Anti-money laundering and counter-terrorist financing measures - Norway

3. Legal systems and operational issues

Effectiveness and technical compliance

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3. LEGAL SYSTEM AND OPERATIONAL ISSUES

Key Findings

- Norway has a well-functioning financial intelligence unit (FIU) which develops and disseminates good quality financial intelligence to a range of law enforcement agencies (LEAs) as well as to customs and tax authorities.
- The FIU produces its financial intelligence based on suspicious transaction reports (STRs) received and on information from a wide range of informative, public and restricted access databases, including police information. However, several factors negatively impact the FIU's ability and capacity to produce an increased amount of good intelligence products: the rather low quantity and quality of the STRs received; and the fact that the FIU did not undertake strategic analysis since 2011, undermines authorities' ability to identify emerging threats.
- Financial intelligence is used by some specialist agencies such as ØKOKRIM and the Norwegian Police Security Service (PST) to 'follow the money' associated with predicate offences and terrorist financing (TF), although money laundering (ML) offences are generally not pursued. The use of financial intelligence in the 27 police districts and in other specialised agencies such as the National Criminal Investigation Service (KRIPOS) is limited.
- Norway has in many ways a good legal foundation and sound institutional structure for combatting ML which could be applied to effectively mitigate ML risks. Norway has a broad ML offence that applies to all crimes in line with the FATF Standards, and the proposed new Penal Code with a separate ML offence (*cf.* "receiving") will help to show that ML is more than just an ancillary crime to the predicate offence. There are also designated LEAs with access to a generally broad range of powers.
- While economic crime is considered a priority, ML is not prioritised. Despite the absence of comprehensive and reliable statistics, information received from various authorities indicates that there are few ML cases, and that many of them are self-laundering cases. There are not many cases in relation to organised ML, third party laundering, or laundering the proceeds of foreign predicate offences.
- There are relatively few prosecutions and convictions for ML. ML cases are handled either by the 27 police districts or by specialised agencies such as ØKOKRIM. Police districts and specialised agencies often decide not to investigate or prosecute ML offences because they prioritise the investigation and prosecution of the predicate offence. In addition, the lack of expertise and resources in many police districts is also a factor.
- Confiscation powers are broad, and the confiscation of criminal proceeds is a policy priority. However, results to date are not satisfactory and significant improvements are necessary.
- The system for cross border cash and bearer negotiable instruments (BNI) declarations, while legally comprehensive, has produced limited outputs, relative to the risks in this area.

3

3.1 Background and Context

Legal System and Offences

3.1. Most criminal offences in Norway are contained in the *General Civil Penal Code 1902* (*PC*). The *PC* distinguishes between more serious offences "felonies" (mainly offences punishable by imprisonment for more than 3 months) and other less serious offences "misdemeanours". The PC also contains other relevant provisions such as those relating to ancillary offences, jurisdiction, corporate criminal liability, powers to order confiscation etc. The *PC* is complemented by the *Criminal Procedure Act 2006* (*CPA*) which sets out all the procedural powers and mechanisms including for the use of investigative powers and coercive measures (e.g., powers to freeze and seize property). Provisions in relation to the declaration of currency and BNI are contained in the *Customs Act 1966* (*CA*) and the *2009 Regulations to the Customs Act* (*RCA*). ML is criminalised in *PC*, s.317 & 318. The legal provisions concerning confiscation and provisional measures are set out in s.34-38 of the *PC* and in s.202d-g (Freezing of assets), s.203-216 (Seizure and surrender order), and s.217-222 (Charge on property). Administration of the property of the person charged) of the *CPA*.

3.2. ØKOKRIM is the national authority with responsibility for the investigation and prosecution of economic and environmental crime. In general, ØKOKRIM handles the most significant ML cases related to such criminality. The police districts also have responsibility for investigating ML. There are 27 police districts and all districts have specialised economic crime units which could handle ML cases. The KRIPOS and the National Authority for Prosecution of Organised and Other Serious Crime (NAST) are responsible for the investigation and prosecution of ML cases in relation to organised crime.

3.2 Technical Compliance (R.3, R.4, R.29-32)

Money Laundering and Confiscation:

Recommendation 3 – Money laundering offence

3.3. Norway is rated compliant (C) with Recommendation (R.) 3. ML is criminalised in s.317 of the *PC,* and s.318 makes ML conspiracy an offence. Section 317 also criminalises the receiving of stolen property. This provision makes it an offence to launder "the proceeds of a criminal act" and the offence covers all crimes as predicates (including a range of offences in all 21 categories of designated predicate offences including tax offences). The term "proceeds" covers all types of property, regardless of value, that directly or indirectly represent the proceeds of an offence. It is not necessary that someone be convicted of a predicate offence to prove that the property is the proceeds of crime. Third party and self-laundering are separately criminalised, laundering the proceeds of foreign predicate offences is covered, legal persons are subject to criminal liability and there is a range of ancillary offences. The ML offence is therefore a broad one.

3.4. Criminal sanctions for natural persons are proportionate to many other similar types of offences in Norway and although at the lower end of the range could be considered dissuasive. The penalty for ordinary ML is up to 3 years imprisonment. Aggravated ML has a penalty of up to 6 years imprisonment and is used based on factors such as the value of the property being laundered i.e., it can be aggravated if more than NOK 100 000 (EUR 13 000). More serious penalties apply to drug ML (21 years) and cases involving organised crime (up to 5 year increase). Unlimited fines can be imposed. Norway considers that the penalties for ordinary and aggravated ML are in line with other economic crimes, and are dissuasive. Overall the sanctions regime for s.317, while at the lower end of the international scale, is proportionate to most of the domestic penal regime, and can be considered dissuasive for technical compliance purposes.

Recommendation 4 – Confiscation and provisional measures

3.5. Norway is rated largely compliant (LC) with R.4. The legal provisions concerning confiscation (*PC* s.34-38) and provisional measures (*CPA* s.202-217) are generally comprehensive and have the potential to be

very effective. Confiscation of the proceeds of all criminal offences is mandatory, includes any profits derived, while confiscation of instrumentalities or intended instrumentalities is a discretionary penalty. Even if the prosecutor has not made a claim, the Court has a duty to confiscate if the preconditions are met. It is also possible to order equivalent value confiscation, and to confiscate proceeds held by third parties who knew that the property was criminally derived or was a gift. The amount of proceeds can be proven to the civil standard of proof. A potentially very effective additional power is the power to use extended confiscation in cases (a) which have a penalty of 6 or more years or the type of offence may result in a considerable gain, and (b) the offender was convicted within the previous five years of an offence resulting in a considerable gain. Under extended confiscation, the offender must prove on the balance of probabilities that the property was legally obtained, and can cover the property of their spouse, close relatives, or legal person(s) that they control. There is also a possibility for the prosecution authority to issue a writ of confiscation instead of an indictment (s.255, *CPA*). The writ can be used for confiscation of both goods and value.

3.6. The police and prosecution authorities, including ØKOKRIM, have investigative powers to identify and trace assets, and powers to freeze, seize and/or charge property. Freezing is restricted to terrorism and TF cases (see R.6), seizure is used to either seize or freeze property, while charging involves placing a charge on the property for a specific amount in order to secure payment of a possible confiscation order. There has not been any change to the legislation since Norway´s 4th follow up report. These powers are extensive but could be further strengthened if it became possible to seize all of a defendant's assets (even those not identified specifically). Another small practical enhancement would be to create the powers/mechanisms that would enable the authorities to actively manage seized or frozen property.

Operational and Law Enforcement

Recommendation 29 – Financial intelligence units

3.7. Norway is rated LC with R.29. Norway's FIU is a law enforcement/judicial type of FIU located within ØKOKRIM. It is responsible for receiving, analysing and disseminating information disclosed by reporting entities. The FIU has a well-developed operational analysis function with direct access to a wide range of databases and registers with administrative and law enforcement information to support its operational analysis. It uses an advanced IT-system *"Ask"* with analytical and data processing functions which allows it to directly link STRs to relevant public and police sources, and to information from other domestic authorities and foreign FIUs. The FIU is able to obtain additional financial information from the reporting entity which filed the STR. The scope of its strategic analysis is currently limited as no strategic analysis has been produced since 2011. Information can be disseminated to competent authorities both spontaneously and upon request. There are procedures in place for the handling, storage, protection of, and access to FIU information. For data protection reasons, the FIU is subject to the oversight of a Supervisory Board but the working methods of this Board could potentially interfere with the FIU's operational independence. The FIU has been a member of the Egmont Group since 1995 and frequently engages in information exchange with foreign counterparts.

Recommendation 30 – Responsibilities of law enforcement and investigative authorities

3.8. Norway is rated C with R.30. Norway has a comprehensive network of law enforcement and prosecution authorities that have designated responsibility for investigating ML, TF and associated predicate offences. In addition to the local police, Norway has seven special permanent units that are organised directly under the National Police Directorate (NPD). ØKOKRIM is one of these permanent units and specialises in the investigation of complicated economic crime, including ML, corruption and tax offences. As a general rule, ML and associated predicate offences are investigated by the local police under the instruction of the Prosecution Authority in the police district where the offence was committed. ØKOKRIM is in charge of the investigation of more complicated cases and also provides assistance to the local police. The PST is formally responsible for investigating covert TF cases. The police and ØKOKRIM are formally responsible for open cases, although in practice PST takes over all cases.

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Recommendation 31 – Powers of law enforcement and investigative authorities

3.9. Norway is rated LC with R.31. Norwegian competent authorities that are responsible for investigating ML/TF and associated predicate offences have powers that give them access to documents and information for those investigations. Norway has legislative measures in place that provide law enforcement with a range of investigative techniques when conducting ML/TF or other criminal investigations. Most of these techniques can be used for serious offences (where the maximum penalty is five or ten years imprisonment). In the context of ML, they are available in cases of aggravated or organised crime/drug-related ML. It is also noted that witnesses bound by certain secrecy laws such as banking legislation, are also required to provide statements to police on matters covered by these laws. While authorities can identify accounts from the taxation register, this is only updated annually, which leaves a gap in the ability of authorities to identify whether natural or legal persons hold or control accounts.

Recommendation 32 – Cash Couriers

3.10. Norway is rated C with R.32. Norway has a sound legal framework in place for the declaration and identification of incoming and outgoing cross-border movements of funds by travellers. Customs authorities have comprehensive powers to collect further information from the carrier and to impose proportionate and dissuasive sanctions for failures to comply with the declaration requirement. Customs authorities can stop or restrain currency or BNI on a suspicion of ML/TF or predicate offences. For false declarations, customs can stop the currency or BNI immediately to withhold an administrative fine of 20% of the total amount not declared and to determine whether there is a suspicion of ML/TF. With the exception of the cases reported to the police/prosecutor, data regarding other cross-border declarations are registered by the customs authorities in the Currency Register. Norwegian competent authorities, including the FIU, have on-line access to this register. In addition, customs authorities work closely with other competent authorities in implementing cross-border declaration requirements and on related issues.

