should the judiciary's budget be apportioned? Is the judiciary legally entitled to participate in this process? Is the judiciary required by law to be apportioned a minimum percentage of the general budget?*

**Resources (practice)**
To what extent does the judiciary have adequate levels of financial resources, staffing, and infrastructure to operate effectively in practice?
*Is the budget of the judiciary sufficient for it to perform its duties? How is the judiciary's budget apportioned? Who apportions it? In practice, how are salaries determined (by superior judges, constitution, law)? Are salary levels for judges and prosecutors adequate or are they so low that there are strong economic reasons for resorting to corruption? Are salaries for judges roughly commensurate with salaries for practicing lawyers? Is there generally an adequate number of clerks, library resources and modern computer equipment for judges? Is there stability of human resources? Do staff members have training opportunities? Is there sufficient training to enhance a judge's knowledge of the law, judicial skills including court and case management, judgment writing and conflicts of interest?*

**Independence (law)**
To what extent is the judiciary independent by law?
*Is the highest court anchored in the constitution? Is its independence guaranteed in the constitution? How difficult is it to amend the constitution regarding its specifications on the highest court? What is the process for appointing judges? Are judicial appointments made by professionals or politicians? Is there an independent Judicial Services Commission or a similar body with constitutional protection for the appointment and removal of judges? If so, how is this Commission/body appointed? To what extent are members of the judiciary and the legal profession involved in appointing judges? Do appointments have to based by law on clear professional criteria? Are they appointed for life?*
*Does the system provide for security of tenure (permanent) to prevent judges being threatened with arbitrary termination of their contract? What is the process for removing judges? Are there regulations protecting judges from undue influence? To what extent is there room for participation of civil society in appointment proceedings (e.g. public hearings)?*

**Independence (practice)**
To what extent does the judiciary operate without interference from the government or other actors?
*Are judges appointed based on clear professional criteria? How common is it for judges to be removed from their position before the end of their term? How credible are the justifications used for removing judges from their positions before the end of their term? Do judges get transferred or demoted due to the content of their decisions? Has the legal foundation for the highest court remained stable over time or been subject to frequent changes? Are there any examples of undue external interference in judicial proceedings? Is the independent Judicial Services Commission effective? Are the regulations protecting judges from undue influence effectively enforced?*

## Governance

**Transparency (law)**
To what extent are there provisions in place to ensure that the public can obtain relevant information on the activities and decision-making processes of the judiciary?
*Are judges required to disclose their assets and make them available to a Judicial Appointments Commission or another appropriate body? Is the judiciary required to provide information on judgements, judicial statistics, court hearing records/transcripts, membership of relevant organisations, and other relevant activities to the public in a timely manner? Are public hearings/proceedings generally required by law? Is the Judicial Services Commission required to provide information on its activities and decisions to public in a timely manner? Is the information on appointing, moving and removal of judges required to be made public?*

**Transparency (practice)**
To what extent does the public have access to judicial information and activities in practice?
*Does the judiciary publish regular reports on its activities, spending and governance? Does the Judicial Services Commission publish regular reports on these topics? Are these reports comprehensive? How are these reports publicized/distributed? Is there reliable access to information on court procedures, judgments, judicial statistics, court hearing records/transcripts, etc.? Is the public entitled to information on the number of cases disposed of annually? To what extent can citizens access this information? Does the prosecution generally conduct judicial proceedings in public? Can citizens obtain information on appointing, moving and removal of judges easily? Is there a comprehensive website on the judiciary?*

**Accountability (law)**
To what extent are there provisions in place to ensure that the judiciary has to report and be answerable for its actions?
*Are judges required by law to give reasons for their decisions? If so, what are the consequences if they do not do so? Is there an independent body investigating complaints against judges? Does immunity apply to corruption and other criminal offences? Is there a formal complaints/disciplinary procedure? Are complainants protected by law? Can a judge be censured/reprimanded, fined, suspended and removed?*

**Accountability (practice)**
To what extent do members of the judiciary have to report and be answerable for their actions in practice?
*Do judges provide reasons for their decisions in practice that can readily be understood by court users? Are any sanctions imposed if they fail to provide reasons for their decisions? How effective and independent is the body in investigating complaints and imposing sanctions? Are complainants effectively protected in practice and provided with acceptable remedies? How effective are disciplinary procedures?*

**Integrity mechanism (law)**
To what extent are there mechanisms in place to ensure the integrity of members of the judiciary?
*Are judges required to disclose their assets and make them available to a Judicial Appointments Commission or another appropriate body? How comprehensive is the Code of Conduct, if it exists? Are there regulations preventing judges from receiving reimbursements, compensation and honoraria in connection with privately sponsored trips? Are there regulations governing conflicts of interest for the judiciary? Are there regulations governing gifts and hospitality for the judiciary? Can citizens challenge the impartiality of a judge if s/he fails to step down from a case? Are there restrictions for judges entering the private or public sector after leaving the government?*

