The Ministry of Justice and the Police
The Ministry of Finance

The Norwegian Government's Action Plan for Combating Economic Crime

2004 – 2007

Foreword

Our open, trust-based, democratic society faces forms of crime that take advantage of the vulnerability brought about by this openness.

The globalized international financial system combined with non-cooperative jurisdictions and non-transparent trust and company structures enables money laundering and effective concealment of illegally acquired capital and evasion of social obligations. This results in enormous costs to society and it has been shown that this form of crime often has ramifications in poor and conflict-ridden countries.

The fight against serious international crime is the responsibility of nation states, which only operate within their own borders, while money is moved electronically around the world. Effective international cooperation has never been more important.

The rule of law must meet this new reality.

At the same time, we must safeguard the values we have built up since the Enlightenment: democracy, security of individuals under the law, the right of privacy and the right to live in safety.

The Government's action plan for combating economic crime has these values as its backdrop.

The aim of the measures that are to be implemented is to prevent and reduce economic crime without unnecessary intervention in people's private lives. We have borne in mind simplicity for ordinary citizens. The measures are also based on cost-benefit assessments. We believe that the outlined reforms have a low cost in relation to the savings that society can achieve by implementing them.

We believe that the general sense of justice will be strengthened by enabling detection and punishment of sophisticated crime committed by decision makers in the private and public sectors.

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PART I

INTRODUCTION

1 A new action plan for combating economic crime

The Government gives high priority to efforts to combat economic crime. Previous governments have submitted action plans for combating economic crime in 1992, 1995 and 2000.

There are several reasons why there is now a need for a new and broader action plan. Firstly, developments show a tendency towards greater *internationalization* and *organization* of economic crime.

Major financial scandals demonstrate a need to consider whether new approaches must be adopted in order to prevent and more effectively combat this type of crime. Secondly, a *considerable development in law* has taken place in the area of economic crime. Particularly in *international* terms, there has been a keen focus on economic crime. A milestone in international developments in law is the United Nations Convention against Corruption of 31 October 2003, which was signed by the Norwegian Government on 9 December 2003. The United Nations Convention against Transnational Organized Crime of 15 November 2000, which was ratified by Norway on 23 September 2003, is also of major importance for international efforts to combat economic crime. Last, but not least, the Financial Action Task Force (FATF)[1] revised its 40 recommendations regarding measures against money laundering in June 2003.

Norway complies with the international obligations and recommendations ensuing from international instruments and bodies of which it is a member. Moreover, the Government wishes Norway to play a proactive role in encouraging the introduction of more efficient international measures, such as reduction in the use of tax havens. It must thus be considered whether Norway may take international initiatives to revise the framework conditions for combating of economic crime.

Since it came to power in 2001, the Government has submitted and secured adoption of a number of statutory amendments, for example new penal provisions against corruption and organized crime, a new Competition Act, Money Laundering Act and Foreign Exchange Register Act[2], amendments to the rules concerning the tax administration's right to request audit information from banks, etc. and authority for the tax collector to obtain audit information from third parties. In order to secure funds for management of estates and detection of any financial irregularities, the petitioner's liability (the amount that the person who petitions for bankruptcy must guarantee for) has been increased to 50 times the standard court fee, currently NOK 37 000. At the same time, a statutory charge of 5 per cent of the total pledged assets in the estate has been introduced for necessary estate charges.[3] Pursuant to the statutory amendment of 12 March 2004, the Office of the Auditor General of Norway obtained the right to inform the police on its own initiative if, in connection with an audit,

[1] See 10.1 for further details concerning FATF.

[2] According to plans, the Act will enter into force on 1 January 2005.

[3] The Act has not entered into force.

facts were revealed that gave grounds for suspecting a criminal offence.

The Government has also submitted a number of proposals for statutory amendments to the Storting, for example proposals for amendments to chapter 27 of the Penal Code on felonies in debt relations, proposals concerning the obligation of employees of financial institutions to give evidence to the police and proposals for amendments to bankruptcy legislation.

Norway has primarily sound legislation for preventing and combating economic crime. However, practical follow-up of all amendments is a major priority. In this connection, training initiatives, appropriate organization, development of new cooperative procedures, assessment of the resource situation, etc. will all be necessary.

Initiatives concerning statutory amendments constitute an important element of the action plan. Most of these amendments are aimed at prevention of economic crime. However, amendments are also needed in order to comply with international obligations.

Efforts to combat economic crime must be made in several arenas and at different levels. The main purpose of the plan is to provide guidelines and propose measures that may help in reducing the scale of economic crime. This, in its turn, will provide commerce and industry with more equitable competitive conditions, which will provide a basis for sound economic developments, increased employment and growth. At the same time, it is important to avoid measures that hinder law-abiding activities. It is also of value in itself to protect the community against abuse of the welfare system and systems based on trust on which our society depends. In the action plan, the Government will outline new measures that will result in enhanced detection and more efficient prosecution of economic crime. The action plan will also promote measures that may help in other ways in preventing or reducing economic crime. In order to maintain respect for the law and encourage attitudes that counteract *all* forms of economic crime, improved measures must also be developed to counteract less serious breaches of the law, such as minor tax evasions. In this area, the plan will primarily contain measures to make it easier for people in general to comply with the law.

The Government wishes Norway to play an active role in international cooperative efforts to combat economic crime, particularly as regards support for and effective follow-up of new international instruments in this area. Globalization of world economy with new opportunities for concealing criminal acts and the proceeds of such acts has a particularly serious effect on the poorest and least developed countries. The Government gives high priority to efforts to combat corruption and money laundering, and has therefore established a separate project under the leadership of Assistant Secretary General Eva Joly.

The plan is to be implemented over a period of three years.

2 Summary of the measures in the plan

There is a need for a greater and more targeted effort on the part of the police and public prosecution authority in order to detect and combat economic crime. Multi-professional economic crime teams will therefore be established in all police districts by the end of 2005.

In order to improve performance, measures to raise the level of expertise will be established for the economic crime teams in the police. The basis of recruitment to work on combating economic crime will be improved by making financial investigation a separate subject at the National Police Academy by the academic year of 2005–2006. Measures will also be introduced to raise the level of expertise at higher levels of the public prosecution authority and in the courts.

There is a need for more knowledge concerning the scale, development and detrimental effects of economic crime. Such knowledge will provide a better basis for assessing the effect of measures and where new measures are needed. More research into economic crime will be carried out, among other reasons, in order to determine the extent of corruption in the public sector.

In order to make crime less profitable, more active efforts must be made to confiscate the proceeds of criminal activities. The number of confiscation cases shall increase by 20 per cent in 2004. In order to increase the efficiency of confiscation, the Government proposes amendment of the rules concerning seizure and freezing including extended rights to seize and arrest and to sell seized objects.

Among other ways, by means of its membership of international bodies, Norway will play a proactive role in promoting measures to reduce the use of tax havens, including rules that make it possible to establish the identity of the real owners of companies and other legal structures. Norway will include this complex of themes in the developmental dialogue with partner countries where natural, and consider providing technical assistance in order to establish the necessary legislation and administration of such legislation. In cooperation with Norwegian companies and in international fora, the Government will strive for increased transparency of income from extractive industries.

During the spring session of 2005, the Government will recommend the Storting to consent to ratification by Norway of the United Nations Convention against Corruption.

The Government will propose statutory amendments to enable us to restore and share the confiscated proceeds of criminal activities with other countries.

The Government will implement a review of national legislation in order to ensure that international measures against money laundering and the financing of terrorism are implemented in Norwegian law, including the EU Third Money Laundering Directive and the FATF recommendations.

The financial scandals of recent years have demonstrated a strengthened need to ensure confidence in financial information. It is therefore important to strengthen controls. Norway will follow up international measures in this area. Important topics that will be assessed in this connection include:

- enforcement arrangements for control of financial information provided by companies listed on the stock exchange
- strengthening of the current requirements regarding provision of information concerning payments to senior personnel in the company in the form of notes in the annual accounts
- rules prescribing that the use of special purpose vehicles in closed financial centres shall be clearly shown in the company’s accounts with an explanation of why the company finds it necessary to use such a structure
- whether it should be required that consolidated information concerning incoming and outgoing payments made in relation to different countries or regions be provided in the annual accounts
- measures associated with follow-up of the EU’s draft of a new Eighth Company Law Directive on Statutory Audits designed to encourage confidence in auditors’ independence and strengthen the basis of administrative sanctions against auditors
- amendments to the Public Limited Companies Act and the Companies Act aimed at

arranging for increased control and greater transparency regarding contracts between a company and senior personnel in the company, or between the company and shareholders with large holdings

The Government aims to move some areas of the "black" economy into the "white" economy. This will include a focus on simplification measures designed to help loyal taxpayers to abide by the law without excessive exertion. Procedures associated with private work assignments carried out at home will be reviewed with a view to simplification.

The tax authorities will further develop sectorally and thematically targeted approaches. One area of focus will be the building and construction sector, where consideration will be given to whether the main contractor should be made responsible for withholding and remitting taxes for the whole contract. The Norwegian Customs and Excise Administration will focus in future on controls in the area of exports in order to detect fictitious exports, VAT refunds and the black economy. Commercial importers of flowers, fruit and vegetables will also be subjected to increased controls.

The Norwegian Tax Administration has established a separate unit to be responsible for black economy and economic crime in the Oslo area and aims to set up similar specialized units in several parts of the country.

In order to ensure a sustainable development of marine resources and equal conditions of competition in the fishing industry, focus will be directed towards effective control as well as cooperation and information exchange between supervisory bodies and between supervisory bodies and the police.

The Government will consider arrangements in the public sector with regard to the right or duty of public employees to report suspicions of corruption or other criminal or improper activities in their own organization. Improved mechanisms will be established for storage and handling of such information and guidelines will be drawn up indicating when information shall be handed over to the police.

The Government will consider whether to introduce quarantine rules for civil servants moving to jobs in the private sector.

The Ministry of Justice will establish a special team at the National Authority for Investigation and Prosecution of Economic and Environmental Crime (ØKOKRIM) to increase detection of and prosecution for abuse of state support schemes.

The Government will propose revision of the rules concerning the disqualification period following bankruptcy in order to ensure a more effective handling of bankruptcy crime.

The securities market develops rapidly and conditions change frequently. It is important that breaches of the law are detected rapidly and penalized effectively. An assessment of the cooperation between ØKOKRIM, Kredittilsynet (the Financial Supervisory Authority of Norway) and the Oslo Stock Exchange shall be made in order to assess control resources and the division of labour between the agencies.

Within the framework of the EEA Agreement, Norway takes an active part in the drafting of EU finance market legislation. Important measures for follow-up of the EEA rules in this area currently being implemented in Norwegian law include:

- *Accounting*: In summer 2004, the Ministry of Finance will submit a bill concerning implementation of the EU Regulation on the application of international accounting standards (IFRS).

- *Auditing*: The Ministry of Finance will consider amendments to the Auditors Act and submit a Bill when a new Eighth Company Law Directive on Statutory Audits is finally adopted.
- *Market abuse:* In autumn 2004, the Ministry of Finance will submit a Bill on implementation of the new directive on insider dealing and market manipulation (market abuse) and its supplementary Acts.
- *Prospectus Directive:* A working group appointed by Kredittilsynet has proposed rules for implementation of the new directive on the prospectus to be published when securities are offered to the public or admitted to trading and the Directive's supplementary Acts. The Ministry of Finance will circulate the Bill for consideration by the appropriate bodies.
- *Disclosure obligation of companies listed on the stock exchange*: The Ministry of Finance will consider and propose appropriate amendments resulting from the new directive on continuous reporting by issuers of securities listed on the stock exchange or regulated markets.
- *Investment services and regulated markets:* The Ministry of Finance will consider and propose appropriate amendments resulting from a new directive on markets for financial instruments**.**

The Government will issue regulations containing further provisions designed to ensure effective enforcement of the new Competition Act. These will include regulations enabling leniency in order to facilitate detection of cartels. Regulations ensuring stringent administrative sanctions will also be issued.

3 Economic crime

3.1 What is economic crime?

Economic crime is an umbrella term for a number of crimes associated with industry and commerce and other organized activities in the private or public sector. It consists of profit-motivated, illegal activities conducted within or arising out of an economic activity that is in itself legal or is purported to be so. Examples of economic crime are tax evasion, breaches of competition legislation, corruption, bankruptcy crime, breach of trust, fraud and embezzlement, breaches of accounting rules, illegal copying of software, abuse of state support schemes, fishery crime, insider dealing and currency manipulation. Serious profit-motivated crime[4] generally gives rise to a need for *money laundering* of the proceeds. Money laundering is often carried out through companies or financial institutions where proceeds are concealed by other persons. Such activities are therefore generally regarded as a separate form of economic crime.

3.2 Detrimental effects of economic crime

Economic crime occasionally has a direct impact on individuals, but generally it is corporate interests or non-profit-making or public interests, i.e. the public at large, that suffer. The cost to society of, for example, tax evasion probably amounts to a two-figure number of billions each year. This weakens the basis of the welfare state and results in law-abiding taxpayers

[4] It is usual to distinguish economic crime from other forms of profit-motivated crime, such as traditional crimes of gain, e.g. theft, and forms of organized crime, e.g. drug-related crime. But most cases of serious profit-motivated crime share the need for money laundering.

paying a disproportionate share of communal costs. Abuse of state support schemes results in increased costs for the public authorities. Violation of fisheries legislation, such as breach of quotas, dumping and black market landing hinder sustainable development of our common marine resources. Illegal price collusion results in losses for consumers. Insider dealing and currency manipulation has unfortunate consequences for investors and for industry and commerce. Economic crime is furthermore an obstacle to economic growth, particularly because it undermines confidence in the market. The will to invest and to take risks is reduced if it is not possible to trust the accounting figures of the companies concerned or if there is reason to believe that price fluctuations are the result of manipulation. Moreover, economic crime is a serious problem for our trust-based system as regards the basic data used for computation of taxes and for grants and subsidies. Economic crime may also give rise to detrimental distortion of competition whereby lawful business activities fail to compete with unlawful activities and, at worst, may be forced to choose between closing down or engaging in criminal activities. This is assumed to be a particularly serious problem in the building trade and in the catering sector.

3.3 The scale of economic crime

The level of *reported* or *recorded* economic crime has remained fairly constant during recent years. Taking the country as a whole, economic crime constitutes on average approximately 2 per cent of all reported crimes. However, only a fraction of economic crime is detected and reported. It is therefore impossible to å give a reliable estimate of the *actual* scale of economic crime.

Certain features of economic crime, particularly the low risk of detection, indicate that the *dark figures* (unrecorded crime) are large compared with the figures for other categories of crime. Most economic crimes have no aggrieved party in the traditional sense, who discovers and reports the act. The fact that economic crime takes place in ostensibly lawful activities also contributes to the low risk of detection. The perpetrators are often persons with considerable resources and high positions. They have plausibly lawful reasons for carrying out large transactions, and for conducting extensive travel and meetings. Their activities therefore do not initially give rise to suspicion. There are rarely any witnesses to the criminal activities. Evidence often lies concealed in documents or computer systems.

The dark figures are also a consequence of the fact that some detected offences are not reported and are therefore not recorded. Factors that may have significance for whether possible criminal offences are reported include perceptions concerning police efficiency, the potential for repairing the damage without external assistance and the belief that it may be detrimental to the reputation of the enterprise or organization if it becomes common knowledge that economic crime has taken place.

Information released in connection with the evaluation by GRECO (Group of States against Corruption) of Norway's measures against corruption indicates that companies omit to report economic crime partly out of consideration for their reputation.[5] Investigations conducted by PriceWaterhouseCoopers[6] indicate that many companies omit to report crimes. The Norwegian bank Gjensidige Nor recently published the results of a questionnaire survey conducted for them, where one quarter of 2100 senior staff of industrial and commercial concerns answered that they believe bribery and corruption to be a part of the sector in which

[5] See Evaluation Report on Norway adopted by GRECO at its 10th Plenary Meeting, Strasbourg, 8-12 July 2002.