3.3 Effectiveness: Immediate Outcome 6 (Financial intelligence)

3.11. The FIU works with a wide range of informative, and in many respects unique, public and restricted access databases (see Chapter 1 for further details). These are available directly to law enforcement. For example, an agency can determine, online and in a timely way, the date of birth, addresses, employment status, domestic shareholdings and annual declared income of a subject. The breadth of readily accessible information gives LEAs significant assistance in the investigation of ML, associated predicate offences and TF. The FIU provides significant added value to this capacity, by producing bespoke analysis, working with this and the other data available to it, such as STRs (which are often the trigger for such work) and the information it can obtain from relevant reporting entities.

3.12. Typically, financial intelligence products are developed organically by the FIU, often following the initial receipt of an STR. This practice has evolved as a result of the focus of its statutory powers. That is, once an STR has been received from an entity with an obligation to report, the FIU can require that reporter to provide it with all necessary information concerning the transaction and the suspicion.

3.13. The FIU has a total of 18 staff, including 10 analysts, one of whom is a strategic analyst. This post has only recently been re-filled on a permanent basis, following the departure of the previous permanent strategic analyst 18 months ago. Thus, although the FIU now has the capability to conduct strategic analysis, the proactive generation of leads and other products for law enforcement agencies, compared to reactive operational work, is not a priority and no strategic analysis has been produced since 2011. The FIU's effectiveness in this regard is limited.

3.14. With respect to STRs being a trigger for much of the FIU's intelligence development, Norway drew attention to the connection between the analyses and products of the FIU and the quantity and quality of STRs. The FIU and ØKOKRIM have also expressed concern about the number of STRs and about their variable quality. A large number of STRs appear to follow from the reporting sectors' attention to smaller cash based transactions rather than larger, more complex, transactions which are connected to serious crime (see

Chapter 5 below). This in turn affects the FIU's ability to conduct larger and more complex analyses and thus its ability to disseminate information to the police in relation to such cases.

3.15. Despite this, on the basis of available material the output of the FIU is good in terms of operational analysis and cases are ready to be taken on by the police. This is demonstrated by the fact that the intelligence packages produced are in many instances at a sufficient level for the FIU to open an ML investigation on its own initiative, and for the FIU and prosecutors to move the case from the intelligence phase into the criminal law regime. However, as discussed below, a significant factor in this is the extent to which the police are willing and/or able to take on and follow up FIU cases.

3.16. Another significant positive is the degree to which the FIU is able to exchange information and collaborate with foreign partner FIUs, often through the Egmont Secure Web.

Box 3.1. Case example: FIU cooperation and analysis

In 2009, the FIU was contacted by an overseas sister unit in connection with an analysis of an assumed CO2 fraud case. The foreign unit discovered that considerable sums of money had passed through Norway. FIU investigations showed that STRs were not sent for these transactions. However, searches in the Registry of Cross Border Transactions and Currency Exchange revealed that NOK 8 billion (EUR 1.04 billion) had passed through a euro account in a Norwegian financial institution. These accounts had been established with the use of a poor copy of a foreign passport.

Use by competent authorities of financial intelligence and other related information

3.17. The FIU's intelligence products are disseminated to both LEAs and administrative agencies. Specifically, Intelligence Reports are distributed to police districts, the Intelligence Services and Administrative Agencies, including the Tax Administration and Customs. Intelligence placed by the FIU on *Indicia* will in practice be focused upon individuals that are 'known to police'. *Indicia* does not allow for the uploading of documents. Thus an *Indicia* user seeking additional information (e.g., bank statements) would need to contact the FIU. In practice, this makes for a two staged process because in many instances law enforcement users will only be able to see on *Indicia* that the FIU has information about a subject and, until they have applied to the FIU for that data, received and analysed it, they will have no idea how useful it may be. Thus, some agencies do not pursue every potential request for additional data. Some individual police users of *Indicia* indicated that they found the system "cumbersome" and often did not consult the FIU about further information. This limitation is exacerbated by the fact that law enforcement requests for data are the only tangible feedback to the FIU about the material it places on *Indicia* (see below). Accordingly, in light of the combination of: the lack of readily accessible useful data that can be placed on *Indicia*; the dampening effect upon follow up requests to the FIU; and the lack of feedback to the FIU about the quality of the material it has supplied and/or could supply, the use of *Indicia* for non-targeted disseminations is of limited effectiveness.

Table 3.1. Disseminations made by the FIU to law enforcement authorities

	2010	2011	2012	2013
Ongoing cases and charges	18	18	11	27
Intelligence reports - police	121	137	144	62
Information to Indicia	116	235	444	318
Intelligence reports – administrative authorities	90	81	68	28

Source: data provided by Norway

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3.19. These limitations do not apply in relation to disseminations to ØKOKRIM and the PST which both appear to be effectively using financial intelligence and other relevant information in the investigation of predicate offences and TF, respectively. In the context of ØKOKRIM investigators and the FIU, this is perhaps to be expected, given that they are part of the same agency. The assessment team was given good examples of the follow up that takes place in the form of cases that have proceeded to trial.

Box 3.2. Case example: use of financial intelligence by ØKOKRIM

Cooperation between the FIU and ØKOKRIM led to the conviction of a former lawyer for economic crimes including embezzlement, with key information obtained by the FIU and provided to investigators. In another case, the conviction of a target for aggravated corruption was obtained, where the case was initiated by the FIU.

3.20. The PST receives detailed and effective disseminations from the FIU, in the form of detailed written intelligence reports. Disseminations from the FIU to the PST are based upon a high level agreement between them. The disseminations are enhanced by the PST's continuous link to the FIU, through regular weekly or bi-weekly meetings between analysts for the two agencies, which keep the FIU informed about areas of interest; and by the use of secondees, of which there are currently two, to read and assess FIU material. Indeed, the PST has confirmed that it sees all TF related STRs as soon as they are received by the FIU. The PST's investigations into terrorism and its financing make good use of the available financial intelligence and other relevant information.

Box 3.3. Case example: use of financial intelligence by PST

In one case the PST commenced an investigation after receiving an STR from the FIU. The PST carried out the investigation in cooperation with the FIU and led to convictions for offences related to terrorism in the District Court and Court of Appeal. This case has since been appealed.

3.21. Effective use of financial intelligence is evidenced by disseminations from the FIU to the Tax Administration. Although disseminations are made to the Tax Administration for civil tax recovery purposes, given the Administration's non-criminal remit, in many instances the intelligence or information involved concerns ML or activity related to a predicate offence. The Tax Administration holds FIU Intelligence Reports in high regard, with one official highlighting their added value by stating that 'it is considered gold'. They place particular emphasis upon not just the raw material, but also upon the analyses and hypotheses. The Tax Administration also confirmed that of 323 disseminations received in 2013, they were able to work on all but 50 of these cases for further inquiries and for tax recovery. Of these, 19 were remitted back to police forces for criminal investigation, as a result of the Administration's use of its accounting expertise in building a clearer picture and/or obtaining evidence of criminality.

Box 3.4. Case example: use of financial intelligence

In one case in the building and construction industry, by analysing FIU reports, the Tax Administration became aware that contractors were using fictitious invoices from sub-contractors to hide undeclared work. The sub-contractors were assessed to be largely ML entities and the Tax Administration assessed the extent of this type of evasion to be so widespread that it required notification to the Ministry of Finance (MoF) for additional funds to support extra efforts in that area.

3.22. It is worth noting that, as an agency without a law enforcement function, the Tax Administration does not have access to *Indicia* and accordingly receives its FIU Reports in written form, with relevant attachments, for example bank statements, included. The Tax Administration may therefore be in a better position than regular police forces, which can only access such additional material upon request to the FIU.

Areas where financial intelligence and other relevant information is not being used

3.23. While it is apparent that some competent authorities are using these financial intelligence packages, it is not clear to what extent they are being used or that they are being used consistently or effectively in ML investigations. Specifically, there has never been a detailed enquiry to see how many large and complex criminal cases that involve the proceeds of crime, have elements derived from STRs as part of the evidence used. Indeed a look at the larger criminal cases in Norway in recent years seems to suggest that there are only a limited number of cases where STRs have been involved. Moreover, given the number of ML prosecutions it appears that STRs do not lead to or play an important role in ML cases being prosecuted.

3.24. Recent Director General of Public Prosecutions (DGPP) annual circulars have stressed the importance of using FIU intelligence; however the police and KRIPOS do not in practice prioritise its use. While there has been good use of FIU financial intelligence by each of ØKOKRIM, the PST and the Tax Administration, this rarely appears to be the case for most of Norway's 27 police districts and KRIPOS. There is no strategy within the police districts for the assessment and progression of ML cases, whether as a result of a dissemination from the FIU or otherwise. Thus, it is not clear to what degree financial intelligence and all other relevant information is appropriately used by police districts or bodies such as KRIPOS for ML investigations.

3.25. Many of the intelligence products offered directly by the FIU are not taken up and some of the cases taken on are subsequently dropped. As a result of the lack of engagement from most districts, the FIU has been obliged to devote some of its limited resource to marketing its cases to investigating agencies. It is apparent that such marketing depends upon the personal contacts and powers of persuasion of the operational individuals concerned.

3.26. A number of factors may explain why FIU intelligence provided to police districts have only been used to a limited extent. These include a lack of resources and expertise, and lack of co-ordination within the designated law enforcement agency to follow through with targeted investigations and prosecutions. The Police Directorate has performed a short survey on this topic. However, with few respondents, the survey gives only an indication of the degree to which the financial intelligence and other relevant information are accessed and used in investigations. Police districts clearly regard FIU information as useful, and they value the co-operation with the FIU, although some smaller districts indicate that they have little contact with the FIU. Even in Oslo, the largest police district, contact is also limited. Oslo police district has guidelines concerning criminal cases, but these do not cover the dissemination of ML cases from the FIU to the district.

3.27. In seeking to deal with these issues, the Ministry of Justice (MoJ) supported the FIU's outreach function through the *Round Norway* project in late 2013. This followed the budget for 2013-14 which stated that the police districts must make better use of the information from the FIU; and that the FIU should visit all police districts from 2013-2014 to assist them on how to use information from the systems *ASK* and *Indicia*. As of mid-April 2014, the FIU had met with 18 of the 27 police districts to raise awareness of the FIU. It also successfully targeted a number of banks with a view to improving the quality and quantity of their STRs.

Use of material from sources other than the FIU

3.28. Norway has a range of public registers for shareholdings, companies, etc. which are a rich source of information for the FIU and investigators. The transactions recorded in the Currency Register are regarded as particularly useful. Law enforcement indicated that the data in this Register is useful for both predicate offences and ML investigations, not least because it contains details of every cross-border transaction or transfer, with a value of NOK 25 000 (EUR 3 250) or more. The FIU also has access to and makes effective use of this information in its analysis. The various registers in Norway and other available information on

legal persons are a valuable source of financial intelligence that is used effectively by specialised agencies including the FIU, PST and ØKOKRIM.

Conclusions on IO.6

3.29. The use of the FIU's financial intelligence differs significantly between competent authorities. ØKOKRIM and the PST use it to effectively 'follow the money' in criminal investigations, while its use in the 27 police districts and KRIPOS is limited, and the FIU experiences challenges in getting police to use FIU disseminations. Norway has a well-functioning FIU which develops and disseminates good quality financial intelligence based on a wide range of sources including STRs, various government registries, police information and the currency database. However, the FIU's strong analytical capability is undermined by the low quality of STRs received. In addition, KRIPOS does not emphasise the use of financial intelligence in investigations which is a concern given the risk of drug trafficking in Norway, and there is a lack of expertise among some police districts to use financial intelligence effectively. The uneven uptake by LEAs of FIU disseminations undermines the effectiveness of cooperation. However, the recent *Round Norway* project is a good initiative to improve this situation.