**Integrity mechanism (practice)**
To what extent is the integrity of members of the judiciary ensured in practice?
*Are existing codes of conduct, gift and hospitality regulations, post-employment restrictions, conflict of interest policies, integrity bodies, etc. effective in ensuring ethical behaviour by judges? Do judges disclose their assets in practice? Are their asset declarations scrutinized? Are breaches sanctioned? Who ensures compliance with the code of conduct? Are breaches investigated and sanctioned? In practice, how effective are the regulations restricting post-government private sector employment for judges? How long before a judge can take up publicly funded work? In practice, are citizens able to challenge the impartiality of a judge if s/he fails to step down from a case?*

**Executive Oversight**
To what extent does the judiciary provide effective oversight of the executive?
*Do courts have the jurisdiction to review the actions of the executive? If so, how routine and how extensive is it? How effective is it in practice? Are judgements that overturn decisions by the executive implemented?*

**Corruption Prosecution**
To what extent is the judiciary committed to fighting corruption through prosecution and other activities?
*To what extent is the judiciary committed to sanctioning corruption? How effective is it in this task (e.g. number of successfully prosecuted cases)? To what extent are corruption-related cases brought before the courts and found admissible? Does it provide separate statistics on corruption prosecutions? If yes, how comprehensive are these statistics? Is the judiciary involved in suggesting anti-corruption measures/reforms to the government based on its experience and expertise? To what extent do domestic judicial authorities cooperate and offer mutual legal assistance to requesting foreign judicial authorities, when it comes to corruption-related crimes with a cross-border element?*

## 4. Public sector

### Capacity

**Resources (practice)**
To what extent does the public sector have adequate resources to effectively carry out its duties?
*Are actual funds for the public sector in line with requirements? Is the overall wage bill for the public sector sustainable? Are wages in the public sector adequate to sustain an appropriate standard of living according to the level of the country's economy? Do pay and benefit levels attract or deter talented people from entering the public sector? Are public services being delivered effectively?*

**Independence (law)**
To what extent is the independence of the public sector safeguarded by law?
*Are there regulations which prevent undue political interference in the appointment and promotion of public sector employees?Are there regulations regarding professional impartiality of public sector employees? Is there an institution dedicated to protect public sector employees against arbitrary dismissals or political interference?Is parliamentary lobbying for the inclusion/exclusion of publicly procured projects in plans, programmes and budgets regulated in law?*

**Independence (practice)**
To what extent is the public sector free from external interference in its activities?
*To what extent are public sector employees exchanged after a change in government?*
*Are the recruitment and promotion regulations effective in preventing political interference (e.g. are selection committees able to work without political interference)? How much discretion do heads of public sector agencies/departments have over the appointment/dismissal of their staff? To what extent ensure the regulations re: political activities of existing public sector employees (e.g. party membership, expression of political views) their independence? If there is a dedicated institution to safeguard the public sector from political interference, how effective is it in its work?*

### Governance

**Transparency (law)**
To what extent are there provisions in place to ensure transparency in financial, human resource and information management of the public sector?
*Are there regulations requiring the disclosure of declaration of personal assets, income, financial interests of senior officials in public sector agencies? How often? How are they verified? Which laws and regulations pertain to public information management? Are there regulations regarding how records in the public sector are managed and made public? Are there regulations regarding how records pertaining to public procurement are managed? What rules govern appointments? Is it required in law that vacancies are advertised publicly to ensure fair and open competition?*

**Transparency (practice)**
To what extent are the provisions on transparency in financial, human resource and information management in the public sector effectively implemented?
*Do citizens have reasonable access to information on public sector activities and the records that public sector entities keep on them? Does disclosure of personal assets, income, financial interests of public sector employees occur in practice? Is information on public procurement timely and comprehensive enough, and available in practice? In practice, are vacancies advertised publicly to ensure fair and open competition?*

**Accountability (law)**
To what extent are there provisions in place to ensure that public sector employees have to report and be answerable for their actions?
*Is there any official policy on whistle-blowing or exposing wrongdoing? What are the procedures for handling complaints? Are there provisions for whistle-blowing on misconduct and management of complaints in public procurement procedures? To what extent can public sector employees be charged with extortion, bribery, corruption, abuse of privileged state information? What other oversight mechanisms are in place (e.g. legal, administrative and inspection oversight)? What mechanisms for citizen complaints/redress are in place? What audit mechanisms are in place? Are public sector agencies required to report to the legislature?*

**Accountability (practice)**
To what extent do public sector employees have to report and be answerable for their actions in practice?
*Are existing state oversight mechanisms effective? Are whistle-blowing policies and complaints mechanisms for public procurement from public sector employees effective in practice? How often are public sector employees reported of wrongdoing? To what extent are public sector employees charged with/convicted of offenses? Are there cases of public sector employees being held accountable for malpractice and what type of disciplinary procedures were taken as a result of this? Do bodies which are responsible for the control of activities related to public procurement provide effective oversight in practice? Are existing mechanisms for citizen complaints/redress effective?*