[6] See Global Economic Crime Survey 2003.

they work.[7] In insolvency reports received by the district courts, it is not infrequently stated that presumably criminal offences are not reported since it is assumed that the police would not investigate the matter anyway.

Detection of economic crime is largely dependent on the efforts of the police or of supervisory bodies such as the Tax Administration, the Customs and Excise Administration, the Norwegian Competition Authority or Kredittilsynet (the Financial Supervisory Authority of Norway) or of any witnesses in the undertakings themselves or by intermediaries taking contact with the police or media. However, some areas of economic crime are of such a nature that they are unlikely to be detected by the police or by supervisory bodies even if they increase their efforts. Here, input from financial institutions, auditors, lawyers, real estate agents and other persons who, pursuant to the Money Laundering Act are obliged to report suspicious transactions, will be of major importance. The Government wishes also to emphasize that it is important that the fight against economic crime is taken seriously by the company managements both by establishing satisfactory internal control systems and by showing willingness to take contact with the police on suspicion of criminal offences.[8]

Fluctuations in the records of economic crime need not signify changes in the actual scale of crime. An increase may just as well indicate increased efforts by the police or by supervisory bodies. Or, to put it differently, the more successful the police and supervisory bodies are in detecting economic crime, the greater will be the scale of the crime recorded, while reducing the element represented by dark figures. Conversely, a reduction in recorded crime, may be a result of lower priorities, resource problems or other matters in the police and supervisory bodies. It is therefore difficult to measure whether there has been a change in the scale of crime and also whether efforts to combat economic crime function as intended.

3.4 Developmental trends

Police cases and intelligence data indicate an increase in the *complexity* of economic crime cases and that economic crime is becoming increasingly *organized* with an increased degree of *internationalization*.[9] The complexity increases partly as a result of greater use of information technology and sophisticated company structures. In pace with increases in globalization of the economy and society in general, economic crime is also becoming more international. In their pursuit of increased profit, criminal persons, groups and networks make contact with each other across national borders. Criminal activities are thus channelled to areas with high profitability and low risk of detection. This applies particularly to money laundering. The proceeds of criminal activities are most effectively laundered internationally. It takes, for example, only a few seconds to transfer such proceeds to the bank account of a nominee company in another country. The authority of the police is restricted to its own country, and it can take a long time to trace the proceeds. Tracing such amounts abroad is dependent on cooperation with the authorities of the country concerned, which can be complicated and costly as well as time-consuming, a fact that the criminals are aware of and exploit to the full in the most serious cases.

Moreover, experience indicates that the boundaries between economic crime and other categories of crime are somewhat blurred. Witnesses to economic crime are threatened to

[7] See Gjensidige NOR's investigation of Norwegian industry for 2003, Bribery and corruption in Norwegian industry and commerce in Norway.

[8] See Report No. 19 to the Storting (2002–2003), page 113.

[9] See BKA (Bundeskriminalamt section OA 11, OC Situation Analysis Center, "Situation report on organized crime in the Federal Republic of Germany 2000" where organized economic crime is assessed as the most usual form of organized crime after drug-related crime.

silence while the proceeds of drug-related crime are laundered through advanced company structures.

3.5 Combating economic crime

It is the aim of the Government to reduce economic crime.

Two main strategies are adopted for crime fighting in the police and public prosecution authority in general: general preventive work and prosecution of cases.[10] By general preventive work is usually meant visible presence of police and traditional consciousness raising. The most important contribution of the police and public prosecution authority in combating economic crime lies in prosecution of cases. It is assumed that punishment has a considerable generally deterrent effect where this type of crime is concerned. To the extent that the police and public prosecution authority perform general preventive work against economic crime, it primarily takes the form of consciousness raising work.

Economic crimes are often detected in the course of the activities of supervisory bodies. It is therefore of major importance that such bodies possess the necessary competence and the material and economic resources to conduct supervisory activities of satisfactory quality. The objects of supervision and control should be aware of the fact that the public authorities are capable of detecting illegalities through their control regimes. If such awareness is lacking, the risk of detection will be perceived as being small, and the will to comply with legislation will be reduced. Supervisory bodies thus play a role in both preventing and detecting illegalities.

Furthermore, one of the purposes of the *reporting obligations* pursuant to the Money Laundering Act, see 10.2, is to prevent the institutions and professions concerned from being misused for the purposes of money laundering. Measures that prevent money laundering may have a generally preventive effect on profit-motivated crime: If it is made more difficult to launder money and other proceeds of criminal activities, it will become less tempting to commit crimes that result in large gains.

The Director General of Public Prosecutions has overall responsibility for the handling of economic crime cases by the police and public prosecution authority. As a rule, cases concerning economic crime are dealt with in the police district where the scene of the crime is located.

In its letter of allocation for 2004 to the Police Directorate, the Ministry of Justice decided that all police districts are to have multi-professional teams to investigate economic crime ("ecoteams"). In January 2004, teams had been established or were in process of being established in approximately half of the police districts.

The National Authority for Investigation and Prosecution of Economic and Environmental Crime (ØKOKRIM) is a specialized agency that deals with particularly serious, complex economic crime cases and/or cases involving questions of principle. Upon request, ØKOKRIM assists police districts in dealing with specific cases. In addition, ØKOKRIM is the central agency for receiving and dealing with reports of suspicious transactions pursuant to the Money Laundering Act. Besides this, the authority has responsibility for combating environmental crime and computer crime. The number of criminal cases dealt with by ØKOKRIM is limited. In 2002, 468 cases were registered by ØKOKRIM, whereas 11 106

[10] See Circular from the Director General of Public Prosecutions, *Targets and priorities for prosecution of cases*, 2000, 2001, 2002, 2003 and 2004.

cases of economic crime were registered by the police during the same year. In 2003 ØKOKRIM registered 405 cases while the police registered 16 713 (7 500 of the cases registered by the police concerned a single matter, a case of invoicing fraud). It is thus the police districts that have to deal with the majority of economic crimes.

There is a prevailing myth that *all* economic crime cases are difficult and time-consuming. This is not the case. Economic crime cases vary in difficulty. For example few resources are required to prosecute formal infringements, such as failure to deliver tax returns, whereas combating international money laundering crime may involve considerable requirements regarding personnel, money, time and expertise.

3.6 The effectiveness of prosecution

Since the actual scale of economic crime is uncertain, as stated in 3.3, it is difficult to draw any definite conclusions concerning the effectiveness of prosecution. However, the circular on priorities issued by the Director General of Public Prosecutions points towards some factors regarded as significant to an assessment of effectiveness. Here it is stated that the contribution of prosecution to reducing crime depends primarily on *detecting* and *clearing up* criminal cases and ensuring that guilty persons are punished and receive an *adequate* response.[11]

The first factor is thus the risk of detection – or probability that criminal offences will be detected. This is a very uncertain factor. Other factors are associated with the recorded crime. These include clearance rate, conviction rate, the use of penal and administrative sanctions, confiscation and other measures that result in forfeit by the offenders of the proceeds of criminal activity and the time spent on dealing with cases.

3.6.1 Dark figures and limitation issues

The extent to which crimes are detected is associated with the risk of detection, see 3.3. This risk is subject to influence, and much has been done to increase it during recent years. Reporting obligations pursuant to the Financial Institutions Act and, from 2004, the Money Laundering Act, registration of cross-border transactions in the Foreign Exchange Register (the former BRAVO register) and the surveillance system at the Oslo Stock Exchange are all examples of measures aimed, among other things, at *increasing* the risk of detection of criminal activities. These measures are relatively new, and the effect of them may be improved by raising the professional competence of the police and public prosecution authority, see chapter 5 for more information concerning this. However, even if the potential that lies in these measures is fully exploited, many economic crimes will probably remain undetected.

A related but somewhat different problem is that of limitation of the cases investigated by the police. It is often difficult and resource-consuming to prosecute in cases involving economic crime and other profit-motivated crime. It must be acknowledged that the police and public prosecution authority often in practice limit cases so as to simplify their processing as far as possible. For example, it is usual to omit to investigate for the purpose of tracing and seizing the proceeds. Another example is that prosecution in bankruptcy cases is limited to formal infringements, e.g. omission to keep accounts and submit tax returns, even where it is suspected that a debtor in bankruptcy proceedings has withheld assets that should have been applied to coverage of debts. The matter for investigation is then very simple – the debtor has

[11] See Circular from the Director General of Public Prosecutions, *Targets and priorities for prosecution of cases*, 2004, page 2.

either kept accounts/submitted a tax return or he hasn't – and cases are cleared up and decided very rapidly. A third example is that cases concerning unlawful import and sale of goods are limited to apply to imports. There are thus no proceeds to confiscate. A fourth example is that cases concerning organized crime are limited in such a way that ringleaders go free. The consequence of such limitations may be that some parts of serious crime are not prosecuted. If the resourceful criminals escape justice, while the "smaller fish" are caught, crime fighting is taking on an undesirable orientation.

3.6.2 Clearance and conviction rates

The clearance rate for registered economic crime has been between 59 and 65 per cent during recent years. The fact that it is higher than for other categories of crime can probably be explained by the fact that it is primarily formal infringements that are registered. Here the facts in issue are simple and the clearance rate is high.

In some areas the rate of dismissal appears to be extremely high. This applies for example to bankruptcy crime. In December 2002, the Norwegian Advisory Council on Bankruptcy[12] stated that the handling of bankruptcy cases by the police was in many places unsatisfactory, and that in some places a crisis of confidence had arisen between managers of bankrupt estates and the courts on the one hand and the police and public prosecution authority on the other.[13] An investigation in Oslo in 2003 under the auspices of the Norwegian Advisory Council on Bankruptcy showed that managers of bankrupt estates reported 33 per cent of the estates to the public prosecution authority. The Norwegian Advisory Council on Bankruptcy investigated what had happened in 317 cases registered in the Oslo police district, and found that 72 per cent of cases had been dismissed.

The rate of dismissal also appears to be high in cases concerning reports of money laundering. Only a small number of the reports received from persons obliged to submit reports have been used in pending criminal cases or as a basis for criminal proceedings. ØKOKRIM's Unit for Investigation of Money Laundering received 3 459 reports in 2003, of which 912 were from banks. Two hundred and sixty-seven of the reports concerned transactions carried out by companies. Of the reports dealt with in 2003, 56 were appended to pending criminal cases while 124 new cases were instituted. Judgments were passed in 93 cases. Of these, 58, i.e. 62 per cent, were dismissed.

The conviction rate in relation to economic crimes is high. It has maintained an average of approximately 90 per cent during recent years. This must be viewed in connection with what has been said above concerning the clearance rate.

3.6.3 Adequate response – particularly regarding confiscation

The circular on priorities issued by the Director General of Public Prosecutions, calls attention to the need to provide an adequate response to the offender. When penalties are imposed and such penalties are sufficiently severe, they are assumed to have a greater generally deterrent effect in relation to economic crime than in relation to many other categories of crime. If someone profits from a criminal offence, which is generally the case where economic crime is concerned, an adequate response must involve depriving the offender of the proceeds in addition to punishing him. It is a major objective of the Government's criminal policy that crime shall not pay. Confiscation is an important

[12] See statement No. 43.

[13] This has been followed up by the Director General of Public Prosecutions.

instrument – in some cases the only instrument – for achieving this.

No reliable statistics are available regarding the actual proceeds of criminal activities or what proportion of such proceeds is spent and what proportion is laundered. As in the case of crimes, it is assumed that the actual proceeds are considerably greater than the amount that is confiscated. By way of illustration, the Committee on Confiscation estimated the proceeds of drug-related crime to be between NOK 2.5 billion and NOK 5 billion in 1995. The same year approximately NOK 40 million was confiscated in drug-related cases. Part of this – probably one third – was spent, the remainder was in all likelihood laundered in one way or another. Illegal copying of software and international corruption are examples of economic crime that are assumed to yield very high profits.

The confiscation rules were amended in 1999. Ordinary confiscation was made compulsory and a new rule was issued concerning extended confiscation. The purpose of this rule was to increase the effectiveness of the confiscation regime. Whether or not the confiscation rules function according to intentions must be assessed on the basis of the statistics for imposed confiscations supplied by the State Agency for the Recovery of Fines, Damages and Costs:

1997 NOK 63.2 million, 734 cases

1998 NOK 43.2 million, 676 cases

1999 NOK 34.2 million, 724 cases

2000 NOK 45.1 million, 859 cases

2001 NOK 42.7 million, 845 cases

2002 NOK 58.4 million, 628 cases

2003 NOK 143.4 million, 929 cases

The number of cases is probably the best indicator of the extent to which confiscation is implemented. The total amount may vary owing to individual cases where large amounts are confiscated.[14] There are relatively small annual variations in the number of cases, but the fact that the number of cases has not been higher than it was in 2003 since the emphasis on confiscation began in 1997 provides a glimmer of hope. However, the variations are not large, and there is therefore broad agreement that there is little reason to regard the confiscation figures as satisfactory.[15]

Extended confiscation has been used in a small number of cases. There are no reliable statistics for use of extended confiscation. The Ministry of Justice will take the initiative to amend the registration routines in STRASAK (the criminal case register) in order to obtain better statistical information on both ordinary and extended confiscation, and thus better management tools.

3.6.4 Time spent on dealing with cases

An important goal for prosecution of cases is that the time spent on dealing with cases, including those concerning economic crime, shall be as short as possible. There is no conflict between this and the goal of more effective prosecution of economic crime, including increased confiscation of proceeds. If it takes too long to deal with cases, it is obvious that

[14] In 1997, NOK 27 million was seized in a single ØKOKRIM case. If this amount is disregarded, there is relatively little variation in the figures from 1997 to 2001.

[15] The high figure for 2003 is partially due to the seizure of NOK 50 million in a single case.

prosecution will be ineffective. On the other hand, it is only to be expected that that it will take a long time to deal with some of the serious cases concerning profit-motivated crime. It is important that the goal of spending as short a time as possible on dealing with cases will not be used as an “excuse” for not dealing with these cases.

3.7 Summary and challenges

Considerable efforts are being made to combat economic crime. However, the above points show that there is still considerable room for improvement. Too little Economic crime is detected, and it is indisputably extremely profitable. More active use of money laundering legislation and exploitation of the possibilities ensuing from the new Foreign Exchange Register are strategies that would result in detection of more cases. A more proactive approach on the part of the police and public prosecution authority may also result in detection of more cases. A greater number of detected cases should be reported, and this is probably dependent on confidence in the ability of the police to handle such cases. The prosecution of economic crime should to a greater extent target serious cases and tracing and confiscation of the proceeds of the criminal activity.

Effective combating of economic crime is of importance for the general confidence in the police, the public prosecution authority and the courts. Serious economic crime has considerable socially detrimental effects, see 3.2. Unless this form for crime is effectively combated, it may easily bring the whole criminal jurisdiction into discredit, even though such crime is committed with considerable cunning and by persons of high status. The police and public prosecution authority must be able to effectively investigate, prosecute and try all forms of crime, not only “ordinary” crime such as crimes of violence, sexual crimes and drug offences. Failure to combat economic crime may weaken the confidence in and legitimacy of the efforts of the law enforcement authorities in other areas. The impression that only ‘common’ criminals are caught while economic perpetrators go free must not become fixed.