3.30. Norway has a **moderate level of effectiveness** for IO.6.

3.4 Effectiveness: Immediate Outcome 7 (ML investigation and prosecution)

3.31. Norway has a generally sound legal and institutional framework for combating ML. However, a significant concern is that competent authorities do not prioritise the investigation and prosecution of ML. Rather, authorities focus on predicate offences which has led to few ML cases being prosecuted. ML threats have only to a limited extent been assessed by Norwegian authorities as part of the National Risk Assessment (NRA) or the broader criminal threat assessments undertaken. However, the criminal threat assessments by KRIPOS and ØKOKRIM suggest that profit-generated crime in Norway stems from a range of domestic and foreign predicate offences including illicit drugs, fraud and tax evasion. It is not clear that law enforcement and prosecutorial authorities systematically target these ML risks.

3.32. Norway has sound legal provisions and a designated institutional framework that has the capacity to investigate and prosecute ML. However the investigation and prosecution agencies in Norway concentrate on predicate offences rather than on ML offences. In part, this is due to a widely held view that ML is an ancillary crime to the predicate offence. Indeed in s.317 the basic third party ML offence is referred to as "aiding and abetting" the predicate offence, and is part of the same sentence as the offence of receiving stolen goods (*heleri*). This view and approach is reflected in the low number of ML investigations and prosecutions. In addition, statistics regarding ML investigations and prosecutions are incomplete and unreliable (see also R.33), thus making it more difficult to assess the effectiveness of the investigative and prosecutorial regime for ML.

3.33. The Norwegian ML offence is a catch-all offence and, in theory, the offence could be a part of all investigations involving predicate offences generating proceeds. To support and give direction to ML investigations and prosecutions at an operational level, the DGPP sets out in an annual circular letter the types of criminal acts which should be prioritised by the Police and the Public Prosecutors. For 2014, economic crime, including ML, is one of several types of crime that is pointed out as a priority for investigation and prosecution. In this context, the DGPP has also emphasised the importance of active use of confiscation measures, especially in relation to ML. Competent authorities describe the DGPP's circular letters as being important for investigation and prosecution prioritisation. However, as explained below, this is not reflected in the approach taken in practice by investigators and prosecutors.

3.34. Apart from these annual circular letters, the DGPP has also issued more specific guidelines in relation to investigating and prosecuting self-laundering. However, it is understood that while it is clearly stated in the guidelines that the self-laundering offence shall be prosecuted when the ML act could be regarded as a stand-alone offence separate from the predicate offence, the DGPP states that investigating and prosecuting both a predicate offence and self-laundering should be restricted. The guidelines contain several practical

examples of when a prosecution for a predicate offence and self-laundering could be pursued. However, at the same time, the DGPP points to the fact that prosecution should be restrictive about the use of concurrent penal provisions. As a result, it is concluded that prosecution for self-laundering shall be reserved for obvious cases, thus having a dampening effect on self-laundering prosecutions.

3.35. ØKOKRIM has a specialised ML unit which deals with more complicated ML or economic crime cases. The ML Unit consists of prosecutors, police investigators and other specialists such as, tax auditors. The ML team has clearly excellent knowledge, experience and capacity to identify ML and many examples were presented to the team that showed that complex financial investigations are being pursued. However, the focus was often on the predicate offence and confiscation rather than on an ML offence.

3.36. Prosecutors at ØKOKRIM and KRIPOS / NAST clearly prioritise predicate offences rather than ML. It was indicated that often a case starts with a suspicion of ML but in the investigation and prosecution stages the predicate offences are then pursued because they are easier to prove. This approach was confirmed by the examples of important economic crime cases which were investigated and prosecuted and were presented to the assessment team. On a practical level, ØKOKRIM handles serious cases of economic crime. These cases quite often include suspicions of ML.

3.37. Most ordinary criminal cases and sometimes serious cases of economic crime and associated ML are investigated and prosecuted by the 27 police districts in Norway. As indicated in IO.6 above, very few ML cases originate from information from the FIU, and there is a concern that quite a number of the police districts, especially the many small ones, do not have enough capacity and/or experience to handle ML cases. This is reflected in the approach that many of the intelligence products offered directly by the FIU are not taken up or dropped, as mentioned above.

3.38. In this regard the functioning and structure of the Norwegian Police Service has recently been reviewed by a Commission following the Anders Breivik terrorist attack of 22 July 2011. Among the main findings is the conclusion that "the current structure, with its 27 police districts, does not provide the necessary conditions for developing specialist functions or to deal with large-scale serious cases and incidents". The Commission also notes that only the few large police districts have the necessary framework to provide good services and the capacity to develop and maintain robust specialist functions. The Commission therefore recommends, among other things, a reduction in the number of police districts. This finding, if implemented, would be useful to ensure critical mass to build specialist AML investigation capacity to ensure ML and parallel predicate investigations are pursued more effectively.

3.39. As noted in Chapter 2, the limited coordination means that resources in these areas are spread among the involved agencies without there being a national coordination mechanism that should be informed at relevant times about the trends, experiences and resources that exist.

3.40. Investigative techniques like joint or cooperative investigations are used in major proceeds generating offences. Secret coercive measures are not extensively used. Secret communications surveillance can only be used in drug related ML cases or if an act of aggravated ML has been committed as part of the activity of an organized criminal group. Norway provided some limited examples of the use of more sophisticated investigative methods, but the net result is that although financial investigations are pursued, they generally do not appear to use a wide range of sophisticated powers and techniques as part of those investigations.

3.41. Given its responsibilities, ØKOKRIM focuses on a small number of serious economic and environmental crime cases. In the period 2010-2013, ØKOKRIM had cases which resulted in 125 individual convictions, of which 15 persons were convicted of ML in 10 different cases. There were also 3 ML prosecutions in this period which resulted in acquittals. In addition, 8 cases started as ML investigations but in the end were prosecuted as other offences, in line with the preference to prosecute the predicate offence, rather than ML. ØKOKRIM is the most active law enforcement agency in terms of pursuit of ML, but despite this it is a concern that the number of the ML cases remains low. This is a result of the focus of all Norwegian LEAs on the predicate offence rather than ML offence for investigations and prosecutions.

Table 3.2. ML cases by ØKOKRIM

	2010	2011	2012	2013
ML Prosecutions	6	1	4	7
ML Convictions	6	1	4	4
Cases started as ML but prosecuted predicate offence	3	2	3	0

Source: data provided by Norway

3.42. Norway was only able to provide reliable statistics on ML prosecutions or convictions handled by ØKOKRIM. Norway provided summaries of 24 ML cases adjudicated in 2013-2014 through the Supreme Court and Appeals Courts, although these do not represent all ML cases adjudicated in that period. Norway did provide statistics on the ML cases in the police districts as registered in the police case management system STRASAK. However, these have not been included in this report as there are significant concerns regarding their reliability (see below). The registration codes under the STRASAK system are flawed and difficult to interpret and the data for s.317 that has been entered is not reliable, which makes it complicated to identify ML cases. Another complication is that judicial and prosecution decisions usually do not make a distinction between receiving the proceeds of a predicate offence (including receiving of stolen goods) and ML. This is due to the fact that s.317 first paragraph covers both ML and the traditional offence of receiving, and the statistics therefore do not make a clear separation between them.

3.43. On the initiative of the Police Directorate, an analysis of all cases involving violations of s.317 of the Penal Code in the Oslo Police District that were concluded in 2012 has been made. The total number of cases was 1 247, compared to 4 528 cases of violation of s.317 of the Penal Code for the whole of Norway, i.e., approximately 27% of registered cases that year. The analysis showed that the large majority of cases consisted of receiving criminal proceeds, and that the majority of recorded ML cases were incorrectly classified. There were 22 cases recorded as ML by the Oslo Police District in 2012, but of these only five actually involved ML. The analysis also found that of the 34 ML cases concluded by the Police District in 2012, there were 25 ML cases that were incorrectly classified. Of these 34 ML cases, 21 went to court, prosecution was dropped in 3 cases and 10 were discontinued. It is not known how many convictions were obtained. This analysis of these cases demonstrates the unreliability of the statistics provided by Norway.

3.44. As regards other authorities such as KRIPOS and NAST, which pursue organised crime and drug trafficking cases, only a limited number of case summaries (for the period 2013-14) were provided with limited information available on the cases. Based on qualitative information obtained during the on-site visit and the limited number of cases provided, the assessment team concludes that little use is made of the ML offence. Norway provided the assessment team with a small number of significant ML cases that were ØKOKRIM economic crime cases, which were discussed in detail. Immediately prior to the face to face meeting Norway provided short summaries of 24 case examples of aggravated ML cases in 2013 and 2014 which included both successful and unsuccessful prosecutions. In addition, information was provided on another five ongoing cases (post on-site). However, it was not possible at this point to clarify further details about these cases. Most of the predicates were drug trafficking or tax related, and many were self-laundering cases. The conviction rate for the ML offences in the examples provided was over 80%. Given the very late provision of the information and inability to obtain more detail it is difficult to make firm conclusions based on this new material. It does show that the ML offence is used on occasion, including by KRIPOS and police districts, however in most cases it appears that the ML acts are closely associated to the predicate offence, and have been added as an extension of that offence.

3.45. As noted above, the criminal sanctions for natural persons are proportionate to many other similar types of offences in Norway. No comprehensive statistics are available on sentencing, and the only material made available were the cases referred to above. As many of the cases were self-laundering, it is not possible to separate the sentence for the predicate offence from the laundering aspect. It is clear that if it is drug trafficking and associated ML then a noticeably heavier sentence is imposed. In other cases the sentences were in the range of 2-4 years, which includes the sentence for the predicate. Several cases were only for aggravated ML and the sentences ranged from five months to 3.5 years. One case involving a lawyer (see

below) suggests that the sentences for ML may not be significant, even in cases of very serious criminality and it is not clear that they are dissuasive in practice.

Box 3.5. Case example: investigation of ML by a lawyer

In 2013, a lawyer was convicted of several counts of ML under s317 of the Penal Code. The ML took place over a period of eight years with funds coming from different sources and one company, which were the result of fraud offences in the United States, Italy and Norway. ML was conducted through the collection of debts (NOK 1.5 million), purchase of real estate in Spain (NOK 335 000) and transactions to and from the lawyer's client account (NOK 3.4 million and EUR 42 000). The defendant was found guilty in the court of appeal and sentenced to 3 years and 6 months imprisonment and NOK 113 000 (EUR 14 700) was confiscated.