**Integrity (law)**
To what extent are there provisions in place to ensure the integrity of public sector employees?
*Are there codes of conduct, rules regarding conflicts of interest, rules on gifts and hospitality, post-employment restrictions, unauthorized use of official property/facilities, work outside the public sector, use of official information, use of official travel, employment of family members? Is bribery of/by public sector employees considered an offense in law? When it comes to public procurement, do bidding/ contracting documents contain special anti-corruption clauses?*

**Integrity (practice)**
To what extent is the integrity of public sector employees ensured in practice?
*How widespread is public sector corruption? Are existing codes of conduct, gift and hospitality regulations, post-employment restrictions, conflict of interest policies, integrity bodies, etc. effective in ensuring ethical behaviour by public sector employees? Are there*

*training programmes for employees on their content? Are public sector core values regularly communicated? Are they included in employment contracts? Are they widely known by public sector employees? When it comes to public procurement, are anti-corruption clauses in bidding documents generally enforced?*

## Role

**Public Education**
To what extent does the public sector inform and educate the public on its role in fighting corruption?
*Are there specific programmes run by the public sector to educate the public on corruption and how to curb it? How much prominence do these programmes have? How successful are they? Is there high-level support for these programmes? Does an average citizen know where and how to complain about corrupt practice?*

**Cooperate with public institutions, CSOs and private agencies in preventing/addressing corruption**
To what extent does the public sector work with public watchdog agencies, business and civil society on anti-corruption initiatives?
*Are there examples where public sector agencies cooperated with other agencies within the state and/or with CSOs and business on anti-corruption initiatives? Who initiated them? How willing/interested were public sector bodies to cooperate on these initiatives? How successful were they?*

**Reduce Corruption Risks by Safeguarding Integrity in Public Procurement**
To what extent is there an effective framework in place to safeguard integrity in public procurement procedures, including meaningful sanctions for improper conduct by both suppliers and public officials, and review and complaint mechanisms?
*Does the law require open bidding as a general rule? To what extent does this happen in practice? Are exceptions to open bidding regulated by the law and kept to a minimum? To what extent does the law provide rules to ensure objectivity in the contractor selection process? How well do these rules work in practice? Does the law provide for the use of standard bidding documents? Are these used in practice? Does the law establish which bodies are responsible for the control of activities related to public procurement? Does the law require that these bodies be independent? Are there procedures for supervision of contract implementation? Are these enforced in practice? Is there a central procurement agency? If so, to what extent is it adequately resourced (personnel and funding)? Is it independent from procuring agents/bodies? Does the law require those involved in different stages of public contracting to have special qualifications, related to their tasks? Is this the case in practice? Does the law regulate that staff in charge of offering evaluations must be different from those responsible for the elaboration of the terms of reference/bidding documents? Does the law require that both of the above-mentioned types of staff are different from those undertaking any control activities? Does the law require clarifications and amendments during the bidding process to be shared among all bidders?*

*Does this take place in practice? Are procurement award decisions made public? Does the procurement law require the maintenance of registers and statistics on contracts (irrespective of the contracting method)? Are these registers kept in practice? Is there a procedure to request a review of procurement decisions? Does it operate in practice? Does the law consider civil or social control mechanisms to monitor the control processes of public contracting? Are there administrative sanctions (eg. Prohibition to hold public office) for criminal offences against the public administration in connection with public procurement? Are these sanctions enforced in practice?*

## 5. Law Enforcement Agencies

### Capacity

**Resources (practice)**
To what extent do law enforcement agencies have adequate levels of financial resources, staffing, and infrastructure to operate effectively in practice?
*How adequate is the budget? Do agencies seek out-of-budget funding (e.g. service charges, donations)? How adequate are salaries to attract qualified and committed staff? How adequate is the computer equipment? Have there been complaints regarding budget cuts? Is there a special police unit dedicated to investigating corruption-related offences?*

**Independence (law)**
To what extent are law enforcement agencies independent by law?
*Are there rules stipulating that appointments should be made on the basis of clear professional criteria? Are there laws preventing any political interference in the activities of law enforcement agencies? Can prosecutors be instructed not to prosecute in a specific case by another authority? Is there a prosecutorial career, based on objective criteria? How are prosecutors promoted?*

**Independence (practice)**
To what extent are law enforcement agencies independent in practice?
*In practice, are appointments made on the basis of clear professional criteria? To what extent is the politicization of law enforcement a problem for their independence? Are there examples of undue external interference in ongoing investigations? Can prosecutors work without intimidation, hindrance, harassment, improper interference or unjustified exposure to civil, penal or other liability? If not, are these cases properly investigated and those allegedly responsible brought to justice?*

### Governance

**Transparency (law)**
To what extent are there provisions in place to ensure that the public can access the relevant information on law enforcement agency activities?