Pursuant to the changes in the Money Laundering Act, there is reason to anticipate an increased number of reports to ØKOKRIM concerning suspicious transactions. The fact that the stock exchange has established a surveillance system, that the tax authorities and the Office of the Auditor General of Norway are able to report possible criminal offences on their own initiative and that the banks have been charged with introducing an electronic surveillance system for suspicious transactions during the course of 2004, are all expected to result in an increase in the number of criminal cases. The apparent increase in general awareness of the seriousness of economic crime will result in more criminal offences being exposed by the press, probably owing to “whistle-blowers” requesting source protection. These are features that also manifest themselves internationally.

Learning to exploit the increased information available is a challenge for the police, the public prosecution authority and other groups involved in crime fighting. Changes are required in the direction of a more proactive approach – one cannot merely wait for reports to come in. This, in its turn, may increase the risk of detection of serious economic crime. Another challenge is the prosecution of difficult cases and ensuring that crime becomes less profitable. This must be brought about by means of increased use of financial investigation and investigation abroad.

Changes in the pattern of crime and the assumed increase in the number of criminal cases reported to the police forms the background for the measures that the Government will continue and implement in order to ensure more effective combating of economic crime.

PART II

GENERAL MEASURES AGAINST ECONOMIC CRIME

4 Resources and organization

4.1 The police and public prosecution authority

There is a need for increased and more targeted efforts by the police and public prosecution authority in order to detect and combat economic crime and to deprive offenders of the proceeds in more cases. All stages of the process of detection and prosecution of criminal cases must take part in these efforts. As mentioned in 3.7, in recent years, several measures have been implemented that will result in the detection and report to the police of more possible criminal offences. The police and public prosecution authority must be equipped to deal properly with a larger number of economic crimes.

Before the end of 2004, all police districts shall have established multi-professional economic crime teams with expertise in legal, police and economic matters.

It is important to ensure that the teams actually function as teams, that they have an adequate size, that they are stable, that the right personnel are recruited to them and that this personnel is given the necessary training and competence to enable it to deal with large and complex economic crime cases. The teams must be protected from withdrawal of personnel for shorter or longer periods in order to supply needs that may arise in dealing with other categories of crime.

4.1.1 The National Authority for Investigation and Prosecution of Economic and Environmental Crime (ØKOKRIM)

It is difficult to develop and maintain competence in police districts in case types that occur only rarely and that, in addition, have a certain level of difficulty. An example is insider dealing cases. Some other cases or case types are so unusual and/or complex that it is unrealistic to expect that they can be dealt with in police districts even after upgrading of the economic crime teams. Examples are the most serious tax cases and cases concerning unlawful cooperation on prices. In order to deal with the most serious, complex cases and cases concerning principle and to assist police districts in dealing with complex cases, it is necessary to maintain an effective specialized agency such as ØKOKRIM with specialized expertise and sufficient resources.

During the last year ØKOKRIM has detected more cases indicating extensive abuse of various state support schemes. The same tendency has been observed in the other Nordic countries and in the EU. The Government takes a serious view of this problem and will strengthen ØKOKRIM with resources for a separate team to combat such crime. For more details of this, see chapter 14.

4.1.1.1 The police computer crime unit

The use of computer technology is continually increasing. This development is also reflected in crime. In recent years, the police and supervisory authorities have seized computerized data in an increasing number of cases. It is expected that this trend will continue. The seizure of computerized data presents the public authorities with major challenges. Technically correct seizure requires specialized expertise, and search and analysis tasks are also difficult. Not least, it is also costly to obtain the computer equipment needed in relation to different computer systems, networks, etc. owned by those subjected to control.

The police must have computer expertise, among other reasons, in order to be able to conduct search and seizure in computer environments. However, it is somewhat unrealistic and poor utilization of resources to establish adequate computer environments both in police districts and in supervisory bodies. Considerable specialization and centralization is entirely necessary. The police computer crime unit plays an important role in this connection.

According to plans, development of the police computer crime unit shall be finished by the end of 2005.

4.1.1.2 ØKOKRIM's Unit for Investigation of Money Laundering

The new Money Laundering Act, which is discussed in greater detail in 10.2, entered into force on 1 January 2004. Following this change in the legislation, it is to be expected that there will be an increase in the number of reports received by ØKOKRIM's Unit for Investigation of Money Laundering concerning transactions that may be associated with the proceeds of criminal offences. In 2004, ØKOKRIM received increased resources in the form of four positions to meet this development.

In order to follow up at the operative level, a review of technical needs and potential, organization and competence structures is also necessary. It is an objective that ØKOKRIM's money laundering unit shall be at the forefront of its field.

4.2 Cooperation between the police/the prosecuting authorities and supervisory bodies

The work of supervisory bodies is of major importance for effective prevention and combating of economic crime. This applies to such bodies as the Directorate of Taxes, the Directorate of Customs and Excise, Kredittilsynet (the Financial Supervisory Authority of Norway), the Norwegian Competition Authority and the Directorate of Fisheries, which, by means of various forms of control and supervisory activities, e.g. tax audit and on-site inspections, can detect crimes in their respective areas, and can report cases to the police and to a certain extent impose their own sanctions.

The Government will make efforts to further develop and make provisions for sound cooperative procedures between the various supervisory bodies and the police and prosecuting authority. The Government will also assess the legislative amendments necessary to ensure functional framework conditions for obtaining and exchanging information. In this connection, discussions of matters of principle must be conducted associated with the balancing of considerations regarding effective control and protection of privacy.

The arrangement involving the use of tax audit support personnel (tax auditors who assist the police in dealing with cases concerning tax) has proved to be an effective form of cooperation between the county tax assessment offices and the police. The arrangement is currently being

reviewed with a view to further development and improvement of the role of the tax audit support personnel.

One of the objectives is to establish an arrangement involving tax audit support personnel in all counties.

Establishment of a central information repository should be considered in order to facilitate access to sources of international law concerning the application of tax law. Consideration should be given to making such a repository available to supervisory bodies, the police and prosecuting authority and judges.

A new Act relating to a register of information concerning foreign exchange and transfer of currency to and from Norway (Foreign Exchange Register Act) was adopted on 28 May 2004. This legislation replaces the current BRAVO system. Information concerning foreign exchange and transfer of currency to and from Norway may be used by the police and ØKOKRIM for purposes of investigation and by the Tax Administration the Customs and Excise Administration and the National Insurance Administration for control purposes,. Managers of bankrupt estates can obtain information from the register on application to the Directorate of Customs and Excise. Financial institutions, including banks, credit card companies and the Customs and Excise Administration are obliged to report to the register, and the police and supervisory bodies can search the register in connection with their control and investigation work. The Directorate of Customs and Excise has responsibility for maintaining the new register. Until 1 January 2005, when work on establishment of the new foreign exchange register is planned to be completed, the Directorate of Customs and Excise will have special responsibility for developing and establishing the register. It is of major importance that the register will be simple to use and that searches can be made extremely rapidly.

4.3 Cooperation between public and private sectors

There have been collaborative projects and certain established channels of communication, but no permanent collaborative structure exists between the public authorities and the private sector regarding efforts to combat economic crime. In order to further strengthen efforts against economic crime, the Government wishes to consider establishing a permanent board consisting of representatives from the ministries and their subordinate agencies, county authorities, municipalities and private sectors including workers' and employers' organisations. The main purpose of such an initiative will be to help in identifying problems and to build confidence and develop adequate preventive strategies. The Senior Officials Group on Economic crime (EMØK) will be maintained in existence.

Establishment of a permanent cooperative body between public and private sectors will be considered.

5 Competence-building measures

Effective combating of economic crime and other serious profit-motivated crime requires that the police and public prosecution authority have the necessary professional competence. This must take into account the necessity for *specialization* of personnel who are to be involved in investigating such crime. First of all, this requires certain basic knowledge of how industry and commerce, public administration and organizations normally function. In many cases,

there is a need for knowledge of accounting and economic matters and relations.[16] Furthermore, there is a need for knowledge of specific legislation, e.g. the Tax Assessment Act and the Money Laundering Act. In order to ensure that offenders are deprived of the proceeds of criminal activities, there is a need for knowledge of the provisions of the Penal Code concerning confiscation.

There is a need to identify and trace financial proceeds of crime both in order to clear up questions concerning guilt and punishment and, not least, in order to clarify whether there is a basis for confiscation or other measures to deprive the offender of the proceeds. Such investigation is generally referred to as financial investigation. Financial investigation is a method that is adopted in most cases concerning economic crime and which should be adopted to a greater extent in connection with other serious profit-motivated crime. The method is characterized by use of information from money laundering reports and other financial intelligence data, information from financial institutions obtained by means of court orders, information from the Property Register, the Brønnøysund registers and other registers, economic analyses of private consumption and transaction patterns, investigations of accounts and companies, etc. It is of decisive importance that both the investigators and the public prosecution authority leading the investigation of economic crimes have a knowledge of financial investigation.

All agencies participating in criminal proceedings, i.e. the police, the public prosecution authority and the courts, must have the necessary professional competence. There is little point in raising the level of competence in the police if it is not raised correspondingly in the public prosecution authority. The same applies to the relationship between the public prosecution authority and the courts. it is also important to ensure that supervisory bodies and other agencies that play a part in detecting economic crime have a knowledge of the legislation and methods available to individual agencies or institutions.

5.1 Competence-building in the police

Police officers and lawyers typically possess general qualifications with certain possibilities for specialization. The Committee on Confiscation, which submitted its recommendations in 1996[17], proposed that the economic aspect of criminal cases in general and confiscation of proceeds in particular should be included in the syllabus of the institutions that train investigators and lawyers. Little or nothing has been dome about this. It is therefore difficult to recruit lawyers and police officers with the necessary professional competence.

Until 2002, the National Police Academy provided an annual advanced course in economic crime for lawyers and police officers. The course will be reintroduced in autumn 2004. However, this course is not sufficient to meet the need for competence in this area. There is also a need for measures in connection with *basic training*. There is currently no instruction in financial investigation in connection with basic training at the National Police Academy. According to section 2.2 of the current curriculum regulations for police training, on completion of training, police cadets will have developed “knowledge, skills and attitudes that provide a sound basis for work on combating crime and on promoting safety, order and security under the law”. Crime cannot be effectively combated if parts of the serious profit-motivated crime committed by people with considerable resources remain unpunished and/or profitable. In order to achieve the objectives laid down in the curriculum regulations,

[16] For example bankruptcy cases, cf. statement No. 43 of the Norwegian Advisory Council on Bankruptcy.

[17] See NOU 1996: 21 *More effective confiscation of the proceeds of crime*, page 60.

instruction in financial investigation should be included in basic training.

Instruction in financial investigation will constitute a separate subject in the basic training course at the National Police Academy from the academic year of 2005/2006.

Furthermore, the members of economic crime teams must as soon as possible be equipped to deal with economic crime cases. The annual advanced course in economic crime at the National Police Academy that is to be introduced in 2004 does not have sufficient capacity to meet this need. If the team members are to wait in line for this course, competence development will take too long. They should therefore be given a pre-emptive right to admission to this course but, pending completion of the course by all team members, short courses should be developed to ensure that the members are provided with a minimum of the necessary professional competence.

The advanced course in economic crime will be offered annually from the academic year of 2004/2005. Members of economic crime teams will have a pre-emptive right to attend the course.

The National Police Academy will provide short courses (approximately 1–2 weeks) in order to raise the competence regarding economic crime and financial investigation of the members of economic crime teams. All such personnel shall been offered such courses by the end of 2005.

It is important that senior police officers are aware of the requirements regarding investigation of economic crimes. Combating of economic crime should therefore be included as a topic in management development courses and the like.

There is a growing need for special expertise in the police, for example in economics and IT. Such competence can be provided by training the available personnel or by recruitment of other professions, such as IT experts and economists, to the police. Another possibility is to offer persons with special expertise a brief police training at the National Police Academy. The Ministry of Justice aims to submit a Report to the Storting on the role of the police during the first session of 2005. Such issues will be addressed in this Report.

5.2 Competence-building measures in the public prosecution authority

As mentioned above, it is important that all agencies involved in investigating economic crime cases have the necessary professional competence. The public prosecution authority has a key role. It is responsible for management of the investigation and for conducting cases in court. The superior public prosecuting authority has moreover responsibility for management of the police districts. The public prosecution authority cannot satisfactorily fulfil its responsibilities in combating economic crime without a sound knowledge of this area of the law and of the methods used in financial investigation.

If, for example, the prosecutor does not know how a private consumption analysis is conducted or how it shall be interpreted, he or she will have difficulty in using it as evidence in court.

The power of the public prosecution authority in the police to instigate criminal proceedings was extended by the statutory amendment of 19 December 2003, which entered into force on 1 April 2004. As a result of this, more economic crime cases will be decided by the police. The amendment states requirements concerning the competence of the public prosecution authority in the police.

Measures will be implemented to raise the level of competence of both the public prosecution authority in the police and the superior public prosecution authority.

5.3 Competence-building measures for the courts

Developments in law move very rapidly, and a growing number of criminal cases have a high level of difficulty. This increases demands on the professional competence of judges. In some areas this affects only a small number of cases each year, for example insider dealing and currency manipulation. In such areas, it is difficult both to develop and maintain the necessary competence in the courts. To some extent, this can be remedied by appointing expert lay judges. However, the professional judge must be able to understand the expert lay judges. Furthermore, questions can be raised as to whether the purpose of the lay element is sustained if expert lay judges must always be appointed. Another developmental trend that increases the demands placed on judges is the influence of international law on Norwegian criminal law. Judges must acquaint themselves with the practice of the European Court of Human Rights (ECHR) in an increasing number of cases. ECHR decisions are not available in Norwegian, and may be complex. It is difficult for judges to keep up-to-date with these developments.

A special challenge is associated with the use of IT in committing crimes. There is a need to develop judges' IT competence in order to ensure that they are able to assess IT-based evidence.

In international evaluative processes, a certain pressure is often exerted on countries to train and retrain their judges. An example can be found in the assessment methodology prepared in cooperation between the FATF, the International Monetary Fund and the World Bank. In relation to follow-up of recommendation 30, it is stated that countries may be asked questions concerning special training or educational programmes for judges concerning money laundering, seizure, freezing and confiscation of property.[18]

The Government recommends that the court administration implement training programmes for judges with regard to economic crime. The Government will consider whether certain case types in the field of economic crime should be dealt with by specific courts in the districts, for example a central district court in each judicial district.

6 Research

It is stated in part I that there is uncertainty associated with many issues concerning economic crime; for example the scale, detrimental effects, development, profitability and the effect of prosecution and preventive measures. We have little certain knowledge concerning the effect and practice of new rules. Research should be carried out in order to bring about greater clarity as regards these and similar issues.

The Ministry of Finance and the Ministry of Justice support the research of the Research Council of Norway into money laundering of the proceeds of criminal activities. These initiatives include two projects at the Faculty of Law at the University of Oslo, one at the Department of Public and International Law and one at the Department of Criminology. In addition to this, the Directorate of Taxes, in collaboration with a research institution, has set up several research projects aimed at providing better insight into company behaviour, taxpayers' knowledge of and compliance with tax regulations and the influence of social norms on the subjective risk of detection.

[18] See Methodology for Assessing Compliance with the FATF 40 Recommendations and the FATF 8 Special Recommendations, 30.4.

The need for greater knowledge concerning social problems associated with economic crime, corruption and tax evasion forms part of society's general need for increased legal competence. The Ministry of Justice has initiated a collaboration with the legal academia and the Research Council of Norway with the aim of obtaining better framework conditions for legal research in both established and new branches of law.

In collaboration with Statistics Norway, the Ministry of Justice is conducting a broad investigation of companies' vulnerability to economic crime.

At the request of the Storting, the Ministry of Justice recently initiated an investigation to survey, among other things, the socio-economic costs and detrimental effects of crime. The project is planned to be completed by spring 2005. Its purpose includes creating a better knowledge base for further research, identification of problems and revealing of consequences associated with crime.

