



Gross corruption and other serious financial crime

In connection with the amendment of the GPFG's ethical guidelines in the autumn of 2021, the scope of section 4(g) of the guidelines was expanded from "gross corruption" to "gross corruption or other serious financial crime". Section 4 now reads:

"Companies may be excluded or placed under observation if there is an unacceptable risk that the company contributes to or is responsible for: [...]"

k. gross corruption or other serious financial crime."



In addition to its normal endeavours under the corruption criterion in 2021, the Council has devoted considerable resources to preparing for the inclusion of other serious financial crime as part of the criterion.

In 2021, the Council recommended that two companies be placed under observation due to an unacceptable risk that they are contributing to or are themselves responsible for gross corruption. The Council recommends observation in relation to corruption cases more frequently than in other cases. This is because, as a rule, the norm violations took place some time before they became public knowledge and the companies involved in corruption will often make changes that sow doubts on developments going forward.

In March, Norges Bank decided to follow up on the risk of corruption in its ownership dialogue with the German industrial company Thyssenkrupp AG following the Council's recommendation in December 2020 that it be placed under observation. Norges Bank is responsible for following up companies through ownership dialogue, while the Council follows up companies that have been placed under observation.

Thyssenkrupp may be linked to allegations or suspicions of corruption in a total of eight countries over a period of more than 20 years. The Council's review of the company's anti-corruption systems gave the impression that Thyssenkrupp has done much to put in place a comprehensive and effective anti-corruption apparatus. At the same time, the Council noted that in one corruption case there was a significant discrepancy between what the company itself had stated and the information the Council had obtained from other sources. The Council also considered that Thyssenkrupp had not provided sufficient assurance that it would always be able to adequately manage the corruption risk associated with the use of third parties.

In July, the South Korean construction company Hyundai Engineering & Construction Co Ltd (HDEC) was placed under observation. HDEC may be linked to allegations or suspicions of corruption in three countries from 2008 to 2018. In addition, HDEC has been involved in 13 different bid-rigging cases in the period 2005–2013. In the Council's opinion, the company had treated the various allegations too

lightly. Furthermore, the Council's review of the company's systems and procedures to prevent and detect corruption gave the impression that much remained to be developed and implemented. However, the company expressed the aim of intensifying its efforts to secure compliance with regulations relating to the prevention of financial crime.

At the very end of the year, Norges Bank decided to place Bombardier Inc, a Canadian producer of private aircraft, under observation. This decision was published in March 2022. Bombardier or its subsidiaries may be linked to allegations or suspicions of corruption in six countries over a period of more than 10 years. The Council's review of the company's systems and procedures for the prevention and identification of corruption gave the impression that some elements are in place. However, the discrepancy between what the company itself has stated and the information the Council has obtained from other sources makes the Council question the efficacy with which the company handles third-party risk and reports of potential irregularities. As Bombardier divested that part of its operations to which the majority of the allegations and suspicions of corruption have been linked (the transport division), the Council still considered there were grounds to observe developments going forward.

In 2021, the Council also continued to observe the Italian defence contractor Leonardo SpA, which has been under observation since 2017.

The Council follows up allegations linked to companies in which the GPF is invested on an ongoing basis. The most serious allegations identified through the portfolio monitoring process are investigated further. In addition to the two recommendations issued during the year, the Council has focused particularly on one company in the industrial services sector and one in the oil service sector. Furthermore, the Council's review of state-controlled oil and gas companies, which began in 2020, was concluded. Work with respect to one of these companies will continue in 2022.

The Council's approach to corruption cases

In 2012, the Council reviewed its experience with corruption-related cases since its establishment in 2005. This resulted in a sharper focus on risk and less emphasis on legal processes than before. In connection with the Ethics Commission's report, and in light of the fact that almost a decade had passed since the last assessment of the Council's approach to corruption cases, it decided to review its work under this criterion once again.

The Council reviewed key provisions from laws and regulations, and their preparatory works, the methods used to consider and assess corruption cases, companies' responsibility to document their anti-corruption activities, the weighting of various types of risk, the framing of the actual recommendation text and the scope of the information available to the Council in each individual case.

The preparatory work to the guidelines for observation and exclusion provides important guidance for the Council's work.¹⁰ This applies in particular to the Ethics Commission's report and its further treatment. This preparatory work makes it clear that the Council makes no evaluation with respect to criminal liability and therefore does not need to find it proved that a company is responsible for an illegal practice. For the Council, the issue at hand is the future risk of corruption. The Council assesses this risk partly on the basis of information about the company's previous actions and what the company is doing to prevent similar incidents in the future.