*What aspects of law enforcement work are required to be publicly disclosed? Does the law require assets of law enforcement officials to be disclosed regularly? Are there any special provisions for victims of crimes to access their case files?*

**Transparency (practice)**
To what extent is there transparency in the activities and decision-making processes of law enforcement agencies in practice?
*Are assets disclosed in practice? Is disclosure of relevant activities taking place in practice?*

**Accountability (law)**
To what extent are there provisions in place to ensure that law enforcement agencies have to report and be answerable for their actions?
*Are prosecutors required to give reasons to relevant stakeholders regarding their decision to prosecute or not (when it falls within their discretion)? Can victims of certain crimes access the justice system to ensure prosecution? In law, is there an independent mechanism for citizens to complain about misconduct in police action? In law, is there an agency/entity to investigate and prosecute corruption committed by law enforcement officials? In law, are law enforcement officials immune from criminal proceedings?*

**Accountability (practice)**
To what extent do law enforcement agencies have to report and be answerable for their actions in practice?
*Does the public prosecution office account periodically and publicly for its activities as a whole and in particular the way in which its priorities are carried out? Do prosecutors give reasons to relevant stakeholders regarding their decision to prosecute or not?*
*In practice, does the independent law enforcement complaint reporting mechanism respond to citizen's complaints within a reasonable time period? In practice, does an independent agency initiate investigations into allegations of corruption by law enforcement officials? In practice, are law enforcement officials immune from criminal proceedings?*

**Integrity (law)**
To what extent is the integrity of law enforcement agencies ensured by law?
*Is there are a code of conduct for the police? For prosecutors? Are there rules on conflict of interest for police officers? For prosecutors? Are there rules on gifts and hospitality? Are there post-employment restrictions? Are there corresponding legal provisions for holding accountable those law enforcement officials who have not accurately declared their assets and property?*

**Integrity (practice)**
To what extent is the integrity of members of law enforcement agencies ensured in practice?
*Are existing codes of conduct, conflict of interest policies, integrity bodies, etc. effective in ensuring ethical behavior by law enforcement officials? Are there training programmes for employees on their content? How effective and independent are disciplinary mechanisms?*

### Role

**Corruption prosecution**
To what extent do law enforcement agencies detect and investigate corruption cases in the country?
*Do police and prosecutors have legal powers to apply proper investigative techniques in detecting corruption cases? Are the powers of police and prosecutors with regard to corruption cases adequate (e.g. search warrants, arrest, access to personal information)? How many cases of prosecuting corruption-related charges have been undertaken during the last 12 months? How many of them have resulted in charges?*

## 6. Electoral Management Body

### Capacity

**Resources (practice)**
To what extent does the electoral management body (EMB) have adequate resources to achieve its goals in practice?
*Does the EMB receive a budget in a timely manner from the state sufficient for it to perform its duties for each electoral event and the running of institute? Are there regular increases in financial resources from the state? Does the EMB have the necessary human resources and operational structures (administrative, financial and technical) to manage the electoral process? Does the EMB have sufficient facilities to conduct its work (offices, transport, communications)? Are EMB staff permanent? Does the EMB have a systematized archive and institutional memory?*
*Do EMB members have appropriate academic qualifications and sufficient previous work experience? Is there equality of opportunity for women and ethnic/minority groups? Adequate career development and training opportunities for permanent staff?*

**Independence (law)**
To what extent is the electoral management body independent by law?
*What is the legal status of the EMB as an institution? Is the EMB anchored in the constitution? Does the legal framework require and enable the EMB to operate in an impartial and transparent manner? What is the management structure of the EMB? Is there a clear division of powers between the commission (policy makers) and the secretariat (administration)? Is there a system in place to ensure that recruitment is based on clear professional non-discriminatory criteria? Who appoints/elects the head and staff? How can staff, particularly the director, be dismissed? Are they protected by law from removal without relevant justifications?*

**Independence (practice)**
To what extent does the electoral management body function independently practice?
*Does the EMB have the confidence of government and citizens? Are there examples of undue external interference in the affairs of the EMB? Is the EMB perceived to be independent, im-*

*partial, accountable and efficient? Can the EMB operate in a professional and non-partisan manner? How common is it for the senior EMB staff to be removed from their position before the end of their term? Are there examples of EMB officials making partisan statements/ engaging in partisan activities?*

## Governance

**Transparency (law)**
To what extent are there provisions in place to ensure that the public can obtain relevant information on the activities and decision-making processes of the EMB?
*To what extent is relevant information produced by the EMB (e.g. election results, dates, polling stations) required to be made public? What aspects of party funding and operations are required to be made public by the EMB, if any?*

**Transparency (practice)**
To what extent are reports and decisions of the electoral management body made public in practice?
*To what extent is the required information actually made public? Are regular press conferences held/statements made? Is the schedule of operations made public in advance (registration dates/party registration/election day, etc)?*
*Does the EMB have an accessible public website with events, facts, decisions and data? Does the EMB have a call centre for queries? To what extent does the EMB's transparency extend from the central to the local levels?*