The Ministry of Justice has strengthened its investment in analysis, statistics and research associated with crime. A newly established analysis unit will assist the senior staff of the ministry in detecting causal relationships, and improve the factual basis for political decisions, not least as regards crime fighting – including measures to combat economic crime.

A finance market fund has recently been established. According to its statutes, the fund will contribute to increased knowledge and understanding of the functioning of finance markets, including regulation of markets and market players, as well as promoting insight and increased awareness with regard to finance market ethics. Twice a year, the fund, which has a total value of over NOK 200 million, will distribute part of its earnings to research, education and general information in the area of finance markets.

The Government will take the initiative to increase investments in research into economic crime, in order to obtain a better knowledge of the incidence of economic crime, including corruption. There is a need for more knowledge of the incidence of corruption in the public sector, and of whether some parts of the public sector are more vulnerable than others. These are examples of topics that can be made the subject of research.

7 Sanctions against economic crime

7.1 Penalties versus administrative sanctions

The relationship between the police and prosecuting authority and the various supervisory bodies is of central importance to effective combating of economic crime. Owing to the developments of recent years, cooperative procedures must be restructured and areas of responsibility must be relocated. This is due to several factors. Firstly, the courts have concluded that the rule against double penalties in the European Convention on Human Rights and Fundamental Freedoms (ECHR) prevents repeated prosecution of the same person for the same offence by means of sanctions that are penalties within the meaning of the Convention. This entails that the former arrangement, whereby an administrative sanction imposed by a supervisory body is followed by a fine or imprisonment imposed by a court, cannot be maintained.

Secondly, the Committee on Sanctions concluded in NOU 2003: 15 that penal reactions should to a greater extent be reserved for the most serious crimes in the future, whereas one should make more use of administrative sanctions for less serious crimes. The Committee proposed a number of statutory amendments to achieve this goal. The proposals may have significance for the ongoing work on a new Penal Code.

The report of the Committee on Additional Tax in NOU 2003: 7 also contains assessments and recommendations concerning the rule against double penalties in respect of sanctions in the area of taxation.

In the further work on the reports of the Committee on Sanctions and the Committee on Additional Tax, the Government is interested in achieving the most effective combating of economic crime that is possible. Due regard for ordinary law-abidingness and general justice considerations indicate that more serious offences should meet with a generally more stringent reaction than those of less serious nature. According to the circumstances, more use of administrative sanctions may, as the Committee on Sanctions suggests, increase the efficiency of law enforcement.

7.2 Increased use of proceeds-oriented measures

Criminals must not only be punished. They must also be deprived of the proceeds of their criminal activity. This is important out of regard for both justice and more effective combat of crime. There is reason to believe that the general and specific deterrence function of punishment is reduced if criminals are allowed to retain the proceeds of their criminal activity. Investigations must therefore be carried out with a view to tracing and confiscating the proceeds or the aggrieved party's claim for compensation must be included in the criminal proceedings as a civil legal claim.

Internationally, recognition of the importance of measures directed against the proceeds of criminal activity has resulted in a number of conventions and agreements. These include The Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime of 8 November 1990, which was ratified by Norway in 1994, the EU directives of 1991 and 2001 on money laundering[19], the United Nations Convention against Transnational Crime of 15 November 2000, ratified by Norway on 23 September 2003 and most recently the United Nations Convention against Corruption of 31 October 2003.

A new Act relating to measures to combat money laundering of the proceeds of criminal activities, etc. was adopted on 20 June 2003. The Act is described in more detail in 10.2. A central element of the Act is the obligation to report suspicious transactions in what are termed money laundering reports to ØKOKRIM's money laundering unit.

It is not certain how many money laundering reports have significance in criminal cases. However, statistics given in the annual reports of ØKOKRIM's Unit for Investigation of Money laundering indicate that many reports do not result in criminal cases and that a large number of cases based on such reports are dropped, see 3.6.2. Regard for both protection of privacy and more effective combating of money laundering indicates that efforts must be made to achieve the highest possible degree of accuracy in the reports from persons obliged to submit reports. This is an important task for Kredittilsynet (the Financial Supervisory Authority of Norway) and other bodies that supervise persons obliged to submit reports, as well as for ØKOKRIM's money laundering unit, which gives feedback to the persons obliged to submit reports. Increased professional competence in financial investigation will probably result in increased use of information derived from money laundering reports in criminal cases.

The confiscation rules were amended in 1999. Ordinary confiscation pursuant to section 34 of the Penal Code was made compulsory. The object of this was that confiscation was to be

[19] EU Council Directive 91/308/EEC of 10 June 1991 on prevention of the use of the financial system for the purpose of money laundering (Money Laundering Directive), binding for Norway through the EEA Agreement.

carried out more widely and in more cases. In order to increase the effectiveness of confiscation as an instrument of criminal policy, a new provision on extended confiscation was included in section 34a of the Penal Code. This provision enables confiscation of the proceeds of unidentified crime. On amendment of section 38 of the Criminal Procedure Act the court has been given the power to order confiscation in the absence of any request and to a greater extent than requested by the public prosecution authority.

The relatively low confiscation figures, see 3.6.3, indicate that too little emphasis is still placed on confiscation by the police, the public prosecution authority and the courts. This is assumed to be largely owing to lack of competence, see chapter 5. Under the auspices of the Anti-corruption and Money Laundering Project at the Ministry of Justice, a book was published in 2004 on practical procedures in confiscation cases.[20] Active use of this book in practical work and in connection with training programmes will increase competence, and the increased focus on the topic is expected to result in a greater number of confiscation cases.

The target for 2004 is that the number of confiscation cases shall increase by 20 per cent, cf. the letter of 19 February 2004 from the Ministry of Justice to the Director General of Public Prosecutions. It is also important that extended confiscation is applied in more cases where there is a basis for it.

8 Increasing the efficiency of international cooperation

As mentioned in chapter 1, developments show a tendency for greater internationalization and organization of economic crime. International cooperation is therefore essential. International cooperation concerns both drafting of international legislation and cooperation by the police and prosecuting authorities in specific cases. The Norwegian authorities have played an active role in international cooperation and have also followed up international initiatives at the national level. These active efforts will be continued particularly with a view to follow up and implementation of the new international agreements, and in bilateral relations and by means of practical cooperation between the police and prosecuting authority.

Economic crime, particularly corruption, is hostile to development

There is broad international agreement that corruption is a social evil that obstructs social and economic development. When public funds are stolen or misapplied, there is less money left over for public investments and services. The worst effect of this is on the poor. The scale of corruption – particularly in the poorest countries with weak administrative structures– is considerable. It is difficult to measure the scale and to quantify economic and social effects of corruption, but there is general agreement that corruption is one of the main obstacles to development.

All of the poorest countries of the world are afflicted by corruption. Given that the poorest countries are priority partners of Norwegian development cooperation, this means that we to a great extent cooperate with countries where corruption constitutes a considerable social evil. The Government has therefore given high priority to the fight against corruption in its development policy. Measures to strengthen public administration and supervisory institutions in developing countries are also important for reducing the risk of abuse of assistance funds.

Corruption is often prevalent in countries with reserves of valuable natural resources such as petroleum, gas, diamonds and other important minerals. This applies particularly to developing countries and countries with transitional economies and weak systems of government, that suddenly receive large incomes. *Corruption cannot be combated by means of a single set of measures, and results can only be achieved through long-term efforts. Work on reducing the latitude for corrupt behaviour largely involve implementing measures to improve systems of government.*

The Government will therefore:

- give priority to follow-up of the United Nations Convention against Corruption, see chapter 13.

[20] Anne-Mette Dyrnes, *Confiscation – What must be done?,* 2004.

- place combating of corruption high on the agenda in the policy dialogue with partner countries and in collaboration with other donors.
- strive to ensure that UNDP, other relevant UN organizations and international financial institutions intensify their efforts to combat corruption and support this work through economic contributions and participation in relevant governing bodies.
- continue efforts in the Utstein Anti-Corruption Resource Centre.
- support international organizations and networks that contribute effectively to encouraging public authorities and companies to take the fight against corruption seriously. This includes Government support for anti-corruption as part of the principles of the UN Global Compact.
- assist in providing technical cooperation and institutional development in order to combat corruption associated with income from extractive industries while cooperating with Norwegian companies and taking part in international fora in order to achieve increased transparency income from extractive industries, partly by means of the EITI initiative, see 8.2.
- assist in ensuring that corruption and money laundering are given priority by the IMF and the World Bank in their reviews of member countries' economy

Norway provides extensive economic assistance to developing countries. There is broad agreement across party lines that this assistance constitutes an important part of Norway's foreign policy commitment. Ensuring the greatest possible efficiency in administering assistance funds is a clear objective. The Ministry of Foreign Affairs has therefore involved itself in the fight against corruption in Norwegian partner countries. It is important that this work be continued.

The Government will apply assistance funds to measures that help to make partner countries better able to combat economic crime.

Cooperation between national money laundering units plays a central role in the fight against money laundering. Efforts will be made to enhance cooperation with money laundering units in other countries.

The United Nations Convention against Corruption

The United Nations Convention against Corruption is very extensive and contains provisions concerning preventive measures, criminalization, international cooperation, restitution of assets deriving from corruption, technical assistance and follow-up of the Convention. The provisions concerning preventive measures are designed to prevent corruption from occurring. These measures may also have significance in relation to other categories of economic crime. As regards corruption, this involves reducing the latitude for corrupt behaviour by implementing measures to improve systems of government. Measures referred to in the FN Convention concern, among other things, transparency and access to information, regulatory bodies, prospects for efficient prosecution, separation of powers and quality of public administration.

- In order to ensure rapid entry into force of the Convention, the Government will work to achieve a swift Norwegian ratification of the Convention. Before 1 July 2005, the Government will recommend the Storting to consent to ratification by Norway of the United Nations Convention against Corruption.
- The Government will consider ways of encouraging other countries, including developing countries and our main partner countries, to ratify the Convention without delay.
- The Government will draw up and implement an effective and coordinated policy aimed at preventing corruption cf. article 5 of the UN Convention.
- The Government will seek to ensure periodical evaluation of relevant anti-corruption legislation and measures, cf. article 5.3 of the UN Convention.
- The Government will ensure the existence of a body or bodies that shall prevent corruption in accordance with the policy drawn up pursuant to article 5 (referred to above) cf. article 6 of the UN Convention.
- The Government will hold an active dialogue with Norwegian industry to raise awareness concerning ways of combating corruption.
- The Government will consider the existing codes of conduct for its public officials cf. article 8 of the Convention.
- The Government will consider legislation for protection of witnesses cf. articles 32 and 33 of the UN Convention.
- The Government will seek to ensure that assets deriving from corruption are restored to their rightful owners. This work must be carried out within the framework of the UN Convention and should be performed in collaboration between

Norway and like-minded countries with a view to relieving the needs of the developing countries concerned.

- The Government will work to bring about the best possible follow-up mechanism to ensure effective implementation of the UN Convention.

8.1 The actual owners of companies

Questions concerning tax havens have been on the agenda of several international organizations, inter alia, in connection with the amendment of the FATF Forty Recommendations. The banks' duty of confidentiality has been important for the continued existence of tax havens. Considerable inroads have been made into this. According to the international standards that now apply, finance institutions are obliged to identify their customers, including the actual owners of the assets in question. Information concerning who owns the money in bank accounts must be submitted to the judicial authorities in criminal cases concerning most forms of economic crime. However, there are still countries that permit shell banks, which in practice provide protection against access to account details, etc. And several states permit that assets that actually derive from corruption and other forms of crime can be concealed in trusts and other legal structures. There is furthermore extensive use of bearer shares in many countries. National legislation that ensures access to information concerning financial matters and company matters is often essential for clearing up serious economic crime and for securing assets deriving from criminal activities with a view to confiscation. The European Commission has also notified increased activity to detect companies' use of "offshore" structures not included in the ordinary accounts, see 9.1.

Norway will play a proactive role in international fora for rules that make it possible to establish who actually wholly or partly owns companies and other legal structures.[21] Norway will include these topics in the developmental dialogue with partner countries where this is natural, and consider providing technical assistance to establish the necessary legislation and administration of this.

8.2 Norway's role in the fight against corruption in exposed sectors

Corruption and lack of access to information concerning income flow is a problem in many international activities, for example the financial sector, the construction sector and undertakings involved in extraction of natural resources. The problem is particularly evident when one operates in countries with weak institutions and poorly developed judicial systems.

The Norwegian authorities are involved in the Extractive Industries Transparency Initiative (EITI). Statoil and Hydro have taken part in this work since its inception. EITI involves cooperation between extractive industries and host countries on transparency and access to information associated with economic transactions. This will reduce the potential for corruption.

The Norwegian authorities take part in the process "Voluntary Principles on Security and Human Rights". This is a set of guidelines for use of security personnel by industry. Statoil and Hydro also take part in this process.

Norway is also active in the OECD Working group on Bribery in International Business Transactions, which has the main responsibility for follow-up of implementation of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions.

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[21] See Standing Committee Recommendation No.118 (2003–2004) Recommendation from the Standing Committee on Foreign *Affairs A World Filled with Potential – the Age of Globalization and its Challenges.*

In addition, the Norwegian authorities have set up "the Consultative Body for Human Rights and Norwegian Economic Involvement Abroad", (KOMpakt). The purpose of this is to raise awareness concerning the relationship between the business sector and human rights.

Norway is a major producer of energy and lies in third place in the world as regards export of both petroleum and natural gas.

Report No. 35 to the Storting (2002–2003), page 74, states as follows

"Norway's role as an energy nation and our experience in administering resource income gives us particular qualifications – and a particular responsibility – to provide input in relation to the issues addressed by EITI. Unlawful or unethical administration of resource income may have major negative consequences for social developments. Viewed in conjunction with the Norwegian assistance already provided in relation to administration of petroleum resources, Norway's support to EITI may help to reduce the danger of petroleum income giving rise to such consequences."

In collaboration with Norwegian companies and in international fora, the Government will make efforts to ensure increased transparency of income from extractive industries.[22]

9 Statutory amendments

9.1 The Accounting Act

In chapter 3 of Report No. 8 to the Storting (2002-2003), the Ministry of Finance referred to the lessons learned from the financial scandals in the USA and the follow-up in Norway. Particularly where stock exchange listed companies are concerned, the Ministry emphasized the importance of sound and reliable financial information, and that there is confidence in the information that is provided. The need to secure confidence in financial information has been strengthened by the financial scandals that are referred to in the report, Enron, WorldCom, Tyco International, Global Crossing and other similar cases. Special considerations apply to companies that obtain capital for their activities by approaching the general public through introduction of financial instruments on the stock exchange or another regulated market. Confidence in the financial information provided by the listed companies must be assumed to affect the risk premium investors charge when investing in listed instruments and thus the cost of financing the activities engaged in by the listed companies Moreover, investors in these markets have an independent right to special protection against misleading financial information from the listed companies. Detrimental effects of both misleading and uncertain financial information can be considerable. The Government will arrange the measures against this according to the following guidelines:

Appropriate and adequate control mechanisms are an important element in securing confidence in financial information. The frameworks for corporate governance should be arranged in such a way that they help to ensure correct and adequate information. Such a measure may be establishment of audit committees in listed companies and other companies of public interest, see 9.2. See also the reference to corporate governance in 9.3, below.

The auditor has a central control function, and it is important to secure confidence that it will be well taken care of. In the Government's view, it is necessary to place special emphasis on confidence in the auditors' independence in addition to requirements regarding qualifications

[22] See Report to the Storting No. 35 (2003–2004) *The Common Fight against Poverty*, particularly, page 74.

and performance of the audit. See also the description of the auditor's role in 9.2, below.