Conclusions on IO.7

3.46. In many respects Norway has a good legal foundation and sound institutional structure for combatting ML which could be applied to effectively mitigate ML risks. However, while financial investigations are being undertaken for predicate offences, a fundamental concern is that the investigation and prosecution of ML is not prioritised by competent authorities. Decisions not to investigate or prosecute ML in the 27 Police Districts often result from a lack of expertise and resources. The specialised agencies such as ØKOKRIM and KRIPOS often decide to investigate and prosecute the predicate offence rather than ML. These factors undermine Norway's ability to effectively investigate and prosecute ML. The authorities could not provide comprehensive and reliable statistics for the investigation and prosecution of ML, there were a limited number of case examples, and information provided by prosecutors and law enforcement did not provide a clearer picture. As a result, there are few ML prosecutions and convictions, many of which appear to be self-laundering, and it is not clear that the sentences applied in practice are dissuasive.

3.47. Norway has a **moderate level of effectiveness** for IO.7.

3.5 Effectiveness: Immediate Outcome 8 (Confiscation)

3.48. Norway has a good legal framework for freezing, seizing and confiscation measures. Criminal proceeds can be confiscated without establishing the precise criminal offence from which the proceeds are derived, and extended confiscation is a valuable power. However, the lack of consistent, reliable and comprehensive statistics regarding confiscation, and seizing and freezing, in combination with a lack of any substantive qualitative information (including case examples), presents a major challenge in assessing effectiveness

3.49. Norway has set clear policy objectives focusing on improving the use of confiscation measures and competent authorities are aware of the need for an increased focus. This is especially true given the general perception that the results of confiscation are not satisfactory. For instance, the policy performance requirement for 2013 from the MoJ to the Police Directorate emphasises that the Police must conduct confiscation investigation in all cases of profit-motivated crime and that the numbers of confiscation requirements are expected to exceed the average for the last three years. The Police Directorate has also provided similar policy objectives to the police districts and special investigative agencies. The Police Directorate has established several initiatives to help improve results. Moreover, in his annual Circular letter (2014) the DGPP also calls attention to the importance of the active use of confiscation measures whenever it is applicable. The Norwegian authorities, including Prosecution, Police, ØKOKRIM and Customs have acknowledged that the policy objective to focus on confiscation has not been successful to date and confirmed during the meetings with the assessment team that the results with respect to confiscation are not satisfactory.

3

3.50. To support the use of the quite comprehensive confiscation provisions in an effective and coordinated manner, ØKOKRIM produced a handbook on confiscation. It emphasises the importance of confiscation to disrupt and prevent crime and contains explanations and instructive examples of how to secure confiscation, and what to particularly consider about prosecution, trial and confiscation abroad. While this handbook is highly regarded and used by practitioners, it has not yet produced the required results pointing to an effective confiscation regime. Moreover, ØKOKRIM and the Police College have also organised seminars and courses on the subject but again, without clear visible results so far.

3.51. The Police Directorate is in charge of keeping statistics regarding confiscation, and the statistics for 2009-2013 are included in the table 3.3 below. These centrally registered statistics give a nationwide picture and show the number of enforceable confiscation requirements (orders) and the amounts and value to be confiscated. It is the number of confiscation orders that are counted, not the number of criminal cases (there may be several confiscation orders in each case or sentence). This includes both ordinary confiscation (*PC* ss.34 and 35) and extended confiscation (*PC* s.34a). It should be noted though that such confiscation statistics include both court orders for confiscation and cases where the police have confiscated property and this was not contested by the defendant. There is no data on the number of cases or the value of property that has been seized, charged or frozen.

3.52. The Police Directorate highlighted that the number of confiscation orders fluctuate significantly between police districts and from year to year as can be deduced from the table. This is likely linked to the lack of resources and expertise the local police districts are confronted with (see also IO.7 above). However, there is a clear downward trend in the value of the confiscation orders made (see proceeds of crime – amounts), with the amount in 2013 being one third of the 2009 figure. Table 3.3 represent value of confiscation orders made by the courts rather than actual amount of confiscations collected.

Table 3.3. Police districts: Confiscation orders

	2009	2010	2011	2012	2013
Number of confiscation orders					
Confiscation of proceeds, s.34	972	1 011	1 761	1 061	991
Extended confiscation of proceeds, s.34a	94	155	61	359	37
Total	1 066	1 166	1 822	1 420	1 028
Number of objects/goods confiscated					
Number of objects – Confiscated goods, s.35	4 622	4 842	5 442	5 342	5 558
Amount of confiscation orders					
Value confiscation orders (NOK million)	234.5	187.4	135	108	81
Value confiscation orders (EUR million)	30.5	24.4	17.6	14	10.5

Source: data provided by Norway

3.53. ØKOKRIM also maintains statistics on the enforceable orders for confiscation and compensation. The statistics for 2009-2013 are included in Table 3.4 below. Given that ØKOKRIM focuses on a limited number of serious cases, the amounts confiscated can fluctuate from year to year depending on the conclusion of cases that involve significant proceeds. However, it can be deduced from the statistics that there is a significant

upward trend in the value of confiscation orders made for ØKOKRIM cases. The table below represent the value of confiscation orders made in ØKOKRIM cases rather than the value of money actually realised pursuant to confiscation orders and paid into government revenue (see below for further detail). As with the Police Districts, there is no data on the number of cases or the value of property that has been seized, charged or frozen. It contains some information on the amount and number of confiscations made by KRIPOS/NAST, although these are very small amounts.

Table 3.4. ØKOKRIM and KRIPOS: Confiscation and compensation orders

	2009	2010	2011	2012	2013	Average
ØKOKRIM - No. of orders	16	15	12	9	16	13.6
Value (NOK million)	7.5	31.3	61	12.3	34.3	29.3
Value (EUR million)	1	4.1	7.9	1.6	4.4	3.8
KRIPOS/NAST No. of orders			9	18	6	11
Value (NOK million)			1.5	2.2	0.1	1.3
Value (EUR million)			0.2	0.3	0.01	0.2

Source: data provided by Norway

3.54. In practice, seized property is normally taken care of by the Police. However, as soon as there is an enforceable confiscation order the Public Prosecutor, or in some cases the Police, makes an administrative decision on execution of the confiscation, and can sell property or goods that are specifically ordered to be confiscated e.g., cash that is the proceeds of a drug deal. All orders to pay a pecuniary amount (rather than an order confiscating a specific item of property or goods) are pursued as a civil debt by the National Collection Agency (NCA) which is responsible for the actual enforcement of the order and recovery of the assets. As a result, confiscation statistics kept by Norway's Police Directorate and ØKOKRIM (see above) do not show how much money is actually collected but instead, give an overview of the amounts of money ordered to be confiscated.

Chart 3.1 Value of Confiscation orders

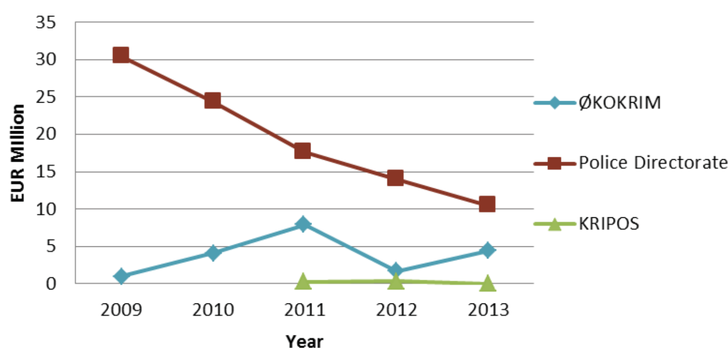


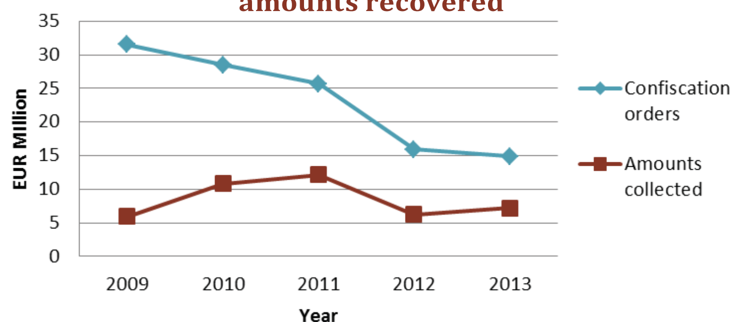
Table 3.5. Amounts recovered from confiscation orders

Amounts recovered by the NCA1	2009	2010	2011	2012	2013	Average
NOK million	45.6	83.1	93.4	43.3	55.8	64.2
EUR million	5.9	10.8	12.1	6.2	7.2	8.3

Table note 1: Value of confiscated goods not included.
Source: data provided by Norway

3.55. The NCA is an agency of the MoF and is used by 32 government authorities; not only by the police and prosecution authorities. There is a disconnect between the property seized by LEAs, the confiscation orders that are made and the actual recovery of the proceeds. There do not appear to be any coordination mechanisms between LEAs on the one hand and the NCA on the other hand.

3.56. The value of assets recovered by the NCA is significantly less than the value of assets subject to confiscation orders. Norway indicated that the discrepancy between the amounts in the confiscation orders and amounts collected by the NCA is partly due to the time taken for collection (which may take place in stages) and partly due to unsuccessful collections as proceeds may have dissipated or are hidden. However, the overall picture is difficult to determine as Norway was unable to provide any data on the number and value of assets seized or frozen, and there were only a limited number of case examples provided by authorities which contained limited information. The discrepancy implies that authorities in Norway are not adequately taking action, through the seizure, freezing, or charging of assets, to secure assets and thus deprive criminals of their proceeds of crime. Rather, based on the assessment team's interviews with competent authorities, where there is focus, it is on obtaining confiscation orders at the end of a case.



3.57. The value of property (movable or immoveable property) confiscated is not reflected in the confiscation statistics in Tables 3.3-3.5. In practice, when property is confiscated, it is sold without the money being transferred to the NCA. The result of this is that the value of confiscated property, which may be considerable, is not reflected in the court decisions, nor in the police confiscation statistics, or in the statistics of confiscation orders enforced by the NCA. Norway provided information (Table 3.6) on the value of confiscated property realised by all LEAs through the sale. No further information was provided as to the number of assets that were sold. Further, no breakdown on the type of assets was provided. Authorities did advise that a large portion of the value relates to real estate, motor vehicles and luxury items.

Table 3.6. Value of confiscation property realised by all LEAs[1]

Amounts of property sold by police[2]	2009	2010	2011	2012	2013	Average
NOK million	24.5	25.1	26.2	23.8	41.3	28.2
EUR million	3.2	3.3	3.4	3.1	5.4	3.7

Table notes:

1. The relation between these figures and Tables 3.3-3.5 are unclear given that these were provided late in the assessment process and the assessment team did not have the opportunity to discuss with the Norwegian authorities.
2. Values are estimated as the statistics provided included non-recovered property. Norwegian authorities estimate that less than 1% relates to non-recovered property so the figures were reduced by 1%.

Source: data provided by Norway

3.58. It is clear that the results in terms of amounts confiscated vary considerably both from year to year and between agencies. Given that the level of confiscation orders and the value of confiscated assets realised is relatively low, the levels and fluctuate significantly based on individual cases in any one year. For example, the increase in 2013 of realised confiscated assets is largely a result of an ØKOKRIM case in which an expensive real estate property was realised. It is a concern that confiscation orders in police cases are declining considerably and that orders made for KRIPOS/NAST, responsible for serious drugs and organised crime cases are negligible. There are some good qualitative examples of successful confiscation; but these are isolated cases.