**Accountability (law)**
To what extent are there provisions in place to ensure that the EMB has to report and be answerable for its actions?
*Does the legal framework adequately define the EMB's relationships with external stakeholders? Does the legal framework allow for timely and enforceable review of an EMB decision? Is the EMB required to file reports? How comprehensive are they required to be? Are these reports required to be publicly available? Do political parties and candidates have the legal means of redress for electoral irregularities? Is there a legal requirement for internal auditing and/or independent/external auditing of expenditure? Is the EMB required to present the financial report to the state? How are discrepancies accounted for?*

**Accountability (practice)**
To what extent does the EMB have to report and be answerable for its actions in practice?
*Does the head of the EMB account for the activities of its staff in practice? Does the EMB file the required reports? Are they adequate in quality and scope to ensure proper oversight? Are they made publicly available? In practice, can political parties and candidates seek redress for electoral irregularities through a complaints/dispute resolution mechanism? How effectively are complaints/disputes resolved? Are imposed sanctions/fines generally implemented? Does the EMB have regular meetings with parties, the media and observers to answer queries on delays/decisions/disputes?*

**Integrity (law)**
To what extent are there mechanisms in place to ensure the integrity of the electoral management body?
*Is there a code of conduct? How comprehensive is it? Does it cover conflict of interest rules? Rules on gifts and hospitality? Post-employment restrictions? The EMB's commitment to maintaining the integrity of all electoral processes? Its support for the principle of political non-partisanship? A commitment to the provision of quality service to voters and other stakeholders? Do staff have to sign a contract, declaration or swear an oath to uphold the guiding principles of independence, impartiality, integrity, transparency, efficiency, professionalism and service-mindedness in conducting their duties?*

**Integrity (practice)**
To what extent is the integrity of the electoral management body ensured in practice?
*Are existing codes of conduct, gift and hospitality regulations, post-employment restrictions, conflict of interest policies, integrity bodies, etc. effective in ensuring ethical behaviour by EMB staff/officials?*
*In practice, do staff sign a contract, declaration or swear an oath to uphold the guiding principles of independence, impartiality, integrity, transparency, efficiency, professionalism and service-mindedness in conducting their duties? How effective is the EMB in exposing and sanctioning breaches, irregular or corrupt practices within its staff? Is there a hearing or investigation process? Are there any precedents of staff suspension or dismissals?*

## Role

**Campaign regulation**
Does the electoral management body effectively regulate candidate and political party finance?
*What are the competencies of the EMB in this regard? What laws have been passed? How extensive are they? Is it just registration? Media allocation? Regulating funding and disclosure provisions? Auditing?*

**Election Administration**
Does the EMB ensure the integrity of the electoral process?
*Is the EMB able to ensure that all eligible voters (including first time voters, women, minorities, habitants in remote/security areas) can register to vote and know where to vote? Do voters (and parties) have an opportunity to check their names are registered correctly? Are a considerable number of voters who come to the polling station unable to vote for any reason (on wrong register/lack of time/materials/security)? Does the EMB run/oversee voter education programs? Are sensitive electoral materials (ballots, seals, tally sheets) tamperproof and accounted for? Is the EMB able to account for and aggregate results accurately and efficiently and objectively validate election results? Are observers and parties allowed access to observe all stages from polling to counting to result aggregation?*

## 7. Ombudsman

### Capacity

**Resources (practice)**
To what extent does an ombudsman or its equivalent have adequate resources to achieve its goals in practice?
*Is the budget of the ombudsman sufficient for it to perform its duties? Are funding levels maintained over time? Is there stability of human resources? Do staff members have appropriate skills and experience? Are there adequate career development and training opportunities for staff?*

**Independence (law)**
To what extent is the ombudsman independent by law?
*Is the ombudsman established in the Constitution or solely in law? Is the principle of independence of the ombudsman enshrined in the constitution or another legal act? Is the recruitment of the ombudsman and its staff required to be based on clear professional criteria? Is the head of the institution appointed by qualified parliamentary majority or a body which is not subject to the ombudsman's jurisdiction? Does the law provide legal restrictions on political and other activities of the ombudsman, aiming to ensure his independence and neutrality? Does the ombudsman have fixed term of office by law (i.e. exceeding by one year or more the term of the body appointing him) and can he be reappointed? Is the ombudsman's salary comparable to salaries of high-level officials (MPs, government officials, judges of higher courts)? Does the ombudsman have the sole power to appoint and remove staff (in conjunction with a public service commission, if it exists)? Are the staff, and particularly the ombudsman, protected by law from removal without relevant justifications? Are there legal provisions to ensure that the ombudsman may not be prosecuted criminally for acts performed under the law? Are the ombudsman's activities subject to judicial review by the courts? Can the ombudsman appeal to courts to reinforce the powers granted by law?*