The special considerations that apply to listed companies indicate particularly enforcing these companies submission of adequate financial information. Establishment of enforcement arrangements for control of financial information provided by companies listed on the stock exchange, is part of the EU accounting strategy. The Government advocates the establishment of such an enforcement arrangement in Norway. The Accounting Act Committee has provided an assessment of the organization of such an enforcement arrangement in Norway in NOU 2003: 23 Assessment of the Accounting Act. This will be given further consideration in the follow-up of the report.

It is important that companies are bound by the accounting rules and standards capable of providing comparable accounts and an adequate picture of the companies' financial position and result. The EEA rules corresponding to Regulation (EC) No 1606/2002 on the application of international accounting standards are intended to help in ensuring this. Pursuant to the Regulation, listed companies shall prepare group accounts consistent with International Financial Reporting Standards – IFRS of 2005. States may furthermore permit or require that listed companies prepare company accounts or that other companies prepare group and/or company accounts according to IFRS. Pursuant to amendments to the EEA rules corresponding to the EU accounting directives, states may also adapt the national accounting legislation to IFRS. In the view of the Government, the accounting requirements for Norwegian companies should be adapted to IFRS. This will be given further consideration in the follow-up of the Accounting Act Committee's report (NOU 2003:23).

The financial scandals in the USA have thrown light on the fact that share-based remuneration of senior personnel (options arrangements, etc.) may provide incentives to give misleading financial information in order to increase the value of such payments. This is primarily an observation that the governing bodies of companies should take into consideration before arranging share-based remuneration. However, as a result of a weakness in accounting practice both in Norway and in other countries, share-based remuneration has not been charged in the accounts. The Government is planning to tighten this up. The IFRS (see above) has recently been completed including a specific accounting standard for share-based remuneration that should be charged to profits at the time it is paid.

Transparency concerning payments to senior personnel, particularly in listed companies and other companies of public interest, is important for the confidence that such payments are made in the interest of the company and the owners. This is illustrated by experience from other countries including Sweden (Skandia case). Such information may be important for investors and other interested parties when assessing a company. The European Commission is currently working on a recommendation concerning information requirements regarding remuneration of senior management. In the view of the Government, there is a need to strengthen the current requirements regarding information concerning payments to senior personnel in the notes to the annual accounts. These requirements should also apply to payments received from other companies in the group in relation to a position or office.

Furthermore, such information should apply both to company and group management. Information requirements in the annual accounts and/or annual report will be considered in the follow-up of the Accounting Act Committee's report and consultation memorandum of the Ministry of Justice concerning the provision of guidelines for managerial pay policy in public companies and limited companies.

Recent financial scandals have also concerned the use of Special Purpose Vehicles (SPVs), including those established in closed financial centres in jurisdictions with very restricted

access to information concerning matters of ownership, etc. Such structures can be used to conceal a company's actual financial position and result, and can thus weaken the confidence of the financial markets and subject investors to major losses. In the Enron case in the USA, structures were revealed where special purpose vehicles were associated with the company in such a manner that, according to American accounting rules, they were not subject to consolidation in the group accounts although the company maintained the actual control and financial risk. It is viewed as more difficult to implement such structures in compliance with the consolidation requirements pursuant to the Accounting Act and the IFRS. In the Parmalat case in Italy, the value of property was concealed by placing it in special purpose vehicles set up in a closed financial centre. The European Commission has notified that, during 2004, it will submit proposals that the use of special purpose vehicles in closed financial centres shall be clearly shown in the company's accounts with an explanation of why the company regards it as necessary to use such structures. This work will be reflected in Norwegian legislation.

A particular issue concerns whether it should be required that information be given in the annual accounts concerning incoming and outgoing payments to different countries or regions of the world. According to the circumstances, this may help to reveal and place a focus on the company's foreign involvement, including any transfers to tax havens, closed financial centres, developing countries, etc. This may raise awareness concerning issues associated with corruption, etc. Even if such information were made compulsory, it would still be possible to conceal transfers, for example, by using financial institutions as middlemen or by other means. The Government will nevertheless consider whether this may be an appropriate measure and whether such a measure can be defended on the basis of cost-benefit considerations.

9.2 The Auditors Act

On 16 March 2004, the European Commission submitted a new and modernized Eighth Company Law Directive on Statutory Audits which tightens up the requirements regarding auditors, including those regarding qualifications, independence and ethics as well as quality control of the auditors' work. It is intended that the draft Directive shall replace the existing Directive concerning approval of persons responsible for carrying out statutory audits of accounting documents (84/253/EEC). The purpose of the draft Directive is to ensure that investors and other interested parties can trust the accuracy of audited accounts, and strengthen the EU's protection against the type of scandals that recently took place in companies such as Parmalat and Ahold.

The Directive upholds to a great extent existing rules concerning approval, but is considerably extended as regards registration requirements, audit execution (including use of international auditing standards), ethics and independence as well as quality control and public supervision. In this way, the Directive is intended to clarify the auditors' obligations and lay down certain ethical principles in order to ensure the independence and objectivity of auditors, for example, in situations where a firm of auditors also provides other services to the audit client. In this connection, auditors' fees for auditing and other services (any services additional to auditing) shall, pursuant to the Directive, be stated in the annual accounts of the audited companies. This is already laid down in Norwegian accounting legislation.

The Directive also lays down additional requirements regarding auditing firms responsible for auditing clients of major social importance in the form of information requirements, requirements regarding establishment of an audit committee and requirements regarding change of auditor every fifth year (or change of auditing firm every seventh year). In addition, more stringent demands will be placed on auditors' obligations in relation to audit of

consolidated accounts in that the auditor responsible for auditing the group will be responsible for the whole of the group accounts. The Directive also makes provisions for cooperation between the supervisory authorities of the respective EEA member states and between EEA member states and third countries such as the USA.

The Ministry of Finance has continuously monitored work on the Directive, chiefly through participation in the EU Committee on Auditing.

The Ministry of Finance will consider amendments to the Auditors Act and submit a Bill when the new Directive has been adopted.

Other measures in the area of auditing include a proposal for a statutory authority to issue further regulations concerning the right of auditors to perform consultative services and other services for audit clients, circulated for comments by the Ministry of Finance on 20 January this year. The Ministry of Finance has further, in response to suggestion from ØKOKRIM, requested Kredittilsynet to consider a proposal that auditors shall be obliged to notify the police if, in connection with auditing or other services, information emerges that gives grounds to suspect a criminal offence. Auditors are currently obliged, pursuant to section 4, second paragraph (1), of the Money Laundering Act, to report any suspicion that the transaction is associated with the proceeds of a crime. Auditors have furthermore a right, but not an obligation, to notify the police of possible criminal offences pursuant to the section 6-2, final paragraph, of the Auditors Act. On 13 May 2004, Kredittilsynet submitted a consultation memorandum to the Ministry of Finance, proposing a limited reporting obligation. The memorandum will be circulated for general review. The Ministry of Finance will consider amendments to the Auditors Act and submit a Bill when the new the Directive has been adopted.

In the USA, supervisory authorities impose sanctions for gross infringements of the auditor legislation by auditing firms responsible for auditing listed companies, suspending them from further audit assignments for listed companies for a given period. This may be an effective, though intrusive measure.

The Government will consider this and other ways of strengthening the basis for administrative sanctions against auditors in connection with the follow-up of the amendments to the Eighth Company Law Directive and/or the report of the Committee on Sanctions in NOU 2003:15.

9.3 Corporate Governance

“Corporate governance” largely concerns the relationship between the owners, the board and the management of a company. In a somewhat broader sense, corporate governance also concerns the relationship to other groups than the owners, such as employees, creditors, the local community and other groups with which the company has relations. Recent events in the world’s capital markets have given investors reason to believe that a number of the large listed companies have had defective and partly deficient control mechanisms. In addition, serious cases of manipulation of accounts have been detected with resulting reduction of confidence in the companies’ financial reporting. In this connection, corporate governance has been discussed as an important precondition for restoring confidence in the companies. In Norway, there has been increased focus on corporate governance in recent years. For example, the Oslo Stock Exchange has in a stock exchange circular recommended listed companies to notify whether they fulfil the requirements listed in a proposed recommendation concerning corporate governance that will enter into force in autumn 2004. The OECD has principles concerning corporate governance that were recently revised. The EU has also

increased its focus on issues relating to corporate governance, and issued a Communication on the topic last year. This work will also be followed up in Norway.

An important precondition for corporate governance is correct accounting information, providing investors and other interested parties with as correct as possible a picture of a company's status, cf. above on accounting legislation. Another important precondition for corporate governance is adequate internal and external control systems/mechanisms ensuring that the management acts in the interests of the shareholders and other interested parties. Internal systems may include payroll systems that ensure that the management's economic interests coincide with the long-term interests of the shareholders and the establishment of separate audit committees. External control systems are associated with the work carried out by auditors, analysts in brokerage firms and rating agencies. The auditors' independence in relation to the company and its management is a precondition for the auditor's ability to perform his work in a proper manner. The follow-up of new EU rules concerning compulsory audit committees and compulsory rotation of the auditors /auditing firms will therefore be of major importance, cf. above on regulation of auditors. Brokerage firms that carry out both analysis activities and arrangements may, according to the circumstances, face conflicts of interest, which may be more closely regulated in connection with the implementation of chapter 16 of the EU directive on investment services and regulated markets. As regards rating agencies, these play an important role in relation to companies that issue bonds. The importance of such agencies will increase as a result of the new capital adequacy requirements for banks (Basle II). Rating agencies also face potential conflicts of interest since their activities are largely financed by fees from the companies that are rated/assessed.

The EU has also notified new initiatives in this area, and this work will be followed up in Norway.[23]

In the Revised National Budget for 2004, the Government has proposed ethical guidelines for administration of the State Petroleum Fund. The intention of the rules is that the state, through its ownership, shall respect the fundamental rights of persons affected by the activities of the companies in which the fund invests. Ethical obligations are to be upheld by means of three instruments; exercise of ownership, filtering and withdrawal. The latter instrument involves individual withdrawal from companies where there is an unacceptable risk that the company will participate in the future in gross violations of fundamental humanitarian principles, gross violations of human rights, gross corruption or serious environmental damage.

9.4 New accountancy rules

On 26 March 2004, the Ministry of Finance submitted a proposal to the Storting for a new Act relating to accountancy (the Accountancy Act), cf. Proposition No. 46 to the Odelsting (2002–2003). The main purpose of the Accountancy Rules is to ensure satisfactory registration, documentation and storage of the various transactions during the accounting year, thereby ensuring that the various interest groups receive reliable and verifiable information. Central principles of accountancy include completeness, accuracy and reality. The information obtained in accordance with the accountancy rules will be the basis used for preparation of the annual accounts, tax returns, income statements, VAT returns, etc. The accountancy rules thus play an important role in combating economic crime.

External groups that have an interest in such information include owners, investors, creditors, employees and public authorities, including the tax authorities and the police and prosecuting

[23] As in the auditing sector, the market for rating services is heavily concentrated.

authority. External interest groups are not involved in accountancy or preparation of annual accounts, etc. Control of the accountancy is for example carried out by external auditors and by the tax authorities. In other cases, there may be special grounds for access to information, for example in connection with management of estates and investigation of economic crime. It is important that accountancy rules are drawn up in such a way that they provide for access to information and control. The Government will make efforts to ensure that the new accountancy rules enter into force as soon as the Bill has been passed by the Storting.

9.5 The Public Limited Companies Act and the Companies Act

In order to prevent abuse of senior managerial posts in the company for personal gain, contracts capable of concealing such abuse should be subject to more stringent rules concerning reporting, control and transparency. Examples of such contracts are tenancy agreements, purchase of real property between the managing director and the company and all forms of contract where the parties have conflicting interests. There is a need for increased transparency concerning such contracts because they involve situations where the same people sit on both sides of the negotiating table.

The introduction of special rules should be considered, for example, where the company, has direct or indirect agreements with the management, board members, or shareholders that hold more than 5 per cent of the share capital or votes on the date the contract is concluded. The same applies to agreements with companies that are shareholders and companies that have decisive influence over such shareholders. Such contracts should only be concluded by the permission of the board. The same rules should apply when one of the persons mentioned above holds indirect interests. In the same way, agreements between the company and another company where one of the managers of the first company is a manager, board member or shareholder (more than 5 per cent) should require the approval of the board Such contracts should be specifically mentioned in the auditor's certificate and attestation should be given that the agreement was concluded on the basis of market terms.

The documents that underlie the auditors' assessment of specific contracts should be made available to shareholders who represent over 5 per cent of the share capital. The Government will consider amendments to the Public Limited Companies Act and the Companies Act aimed at improving control and creating greater transparency in relation to contracts capable of concealing abuse of senior managerial posts in companies.

9.6 Amendment provisions concerning seizure and freezing of assets in the Criminal Procedure Act

9.6.1 Extended right of seizure and freezing of assets pursuant to the Criminal Procedure Act

Approximately one third of confiscation claims are never enforced. On 31 December 2003 the amount outstanding at the State Agency for the Recovery of Fines, Damages and Costs was NOK 267 625 million. An important reason for this is that the claims are not secured by seizure pursuant to section 203 ff. of the Criminal Procedure Act or by freezing pursuant to section 217 ff. of the Criminal Procedure Act. In the event of a legally enforceable decision there are often no available assets by means of which to enforce the claim, for example, because the offender has succeeded in hiding his assets or transferring them to other persons. There is reason to expect that increased competence in financial investigation and increased focus on confiscation will result in the securing of more confiscation claims by seizure or

freezing.

Seizure can be carried out pursuant to section 203 ff. of the Criminal Procedure Act and freezing pursuant to section 217 ff. of the Criminal Procedure Act until a legally enforceable confiscation order is made or a writ is issued. If the police later find the proceeds of the crime for which the offender has been convicted or find assets by means of which the confiscation claim can be enforced, according to the current rules, seizure or freezing is not possible. In such situations, the enforcement authorities have to be summoned and the assets must be attached or interim measures must be taken.[24] This is cumbersome and inappropriate.

In order to increase the effectiveness of the confiscation rules, the Government will take initiative to propose a statutory amendment so that a decision to seize or freeze assets can still be made after the confiscation decisions are legally enforceable.

9.6.2 Handling of seized objects that rapidly fall in value, etc.

A long period sometimes elapses from seizure until a legally enforceable confiscation decision is made. If there is a danger that a seized object will be rapidly impaired, the court may permit the police to sell it, cf. section 213, first paragraph, second sentence of the Criminal Procedure Act. If, on the other hand, there is only a danger that the object will rapidly fall in value, and/or it is extremely costly and inconvenient for the police to keep it, it may not be sold. Examples are automobiles and boats. It is costly for the police to pay for storage of cars, for example on an impound lot, and the cars fall rapidly in value if they are left unused for a long period. This is assumed to be the reason why cars are rarely seized in order to secure confiscation claims. One solution may be to permit sale in these cases too. Another solution is to make it easier and cheaper for the police to provide safe storage for seized objects. This may be achieved by allocating suitable premises to the police, perhaps on a regional basis, and competent personnel to look after and maintain the objects, or by allocating resources to pay private enterprises for such services.

In order to provide for increased use of means of security such as seizure and freezing, the Government will propose more appropriate rules for handling of objects subjected to seizure and freezing.

9.7 Restitution and sharing of confiscated assets

Profit-motivated crime is a serious international problem. Corruption scandals have revealed that heads of government have unlawfully appropriated large sums of money from the state treasury and placed them in bank accounts or invested them abroad. Money laundering of the proceeds of criminal activities is carried out most effectively across national borders. Transport/transfer of money to other countries, either in the form of cash or between accounts back and forth across national borders, often achieves good results for those who wish to launder the proceeds of crime, because it is difficult and time-consuming for the police to cooperate internationally. Improvement of international cooperation is essential to the more effective combating of this type of crime. In this connection, *restitution* of confiscated assets to the countries from which they originate, and *sharing* of confiscated assets with other countries that have taken part in the investigation or suffered damage from the criminal activities, are approaches that have received increased international attention during recent years.

