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Investigating the ethics of investments

An interview with Kjell Kristian Dørum on the work of the Norwegian Council on Ethics

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About U4

U4 is a team of anti-corruption advisers working to share research and evidence to help international development actors get sustainable results. The work involves dialogue, publications, online training, workshops, helpdesk, and innovation. U4 is a permanent centre at the Chr. Michelsen Institute (CMI) in Norway. CMI is a non-profit, multi-disciplinary research institute with social scientists specialising in development studies.

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Norway invests its petroleum revenue surplus in the international financial market through its Government Pension Fund Global, which held a portfolio of about 1.2 trillion euro in April 2022. A Council on Ethics monitors whether companies in which the Fund invests meet ethical standards of the Norwegian government. If a company is found to be persistently corrupt, it is put under observation or excluded until it can demonstrate that corruption risks have been adequately addressed. The Council's engagement can therefore influence corporate behaviour worldwide. U4's Sofie Arjon Schütte interviewed Kjell Kristian Dørum, chief advisor on corruption in the Council on Ethics, about the Council's work.

Main points

- The Norwegian Government Pension Fund Global had about 1.2 trillion euro invested in 9,300 companies in 70 countries as of April 2022. These investments help reduce the impact of oil price volatility and ensure that future generations of Norwegians will benefit from surplus revenue generated by the country's petroleum resources. Because of the Fund's large size, its investments can influence corporate behaviour worldwide.
- The Fund's investments follow ethical guidelines on the types of commodities that companies may produce and the behavioural principles that they must adhere to. A Council on Ethics monitors the companies and will recommend observing a firm more closely or excluding it from investment if a systemic breach of the principles is detected and is deemed likely to recur. This may include, for example, repeated instances of bribery.
- In gathering data, the Council draws on reporting from 80,000 media outlets and investigative journalism sources, as well as official court proceedings. It engages directly with the companies when further investigation of public reports is required.
- The corruption criterion in the Fund's ethical guidelines has recently been widened, and the Council on Ethics is expanding its capacity to investigate financial crimes such as money laundering and tax offences.

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About the authors

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Kjell Kristian Dørum is chief advisor on corruption in the Council on Ethics for the Norwegian Government Pension Fund Global, where he has been employed since 2017. He is responsible for monitoring the companies in the Fund's portfolio for possible violations of the corruption criterion in the ethical guidelines of the Fund. He also carries out research relating to corruption allegations and engages in dialogue with companies in this regard, as well as drafting recommendations and reports on the observation and exclusion of companies.

Sofie Arjon Schütte

Dr. Sofie Arjon Schütte leads U4's thematic work on the justice sector, including specialised institutions like anti-corruption agencies and courts. Previously, she worked for the Partnership for Governance Reform in Indonesia and the Indonesian Corruption Eradication Commission and has conducted workshops and short-term assignments on corruption in more than 15 countries. She is editor of the series of U4 publications on anti-corruption courts around the world.

Norway is one of the founding members of the U4 partnership and supports anti-corruption initiatives worldwide. A country rich in natural resources, Norway has experienced great economic returns since it started exploiting its mostly offshore gas and oil reserves in the 1970s.

To ensure responsible long-term management of petroleum revenue resources, avoid a sudden inflow of foreign currency that could have a negative impact on other sectors (Dutch disease, resource curse), and mitigate the risks of oil price volatility, the Norwegian government directs the revenue surplus into the Government Pension Fund Global (GPFG or the Fund). The Fund only invests in international financial markets, and it holds 1.3% of all listed companies in the world, approximately 9,300 companies in 70 countries. By mid-April 2022 the Fund's value was about 11.5 trillion NOK, or 1.2 trillion euro.

Managing one of the largest funds in the world implies great responsibility. The Fund's investments will contribute to Norway's economy when the country's petroleum resources have been exhausted. Furthermore, because of its large size, the Fund has an impact on the corporate conduct of companies worldwide. In so-called expectation documents, the Fund lays out its principles on children's rights, climate change, water management, ocean sustainability, biodiversity and ecosystems, human rights, tax and transparency, and anti-corruption.

Norges Bank Investment Management (NBIM), a section of Norway's Central Bank, manages the Fund. It is regulated by a legal framework and ethical guidelines determined by the Norwegian Ministry of Finance, and since 2004 it is also advised by a Council on Ethics set up to continuously monitor the companies in the Fund according to specific criteria. The Council on Ethics regularly issues recommendations to the Central Bank on whether a company should be excluded or put under special observation. These determinations are then published by the NBIM on an observation and exclusion list.