**Independence (practice)**
To what extent is the ombudsman independent in practice?
*Can the ombudsman operate in a professional and non-partisan manner? Are there any examples of political influence on the appointment of the ombudsman's staff or examples of political interference in the ombudsman's activities? Are there any cases of the ombudsman's political engagement or conducting other activities, prohibited by law, or holding positions which might compromise independence? How common is it for the ombudsman to be reappointed? How common is it for the ombudsman (or senior staff) to be removed from their position before the end of their term without relevant justifications (or on political reasons)? Can complaints be filed to the ombudsman without fear of retaliation?*

## Governance

**Transparency (law)**
To what extent are there provisions in place to ensure that the public can obtain relevant information on the activities and decision-making processes of the ombudsman?
*Is there a confidentiality clause requiring the ombudsman to maintain the confidentiality of complainants when needed? What kind of information on his activities (i.e. findings, recommendations, reports, budget) is the ombudsman required to make publicly available, taking into account reasonable confidentiality considerations? Are there any deadlines on making such information publicly available? Is the ombudsman (senior staff of ombudsman's office) required to make his/her asset declarations public? What are the regulations pertaining to the involvement of the public in the activities of the ombudsman (e.g. public council, advice committee, public consultations) taking into account reasonable confidentiality?*

**Transparency (practice)**
To what extent is there transparency in the activities and decision-making processes of the ombudsman in practice?
*What kind of information on the Ombudsman's activities is actually made publicly available by the ombudsman? Does the information provide adequate details on the work performed (e.g. average time taken to finalise complaints, proportion of complaints to the office that were investigated)? Are there any cases of violation of time requirements for making such information publicly available? Does the ombudsman have his own website? Does ombudsman make publicly available on his website all information required by law to be publicly available? Does the ombudsman involve the public (independent experts, NGOs representatives etc.) in his activities in practice? What are the main forms of such involvement? Does the ombudsman make his asset declarations public in practice?*

**Accountability (law)**
To what extent are there provisions in place to ensure that the ombudsman has to report and be answerable for its actions?
*To whom is the ombudsman accountable by law? What kind of information on ombudsman's activities must be submitted to the body, to whom the ombudsman is accountable? Must this information be debated (discussed) be this body? Are there any time provisions on submission of this information? Must this information be publicly available? Are its activities subject to judicial review by the courts? Are there provisions for whistleblowing by the ombudsman's staff on misconduct*

**Accountability (practice)**
To what extent does the ombudsman report and is answerable for its actions in practice?
*Does the ombudsman have to account for the activities of its staff in practice? What kind of information does the ombudsman file (submit to the body, to whom he is accountable), in practice? Is this information submitted in proper time? Is this information debated in practice? Is the whistleblowing policy effective? Is the judicial review mechanism, if it exists, effective?*

**Integrity (law)**
To what extent are there provisions in place to ensure the integrity of the ombudsman?
*Is there a code of conduct or any other rules aiming to ensure the integrity of the ombudsman? What issues and to what extent does it cover? Does it cover conflict of interest rules? Rules on gifts? Restrictions on political engagement? Asset declarations? Confidentiality of communication unless given permission? Obligation to hold all communications with all those seeking assistance?*

**Integrity (practice)**
To what extent is the integrity of the ombudsman ensured in practice?
*Are existing codes of conduct, gift and hospitality regulations, post-employment restrictions, conflict of interest policies, integrity bodies, etc. effective in ensuring ethical behaviour by the ombudsman and his staff? Are staff trained on integrity issues? Have there been cases of violation of the code of conduct or other ethical standards? If yes, what sanctions were levied against them? Are the ombudsman's asset declarations published and scrutinized?*

## Role

**Investigation**
To what extent is the ombudsman active and effective in dealing with complaints from the public?
*How simple is the procedure of lodging complaints to the ombudsman in practice? How many complaints have been received and investigated in past year? Are the ombudsman's recommendations generally implemented by the relevant institutions? Are there examples of proactive investigation by the ombudsman? What is the public perception of the ombudsman? Is there an outreach programme in place to make the ombudsman's services better known to the public?*

**Promoting good practice**
To what extent is the ombudsman active and effective in raising awareness within government and the public about standards of ethical behavior?
*What governmental agencies are under the ombudsman office's jurisdiction by law and in practice? How common is it for the ombudsman to consult before criticizing an agency or person and to allow the criticizing to reply? Are there examples of public campaigns or campaigns for government officials? Are there examples of the ombudsman making recommendations to government on such public and internal campaigns? Is the ombudsman active in publishing findings, recommendations, reports on complaints, materials on the principles of good administration and effective complaint handling? Does the ombudsman monitor implementation of his findings and recommendations?*

## 8. General Audit

### Capacity

**Resources (practice)**
To what extent does the audit institution have adequate resources to achieve its goals in practice?
*Is the budget of the SAI sufficient for it to perform its duties? Does the SAI control and manage its own resources? Are there regular increases in financial resources? If the SAI deems resources to be insufficient, can it apply to the legislature directly for the necessary financial means? Is there stability of human resources? Do staff members have an adequate academic background and sufficient previous work experience? Do they have adequate career development and training opportunities?*