Box 3.6. Case example: the Tordenskjold case

The Tordenskjold case, handled by ØKOKRIM, concerned fraud and breach of trust by the chairman and CEO against a publicly listed Norwegian shipping company (Tordenskjold ASA). Funds were stolen through the purchase and sale of vessels, and unauthorised commissions. Dividends went through various accounts in tax havens and other jurisdictions to the accounts of foundations abroad. ØKOKRIM made significant use of international cooperation, including informal contact with their counterparts and formal mutual legal assistance, to determine the ownership and control of the identified accounts. Evidence was gathered from a range of jurisdictions including Guernsey, Switzerland, Denmark, Spain and Belgium. In October 2013, the Supreme Court upheld the confiscation of the proceeds of crime abroad, despite the fact that the formal account holders were not made party to the case. Nearly NOK 30 million (EUR 3.9 million) was confiscated and is expected to be returned through asset sharing arrangements.

3.59. In general however, the available data suggests, and this is confirmed by the representatives from all LEAs and prosecution services, that the actions taken and the results achieved regarding the confiscation of criminal proceeds is not adequate and needs to be improved in Norway. It is difficult to make precise judgments given that there is virtually no information on the risks and the possible value of criminal proceeds in Norway (whether domestic or foreign), and that there is only partial data on the value of property seized, confiscated and recovered. However it is concerning that the value of confiscation orders in Police Directorate cases had, by 2013, declined to about EUR 10 million, one third of the 2009 figure. Furthermore, it is not clear how much of this is actually recovered. Also, the amount confiscated by KRIPOS/NAST, which is responsible for serious drug trafficking and organised crime cases, is negligible. Importantly, and despite clear policy objectives, strong legislation and areas of expertise, the universal view of authorities is that the confiscation system is not effective.

Cross-border declaration and seizures

3.60. The NRA finds that Norway has significant currency smuggling risks. A study by Customs in 2007 estimated that approximately 1.5 billion NOK (EUR 195 million) was smuggled out of Norway in that year. The FIU also noted that there is a large volume of NOK exchanged in Baltic countries and a widespread involvement of Baltic organised crime groups in Norway as a contributing factor for this trend. Norway has a sound legal framework in place for the declaration and identification of cross-border movements of funds. There is evidence that the system is implemented in practice but has only produced limited outputs when contrasted with the risks of cross border movement of cash and BNI. The cross border declaration system has produced some results, including through cooperation with foreign partners, as shown by the outcome of the Atlas and Athena operations set out below. Norway provided the following examples of currency seized through international cooperation (see also IO.2 below):

Box 3.7. Case examples: currency seizures

September 2008 – NOK 880 000 (EUR 114 400): The seizure was made from a passenger travelling by plane from Oslo to Sri Lanka. Money was detected in the person's hand luggage and clothes.

October 2009 – NOK 303 000 (EUR 39 390): The seizure was made from a bus passenger travelling from Oslo, Norway via Sweden to Lithuania. Money detected was hidden in lining of suitcase.

April 2010 – NOK 415 000 (EUR 53 950): The seizure was made from the driver of a car leaving from Larvik, Norway to Denmark on a ferry. Money was detected in lining of a holdall.

October 2012 – NOK 692 900 (EUR 90 077): The seizure was made from a passenger travelling by plane from Bergen, Norway to Poland. Money was detected among clothes in checked baggage.

3.61. Norway also provided the following figures regarding the total number of declared cross border movements of cash and BNI and seizures of cash:

Table 3.7. Cross- border declarations (cash and BNIs)

	2011[1]	2012	2013	Average
Total number (In)	1 338	1 214	1 213	1 225
Total amount (In) (NOK million)	190	137	101	428
Total amount (In) (EUR million)	24.7	17.8	13.4	55.6
Total number (Out)	6 893	7 825	9 321	6 010
Total amount (Out) (NOK million)	467	517	559	385.8
Total amount (Out) (EUR million)	60.7	67.2	72.7	20.2

Table note 1: From March 2011, Customs was given the legal basis to issue an administrative fine for minor cash smuggling. Therefore, the figures for 2011 represent a partial estimate of the cases that would have been given a fine.
Source: data provided by Norway

3.62. One point that is very noticeable from the data is that a lot more cash and BNI are being taken out of Norway than are coming into the country. This is increasing both in terms of number of declarations and value. It is also striking that the number of cases where money was seized remains relatively stable over the period 2009-2013, and the value of such seizures even appears to be declining. One would expect that more experience regarding implementation would also lead to an increased detection of the breaches of the legislation, especially given the sharp increase in the number of declarations made. This finding points to a serious issue regarding the effective implementation of the declaration regime.

Table 3.8. Cross-border seizures of cash and BNIs

		2009	2010	2011	2012	2013
Police reports	Number	136	139	96	91	73
	Value (NOK million)	16.7	19	16.4	8.8	7.4
	Value (EUR million)	2.2	2.5	2.1	1.1	1
Admin. fines	Number			794	801	903
	Value (NOK million)			39.7	37.4	43.1
	Value (EUR million)			5.2	4.9	5.6
Total cash seized	Number	627	967	890	892	976
	Value (NOK million)	42.7	58	56.1	46.2	50.5
	Value (EUR million)	5.6	7.5	4.3	6.0	6.6

Source: data provided by Norway

3.63. Both Customs and Police authorities have acknowledged, during meetings with the assessment team, that there is further room for improvement in implementing the legal framework. Customs authorities are currently working on developing new guidelines for customs officers, including on administrative fines which can be imposed since 2011.

3.64. If customs authorities suspect that any amount of currency or BNI carried by a person is associated with a crime punishable by imprisonment for more than six months, then regardless of whether a declaration has been made, Customs must report the case to the police/prosecutor for further investigation. In addition, as a general rule, all declarations of cross border movements of funds of NOK 500 000 (EUR 65 000) or more are handed over from the customs authorities to the police. Referrals are however not systematically picked

up by the police because of a lack of resources or other priorities. As a result, many opportunities to seize and confiscate, or to follow up on cross border ML or other criminality are not taken up.

Conclusions on IO.8

3.65. Norway has a strong legal framework for the freezing, seizing and confiscation of criminal proceeds. However, despite authorities making confiscation a policy priority, results are not satisfactory. There is a lack of statistics regarding freezing and seizing. The data that is available for confiscation shows a steady decline in the amounts confiscated. Despite the fact that there are some good confiscation case examples, and that the authorities seek to confiscate all types of property, using extensive powers, the key objective of depriving criminals of their proceeds is not adequately met. The level of confiscation varies considerably from year to year, and change significantly year to year based on single cases. It is a concern that confiscation orders in police cases are declining considerably and that orders made for KRIPOS/NAST, responsible for serious drugs and organised crime cases are negligible. In addition, the value of assets actually confiscated is considerably less than the value of the confiscation orders. Further, authorities only provided a limited number of case examples where assets were frozen or seized, and subsequently confiscated. It is difficult to determine why the system is less effective than it should be, and further analysis should be done to examine this issue in more detail. From the available information, and as confirmed by the authorities, it is clear that the confiscation results achieved are less than expected and significant improvements are necessary.

3.66. Norway has a **moderate level of effectiveness** for IO.8.

3.6 Recommendations on legal system and operational issues

FIU and financial intelligence

a. The FIU should enhance its strategic analysis function.

b. The Police Districts and KRIPOS should enhance their use of financial intelligence, particularly the disseminations by the FIU.

c. Norwegian authorities should more clearly delineate the powers of the Supervisory Board in relation to data which the FIU receives and processes, including the extent to which the Board can require access to live operational data.

ML investigations and prosecutions

d. Law enforcement agencies should prioritise and give investigative focus to further utilising financial intelligence and the ML offence to target organised crime, tax offences, foreign proceeds of crime and other high threat areas.

e. The MoJ and the National Police Directorate should ensure that police districts have appropriate expertise and resources to use financial intelligence, to target and progress ML cases and parallel predicate investigations and make more effective use of confiscation powers and tools.

f. ML should be clearly made a stand-alone offence.

g. Norway should use the DGPP's statutory authority to improve the effectiveness of the use of the ML offence, for example, through issuing guidelines or instructions.

Confiscation

h. Norwegian police and prosecution authorities should continue to prioritise the confiscation of proceeds of crime and examine the complete chain of action to determine why actions to confiscate and recover criminal proceeds are not effective, including any legislative or institutional framework issues.

i. Norway should establish and implement procedures and processes for the management of frozen or charged property before and/or after confiscation.

3. LEGAL SYSTEM AND OPERATIONAL ISSUES

Recommendation 3 – Money laundering offence

a3.1. ML is principally criminalised in s.317 of the *PC*. In its 3rd Mutual Evaluation Report (MER), Norway was rated LC for the ML offence and C for requirements concerning *mens rea* and corporate criminal liability (see paragraphs 75-96). The main technical deficiencies were that: the criminalisation of ML did not cover self-laundering and that the conspiracy offence was not sufficiently broad. In 2006 Norway addressed these deficiencies by amending s.317 (self-laundering) and adding s.318 (ML conspiracy) of the *PC.*

a3.2. **Criterion 3.1** – As noted in the 3rd MER, s.317 fully covers all the physical elements of the ML offence required under the *Vienna Convention* and the *Palermo Convention*[1]. However, it should be noted that for 3rd party laundering (not self-laundering) the offence is described as "aiding and abetting" the predicate offence, rather than as a free standing offence.

a3.3. **Criteria 3.2 & 3.3** – Section 317 makes it an offence to launder "the proceeds of a criminal act", and thus covers the proceeds of all criminal offences. This approach covers a wide range of offences in all 21 categories of designated predicate offence (including tax offences).

a3.4. **Criteria 3.4 & 3.5** – In s.317, the term "proceeds" covers all types of property, regardless of the value, that directly or indirectly represents the proceeds of crime. It is not necessary that a person be convicted of a predicate offence to prove that the property is the proceeds of crime.

a3.5. **Criterion 3.6** – Although the offence does not expressly refer to foreign predicate offences, the preparatory works make it clear that predicate offences for ML extend to conduct that occurred in another country, constituted an offence in that country, and would have constituted a predicate offence had it occurred domestically.

a3.6. **Criterion 3.7** – Since its last evaluation, Norway has extended s.317 to expressly cover self-laundering, which is separately criminalised in a different paragraph of s.317.

a3.7. **Criterion 3.8** – It is possible under the general *Criminal Procedure Act* (*CPA*) to infer the intent and knowledge required to prove the ML offence from objective factual circumstances.

a3.8. **Criterion 3.9** – The criminal sanctions that can be applied to natural persons convicted of ML are proportionate and for technical compliance purposes could be considered dissuasive, though at the minimum end of the range. Although the penalty for ordinary ML is limited to up to 3 years imprisonment and/or a fine (unlimited in amount), aggravated ML has a penalty of up to 6 years imprisonment and is used based on a number of factors, which include the value of the property being laundered (i.e. if more than NOK 100 000 – EUR 13 000). In addition drug ML is subject to 21 years imprisonment. Furthermore, the penalty for ML can be doubled in cases involving organised crime but not by more than five years imprisonment.

a3.9. As regards ordinary ML and aggravated ML, the maximum penalty for ordinary ML is lower than in many other countries, but is consistent with the penalty for many other economic crimes in Norway. As regards the offence of aggravated ML it is notable that this is available in cases where quite small amounts of money are laundered. The unlimited fine also adds to the sanctions options; however, an effective confiscation regime should deprive an offender of any criminal proceeds. The offence of ML conspiracy (s.318) has a penalty of up to 3 years (doubled if it involves organised crime – Penal Code s.60a).

a3.10. **Criterion 3.10** – Legal persons are subject to criminal liability and can be penalised with unlimited fines. Parallel civil or administrative proceedings are not precluded with respect to legal persons.