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drafting recommendations and reports on the observation and exclusion of companies.

Before joining the Council on Ethics, Kjell worked for the Office of the Auditor General of Norway (OAGN) for more than ten years. He also worked in the Norwegian Ministries of Foreign Affairs and Fisheries for eight years, mainly on international and national resource management issues. Kjell holds an undergraduate degree in political science and has completed additional master's studies in economic crime and corporate responsibility.

Sofie Arjon Schütte leads U4's work on corruption and anti-corruption measures in the justice sector, including anti-corruption agencies and special courts. She interviewed Kjell by email in April 2022.

How the Council on Ethics works

Kjell, how did you come to work for the Norwegian Council on Ethics and what is it that you personally do there?

Before I came to the Council on Ethics (COE), I worked in the Office of the Auditor General of Norway (OAGN) for more than ten years. In the OAGN I worked on fraud and corruption issues in various ways, among other things through performance audits of Norwegian development aid, through the OAGN's Internal Specialist Group on Fraud, and as project manager for the INTOSAI WGEA project on addressing fraud and corruption issues when auditing environmental and natural resource management. Studying corruption closely for several years made me more and more convinced that it is one of the major challenges facing humanity, and from that I derived my motivation for working on corruption full-time.

One of the main lessons I learnt from my years in the OAGN is that you cannot only focus on the bribe takers to fight corruption; you also must focus on the bribe payers. In other words, in addition to government, you also must focus on the private sector and the companies which pay the bribes. And this eventually led me to the COE.

My job is to monitor and investigate companies in the Fund for possible involvement in corruption.

Perhaps not so surprisingly, then, my job in the COE is to monitor and investigate the companies in the Fund for possible involvement in corruption. For those companies that the Council selects for further investigation, it is my responsibility to facilitate the dialogue with these companies and to collect further information relating to the corruption allegations and the companies' anti-corruption measures. In those cases where the Council finds that a company qualifies for observation or exclusion, it is my job to draft the recommendation. Lastly, when the Central Bank decides to place a company under observation for corruption, it is also my responsibility to facilitate the observation process.

What is the relationship between the Council on Ethics and Norges Bank Investment Management (NBIM)? Could you explain the different roles of the COE and NBIM when it comes to responsible management?

Fundamentally, NBIM is the Fund's operational manager and is responsible for the exercise of ownership rights. The COE monitors the Fund's portfolio with a view to detecting whether the Fund's investments are consistent with the ethical guidelines and submits recommendations to the Central Bank for the exclusion or observation of specific companies. Basically, then, the COE's role when it comes to responsible management is to try to keep the 'worst' companies out of the Fund.

NBIM's role, on the other hand, is to reduce the financial risks associated with the environmental and social practices of companies in the Fund's portfolio. By setting various standards, through shareholder voting and through direct dialogue, NBIM seeks to promote responsible practices by the companies. A part of this work is the preparation of expectation documents on various topics related to responsible management, and corruption is one of these topics. In addition, NBIM may itself also decide to divest, through so-called risk-based divestments, from companies which do business in a way that NBIM does not consider sustainable or that could have negative financial consequences.

Norges Bank and the COE are independent of each other. This means that the Bank cannot instruct the Council to submit – or not submit – a recommendation to exclude or observe particular companies. Norges Bank in turn is free to decide whether to follow the Council’s recommendations. In most cases, however, the Bank does follow the recommendations. As there is always a risk that NBIM and the COE may wish to focus on the same companies and the same topics at the same time, it is important to coordinate closely to avoid any unwanted overlaps of engagement activities. Therefore, the two entities have established procedures for the exchange of information and have coordination and information-sharing meetings on a regular basis.

The COE is not consulted and does not carry out any research before NBIM makes its investments. We only focus on companies which are already in the Fund.

Investigating and influencing the ethical conduct of companies

What are you looking for when you monitor the companies in the Fund according to the corruption criterion? What triggers an investigation?

Our guidelines use the term ‘gross corruption’. For us, ‘corruption’ basically means bribery, and ‘gross’, according to our definition, means that the corruption – or alleged corruption – is systematic and/or extensive. Among other things, this means that we are looking for corrupt practices which seem to have been carried out repeatedly over time and which relate to several unconnected incidents. In other words, we are looking for companies that appear to be serial offenders.