**Independence (law)**
To what extent is there formal operational independence of the audit institution?
*Is the SAI established in the Constitution or solely in law? Is the principle of independence of the SAI enshrined in the constitution or other legal act? Are the relations between the SAI and the legislature laid down in the Constitution? Is there any state body which by law can influence the SAI's agenda? Can the SAI carry out its audits in accordance with a self-determined programme and methods? Is recruitment to the SAI required to be based on clear professional criteria? Is the director of the SAI appointed in the way that ensures his/her independence? Does the law provide restrictions on political and other activities of the director/members of SAI, aiming to ensure his/her independence and neutrality? Does the director of the SAI have a fixed term of office by law (i.e. exceeding by one year or more the term of the body appointing him) and can he be reappointed? Are the director and staff protected by law from removal without relevant justifications? Are the director/members of the SAI/staff immune from prosecutions resulting from the normal discharge of their duties?*

**Independence (practice)**
To what extent is the audit institution free from external interference in the performance of its work in practice?
*Can the SAI operate in a professional and non-partisan manner? Are there any examples of political influence on director's/members'/staff appointment or examples of political interference in the SAI's activities? Are there any cases of director'/members'/staff's political engagement or conducting other activities, restricted by law, or holding positions which might compromise the SAI's independence? How common is it for the director/members to be reappointed? How common is it for the senior SAI staff to be removed from their position before the end of their term without relevant justifications (or for political reasons)?*

## Governance

**Transparency (law)**
To what extent are there provisions in place to ensure that the public can obtain relevant information on the relevant activities and decisions by the SAI?
*What kind of documents (reports on audits, opinions on draft laws and state budget etc.) must be prepared by the SAI? What kind of documents must be submitted to the legislature? Must these documents be debated by the legislature? What kind of information on its activities is the SAI required to make publicly available? Are there any deadlines on making such information publicly available?*

**Transparency (practice)**
To what extent is there transparency in the activities and decisions of the audit institution in practice?
*Which of the legally required documents are prepared by the SAI in practice? Are the required documents always submitted to the legislature? What kind of information is actually made public? Is this information made public in proper time? Does the information provide adequate details on the SAI's activities? How easy is it for the public to get access to the information on SAI and its activities (audits, SAI's internal organisation, methods of audit, staff and financial capacity, budget, reports etc.)? Is there a SAI website? Is it up-to-date?*

**Accountability (practice)**
To what extent are there provisions in place to ensure that the SAI has to report and be answerable for its actions?
*Is the SAI required by law to provide a comprehensive report on SAI activities to the parliament or other responsible public body at least once a year? Are there any legal requirements on the content of this report? Is there any deadline for submission of the annual report to the legislature? Is the SAI required to have its financial management audited itself? Is this audit independent? Must the results of audit of the SAI's finances be submitted to the parliament (or another authorised body) with a comprehensive report on the SAI's activities? Are there legal provisions which allow administrative bodies audited by the SAI to challenge or appeal against audit results*

**Integrity (law)**
To what extent are there mechanisms in place to ensure the integrity of the audit institution?
*Is there a code of conduct or other rules aiming to ensure the integrity of the SAI? What issues and to what extent do(es) it (they) cover? In particular, does it cover conflict of interest rules? Rules on gifts and hospitality? Post-employment restrictions? Does it espouse values of independence, impartiality and objectivity?*

**Integrity (practice)**
To what extent is the integrity of the audit institution ensured in practice?
*Are existing codes of conduct, gift and hospitality regulations, post-employment restrictions, conflict of interest policies, integrity bodies, etc. effective in ensuring ethical behaviour by the SAI and its staff? Are staff trained on integrity issues? Have there been cases of violation of the code of conduct or other ethical standards? If yes, what sanctions were levied against them?*

## Role

**Effective financial audits**
To what extent does the audit institution provide effective audits of public expenditure?
*Is it common for the SAI to examine the effectiveness of internal audit within government departments? Is it common for the SAI to carry out not only audits of legality and regularity of financial management and accounting, but also performance audits? Are reports on audit findings comprehensive? Are the audits regular? Up to date? Presented to the legislature or other authorised public body?*

**Detecting and sanctioning misbehavior**
Does the audit institution detect and investigate misbehaviour of public officeholders?
*Does the audit institution have adequate mechanisms to identify misbehaviour (access to all records relating to financial management, power to request necessary information etc.)? Does it have the authority to investigate misbehaviour? Does it have the political power, clout and independence to identify responsibilities of officeholders? Does it (or other government agencies) clearly define the sanctions applicable? Is the sanction generally applied?*

**Improving financial management**
To what extent is the SAI effective in improving the financial management of government?
*How much focus does the SAI put on making comprehensive, well-grounded and realistic recommendations to promote efficiency in the use of state money? How aggressively does it follow up on its recommendations? Is there a review mechanism to assess whether government has implemented the SAI recommendations? Is there evidence on whether governments act upon SAI reports?*