1 See Article 3(1)(b)&(c) of the *Vienna Convention*, and Article 6(1) of the *Palermo Convention*.

a3.11. **Criterion 3.11** – A range of ancillary offences to the ML offence are now available, following the addition of s.318 *PC* which criminalises conspiracy. Aiding and abetting a ML offence is not expressly covered as an offence, unlike other offences, but Norway refers to the Preparatory Works as explaining that this is covered, and provided two case examples of aiding and abetting ML.

a3.12. **Weighting and conclusion:** Norway is compliant with all technical criteria. **Norway is rated C with R.3.**

Recommendation 4 – Confiscation and provisional measures

a3.13. The legal provisions concerning confiscation and provisional measures are set out in the *PC* s.34-38 and *CPA* s.202-217. In its 3rd MER, Norway was rated C for these requirements (see paragraphs 108-125), and the confiscation regime was considered to be a comprehensive one. There has been no change to the legislation since the 3rd MER, and the legal provisions remain generally comprehensive.

a3.14. **Criterion 4.1** –Norway has a broad set of legal powers to deprive criminals of their proceeds or instrumentalities. Confiscation of the proceeds from any criminal offence (or property of corresponding value) is mandatory, including any profit or other benefit derived directly or indirectly from the proceeds: *PC* s.34. The amount of the proceeds can be proven to the civil standard. Confiscation of instrumentalities used or intended for use in the commission of any criminal offence (or property of corresponding value), or which are the product of such an offence, may be confiscated if this is considered an appropriate penalty for the act: *PC* s.35. Action can also be taken against proceeds held by third parties who knew that the property was derived from a criminal offence or it was a gift in whole or in part, and similarly for instrumentalities. These powers are equally applicable where the offence is terrorism or TF.

a3.15. **Criterion 4.2** –The police and prosecution authorities, including ØKOKRIM, have investigative powers to identify and trace assets, including the power to order production of documents, conduct surveillance, and search persons and premises (see also R.30-31). The law provides for three types of provisional measures — freezing, seizure and charging. Freezing applies to property suspected of relating to terrorism or TF and has the effect that the suspect (or a third party) is legally prevented from disposing of it. The property may alternatively be physically seized: *CPA* s.202d-202g. Seizure orders under *CPA* s.203 deprive the suspect (or a third party) of the possession of the property, and prevents any dealing with it. They can also be used to freeze property e.g., police will leave proceeds in a bank account with an instruction to the bank that the account holder cannot deal with it. Charging involves placing a charge on the property for a specific amount in order to secure payment of a possible confiscation order. In all cases the initial decision or application can be made *ex parte* and without giving prior notice. Legal arrangements (contractual or otherwise) containing provisions that are contrary to the law are considered null and void e.g., where persons knew/should have known that their actions would prejudice the ability of the authorities to recover property subject to confiscation.

a3.16. Charging orders can be used against certain types of property held by a defendant or third parties, and can be used to secure a value-based confiscation claim (unlike seizure). However neither the power to charge nor to seize assets can be used against all of the defendant's assets, which may create problems in extended confiscation cases where not all of the property that is owned or controlled by a defendant has been identified at the time of charge. Moreover, courts do not have the power to order a defendant to disclose all of his/her assets (except possibly where there is a charging order), although investigative methods could be used. The Commission on Confiscation recommended (prior to the 3rd MER) that a power to seize all assets should be provided, but the legislation was not amended to allow this.

a3.17. **Criterion 4.3 -** As noted above, criminal proceeds or instrumentalities held by 3rd parties can be confiscated. However, if a third party was bona fide and paid money or other assets of an equivalent value to the property that was proceeds, then confiscation is not permitted. Any benefit gained by undervaluing the proceeds could however be recouped.

a3.18. **Criterion 4.4** – Powers exist to seize and charge property, and to dispose of property if it could be damaged or deteriorate. When a confiscation order has been made then if there is seized property, the Public Prosecutor can order its disposal, and if a pecuniary order has been made, then the National Collection Agency

seeks to recover the civil debt. There is also a power to appoint an administrator over charged property so as to ensure that income does not go to the defendant, but there are no other specific powers or mechanisms that enable the authorities to manage property. In many cases the type of property does not require any active management e.g., a bank account that is frozen or a seized motor vehicle, or the combination of a charge and an administrator might suffice. However in some cases there could be a need for property to be actively managed e.g., a restaurant or other business, and Norway does not have the mechanisms or the specific legal powers to do this.

a3.19. One very effective additional power that is available to prosecutors is the power to use extended confiscation in serious cases (i.e. cases which could result in a penalty of 6 or more years imprisonment or if the penalty is 2 years or more, the type of offence may result in a considerable gain (NOK 75 000 or more – EUR 9 750) and if the offender was convicted within the previous five years of an offence resulting in a considerable gain: *PC* s.34a. If extended confiscation applies then it can also cover the property of a spouse in certain circumstances, as well as property of the offender's close relatives, or legal persons that the offender owns or controls: *PC* s.37a. In such cases, the prosecution must prove on a balance of probabilities that the property stems from criminal acts committed by the offender, and if extended confiscation applies in full then the burden of proof is reversed and the offender must prove on the balance of probabilities that the assets were legally obtained: *PC* s.34a.

a3.20. Section 34 may also allow confiscation of proceeds even when a person is not convicted (NCB). However, there are several preconditions which make the section difficult to use in practice. The wording of s.34 is not particularly clear: "Confiscation may be effected even though the offender cannot be punished because he was not accountable for his acts (sections 44 or 46) or did not manifest guilt". Moreover one judgment indicated that a conviction is required under s.34, but another Supreme Court decision appears to allow confiscation of proceeds even where a defendant is acquitted due to lack of mens rea, provided that it is proved to the criminal standard that the *actus reus* of the crime occurred, and that the property is proceeds of that specific crime. Thus, although not entirely clear, it appears that NCB confiscation may be possible, but with some stringent preconditions.

a3.21. **Weighting and conclusion:** Norway has a good legal framework for confiscation but does not have measures in place to manage seized or confiscated property. **Norway is rated LC with R.4**.

Operational and Law Enforcement

Recommendation 29 – Financial intelligence units

a3.22. In its 3rd MER, Norway was rated PC with these requirements (see paragraphs 146-159). Norway took action to substantially address the deficiencies identified in the MER and Norway's 4th Follow-up Report (FUR) concluded that Norway had raised its compliance with the relevant requirements to a level essentially equivalent to LC. The revised R.29 puts an enhanced focus on access to information; the analytical functions of the FIU; and the dissemination of information.

a3.23. **Criterion 29.1** – The FIU is part of ØKOKRIM, and is a law enforcement/judicial type of FIU with a multi-disciplinary team headed by a senior public prosecutor. It is responsible for receiving, analysing and disseminating information disclosed by the entities with the reporting obligation: s.4 *MLA*.

a3.24. **Criterion 29.2** – The FIU is Norway's central agency for the receipt of STRs filed by reporting entities as required by R.20 & 23. If a reporting entity has a confirmed suspicion that a transaction is associated with the proceeds of crime or a violation of ss.147a, 147b and 147c of the *PC*, it shall on its own initiative submit information to the FIU concerning the transaction and the circumstances that gave rise to the suspicion: *MLA* ss.17-18. The reporting entities should also, as far as possible, provide additional information that supplements a transaction to the FIU: *MLR* s.13. Reporting FIs are required to electronically report all cross-border currency transactions, including physical carriage of cash or BNIs, cross-border bank transactions

A3

and use of credit cards[2], as well as currency exchanges to the Register of Cross Border Transactions and Currency Exchange (the Currency Register): *Currency Register Act (CRA*) s.5. The information must be submitted in electronic format within five days after completion of the transaction. This register is kept by the customs authorities while c.29.2 requires that the FIU should also serve as the central agency for this kind of disclosures. However, the FIU, as part of ØKOKRIM, has direct access to the Currency Register.

a3.25. **Criterion 29.3 –** A reporting entity shall, upon request of the FIU, provide the FIU with all necessary information concerning the transaction and the suspicion it has disclosed: *MLA* s.18. The FIU has direct access, through its database "*Ask"* to a wide range of databases and registers, including all police registers; the Currency Register; public registers (e.g., the business register); registers for government use (e.g., the population register); and commercial databases (e.g., credit bureaus).

a3.26. **Criterion 29.4 –** The FIU's database system *"Ask"* has analytical and data processing functions and directly links STRs to relevant public and police sources, and all requests and messages from other FIUs and police units. *"Ask"* allows FIU staff to perform the necessary analysis to develop intelligence products. Additional analysis is conducted "manually" and largely consists of analysis of transactions; the known financial capability of any subject; past criminal histories; etc. The analysis can include crime group mapping. The scope of strategic analysis currently carried out by the FIU is very limited. The FIU's former strategic analysis resulted in the production of a report on modus operandi and trends based on STRs in 2011 and no strategic analysis has been produced since that time. At present, there is one post dedicated to this function but this position had been vacant for 18 months and a new staff member took up these duties shortly after the on-site visit.

a3.27. **Criterion 29.5** – The FIU has a wide range of formats (e.g., charges, police reports to on-going investigations, intelligence reports, and the *Indicia* registry) for dissemination, spontaneously and upon request, of information to the police and prosecutorial authorities and authorities which have supervisory powers, such as the FSA and the tax and customs authorities. The main platform or channel for dissemination of information from the FIU to domestic LEAs (with the exception of the PST) is *Indicia*. The information is posted on *Indicia* after an in-depth analysis conducted by the FIU, using all sources of available information. The *Indicia* registry does not allow for uploading of supporting material, such as bank statements or other relevant financial information. In cases where the FIU wants to make this type of information available to LEAs, it disseminates the information in the form of an intelligence report with the supporting documents attached. Dissemination of information to the PST is always done in the form of intelligence reports using the police's data system.

a3.28. **Criterion 29.6** – The FIU has internal procedures and guidelines for security and confidentiality. There are strengthened procedures in place for handling, storage, protection of, and access to information contained in *the* FIU's IT system *"Ask*", which can only be accessed by FIU staff. The majority of FIU staff members (prosecutors and police officers) have specific security clearances to deal with sensitive financial intelligence and other data. There are no indications that the non-security cleared staff members would not have an understanding of their responsibilities in handling and disseminating sensitive and confidential material. Members of the Supervisory Board (see c.29.7 below) are not security cleared but are required to sign a confidentiality agreement consistent with *Supervisory Board Regulations* s.6. In addition, members are required to treat information to which they gain access as confidential: *MLA s.31*, and it is a criminal offence to breach such confidentiality: *PC s.121*.

a3.29. **Criterion 29.7** –Being part of ØKOKRIM has not prevented the FIU from independently carrying out its core functions. It is able to engage with other domestic authorities and can exchange information with its foreign counterparts without undue interference. However, the FIU does not have its own budget and it is dependent on ØKOKRIM's budget which could constitute an impediment for ensuring its operational independence even though Norwegian authorities report that this risk is mitigated by the fact that ØKOKRIM's Director is fully responsible for allocating the budget so that the FIU reaches its objectives.