Furthermore, whether the corruption involves the company’s senior executives and whether the bribes are substantial in size are of course important factors. Apart from this, we are first and foremost looking for companies that are paying bribes to government officials at high levels – in other words, grand corruption, often carried out by multinational companies paying bribes in several countries. But there are exceptions here, such as passive bribery in large state-controlled companies.

Common features are corruption in connection with large public sector contracts, either procurements or licences. Fairly often, they involve wholly or partly state-owned enterprises. The procurements can range from construction contracts to major orders for vehicles, defence materiel, and so on. Licences can be for the production of oil and gas or the development and operation of telecommunications networks. The corruption can also be motivated by a desire to obtain other financial benefits from the state, such as financing from state banks or tax breaks. And among the companies which fulfil these criteria, we are particularly focusing on the ones that do not seem willing or able to change their practices.

What do you do to find those companies and to investigate them further?

As mentioned, the monitoring of the companies in the Fund portfolio for possible violations of the corruption criterion is a central part of my job, and this is done more or less continuously. The single most important data source we use here is a media monitoring service provided by a consultancy which screens more than 80,000 media and other public sources from around the world in 20 different languages.

In addition to this monitoring service, I also subscribe to several other newsletters from various private entities and civil society organisations. Although the monitoring service is the single most important tool, it must be emphasized that there are many good and free resources out there as well. (And many investigative journalist organisations that would be really happy to receive a small donation or two) Through these various sources I would say that, on average, I receive information about allegations of corruption concerning one or more companies in the Fund almost on a daily basis.

As far as possible, all identified cases are given an immediate initial assessment that focuses on the substance of the allegations, whether they are new allegations, and whether the alleged offences are recent. Google is of course a key tool here as always, but I also check available databases to see whether this is a new company for us, and also whether it has been involved in several unconnected incidents. One of the databases I check is our own internal one, which we have built up gradually over the years. But there are also other resources out there, such as the TRACE Compendium.

When we decide to investigate a company further, a central part of the job is to try to find more of the same information that triggered the investigation in the first place. This information can basically be divided into two categories. The first category consists of additional, and preferably longer, media articles which describe the allegations further. Long exposés by investigative journalists are often very useful. The second category consists of all sorts of information and legal documents from prosecutors and the courts, that is, press releases, indictments, sentences, settlements, etc.

Because the most important sources of information for the COE's investigations of corruption cases are news reports/exposés and various documents from investigations and court proceedings, my most important contacts in the investigation process are investigative journalists and public prosecutors. In addition to providing valuable background information, these individuals can also be very helpful in answering remaining questions after we study the media reports and official court documents. Civil society organisations may also provide information that is sufficiently specific to be used in our corruption investigations, but this happens only occasionally.

What kind of information do you ask the companies to provide, and what do you do to ensure that the company's viewpoints are taken into account?

The first key element for us is how the company concerned has reacted to the corruption allegations. We look for information on how the company has commented on the allegations, whether it has launched its own inquiry, and possible outcomes of such an inquiry. The second key element is the measures the company has initiated or plans to initiate to prevent, detect, and respond to corruption. Together, these measures make up the company's anti-corruption programme, which is often part of its internal compliance system.

The company's anti-corruption programme is often what the COE attaches most importance to in its assessment of the future risk of corruption. We are looking for information on risk assessments, the 'tone from the top', policies and guidelines, anti-corruption organization, training, whistle-blower procedures, due diligence, and so on. In our initial review, we normally will look at whether all the measures recommended by international compliance standards seem to be reflected in the company's anti-corruption programme.

We look for evidence that the companies' anti-corruption systems are functioning in practice.

We are also pushing more and more for real evidence that the companies' anti-corruption systems are functioning in practice. This means that we, for instance, are asking for the actual report from a due diligence inquiry, more detailed corruption risk assessments, concrete information on how the company has dealt with a specific whistle-blowing report, or specific examples on how the tone from the top has materialized in practice.

As to the companies' viewpoints on our recommendations, this is something we attach much importance to, and we follow strictly the principle of contradiction in all our investigations. In practice, this means that the companies always are given an opportunity to go through a draft recommendation to correct the facts and/or provide additional information. A separate chapter in the recommendations is also reserved for the company's viewpoints.

What does it mean for a company to be on the observation list? What does it mean to be excluded? And have companies reacted to this with behaviour and/or policy changes?