[24] See Proposition No. 8 to the Odelsting (1998–99), page 77.

Article 57 of *the United Nations Convention against Corruption* has provisions concerning *restitution* of assets deriving from corruption. Member states are obliged to restore assets deriving from embezzlement of public funds and money laundering of such funds to another state when rightful ownership is established. As regards the proceeds of other criminal activities, the possibility will be opened up for restitution according to a discretionary assessment.

No. 38 of *the FATF Forty Recommendations* recommends states to establish arrangements that allow for *sharing* of confiscated assets.

Pursuant to section 37d of the Penal Code, the proceeds of confiscation shall accrue to the State treasury unless otherwise provided. Other provisions are laid down in other Acts and in section 37d itself. If another state is the aggrieved party – for example, the money has been misappropriated from the foreign state treasury – it may be decided that the confiscated assets shall be applied to coverage of the other state's claim for compensation. Restitution may presumably also be made if the other state has suffered damage and special reasons make it reasonable to do so. The provisions concerning exceptions are optional and do not confer upon the other state an unconditional right to restitution.

In many cases, the other state is neither an aggrieved party nor has suffered damage, and in such cases there is no statutory authority to restore or share the confiscated assets, which may have unreasonable consequences. It may, for example, seem very unreasonable that the assets accrue to the Norwegian State Treasury merely because the foreign judgment is enforced here. If parts of the prosecution have taken place in Norway, it is reasonable that Norway receives coverage of the cost of criminal proceedings, but it should be possible to share the remainder with other states. If the criminal activity takes place in several countries and the police and other authorities of these countries are involved in the investigation, it is also reasonable that the confiscated proceeds are shared between the countries. The perpetrator may for example be a Norwegian who assists Russians with laundering of money deriving from crime committed in Russia. An amount may have been seized from an account in a Norwegian bank. In clarifying the question of the guilt of the Norwegian, one is entirely dependent on assistance from the Russian authorities as regards the underlying criminal activities that generated the proceeds. It may seem unreasonable, particularly to a poor country, that in such a situation confiscated money cannot be shared. If the, for example, the proceeds derive from drug-related crime, they will not originate in a specific country, and detrimental effects – death, abuse problems and social distress – may arise in another country. In such a case, it is obvious that confiscated proceeds should be shared. However, it is reasonable that part of the confiscated proceeds shall be used to reimburse the country that assists for the costs associated with its assistance. Generally speaking, it must be assumed that the motivation for international cooperation will increase if the countries have prospects of receiving a share of the confiscated proceeds.

In order to comply with international obligations and recommendations and to achieve more reasonable solutions that promote international cooperation, amendments to section 37d of the Penal Code must be considered. Restitution and sharing of confiscated proceeds with another state may nevertheless be carried out in connection with a subsequent budgetary decision when criminal proceedings have been concluded. However, *rules* concerning such arrangements would probably function more effectively, for example, for countries that consider assisting during the investigation associated with Norwegian criminal proceedings.

The Government will take the initiative to propose a statutory amendment in order to enable us to restore and share the confiscated proceeds of criminal activities with other countries.

10 Measures against money laundering and financing of terrorism

10.1 Implementation of the FATF revised and special recommendations

The Financial Action Task Force (FATF) is an international organization that works to combat money laundering and the financing of terrorism. The FATF was established in 1989 on the initiative of the G7 countries. Norway has participated since 1991. The FATF has currently 33 members – 31 countries in addition to the European Commission and the Gulf Cooperation Council. The organization has drawn up 40 recommendations against money laundering. These were revised in June 2003. The recommendations are regarded as the international standard for measures against money laundering. The measures include penal provisions against money laundering, confiscation rules, reporting obligations for financial institutions, etc., identification of customers, international cooperation and issues relating to resources and competence.[25] Following the terror attacks of 11 September 2001, the FATF adopted eight special recommendations against the financing of terrorism.[26]

In the European Commission, work is currently in progress on a third money laundering directive. Follow-up of the FATF recommendations has a central place in this. Monitoring of this work by the Ministry of Finance and the Ministry of Justice includes participation in the Money Laundering Committee of the European Commission. The European Commission has stated that it plans to submit a draft of the directive to the European Parliament before summer 2004. However, it cannot be expected that a third money laundering directive will be finally adopted before mid-2005 at the earliest. On adoption by the EU of a third money laundering directive, the Directive will be implemented in the EEA Agreement.

On the basis of the FATF's revision of its general recommendations, its adoption of recommendations for measures against financing of terrorism and a third money laundering directive, it will be necessary to review relevant Norwegian legislation in order to ensure that Norway complies with its international obligations.

The Government will monitor international developments and implement a review of national legislation in order to ensure that international measures against money laundering and the financing of terrorism are implemented in Norwegian law.

10.2 The Money Laundering Act

A new Money Laundering Act entered into force on 1 January 2004. The Act implements the second EU money laundering directive[27] and some of the FATF recommendations against financing of terrorism. The purpose of the Act is to prevent and combat money laundering of the proceeds of criminal activities. The central obligations pursuant to the Act involve identifying customers and reporting suspicious transactions to ØKOKRIM. Among others, the Act applies to financial institutions, real estate agents, lawyers, auditors, and dealers in

[25] In a letter of 18 September 2003 to the President of the FATF, Minister of Justice Odd Einar Dørum expressed Norway's support for the recommendations and stated that Norway would initiate work on implementation as soon as possible. See also http://www.fatf-gafi.org.

[26] The eight special recommendations are referred to in the travaux préparatoires to the Money Laundering Act, cf. Proposition No. 72 to the Odelsting (2002–2003), page 82–87. Some of them were followed up in the Money Laundering Act or other Acts.

[27] Directive 2001/97/EC of the European Parliament and of the Council of 4 December 2001 amending Council Directive 91/308/EEC on prevention of the use of the financial system for the purpose of money laundering.

valuable objects.

Pursuant to the Money Laundering Act, dealers in valuable objects applies to cash transactions of NOK 40 000 or more.[28] The Act gives the Ministry of Finance the authority to provide in regulations that this shall apply to transactions involving payment cards. The Ministry of Finance has requested Kredittilsynet to consider whether such regulations should be issued.

The Act furthermore gives the Ministry of Finance the authority to provide in regulations that the legislation shall wholly or partly apply to gaming activities, debt collection agencies and regulated markets. Consideration will be given to whether the Act and provisions issued pursuant to the Act should wholly or partly apply to gaming activities.

At the request of the Ministry of Finance, the Ministry of Justice has considered whether there is a need to prepare guidelines for lawyers on how money laundering legislation shall be interpreted and practised. The Ministry of Justice concluded that there is a need for this, and has appointed a broadly composed working group to prepare a proposal for such guidelines.

10.3 Registration obligation for legal persons

An important principle laid down in the FATF recommendations and the Norwegian money laundering legislation is the "know-your-customer principle", which entails that financial institutions and other persons with reporting obligations shall identify their customers.

In the case of physical persons, pursuant to current legislation, registration of details including the name, address and personal identity number is required when establishing new customer relationships. In the case of legal persons, required details include the name, address and certificate of registration (from the Register of Business Enterprises or Central Coordinating Register of Legal Entities). Not all legal persons have a registration obligation (or right). This applies, for example, to foreign companies that do not conduct business in Norway, small one-man enterprises not engaged in distributive trades, associations, non-profit-making organizations, joint proprietorships, athletics associations, betting clubs, etc. When such groups open bank accounts, this must be done in the name of one of the members. This is an unsatisfactory situation for the bank, which, pursuant to the Money Laundering Act, is required to identify the actual owners of the funds on the account. Nor is it a satisfactory situation for the person who is registered as the account holder, because this person will be subject to tax on the funds concerned.

The FATF special recommendation No. 8 obliges assessment of measures to prevent "non profit organisations" from being used to finance terrorism. In this connection, the FATF recommends, among other things, that the organizations be registered and that members and administrative personnel are identified.

The Norwegian Financial Services Association (FNH) has submitted a proposal to Kredittilsynet for an obligation to register in a public register for all legal persons as a condition for establishing business relationships with a financial institution. The proposal entails a simplified registration in the Central Coordinating Register of Legal Entities with a separate number series to keep these separate from ordinary registered entities.

The Government will take the initiative to assess registration obligation of legal persons that wish to establish business relationships with a financial institution.

[28] Money Laundering Act, section 4, second paragraph (8).

PART III

MEASURES RELATING TO SPECIAL CATEGORIES OF CRIME

11 Tax crime

11.1 The pattern of tax crime[29]

Taxes form the basis of the welfare state. In 2003, taxes to the state, municipality and county amounted to almost NOK 700 billion. Tax and duty evasion has a negative effect on the community and weakens the basis of the welfare state. At the same time, it results in law-abiding taxpayers having to pay a proportionately larger share of the communal costs.

The taxation system is largely based on returns from private individuals and undertakings. Individual taxpayers are required to provide the public authorities with necessary and complete information concerning the economic conditions of significance for assessment of taxes, duty and VAT. Systems based on trust involve a risk of abuse.

Taxpayers can misinform the tax authorities in two principle ways. They can omit to provide information or they can provide incorrect or deficient information.

In some cases, facts are concealed from the tax authorities by means of false identity, incorrect/false documents or incorrect bookkeeping so that income is withheld from taxation or costs are fictitious. This often takes place with the assistance of other persons. Moreover, company managers can neglect their duties and thus become criminally liable for *the company's* unlawful omissions – such as negligent tax withholding, negligent reporting of employer's contributions, negligent pay reporting and incorrect bookkeeping. The persons responsible for the company can also be held financially responsible for negligent payment of tax withholding and employer's contributions if the company itself lacks the means.

Naturally enough, there are no reliable statistics or surveys of the underground economy. By means of investigations and research in this area, a number of attempts have been made to estimate the scale of clandestine employment (and other undeclared economic activities). Most conclude that it amounts to several tens of billion Norwegian kroner a year.

11.2 Measures against tax crime

Extensive efforts to combat tax crime take place on a continuous basis. In the following, we will give particular emphasis to the measures being carried out in certain areas.

The Government aims to move some areas of the "black" economy into the "white" economy. The Government is concerned with ensuring that the tax authorities can effectively detect and penalize evasions – in the most serious cases in collaboration with the police. An important precondition for achieving this objective is that everyone shall be able to comply with his or her obligations pursuant to tax, customs and VAT legislation. Efforts will therefore be made

[29] In the following, the designation "tax authorities" is often used. The Tax Administration, the Customs and Excise Administration and the local tax collectors constitute "the tax authorities". This designation is used even though not all agencies within the tax authorities are included in all contexts.

to ensure that tax, customs and VAT obligations and how these are to be complied with shall be made simple and clear to everyone. Work on support of voluntary compliance with tax, customs and VAT obligations will be given priority.

11.2.1 Simplification

The Government will focus on simplification measures that can help loyal taxpayers to abide by the law without having to make disproportionate efforts. Survey and analysis of compliance costs to find ways of simplifying the legislation will be intensified.

In this connection, procedures associated with private work assignments in the home will be reviewed with a view to simplifying procedures. In this connection consideration will be given to whether the current amount thresholds shall be raised, for example the lower limit for the obligation to report pay.

The Ministry of Finance has circulated a proposal for review concerning binding advance rulings to taxpayers from tax assessment offices. It is planned that the authority of tax assessment offices shall apply to *simple* tax matters, for example matters associated with residential property, home offices, different types of pay, welfare measures and deductions for costs associated with employment, gifts and grants both associated and not associated with employment, car taxes, travel expenses and additional costs and education costs. For self-employed persons the arrangement will apply to matters associated with day-to-day operations.

Active efforts will be made to implement simplification measures that can facilitate loyal compliance with taxation rules.

11.2.2 Control

In order to avoid abuse, it is of decisive importance that individual taxpayers perceive the risk of detection as high. A high perceived risk of detection is assumed to have a considerable preventive effect, and may therefore prevent new groups from evading their obligations.

Targeted control activities are essential for detection of tax crime. The tax authorities will place considerable emphasis in the future on serious offences involving the greatest disloyalty. It is important that the tax authorities allocate sufficient resources to control activities. It must not be possible for taxpayers to speculate on control authorities, owing to their lack of resources, not returning for several years. For this reason, it is important that the agencies are visible through controls and other active contact with taxpayers. Important areas of focus will include informing about controls and detection of evasions, and ensuring that tax evasions result in reactions. The tax authorities will make efforts to increase both the actual and the perceived risk of detection in selected high-risk groups.

In the future, supervisory bodies will give special attention to tax evasion in respect of investments in the finance market. This is an important and challenging area where compliance and control are concerned. On the basis of the Tax Administration’s control experience, there are considerable amounts that are not declared, and are thus withheld from taxation. The Tax Administration will work on prioritization and specialization of this as a control area. Specialized competence centres will be built up in selected counties. Work on further development of filing requirements within this area will be given priority in order to ensure effective and correct further processing and taxation.

The Tax Administration will cooperate with other countries on further development as regards effective follow-up with exchange of audit information within this area.

11.2.3 Information exchange

A working group appointed by the Director General of Public Prosecutions has submitted a report with assessments of cooperation procedures between the tax authorities and the police and public prosecution authority resulting from the Supreme Court's plenary judgments of 3 May 2002 where it was established that a taxpayer cannot be charged additional tax and formally penalized for the same offence, cf. 7.1. The report must be followed up and implemented in relation to the distribution of responsibilities between the tax authorities and police and public prosecution authority.

The Foreign Exchange Register referred to in 4.2 will ensure that information concerning transfers of currency between Norway and other countries is more easily accessible to control authorities than is the case today. There is reason to believe some black money is smuggled across the border. It is the responsibility of the Customs and Excise Administration to conduct border controls to detect smuggling of currency into or out of the country. The Customs and Excise Administration should strengthen these control activities. It is important that the police too follow up cases of this kind. Focus on smuggling of currency is also important for detection of financing of terrorist activities.

Cooperation between the Tax Administration, the Customs and Excise Administration and the police and public prosecution authority will continue be strengthened in order to ensure the correct response in each case.

11.2.4 Collection

It is of fundamental importance that people who are caught evading tax, duty or VAT are not allowed to keep the financial proceeds of the evasion. The goal is to perform effective collection of tax, duty and VAT in cases where economic crime is suspected.

11.2.5 Focus on commercial sectors

Black marketeering and other types of economic crime are a problem in a number of sectors, for example the hairdressing trade, the taxi trade, doctors and dentists, the catering sector, different crafts, florists, greengrocers, etc. It is typical of these sectors that they consist of small companies with considerable cash sales. Other characteristics are unclear company structures and frequent use of foreign labour.

The tax authorities will further develop sectorally and thematically targeted initiatives aimed at effective use of instruments by supervisory authorities to gain a positive effect on compliance. Targeted efforts within selected sectors combined with legislative development and cooperation with the law-abiding elements of these sectors have shown good results in the fight against tax crime. The agencies will therefore continue to follow this methodological approach, which places considerable demands on prioritization, competence and specialization. Also important are adequate means of response and clear signals from the public authorities that tax crime will not be tolerated. The right to conduct commercial activities in Norway should be dependent on compliance with tax legislation. An important aspect of this is consideration for industry and commerce itself as regards the risk of undesirable distortion of competition. In the event of gross or repeated infringements, it should be easier than it is today to review the offender's right to conduct commercial activities.

As regards sectors engaged in import of flowers, fruit and vegetables, variable rates of duty, restrictions and quotas are factors that may tempt some people to commit crimes. On the basis

of previous experience, these sectors will now be subjected to increased control.