2 The use of credit cards outside of Norway by Norwegian citizens and the use of credit cards in Norway by foreigners are treated as cross-border currency transactions.

a3.30. More importantly, the FIU continues to remain subject to the oversight of a Supervisory Board, including a representative from the private sector, in relation to protection of privacy and personal data, specifically, the requirement to delete certain data from its database after five years and its power to freeze transactions: *MLA* ss.31, 18 and 19. In that context, the members of the Supervisory Board are entitled to be given access to any information, documents or material that they deem necessary for their supervision, regardless of when this information and associated material were received by the FIU, with the exception of information relating to an on-going investigation (that is from the point where a formal investigation is opened). However, there is a lack of formal feedback mechanisms to inform the FIU about the use of data it has disseminated. This makes it difficult to determine which FIU data are used by LEAs for investigative or other purposes. In addition, the working methods of the Supervisory Board are not defined in regulation and are decided by its members: *Supervisory Board Regulations* s.7. This results in a situation where the Supervisory Board also conducts unannounced visits to the FIU in addition to its regular meetings. Consequently, the concern expressed in the 3rd MER and 4th FUR remains.

a3.31. On 1 July 2014, the Norwegian *Data Protection Authority Act* and related regulations entered into force and the FIU became subject to the additional oversight by the Data Protection Authority (DPA). Norway has issued regulations to supplement s.52-14 of the *Police Data Registration Act* to provide for a special mandate for the DPA to supervise the FIU's data–security measures, including in relation to the receipt, storage and dissemination of information (both to national and international counterparts). It is not clear if and how the oversight of the DPA will affect the work and independence of the FIU, nor is it clear how responsibilities will be divided between the Board and the DPA. At present, the Supervisory Board visits the FIU up to four times per year for 2-3 hours each visit.

a3.32. **Criterion 29.8** – The FIU has been a member of the Egmont Group since 1995. It engages in frequent exchange of information with foreign counterparts based on the Egmont Principles of Information Exchange and uses the Egmont Secure Web system for this purpose.

a3.33. **Weighting and conclusion:** Most of the technical requirements for the FIU are met, but there are deficiencies, the most important being the failure to produce strategic intelligence since 2011. The concern regarding operational independence remains from the 3rd round. **Norway is rated LC with R.29**.

Recommendation 30 – Responsibilities of law enforcement and investigative authorities

a3.34. In its 3rd MER, Norway was rated C with these requirements (see paragraphs 175-178).

a3.35. **Criterion 30.1** – Norway has a comprehensive network of law enforcement and prosecution authorities who have designated responsibility for investigating ML/TF. The DGPP is responsible for ensuring that ML/TF offences are properly investigated and prosecuted, and decides who should have the main responsibility for an investigation. In addition to local police, Norway has seven special permanent units that are organised directly under the National Police Directorate. These units offer assistance to the regional police districts and some of them also have prosecuting authority. ØKOKRIM is one of these permanent units and specialises in the investigation of complicated economic crime, including ML. ØKOKRIM has nine specialised teams, including a multidisciplinary asset confiscation team and specialised investigation teams for tax and corruption offences. The FIU is also part of ØKOKRIM.

a3.36. ML offences and confiscation cases are investigated by the police under the instruction of the Prosecution Authority in the police district where the offence was committed. There are specialised economic crime teams in all police districts. The local police do not investigate TF cases, which are the responsibility of the PST. To the extent that financial investigation is required, ØKOKRIM may also be involved in a TF case. TF investigations are primarily investigated at the head office of the PST, but all the 26 PST-district offices conduct preventive intelligence-cases in their districts, on all issues related to the PST's responsibilities.

a3.37. **Criterion 30.2** – All law enforcement authorities are authorised to investigate ML/TF offences during a parallel financial investigation.

a3.38. **Criterion 30.3** – The local police districts as well as the seven special permanent units of the police have the authority to expeditiously identify, trace, and initiate freezing and seizing of property that is, or may become, subject to confiscation, or is suspected of being proceeds of crime. The local police may seek assistance from ØKOKRIM, especially its assets confiscation team.

a3.39. **Criterion 30.4** – In Norway, all financial investigations of predicate offences are conducted by law enforcement authorities.

a3.40. **Criterion 30.5** –Investigation of ML/TF offences arising from, or related to, corruption offences are carried out by the anti-corruption team within ØKOKRIM.

a3.41. **Weighting and conclusion: Norway is rated C with R.30**.

Recommendation 31 – Powers of law enforcement and investigative authorities

a3.42. In its 3rd MER, Norway was rated C with the requirements regarding the responsibilities of law enforcement and investigative authorities (see paragraphs 179-183).

a3.43. **Criterion 31.1** – Norwegian competent authorities responsible for investigating ML, associated predicate offences and TF are able to obtain access to all necessary documents and information for use in those investigations.

a3.44. **Production orders:** Competent authorities have the power to compel production of objects that are deemed to be significant as evidence if the possessor is obliged to testify in the case. The word objects means movable property, including documents, electronically stored information and financial information that is held or maintained by financial institutions and other businesses or persons (i.e., transaction records, CDD data, account files and business correspondence, and other records, documents or information): *CPA* s.210. The Prosecution Authority must submit a request for a production order to the Court. In urgent cases, the Prosecution Authority may compel information directly, but must then submit the case to the Court for subsequent approval as soon as possible.

a3.45. **Search:** Competent authorities have the power to search premises for financial records, etc. if there are reasonable grounds to suspect that a criminal act punishable by imprisonment has been committed. The objective must be to search for evidence or things that may be seized or charged: *CPA* s.192. A search of the suspect's person may also be conducted on the same conditions as a search of his premises: *CPA* s.195.

a3.46. **Witness statements:** The police and Prosecution Authority do not have the power to compel witness statements, unless the witness is a public official or a person that acts on behalf of the state or a municipality: *CPA* s.230. A witness is obliged to attend at the police station (if served with a summons) to indicate whether he/she is willing to give a statement, and may consent to so doing: *CPA* s.230. The general principle is that witnesses are required to give a statement to the court: *CPA* s.108. Witnesses bound by certain secrecy laws (*Savings Banks Act* s.21; *Commercial Banks Act* s.18; *Act on insurance activity* s.1-6; FIA ss.3-14; *Securities Trading Act* s.10-9, and *Security Register Act* s.8-1) are required to provide statements to the police about matters covered by these laws: *CPA* s.230.

a3.47. **Seizure:** Competent authorities have the power to seize financial records, etc. provided that those records may have significance as evidence: *CPA* s.203. The principal rule is that the Prosecution Authority takes the decision on seizure; however, the police may take the decision when the suspect is caught in the act, pursued following the act, or on finding fresh evidence. In such cases, the Prosecution Authority must be notified as soon as possible and decides whether the seizure should be sustained: *CPA* s.206. Any seizure action is taken without prior notice to the suspect or third parties.

a3.48. **Criterion 31.2** – Norway has legislative measures in place that provide law enforcement with a range of investigative techniques when conducting ML/TF or other criminal investigations, including: (i) video surveillance and technological tracking: *CPA* chapter 15a; (ii) concealed video surveillance of a public place: *CPA* s.202a; (iii) technological tracking when a person with just cause is suspected of an act or attempt of an

act punishable by imprisonment for five years or more: *CPA* s.202b; (iv) break-in for the purpose of placing a technical direction finder, or placing such finders in clothes or bags that the suspect wears or carries, when a person with just cause is suspected of an act or attempt at an act punishable for 10 years or more: *CPA* s.202c; and (v) control of communication apparatus if the maximum penalty is five years or more or if it is a drug related case: *PCA* s.216b, cf. 162 PC. Most of these techniques can thus only be used for serious offences (where the maximum penalty is five or ten year's imprisonment): *CPA* chapter 15a. The exception is video surveillance which can be used when there is just cause to suspect that criminal act(s) punishable by a term exceeding six months have been committed: *CPA* s.202a. Covert audio surveillance is never available in ML cases PCA s.216m.

a3.49. While competent authorities are also able to conduct secret searches and communications surveillance and to access computer systems, these investigative techniques are available when the maximum penalty is 10 years or more i.e. drug related ML or aggravated ML by an organised criminal group: *CPA* ss.200a and 216a, cf. *PC* s.162.

a3.50. Other coercive measures, such as infiltration, (undercover) operations and provocation are available in certain cases, including for ML, predicate offences or TF. These measures are not statutorily regulated and the specific crime types or cases where such techniques can be used, is not clearly defined. Rather, the use of non-statutory investigation methods has been recognised and developed through case law, especially by the Supreme Court, which has set conditions and limitations, and supported by rules and internal guidelines issued by the prosecuting authority. In general, such techniques can only be used if the crime is considered as a serious threat to society. Thus these measures would likely apply in all TF cases, but for ML offences, the scope and nature of the offence and the amounts of funds involved will be important factors when determining whether use of these techniques is permissible.

a3.51. **Criterion 31.3** – CPA s.210 allows the Prosecution Authority, police districts and special units such as ØKOKRIM to get a production order from the court requiring financial institutions to produce the records of account holders (see c.31.1). In urgent cases, the Prosecution Authority can compel this information directly. These powers can be used without prior notification to the owner. The customs authorities have similar powers in the *Value Added Tax Act* s.16-2. The time taken to respond to requests varies but in urgent cases can be very quick.

a3.52. In addition, account information is available in the taxation register as FIs report information on accounts, account holders and account balances to the tax authorities: *Tax Administration Act* s.5. LEAs have direct access to this information which is provided to the taxation authority on an annual basis, and can use this to identify many accounts in a timely manner. However, this information is only updated annually thus leaving a small gap when new accounts are created or the ownership of legal persons and arrangements changes. The *Tax Assessment Act* provides that the duty of confidentiality is overridden in criminal cases and this allows the tax authorities to share information they hold regarding income and asset declarations with the Prosecution Authority and the police both spontaneously and upon request.

a3.53. **Criterion 31.4** – The FIU is an integral part of ØKOKRIM and is empowered to provide all relevant information it holds in relation to ML, associated predicate offences and TF to the Prosecution Authority and other law enforcement authorities.

a3.54. **Weighting and conclusion:** The only deficiency is that Norway's mechanism to identify whether natural or legal persons hold or control accounts is limited since the register is only updated annually. **Norway is rated LC with R.31**.