When a company is placed on the observation list, it means that it is getting a warning from the Central Bank – a 'yellow card' – but the company remains in the Fund. In such situations the Bank considers it uncertain whether the grounds for exclusion are met or what developments may occur in the future. The observation usually lasts for a period of three to four years, but it may be either shorter or longer. It is the responsibility of the COE to follow up with the company during this period.

During the observation period, the COE monitors whether new allegations of corruption or other financial irregularities linked to the company's operations come to light. It also observes the company's anti-corruption activities through continued dialogue with the company. As part of the observation, the COE provides the Central Bank/NBIM with regular assessments of the company in question, which are published on our website. The COE may at any point in the observation period recommend that a company be excluded or, alternatively, removed from the observation list.

When a company is excluded, the Bank is selling its entire holding of the company's shares. The COE assesses on a regular basis whether the grounds for the exclusion of a company are still valid. If new information indicates that the basis for exclusion has ceased to exist, the Council will recommend revoking the exclusion.

We have the impression that the dialogue we conduct with the companies – both those that are officially under observation and those still under investigation – can have a positive effect on their anti-corruption efforts, and that some of them also find the dialogue useful. It should also be added that one single exclusion can have an effect far beyond the company concerned because other firms adjust their practices in light of the signals given – or, at the very least, take more notice when the COE or other investors raise the same issues with them.

Challenges and limitations of the instrument

Most of the companies on the exclusion/observation list have been placed there because of the products they make (e.g., tobacco, nuclear weapons, coal-based energy). As of the beginning of April 2022, only two companies (ZTE Corporation and JBS S.A.) were excluded because of gross corruption, and three more (Bombardier, Leonardo, and Hyundai Engineering and Construction Ltd.) were under observation for that reason. Why haven't more companies been flagged for corruption?

The purpose of the ethical guidelines is to ensure that the Fund does not contribute to serious ethical violations in the future.

There are several reasons for this. The most important, perhaps, is the aspect of future risks. The purpose of the Fund's ethical guidelines is not to punish companies for what they have done in the past, but to help ensure that the Fund does not contribute to serious ethical violations in the future through its investments. And making a convincing case that a company will continue with their corrupt practices in the future is generally quite tricky. For one thing, corruption involves concealed acts, and it is therefore normally not something that takes place in the open. Moreover, corruption – especially when it's defined

as bribery – is considered an illegal act in almost any country of the world, even in the worst kleptocracies. Companies therefore will never admit that they will continue paying bribes in the future. Most companies will also improve their practices after a major corruption scandal – at least on paper. Hence, to ‘prove’ that a company is not sufficiently trustworthy, we need credible information from third parties which can document that there is a clear discrepancy between what the company says it does and what it actually does in practice. Such information is generally very difficult to get and is usually dependent on whistle-blowers and leaks such as the Paradise Papers.

Corruption risk is higher in authoritarian countries where information from the media, the courts, civil society organisations, and the companies themselves is less abundant and less reliable.

The fact that corruption involves concealed acts also means that it can be difficult to detect corrupt companies in the first place. Companies involved in corruption generally go to great lengths to conceal the facts, and enforcement of corruption laws also varies substantially from country to country. Hence, it may be a matter of pure chance whether and when information concerning corrupt acts comes to light. Gaining access to sufficient documentary evidence to permit the COE to recommend that a company be excluded or placed under observation for corruption is even more difficult. The situation is further complicated by the fact that the corruption risk is normally higher in countries where the volume of information from the media, the courts, civil society organisations, and the companies themselves is less abundant and less reliable – that is, in authoritarian states. This challenge has become gradually larger as the Fund has invested more and more in emerging markets. This is a second reason why there are so few companies on the observation and exclusion lists.

A third reason is the thoroughness of our investigation and assessment process. Every recommendation must be well documented and based on reliable and independent sources. Moreover, and as already mentioned, we also attach much importance to the principle of contradiction. All parts of this process – the information gathering, the back-and-forth with the companies, and the final quality assurance – can be both very time-consuming and resource intensive.

And the fact that the COE so far has had only one person working on corruption cases also entails certain capacity limitations.

Fourth, for four of the companies which the Council has recommended for exclusion or observation, the Bank has chosen to follow up on the companies itself through an ownership dialogue.

Last but not least, the threshold for observation or exclusion is set intentionally high. This means that we primarily should look for that handful of companies where the corruption risk is considered to be at the absolute highest level, and where there is also sufficient documentary evidence to support a recommendation.

Unprecedented sanctions against the Russian state, companies, and oligarchs have been issued since Russia started its war against Ukraine in late February 2022. Has there been any special action in this regard by the Council on Ethics?