# 9. Political parties

## Capacity

**Resources (laws)**
To what extent does the legal framework provide an environment conducive to the formation and operations of political parties?
*What is the legal process of establishing parties? What are the legal restrictions on party ideology? Are there laws on freedom of association? Are political parties banned by law? Are political parties and their role mentioned in the country's constitution? Is there a minimum number of founders required to set up parties? What other legal requirements have to be met to set up a party? What are the legal provisions available for political parties to appeal against de-registration, rejected registration etc.? What restrictions exist on political party activities, such as campaigning and internal democratic decision-making? To what extent does the state provide support (financial subsidies, in-kind subsidies, tax incentives etc) to political parties and candidates in order to prevent dependence on private financial donors and guarantee equality of opportunity.*

**Resources (practice)**
To what extent do the financial resources available to political parties allow for effective political competition?
*What is the financial status of opposition parties, small and new parties? Is there sustainability and diversity of funding sources for political parties? What is the balance between private and public funding of political parties? Do parties have equitable access to airtime during campaigns?*

**Independence (laws)**
To what extent are there legal safeguards to prevent unwarranted external interference in the activities of political parties?
*What is the relevant legislation regarding state monitoring/investigation/dissolution of political party operations? How easy it is for state authorities to order the banning of a specific political party? What are the legal powers of state authorities for surveillance of political parties? Is government oversight reasonably designed and limited to protect legitimate public interests? Are there regulations allowing for mandatory state attendance of political party meetings?*

**Independence (practice)**
To what extent are political parties free from unwarranted external interference in their activities in practice?
*Are there examples of the state dissolving and/or prohibiting political parties or of state attempts in this regard? Are there examples of other state interference in the activities of political parties? Are there examples of harassment and attacks on opposition parties by state authorities or actors linked to the state/governing party? Are all political parties treated equally by authorities? How common is the detention or arrest of political party members because of their work? When attacks on political party members occur, does the state usually engage in a proper and impartial investigation?*

**Transparency (laws)**
To what extent are there regulations in place that require parties to make their financial information publicly available?
*Are there comprehensive regulations governing financial accounting of political parties requiring e.g. the disclosure of information on government subsidies and information on private financing at regular and clearly defined intervals? Are there comprehensive regulations on disclosure of campaigning money, public subsidies etc., requiring the disclosure of both the amount, as well as the name and address of the contributor? To what extent are parties required to make the public aware of such information through a variety of channels (e.g. the electoral management body, internet)?*

**Transaprency (practice)**
To what extent can the public obtain relevant financial information from political parties?
*Do political parties make their financial information publicly available, as per the law? How readily can the public access financial information from political parties, including information on public and private donations and party expenditures? To what extent do parties pro-actively make the public aware of such information through a variety of channels (e.g. electoral management body, internet access)?*

**Accountability (laws)**
To what extent are there provisions governing financial oversight of political parties by a designated state body?
*Are there comprehensive regulations empowering a designated state body to demand financial reports from parties, both during and between election periods? What types of finances need to be accounted for? Are there any legal loopholes which allow parties not to account for certain finances? Are there sanctions for not submitting financial reports to the relevant body in full and in a timely fashion? How often must reports be submitted to the body? Is there a standard format? Does the report have to include both donations and expenditures?*

**Accountability (practice)**
To what extent is there effective financial oversight of political parties in practice?
*Do parties submit financial reports to a designated state body during and between elections? Is there a functioning mechanism to ensure the accuracy of the reports? How accurate and reliable are they in reality? Are sanctions for non-compliance enforced by the designated oversight body in practice?*

**Integrity (laws)**
To what extent are there organisational regulations regarding the internal democratic Governance of the main political parties?
*Are there regulations on the election of party leadership in the country's main political parties? Selection of candidates? Decision-making processes regarding party platforms?*

**Integrity (practice)**
To what extent is there effective internal democratic governance of political parties in practice?
*How are party leadership and candidates selected in practice for the country's main political parties? How are the policies of political parties determined in practice?*
*Interest aggregation and representation*
*To what extent do political parties aggregate and represent relevant social interests in the political sphere?*
*Are there stable parties with distinct political platforms? Are there specific interest groups who dominate certain political parties? Are there other clientelistic relationships between individuals/narrow groups and certain political parties? What is the legitimacy of political parties among the population? How strong is the linkage between political parties and civil society?*

**Anti-corruption commitment**
To what extent do political parties give due attention to public accountability and fight against corruption?
*Are these issues mentioned in party manifestos and electoral commitments? Are they given prominence in speeches by party leaders?*

Transparency International is the global civil society organisation leading the fight against corruption. Through more than 90 chapters worldwide and an international secretariat in Berlin, we raise awareness of the damaging effects of corruption and work with partners in government, business and civil society to develop and implement effective measures to tackle it.

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