Recommendation 32 – Cash Couriers

a3.55. In its 3rd MER, Norway was rated PC with these requirements. Norway took action to address the three deficiencies identified in the MER (paragraphs 286-196) and the 4th FUR concluded that Norway had raised its compliance to a level essentially equivalent to LC (paragraphs 118 to 122). While Norway is part of the Schengen area, it is a separate customs territory outside the EU.

a3.56. **Criterion 32.1** – Norway has implemented a declaration system for both incoming and outgoing cross-border transportation of currency and bearer negotiable instruments (BNI): *CA* s.3-1 and *RCA* s.3-1-11. Norway has also established an obligation to declare cross-border transportation of currency and BNI through mail and cargo prior to, or arrival of, the shipment: *CA* ss.4-10 & 4-11 and *RCA* ss.4-10-2(7) & 4-11-1. In addition, enterprises providing security guard services may be specifically authorised by the Directorate of Customs and Excise to declare directly on the Currency Register: *RCA* s3.3-1-11(3). There are only two such specifically authorised companies, freighting currency for businesses and banks, which have an obligation to declare within five days after importation/exportation. Given that these two companies are authorised and represent a low risk of non-reporting, the delay in reporting is not a concern.

a3.57. **Criterion 32.2** – All persons carrying out a physical cross-border transportation of currency and BNI with a value exceeding the equivalent of NOK 25 000 (EUR 3 250) are required to make a written declaration and present themselves to the customs authority at the point of entry to/exit from Norway: *CA* s.3-1 and *RCA* s.3-1-11.

a3.58. **Criterion 32.3** – This criterion is not applicable to Norway since it has implemented a written declaration system for all travellers carrying amounts above NOK 25 000 (EUR 3 250).

a3.59. **Criterion 32.4** – Upon discovery of a false declaration of currency and BNI or a failure to disclose them, customs officers have the authority to obtain further information from the carrier with regard to the origin of the BNI and their intended use: *CA* s.13-7.

a3.60. **Criterion 32.5** – Where persons make a false declaration or fail to make a declaration, customs authorities have the power to impose an administrative fine of 20% of the total amount of currency or BNI not declared: *CA* s.16-15 and *RCA* s.16-15-2. If the customs authorities suspect that currency or BNI carried by a person, regardless of the amount and whether any declaration was made, is associated with a crime that can be punished by imprisonment for more than six months, then they must report the case to the police/prosecutor for further investigation. In these instances, the currency and/or BNI concerned are immediately seized: *CA* s.16-13 and *CPA* s.206.

a3.61. **Criterion 32.6** – The customs authorities register all declarations in the Currency Register (see also R.29 above). The register does not include data regarding currency and BNI cross-border transactions which are related to proceeds of crime and which the customs authorities report to the police/prosecutor (see c.32.5 above). However, these cases are also reported for information to the FIU. The FIU and LEAs have direct on-line access to the Currency Register. Moreover, it is customs authorities' practice to also systematically inform the FIU about all cash smuggling cases above NOK 150000 (EUR 20 000), both in cases where an administrative fine was imposed and in cases where funds were seized.

a3.62. **Criterion 32.7** – As explained above, the customs authorities work closely together with the police, the FIU, and other domestic authorities. The co-operation between the customs authorities and the police is based on a formal agreement of 9 September 2010 which sets out the basic principles for high-level and operational cooperation, including exchange of information, use of equipment and mutual assistance. On that basis the customs authorities and local police districts have established routines and practices for day-to-day cooperation.

a3.63. **Criterion 32.8** – As mentioned above in relation to c.32.5, currency and BNI which are suspected to be related to proceeds of crime or related to TF are immediately seized: *CA* s.16-13 and *CPA* s.206. In cases of false declarations, customs authorities stop the currency or BNI carried by the person immediately to withhold an administrative fine of 20% of the total amount not declared and to determine whether there is a suspicion of ML/TF or predicate offences.

a3.64. **Criterion 32.9** – The customs authorities register all declarations in the Currency Register. Norway can exchange this data, either spontaneously or upon request, on the basis of bilateral and multilateral agreements regarding customs cooperation. The information can be equally exchanged by the FIU and the police with their foreign counterparts as well in the context of MLA. While the register does not contain any data regarding the cases handed over to the police/prosecutor because of a suspicion of a crime that can be punished with imprisonment for more than six months, this data would normally be included in the police

registers.

a3.65. **Criterion 32.10** – The Currency Register contributes to preventing and combating crime: *CRA* s.1. Only authorised personnel have access to the information contained in the register: *CRA* s.6. The *CRA* specifically provides that the police, including the FIU as part of ØKOKRIM, the prosecuting authorities, tax authorities, the National Insurance, and Statistics Norway in addition to customs authorities can access the register.

a3.66. **Criterion 32.11** – If the customs authorities suspect that currency or BNI carried by a person (regardless of the amount and whether any declaration was made) are the proceeds of crime or related to TF, then they report the case to the police/prosecutor for investigation. If the suspicions are confirmed, then the sanctions and measures described in relation to R.3-5 above will come into play.

a3.67. **Weighting and conclusion: Norway is rated C with R.32.**

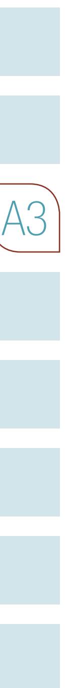


Table of Acronyms

3AMLD	EU 3rd Anti-Money Laundering Directive
AA	Auditors Act
AC/AML Project	Anti-corruption and Money Laundering project
Action Plan 2000	Norwegian Government's Action Plan for Combating Economic Crime 2000
Action Plan 2004	Norwegian Government's Action Plan for Combating Economic Crime 2004
AEAA	Authorisation of External Accountants Act
Al-Qaida Regulations	Regulation on sanctions against Al-Qaida of 22 December 1999
AML	Anti-money laundering
AMLD	EU Anti-Money Laundering Directive
ANSC	Association of Norwegian Stockbrokers Companies
BERA	Business Enterprise Registration Act
BNI	Bearer Negotiable Instruments
BRC	Bronnoysund Register Centre
C	Compliant
CA	Customs Act
CBA	Commercial Banks Act
CCR	Central Coordinating Register for Legal Entities
CCRA	Central Coordinating Register for Legal Entities Act
CDD	Customer due diligence
CFT	Counter-terrorist financing
CJA	Court of Justice Act
Circular 9/2004	FSA Circular 9/2004 of 15 April 2004
CLA	Courts of Law Act
COE Corruption Convention	Council of Europe Criminal Law Convention on Corruption
Control Committee	Control Committee for Measures to Combat Money Laundering
Control Committee Regulations	Regulation on the Control Committee for Measures to Combat Money Laundering
CPA	Criminal Procedure Act
CRA	Currency Register Act
CRR	Currency Register Regulations
Customs	Directorate of Customs and Excise
DGPP	Director General of Public Prosecutions
DNFBP	Designated non-financial businesses and professions
DnR	Norwegian Institute of Public Auditors
DOB	Date of birth
DPA	Data Protection Authority
DPP	Director General of Public Prosecutions
EA	Extradition Act
ECHR	European Court of Human Rights
EEA	European Economic Area
Egmont Principles for Information Exchange	Egmont Principles for Information Exchange Between Financial Intelligence Units for Money Laundering Cases

TABLE OF ACRONYMS

EU	European Union
EU Extradition Convention	European Convention on Extradition
EUR	Euros
FATF	Financial Action Task Force
FCA	Financial Contracts Act
FIA	Financial Institutions Act
FIU	Financial intelligence unit
FNH	Norwegian Financial Services Association
FSA	Financial Supervisory Authority (Kredittilsynet)
FS Act	Financial Services Act
FSA Regulations	Regulations concerning the exchange of information with supervisory authorities from countries within and outside the EEA
FT	Financing of terrorism / terrorist financing
HSH	Federation of Norwegian Commercial and Service Enterprises
FUR	Follow-up report
IA	Insurance Act
ISA	International Standards on Auditing and related services
IOPS	International Pension Supervisors Group
IT	Information technology
KRIPOS	National Criminal Investigation Service
LEA	Law Enforcement Agency
LLC Act	Limited Liability Companies Act
LC	Largely compliant
MFA	Ministry of Foreign Affairs
ML	Money laundering
MLA	Money Laundering Act
MLA Prep. Works	Preparatory Works of the Money Laundering Act
MLR	Money Laundering Regulations
MoF	Ministry of Finance
MoJ	Ministry of Justice and Public Security
MOU	Memorandum/memoranda of understanding
MVTS	Money or value transfer service (i.e. money remitter / alternative remittance service)
N/A	Non Applicable
NARF	Norges Autoriserte Regnskapsføreres Forening (Association of Authorised Accountants)
NAST	National Authority for Prosecution of Organised and Other Serious Crime
NBA	Norwegian Bar Association
NC	Non-compliant
NCB	Non-conviction based
NEA	Nordic Extradition Act
NHO	Confederation of Norwegian Business and Industry
NIPA	Norwegian Institute of Public Auditors
NMFA	Norwegian Mutual Fund Association

NOK	Norwegian Kroner
NPD	National Police Directorate
NRA	National Risk Assessment
OECD Bribery Convention	OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions
ØKOKRIM	National Authority for Investigation and Prosecution of Economic and Environmental Crime
PA	Police Act
PAA	Public Administration Act
Palermo Convention	United Nations Convention against Transnational Organised Crime (2000)
PC	Partially compliant
PC	Penal Code
PCCC	Police Computer Crime Centre
PEP	Politically exposed person
PLLC Act	Public Limited Liability Companies Act
PF	Proliferation financing
POB	Place of birth
Police Academy	National Police Academy
Police Directorate	National Police Directorate
Population Register	Norwegian Population and Employer Register
Prosecution Authority	Government body responsible for conducting criminal prosecutions (headed by the Director General of Public Prosecutions)
PSP	Payment services provider
PST	Norwegian Police Security Service
PSD	EU Payment Services Directive
RBA	Risk-based approach
RCA	Regulations to the Customs Act
REAA	Real Estate Agency Act
REBA	Real Estate Business Act
Reg.1102	Regulation no.1102 of 30 November 1998 concerning exchange of information with supervisory authorities from countries within and outside the EEA
Regulations on International Cooperation	Regulations relating to International Cooperation in Criminal Matters
Reporting DNFBP or Reporting Designated Non-Financial Businesses and Professions	All non-financial businesses or professions that are obligated to comply with the Money Laundering Act and Regulations
Reporting entity	All entities that are obligated to comply with the Money Laundering Act and Regulations
Reporting FI or Reporting Financial Institution	All financial institutions that are obligated to comply with the Money Laundering Act and Regulations
RFA	Regulations for Advocates
ROK	Advisory Council for Combating Organised Crime
SBA	Savings Banks Act
SFA	Securities Funds Act

TABLE OF ACRONYMS

S/RES/	United Nations Security Council Resolution
SRB	Self-regulating body
SSB	Statistics Norway
STA	Securities Trading Act
STR	Suspicious transaction report
Strasbourg Convention	Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime 1990
Supervisory Council	Supervisory Council for Legal Practice
Taliban Regulations	Regulation on sanctions against Taliban of 8 November 2013
Tax Bulletin	Tax Directorate Bulletin of 5 November 2003
Tax Directorate	Directorate of Taxes
TCSP	Trust and company service provider
Terrorist Financing Convention	United Nations Convention for the Suppression of the Financing of Terrorism (1999)
UN	United Nations
UNCAC	United Nations Convention Against Corruption
UNCTC	United Nations Counter Terrorism Committee
UNSC	United Nations Security Council
USD	United States Dollars
Vienna Convention	United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988