Nevertheless, the Council's decision to assess a company always springs from allegations or suspicions of corruption. In some corruption cases, it is possible to find information about allegations in court documents. But this is not always the case. Such documents may also be hard to obtain and difficult to analyse. Media reports also constitute an important source of information – both those covering the actual legal processes and those resulting from in-depth

investigative journalism. For the Council, the key is to have sufficient credible documentation to link the company to actions that qualify as corruption or that imply a high risk of corruption, irrespective of whether this documentation comes from sentences or other credible sources. In addition to information from court documents and media reports, the Council also draws on other relevant sources, such as the World Bank, other public authorities, civil society organisations etc., where such sources exist.

With respect to future corruption risk, the company's anti-corruption/compliance systems lie at the core of the Council's assessment. The company's anti-corruption systems are assessed against key principles in international guidelines and standards for such systems. The Council also attaches considerable importance to the company's corporate governance and business structure, and any changes that have been made after the company became linked to corruption allegations.

The Ethics Commission pointed out that companies devote considerable energy to concealing any corrupt activity, since corruption is a criminal offence. The Commission therefore recommended that the threshold for the likelihood of future corrupt acts be lowered in connection with forthcoming assessments under this criterion. The Norwegian parliament supported this proposal. In this connection, the Council has also reassessed its expectations with respect to companies' assistance in clarifying the case. The Council will continue to take the position that the company in question must substantiate that it is working effectively to prevent corruption if the Council is to deem the risk to the GPFG to be acceptable. If a company cannot document that it is, in key areas, actually complying with its own guidelines, other risk factors and information from other sources may be accorded greater weight in the Council's assessment.

With respect to risk factors other than the company's own anti-corruption endeavours, it seems clear that the extent of criminal investigation, charges and convictions in corruption cases in the countries in which the companies are domiciled, and where they

¹⁰ See the Graver Commission's report NOU 2003: 22, *Management for the Future*, <https://www.regjeringen.no/contentassets/d8124659de-12416dbe2a942b5461be93/no/pdfs/nou200320030022000dddpdfs.pdf> and the Ethics Commission's report NOU 2020: 7, *Values and Responsibility*, <https://www.regjeringen.no/contentassets/86dac65c22384dda9584dc2b1a052a91/no/pdfs/nou202020200007000dddpdfs.pdf>.



operate, could affect the companies' risk tolerance. This also applies to the degree of transparency and access to information more generally in the countries concerned. The Ethics Commission is in favour of a heavier weighting of such information – from indices and other relevant sources – but makes it clear that it cannot be used as independent grounds for exclusion or observation. It must be used as a supplement to the information that the Council obtains on the individual company.

Other gross financial crime

In connection with the expansion of the corruption criterion to encompass other serious financial crime, the Council has focused primarily on clarifying the meaning of this concept and establishing an appropriate set of priorities and methodological approach. The Council has also recruited a new employee to work on this issue.

In principle, financial crime covers a wide range of offences in addition to corruption. These include fraud; money laundering; bankruptcy fraud, accounting and tax offences; price fixing, bid rigging and other forms of collusion; embezzlement; market manipulation; and deception/breach of trust. Given the scale and complexity of all these different forms of financial crime, the Council will initially build up its competence within a more narrowly delimited area before gradually expanding its focus to other types of offences as time goes on.

The preparatory work to the new guidelines explicitly mentions money laundering and tax evasion in discussions concerning the expansion of the corruption criterion. The Council's own statistics also show that these are among the types of crime that can be linked to the largest number of companies in the GPF. Money laundering and tax offences could therefore be a natural starting point for the acquisition of expertise in the area of financial crime.

The Ethics Commission pointed out that there may be "individual cases where companies have been involved in various forms of serious financial crime which, taken together, may establish a pattern of behaviour that makes the risk of further financial offences unacceptable".¹¹ This accords with the Council's own experience. In the Council's opinion, therefore, it should take a cumulative approach when assessing whether a company's previous norm violations cross the threshold into the unacceptable. The Council has already created a certain amount of precedence for such a practice through the HDEC recommendation, which attached importance to illegal collusion (bid rigging) in addition to the explicit corruption cases to which the company could also be linked.

The Ethics Commission has proposed an assessment process for cases relating to other serious financial crime that corresponds to today's practice with respect to corruption cases. As far as is possible and expedient, the Council will strive to follow this guidance. However, the Council's practice must evolve as more experience is acquired. It is also important for the Council and Norges Bank to have a shared understanding of how the criterion is to be applied. We will therefore keep the Bank apprised as our work on this criterion gradually takes shape.

11 NOU 2020: 7, p. 198.