The Customs and Excise Administration will focus on controls in the export area to detect fictitious exports, VAT refunds and black marketeering. Among other reasons, with a view to Norway's reputation as an exporting country, this control area should be given priority. The same considerations have played a prominent part in the Customs and Excise Administration's control of fishery exports. Since autumn 2000, the Administration has carried out an investigation of the fishery sector with a particular emphasis on control of declarations of origin issued in connection with export. Control of fishery exports with a view to detection of all types of false declaration will be continued.

In addition, consideration will be given to whether rules should be introduced prescribing that commercial undertakings should normally use a bank when making payments to other commercial undertakings, i.e. cash payments shall not be permitted. It is currently a problem in various sectors that cash amounts of up to several hundred thousand Norwegian kroner are paid between commercial undertakings. Rules of this kind will require a minimum limit, for example that they shall apply to transactions of over NOK 5–10 000.

11.2.6 Special focus on the building and construction sector

Building and construction is a sector that will be subjected to the Tax Administration's attention in the future. As regards this sector, there is considerable certainty that the scale of both tax crime and other forms of economic crime has increased during recent years, see for example the report "Honesty in the Construction Trade" which has been prepared by the Federation of Norwegian Construction Industries in 2003. The main source of the problem is the existence of many dishonest contractors who, in various ways, evade payment of taxes. For example, some companies keep most of their turnover secret from the public authorities. Others omit to report payment of wages to employees, and construct items of expenditure in their accounts which, in reality, are tax-free payments to employees. In this way, unpaid VAT is sometimes unlawfully paid to the taxpayers. The problems are further exacerbated by the fact that there are many foreign players in the sector, both persons and companies. Control of these is particularly difficult. In connection with the enlargement of the EU on 1 May 2004, these problems may be expected to increase further.

The report "Honesty in the Construction Trade" contains a number of proposals that it may be appropriate to follow up. These include the proposal for establishment of common norms and rules for the sector, aimed at more stringent contractual provisions and control routines in order to counteract distortion of competition and prevent use of clandestine labour.

Many countries have had similar problems with clandestine employment in this sector. Some of these countries, including the Netherlands from 1982 and the UK, Ireland and Germany from 2002, have introduced rules requiring the main contractor to provide security for subcontractors' liability for taxes, or alternatively to be jointly responsible for payment. Sweden is considering introducing such rules.[30]

The rules in these countries have certain variations. Roughly speaking, it is possible to distinguish between compulsory and voluntary systems.

Compulsory systems entail that, in connection with each payment to the subcontractor, the main contractor is *required* to set aside a certain percentage of the invoiced amount less VAT. Deductions may be made for material costs. This reserve, which is to be deposited in a frozen

[30] See report 2002: 6 from the Swedish Tax Agency (Riksskatteverket)

tax account, is to be used to cover taxes accruing to the subcontractor's payroll costs.

The compulsory system is the most effective for securing the claims of the authorities. A weakness of it is that it considerable reduces the subcontractors' liquidity. However, material costs can be excepted, and this lessens the reduction in liquidity.

The voluntary system (introduced in the Netherlands from 1982) does not require the main contractor to set aside a reserve as in the compulsory system. Instead, he is jointly liable for all of the subcontractors' tax payments. This also applies to the subcontractors' subcontractors. And the subcontractor in his turn is liable for his subcontractors. This is referred to as *chain liability*. The public authorities can always place their claims with the link above. A corresponding personal payment responsibility lies with individual managers in the company liable for payment. The company liable for payment can protect itself against liability by requiring the subcontractor to deposit money in a frozen account.

Consideration will be given to whether the main contractor should be made liable to pay taxes for the whole contract.

11.2.7 Organizational adaptation

Control resources should be exploited optimally. Joint control plans will therefore be developed for the Tax Administration and the Customs and Excise Administration. It is also of major importance that the Tax Administration and the Customs and Excise Administration cooperate with each other on control plans, including joint control projects.

The Tax Administration has worked actively on work organization as an instrument for ensuring targeted and effective controls – and, not least, for ensuring rapid competence development. There is an aim to achieve a greater degree of specialization in order to increase the effectiveness of organizational units, and it is important to succeed in cooperating well with the police and prosecuting authority. A separate unit has been established to work on compliance and economic crime in the Oslo area. The Tax Administration will try out various models for organizing work on increasing effectiveness in detecting disloyal taxpayers and following these up. An important measure here will be project-related sectoral controls. The goal is to establish more specialized units or the like in different parts of the country.

The current organization of the Tax Administration has a limiting effect in relation to further development of professional expertise and establishment of specialist functions. In larger environments it is easier to set aside resources for priority tasks and to increase the effectiveness of interaction with other agencies, such as the police. Against this background, a project has been set up for reorganization of the Tax Administration.

11.2.8 ICT development

Use of IT for storage of data, tracing of transactions and securing of evidence is an important area for further development. The potential for analysis of data is also much greater than in traditional handling of information on paper. In the Directorate of Taxes, a unit has been set up to assist external agencies with this, and consideration is being given to the development of regional units or the like with specialized expertise in this area. Special efforts are being made through Nordic cooperation to develop methods for detecting tax evasion and for exchanging experience with regard to detection methods. A future development towards more use of electronic vouchers will further accentuate the need for development in this area.

This also applies to the control activities of the Customs and Excise Administration, whose electronic clearance system (TVINN) was developed in the 1980s on the basis of the concepts

of that time. TVINN has not been adapted to current requirements regarding efficiency improvement and greater need for control. A number of improvements will be required to meet future needs. It is essential that this work is given priority. The Customs and Excise Administration's electronic clearance system will be further developed.

11.2.9 Analysis

In future, the Customs and Excise Administration will strengthen the focus on analytical activities with a view to detection of economic crime. Selection of control objects must be as targeted as possible. Analysis of the information received by the agency through expediting, available registers and intelligence will be important for risk assessment in the control areas of the Customs and Excise Administration.

The Customs and Excise Administration will continue to develop analytical activities in order to be able to target control activities by means of a further focus on the intelligence service and increased cooperation with authorities and private players who are able to provide competence and relevant information. The development of analysis will not only consist of identifying risk, but also of developing analytical methods and systems for handling risks.

12 Economic crime in the fishery and aquaculture industry

The fishing industry is of major importance to the national economy. It is essential to conduct a sustainable administration of resources and ensure equal conditions of competition both nationally and internationally. The industry bases its activities on fish stocks administered by Norway jointly with other countries. In ensuring equal conditions of competition in an international market, international efforts play an important role in preventing other players from committing economic crime on the basis of fish stocks held in common with Norway.

On the basis of criminal cases, material provided by supervisory bodies and information from the industry itself, the public authorities and the fishing industry's organizations have attempted to determine the scale of economic crime. Cases of black market landing, black marketeering, incorrect entries in catch logbooks and landing reports or sales notes, discarding, unlawful by-catch and errors in the certificate of origin in connection with export have been detected.

In October 2002, the Norwegian Fishermen's Association and FHL Industry Exports issued a report of a preliminary study from a joint ethics project, "Not only fish". The report was to form the basis of sound and concrete measures to counteract irregularities and thus also improve the general reputation of the industry. Furthermore, in January 2003, the "Agreement concerning measures to combat illegalities in the fishing industry" was concluded between LO Industry, the Norwegian Seamen's Union, the Norwegian Seafood Federation, the Norwegian Seafood Association, the Norwegian Fishermen's Association, the Norwegian Coastal Fishermen's Association and the Directorate of Fisheries, the Directorate of Taxes and the Directorate of Customs and Excise. The purpose of the agreement is to counteract illegalities, promote increased understanding and necessary simplification and development of legislation. In order to meet this goal, the parties draw up and implement various measures and projects within the framework of the agreement. The report and the agreement provide a sound basis for continued cooperation between the public authorities and the fishing industry as regards measures to combat economic crime.

In March 2004, the Minister of Fisheries appointed a fast-track commission to help strengthen

the Government's efforts to combat the unlawful return of fish to the sea. On 28 April 2004, the commission submitted its report containing a proposal for measures, including increased resources for control, changes in the organization of control responsibilities, and extended regulative measures for fisheries in the North Sea. The Government has started work on a plan for follow-up of necessary measures. The Government will otherwise focus on the following:

Cooperation and information exchange between supervisory bodies, and between supervisory bodies and the police. Legislative development will be considered in order to ensure the best possible cooperation between the agencies.

Effective control and joint exploitation of existing control competence in the various control bodies (fishery, tax and customs authorities, etc.). This is intended to ensure that the total scale of illegalities in individual cases is effectively determined.

Cooperation with supervisory bodies that work on economic crime in countries with which Norway shares common fish stocks. Development in this area has fundamental importance for efforts to combat fishery crime resulting from the structure of the industry's administration of fish stocks across national borders and extensive international trade in fish.

13 Corruption

Most corruption cases in Norway during the last ten years have concerned the private sector.

In other European countries, the situation is different, since most cases are related to the public sector. It cannot be excluded that there is more corruption in the public sector in Norway than has been registered to date. Internationally, the risk of corruption in the public sector is particularly associated with the armed forces, hospitals, public procurements, processing of building permits and various capacities where matters are largely dealt with according to discretion.

The threat must be expected to increase in the years ahead. Such developmental trends are indicated by factors such as increased internationalization, increased competition in public sectors susceptible to corruption, less loyalty to employers among new groups of employees in the public sector and increased pressure on the public sector from organized criminal groups.[31]

Employees in public institutions may find it questionable to report suspicions of corruption or other improper or criminal activities in their own institution. A possible reason is that no clear guidelines have been provided for when such matters are to be reported and nor have any procedures been established for processing of such reports internally. Furthermore, employees may in some cases perceive a conflict in relation to their duty of confidentiality if they choose to provide information to the police.

Since 1994, ØKOKRIM has had a separate specialized team with responsibility for investigating, deciding whether to bring charges and conducting corruption cases in court. In addition, the team has carried out extensive preventive work. ØKOKRIM also conducts criminal investigations in this area and assists other police units in Norway and abroad. The authority has also investigated a number of large and complex cases. Some cases have ended by being dropped while others have resulted in severe prison sentences, large awards of

[31] See the National Bureau of Crime Investigation (KRIPOS) threat assessment 1999 and the Norwegian Police Directorate's threat assessment for 2003.

compensation and large amounts confiscated. Financial investigation is generally decisive for proving that corruption has taken place.

Norway has ratified both the Council of Europe Criminal Law Convention on Corruption of 27 January 1998 and the OECD Convention of 21 November 1997 on Combating Bribery of Foreign Public Officials in International Business Transactions. Both of these conventions have associated assessment mechanisms. The follow-up of the Council of Europe Convention is the responsibility of GRECO (Group of States against Corruption), while the OECD Convention is followed up by the Working Group on Bribery in International Business Transactions. The follow-up entails preparation of reports on the parties to the convention. The reports culminate in recommendations to the individual countries. Norway has recently been evaluated, and has received recommendations from the OECD.[32] Norway was evaluated by GRECO in 2002 and is now being evaluated again.[33]

Pursuant to the statutory amendment of 12 March 2004 the Office of the Auditor General of Norway received the right to notify the police on its own initiative if factors giving reason to suspect a criminal offence were revealed in connection with an audit. The Office of the Auditor General of Norway may, if appropriate, also cooperate with other public control authorities. Information may also be provided even if the audit is not complete, and without informing audited institution or the superior ministry. In view of this amendment, Norway followed up one of the recommendations made by GRECO following evaluation of Norway's measures against corruption in 2002. The amendment may increase the risk of detection of corruption as well as economic crime in public institutions.

In compliance with its obligations as a party to the Convention, the Government will actively and loyally follow up the recommendations made by the OECD and GRECO.

The Government will assess arrangements in the public sector concerning employees' right or duty to report suspicions of corruption or other criminal or improper activities in their own institution. Better mechanisms will be established for storage and processing of such information guidelines will be developed specifying when such information shall be given to the police.

By 1 July 2005, the Government will recommend the Storting to consent to ratification by Norway of the United Nations Convention against Corruption.

13.1 Quarantine rules for civil servants

The Ministry of Labour and Government Administration is considering the introduction of quarantine rules for civil servants moving to jobs in the private sector.[34]

Problems may arise if former civil servants use information and expertise acquired in their positions when taking up appointments in private industry or in political interest groups. When a new employer is a supplier to the state or is involved in lobbying of politicians or senior officials, there is a risk that the new employer will gain access to sensitive or strategic information. Such information could be used to damage the interests of the state.

This increases the danger that decisions will made that are no in the interests of the state. It is assumed that this may be a problem in areas where there are large public procurements, for

[32] See www.oecd/daf/nocorruption/convention.

[33] See www.greco.coe.int.

[34] See Report No. 11 to the Storting (2000–2001).

example the armed forces and the health sector.

Transfer from the public to the private sector or to political interest groups may also give rise to doubts as to whether the handling of previous procurements was correctly conducted. Moreover, if a former civil servant has negotiated contracts with former colleagues, questions may be asked regarding whether personal relations have influenced decisions in the matter. Such factors are capable of weakening confidence in the public administration. The Government will consider whether quarantine rules should be introduced for civil servants, making it a punishable offence to take up employment in a company one has contracted with or given permission, support or the like, during a specific period following termination of employment in the Civil Service.

14 Measures against abuse of state support schemes

Each year, very large sums of money are transferred from state and municipal bodies to various publicly beneficial purposes, for example cultural activities, humanitarian and religious organizations, industrial or commercial purposes, research and compensation schemes. Such arrangements often become firmly established, and the transfers are repeated annually. Such payments are made in a system based on trust. The basis for the transfers is generally written information from the recipient who is not, or is only to a small extent, checked more closely by the body that grants support. Such a trust-based system is extremely vulnerable to abuse. During the last year alone, ØKOKRIM has investigated several large cases concerning abuse of such support schemes. There is reason to believe that the dark figures are considerable, particularly because large amounts are transferred while the risk of detection must be assumed to be small. Experience from the EU and from the other Nordic countries indicates the same. In view of the reinforced attention recently directed towards this form of crime, there is reason to believe that the number of cases will increase in future.

As regards abuse of welfare benefits, a tendency has been observed for more complex and better organized abuse cases. Experience shows that such fraud is committed cooperation between doctor and patient and between doctor, patient and employer. National insurance fraud is organized by means of clandestine employment and/or self-employment combined with sickness benefit, rehabilitation allowance and disability pension. In some cases, companies seem to base their operations on false sick notes concerning a large number of employees followed by clandestine employment in the same company. In this way, the company secures both labour and reimbursement of any wages paid during the sick leave. There are examples of half of a company’s employees being on sick leave at the same time. Such companies often cease to exist after a short time so that it is difficult to check them.

As regards organized abuse of welfare benefits, abuse investigation teams have been established both nationally and regionally in the National Insurance Service, which has resulted in more reports to the police for national insurance fraud. Organized national insurance fraud increases the need for tighter inspection and better communications between the agencies, including improved interlinkage of data registers. It is important that registers are also interlinked as regards content.

The Ministry of Justice will reinforce ØKOKRIM by provision of a special team for combating of serious cases of abuse of state support schemes. Approaches will also be considered for strengthening of the control exercised by the authorities empowered to make grants and by the Office of the Auditor General of Norway.

15 Bankruptcy crime

In 2003, 5 072 bankruptcies were registered. The number of bankruptcies increased by 14 per cent from 2002. To find corresponding figures, we would have to go back to the beginning of the 1990s. Most bankruptcies take place in distributive trades, real estate, business and hiring services, the building and construction trade and the hotel and catering trade.

Operation of commercial activities, particularly innovative commercial activities, often involves risk. Some companies fail, resulting in bankruptcy, without this involving any criminal activity. On the other hand, bankruptcies sometimes also conceal economic crime. Investigations have shown that managers of bankrupt estates detect potential crimes in somewhere between one-half and two-thirds of instituted bankruptcy proceedings. Some of these offences may be a consequence of the fact that a business has been kept going far too long. However, in many cases, they involve profit-motivated crimes. In connection with management of bankrupt estates, various forms of economic crime are detected. In addition to infringements of chapter 27 of the Penal Code concerning felonies in debt relations, other types of crime are often detected, e.g. infringement of tax legislation and accounting legislation, embezzlement and money laundering.

15.1 Guarantee schemes

In the case of bankrupt estates with no assets, it is possible to apply for a guarantee for continued management of an estate if economic crime is suspected. The Ministry of Justice has a special guarantee scheme for follow-up of bankrupt estates. Use of the guarantee scheme requires that continued management of estates can be assumed to provide assets to the estate, and that the estate management that has been conducted has revealed grounds to suspect criminal offences. For 2003, the Ministry of Justice had the authority to incur obligations of up to NOK 9 million. In 2003, use of the guarantee scheme was granted for a total of 148 estates. The guarantee framework for 2004 is the same as for 2003.

The Ministry of Finance also has a guarantee scheme for the costs involved in managing bankrupt estates. The purpose is primarily to secure and follow up duty and VAT claims, but guarantees can also be given in cases where economic crime is suspected. The responsibility for making decisions concerning funding by the Ministry of Finance has been delegated to the Directorate of Taxes and the Directorate of Customs and Excise. As regards tax claims, the tax collector may on specific terms guarantee coverage of the cost of further management of estates when it is probable that the bankrupt estate can be provided with assets. The fact that most bankrupt estates have very limited funds available for management of the estates entails a considerable risk that management will be discontinued before grounds for suspecting criminal offences are revealed. It is therefore a major challenge to ensure that bankrupt estates have sufficient funds to carry out management without having to be discontinued at an early date owing to a lack of funds. Strengthened management of estates will increase the potential for detection of economic crime.

15.2 Use of electronic communications in the management of bankrupt estates

The Norwegian Advisory Council on Bankruptcy has proposed that information on all stages of estate management shall be made known via the website of the Register of Bankruptcies. This will wholly or partly replace notification by letter and announcements in newspapers and in the Norwegian Gazette. It is proposed that the report of the board of trustees, final

accounts, etc. shall be made available via the Internet instead of being sent to each creditor. The purpose of the proposed amendments is that the limited resources for management of bankrupt estates shall be utilized as efficiently as possible. Rationalization of these procedures will free time and financial resources that can be used in the search for the assets of the estate and investigation of economic crime. The Norwegian Advisory Council on Bankruptcy has prepared a memorandum which has been circulated for review. The Ministry of Justice will consider these questions more closely on the basis of comments received, and aims to submit a proposition on the use of electronic communications in the management of bankrupt estates during 2004.

15.3 Trial project pursuant to section 122a of the Bankruptcy Act

The project aims to arrange for increased cooperation between the executive trustee and the police pursuant to the provisions of section 122a of the Bankruptcy Act. The Ministry of Justice will make funds available to police districts for coverage of costs in connection with work performed for the police at the investigation stage by the executive trustee and/or auditor of the bankrupt estate over and above the ordinary management of the estate. NOK 1 million has been allocated to the project. The project has been in progress since 2002 and is currently planned to continue to the end of 2004. ØKOKRIM has responsibility for supervision of the project.

15.4 Disqualification from business following bankruptcy

According to current practice, it is simple to circumvent the rules concerning the disqualification period following bankruptcy. One problem is that the executive trustee often does not have sufficient resources to conduct the disqualification case in court. As a result of this, disqualification is only imposed in cases where there is money in the estate or where the insolvent debtor does not protest. Another problem is that an insolvent debtor has often founded a company immediately prior to the bankruptcy, and continues to function in this company after being imposed a period of disqualification. Pursuant to current legislation, it is possible to deprive the debtor of positions that he or she already holds. However, this rarely happens in practice. A natural goal should be to establish legislation that distinguishes as far as possible between “honest” and “dishonest” bankruptcies.

The Government will revise the rules concerning disqualification following bankruptcy. Both the material conditions for disqualification and the procedural rules will be assessed.

16 Securities crime

Securities trading in Norway is expanding. Trading on the Oslo Stock Exchange amounts daily to approximately NOK 2 billion divided between over 8 000 transactions. The volume of trading has been increasing since 1983 and, during this period, the stock market has developed into an important factor in Norwegian economy.

A well functioning securities market is a precondition for a satisfactory supply of capital to industry and commerce. The precondition for a well functioning securities market is confidence that important rules are complied with, and that unlawful insider dealing, price manipulation and other crimes do not take place. Issues regarding law-abidingness in this area have been raised by a number of players.

This is the background for a number of different measures during recent years to counteract and detect illegalities in the securities market. The market monitoring function of the Oslo

Stock Exchange has undergone development and efficiency improvement. The stock exchange has responsibility for preliminary investigations and reports to Kredittilsynet regarding potential crimes. The Section for Market Conduct at Kredittilsynet has been strengthened. This section is responsible, following further investigations, for deciding whether cases shall be reported to the police. At ØKOKRIM, a special team has been established with specific responsibility for prosecuting crimes associated with trading in financial instruments. The statutory provisions have been strengthened and streamlined in several areas, among other ways, by amendment of the provisions of the Securities Trading Act concerning prohibition against insider dealing, which entered into force in July 2001.

The securities market develops rapidly, and conditions change frequently. It is therefore particularly important in this area that crimes are detected and penalized as swiftly as possible. This requires that the overall control resources function as effectively as possible. This places demands on legislation, procedures and routines applying to the relationship between the Oslo Stock Exchange, Kredittilsynet and the police. Although the individual links in this chain of control have been strengthened, no overall review has been made of control resources and the division of labour between the agencies in relation to the current need for control of securities trading.

An assessment will be conducted of cooperation between ØKOKRIM, Kredittilsynet and the Oslo Stock Exchange as regards efforts to combat securities crime. In connection with this, regulation of corresponding matters in other countries will also be considered.

Nominee registration in a securities register entails that investors' holdings of financial instruments are registered on an account in the nominee's name. Pursuant to Norwegian law, Norwegian shareholders are prohibited from using nominee registration. This means that investors must be shown in the register under their own names. However, foreign shareholders may use nominee registration. On 2 April 2004, the Government appointed a committee which was given a mandate to consider whether nominee registration of shares should be allowed for Norwegian investors. The Committee is broadly composed, and is to submit its recommendations by 2 May 2005. The Committee is to give an account of the advantages and disadvantages of nominee registration compared with direct registration. In this connection particular consideration is to be given to the extent to which nominee registration for Norwegian investors would affect the possibility for effective supervision of the securities market, effective control of money laundering and legislation on the financing of terrorism and how consideration for effective tax control can be maintained. Transparency of ownership in industry and commerce is also an important consideration that must be discussed.

The Government will assess the recommendations of the nominee registration committee and, in that connection, will consider whether any advantages associated with nominee registration are outweighed by disadvantages for the control authorities, etc.

Deficient and deceptive financial information has been a major aspect of recent financial scandals. Experience has also shown that established control mechanisms have not been adequate to avert or limit detrimental effects. This, combined with partially unsound business ethics, has contributed to making the financial scandals possible. In chapter 3 of Report No. 8 (2002-2003) to the Storting (the Credit Report for 2001), the Government referred to the lessons learned from the financial scandals in the USA (Enron, WorldCom, etc.) and the follow-up in Norway. The report refers to the challenges and measures in the areas of accounting rules, auditing – independence and objectivity, control and enforcement of the accounting rules, financial analyses and control mechanisms associated with the companies

themselves (corporate governance). In the EU, EEA-relevant measures in all of these areas are being worked on. In the report, the Ministry emphasizes that it is natural for Norway to keep abreast of these developments.[35] Within the framework of the EEA Agreement, Norway takes an active part in the drafting of EU finance market legislation. New procedures for adopting Acts have been introduced in the EU entailing that legislative authority is delegated to a greater extent to specialist committees within the areas of banking, insurance, securities trading, accounting and auditing. Norway takes part as an observer in all of these committees. When the EU has adopted a Directive, it is implemented in the EEA Agreement. Norway strives to ensure Norwegian implementation on a par with the implementation in the EU. Among important measures for follow-up of the EEA rules in this area are:

Accounting: The Accounting Act Committee submitted its final report – NOU 2003:23 Assessment of the Accounting Act – on 15 August 2003. The report has been circulated for review with a deadline of 5 December 2003. The Ministry of Finance is planning to submit a Bill in June concerning implementation of the EEA rules corresponding to Regulation (EC) No. 1606/2002 on the application of international accounting standards (the IFRS Regulation), establishment of an enforcement arrangement for control of financial reports provided by companies listed on the stock exchange, bookkeeping of share-based remuneration (options arrangements, etc.) and certain other matters. During the course of the year, it is planned that a Bill will be submitted that covers other proposals made in the report. This is referred to in more detail in 9.2.

Auditing: On 16 March 2004, the European Commission submitted a new and modernized Eighth Company Law Directive on Statutory Audits that tightens the requirements regarding auditors in areas including qualifications, independence and ethics as well as quality control of auditors' work. The Ministry of Finance has continuously monitored work on the Directive, chiefly through participation in the EU Committee on Auditing. The Ministry of Finance will consider amendments to the Auditors Act and submit a Bill when the new Directive has been adopted. More details of auditor legislation are given in 9.2.

Market abuse: On 3 March 2004, the Ministry of Finance circulated for review a proposal prepared by Kredittilsynet for implementation of directive 2003/6/EC on insider dealing and market manipulation (market abuse) (the Market Abuse Directive). The main purpose of the Directive is to secure the integrity of securities markets in the EEA area, while ensuring investors' confidence in these markets. The Directive's main provisions concern insider dealing and market manipulation. In both cases, the Directive contains a definition and an associated prohibition against dealing and solicitation. The regulation of market manipulation is a new concept in EU law. The Directive further tightens the requirement regarding listed issuer companies' public disclosure and handling of inside information, in relation to current Norwegian legislation as well. In addition, the Directive provides rules concerning analyses and investment recommendations, "grey lists", reporting obligations of brokerage firms, etc. in connection with suspicious transactions (for example, on suspicion of insider dealing) and primary insiders' obligation to report concerning their own share purchases. The Directive also contains partially extensive requirements regarding the authority and sanctions available to supervisory authorities, including requirements the use of administrative sanctions. The Ministry of Finance is planning to submit a proposition with a view to implementation of the Market Abuse Directive during the course of the summer/autumn.

The Prospectus Directive (Directive 2003/71/EC) was issued on 31 December 2003 with a

[35] See Recommendations concerning the Credit Report for 2001 from the majority of the Standing Committee on Finance (Standing Committee Recommendation No. 88 (2002–2003), chapter 3).

deadline for implementation on 1 July 2005. The Directive lays down provisions concerning the prospectus to be published when securities are offered to the public or admitted to trading on regulated markets (in Norway, the stock exchange or authorized market place). The Directive replaces two previous directives implemented in the Securities Trading Act and the Stock Exchange Act and regulations. The documents to be prepared pursuant to the Directive form part of the basis for investment decisions by potential investors. The Directive includes provisions concerning which offers shall be subject to the obligation to prepare a prospectus, what information shall be included in the prospectus and matters associated with the approval of prospectuses. The Directive and Norwegian rules pursuant to this will require that issuers and any other offerors who wish to act legally must provide information of relevance for investors' decisions and that documentation must be made available concerning what information has been provided. On the initiative of the Ministry of Finance, Kredittilsynet has appointed a broadly composed working group that has assessed the need for and proposed amendments to Norwegian law as a result of the Directive and supplementary provisions issued pursuant to this. The group's proposal will be circulated for review, and the Ministry will prepare proposals for legislative amendments as a result of the proposal and the comments provided by the commenting bodies.

Disclosure obligation of companies listed on the stock exchange (directive concerning continuous reporting): A directive concerning the information that issuers and owners of listed securities must provide to the market was recently adopted. The purpose of the Directive is primarily to enhance the safety of investors, improve the effectiveness of the European capital markets, make provisions for increased transparency and integrity and thus attract investors to the European securities market. In order to achieve this objective, it is planned, among other things, that there shall be a strengthening of the minimum requirements for what accounting information issuers shall provide to the market during the accounting year. In addition to this, certain minimum requirements are proposed regarding public disclosure of material changes in the ownership of the issuing company. The Directive will result in amendments to current rules concerning continuous reporting by issuers of securities listed on the stock exchange or regulated markets. Furthermore, amendments to the rules concerning flagging obligations must be considered.

Investment services and regulated markets: A new Directive was recently adopted that particularly regulates the activities of brokerage firms and stock exchanges. The Directive is also designed to safeguard investors' interests more clearly than the current rules. Brokerage firms are already regulated at the EU level (in the "Investment Service Directive"). However, the new directive entails that further demands be placed on the activities and organization of brokerage firms. Proposals will, for instance, be made for new and more stringent requirements regarding regulation of conflicts of interest in brokerage firms and of trading on their own account by employees of brokerage firms, etc. Brokerage firms and coordinators may, according to the circumstances, face conflicts of interest, a fact borne witness to by recent financial scandals in the USA and Europe. An example of such a conflict of interest exists between the brokerage firm's department for investment analysis (which shall be independent of the companies that are analysed) and the department for coordination of large emissions, etc. In most cases, it is the latter activity that finances the analytical activities, and this therefore raises the issue of whether the analysts act independently of the companies to be analysed. The new EU Directive concerning investment services and regulated markets will authorize regulation of such conflicts of interest at a European level. Considerable emphasis is also being placed on increased transparency in the deals made internally in a brokerage house (i.e. outside the stock exchange). As regards stock exchanges, the new Directive provides requirements regarding organization and capital matters, and will open up the

prospect of stock exchanges operating more easily than today throughout the EEA area. Moreover, the rules will enable greater transparency in connection with stock exchange transactions. The Ministry of Finance will submit proposals for implementation of the Directive and the Norwegian government will also be active in providing supplementary rules to the Directive.

17 Crime involving unfair competition

Crime involving unfair competition and cartels among commercial undertakings is an extremely serious and damaging activity. Such criminal activities result in weakening of competition, increased prices and less competitive tenders. They enable companies to operate inefficiently. Unnecessarily high costs are imposed on the individual links in the chain of distribution and society as a whole suffers a reduction in efficiency.

In recent years, companies in Norway have been heavily fined for cartel activities. Serious cases are currently being investigated by ØKOKRIM. The public authorities are convinced that these cases concern only a small fraction of the existing cartels.

The main challenge in combating cartels in the future consists of detecting the serious cases and ensuring that sanctions are in proportion to the extremely large profits that such infringements normally result in. The new Competition Act, which entered into force on 1 May 2004, provides for two new measures that the Government hopes will result in changes in relation to these two factors. Firstly, the new rules concerning leniency may result in detection of more cases. Leniency entails that a cartel participant is promised immunity from penalties and other sanctions on certain conditions if he discloses information to the Norwegian Competition Authority concerning the cartel he has participated in. In several other countries, such systems have proved extremely effective in putting an end to cartels. The other measure involves giving the Norwegian Competition Authority the power to impose administrative sanctions. Further Regulations concerning both leniency and sentencing are currently being prepared. Rules concerning sentencing in cartel cases are particularly important because such cases often result in profits of a magnitude that, for various reasons, it has been difficult to take sufficiently into consideration in Norwegian confiscation and sentencing practice.

The Government will introduce further Regulations on leniency in order to reveal cartels as well as regulations ensuring stringent administrative sanctions.

In the most serious cases, penalties should still be imposed. In these cases, confiscation will be the only instrument for depriving offenders of the proceeds of cartel activities. Claims concerning infringement fees cannot be included as civil legal claims in criminal proceedings. It is important to ensure that the police and public prosecution authority have sufficient professional competence to proceed in these cases.