At the end of 2021 the Fund's equity investments in Russia had a value of around 27 billion NOK. This represented approximately 0.2% of the Fund's total market value at that time. Still, as Russia for many years has been considered a high-risk country in respect of corruption, the COE has continuously monitored the situation in the country closely.

The Norwegian government has decided that Russia should no longer be part of the Fund's investment universe.

However, after the invasion, the Norwegian government decided that Russia should no longer be part of the Fund's investment universe, and it instructed the Central Bank/NBIM to freeze all investments in Russia and prepare a plan for selling off the GPF's investments in the country. As long as this remains the official policy of Norway and the Fund, the COE will also refrain from investigating Russian companies.

Increasing the ethical leverage of the Fund in the future

The corruption criterion in the ethical guidelines was recently expanded to encompass, in addition to gross corruption, ‘other serious financial crime’. How will this affect your work?

In 2019 the Norwegian government appointed an Ethics Committee to review the ethical guidelines for the Fund. The Ethics Committee proposed an assessment process for cases relating to serious financial crime that corresponds to today’s practice with respect to anti-corruption. Based on the Ethics Committee’s work, the ethical guidelines were amended on 13 September 2021 to include ‘other serious financial crime’ among the criteria for observation and exclusion of companies.

The CoE is expanding its capacity to investigate financial crimes such as money laundering and tax offences.

In principle, financial crime covers a wide range of offences in addition to corruption. These include money laundering; bankruptcy fraud, accounting, and tax offences; price fixing, bid rigging, and other forms of collusion; embezzlement; market manipulation; deception/breach of trust; and all other sorts of fraud. Given the scale and complexity of all these different forms of financial crime, the COE will initially build up its competence within a more narrowly delimited area before gradually expanding its focus to other types of offences. The Council has recruited a new employee with background in the investigation and prosecution of economic crime to work on this issue.

Although the amended guidelines do not specify which types of financial crime should be prioritized, the preparatory work for the revision explicitly mentioned money laundering and tax evasion in discussions concerning the expansion of the corruption criterion. The Council’s own statistics also show that these are among the types of crime that can be linked to the largest number of companies in the GPF. Money laundering and tax offences could therefore be a natural starting point for the acquisition of expertise in the area of financial crime.

We believe the recruitment of the new employee will lead to a significant strengthening of our work in the financial crime field and generate good

synergies with our work on corruption. We see from our investigations of corruption cases that they are often linked to money laundering.

If you could acquire some additional powers to enable you to do your work more effectively, what would they be?

As corruption normally is not something that takes place in the open, my main challenge when companies in the Fund appear on our ‘corruption radar’ is always to gain access to sufficient documentary evidence concerning the various allegations. Better access to all sorts of official documents which are public in principle, but not necessarily publicly available, such as sentences, printouts from public registers, and so on, could be very helpful in many of our investigations. I sometimes try to access such documents via prosecutors, journalists, or NGOs, and sometimes I succeed, but not always.

If I could improve my skills in open-source intelligence (OSINT) further, I guess that could increase the effectiveness of our work in the corruption field to some extent. I have noted that there are several investigative journalist organizations which offer courses in OSINT on a regular basis, some of which are also open to persons other than professional journalists. So someday I hope to get the chance to educate myself to be a better investigator.

It also goes without saying that fluency in other major international languages such as Spanish or Arabic would be an advantage. But at the same time I would say that translation programmes generally have greatly improved in recent years, so language does not represent the same barrier today as it did only a few years ago.

I depend on the work of investigative journalists to do my job.

However, apart from better OSINT and language skills, it cannot be denied that I am still very dependent, sometimes totally dependent, on the work of journalists to do my job – especially the work of investigative journalists. Although there are other important sources out there as well, I believe they can never fully replace the information we get from the media. And, as already indicated, the fundamental challenge for us in this regard is that it is most difficult to get sufficient and valid information about corrupt activities in the states where the corruption risks usually are highest, that is, in autocratic and

repressive states. This challenge has become gradually larger, both because the Fund has invested more and more in emerging markets and because democracy as such has been in retreat around the world for some years now.

So, if there is one thing I really would like to improve, it is the working conditions for reporters and investigative journalists all around the world. Timothy Snyder, the Yale professor and historian, has described reporters as ‘the heroes of our time’. I believe he is absolutely right.

Recommended resources

Lemaître, Sophie. 2021. Strategic litigation against public participation (SLAPP): Fighting back against vexatious lawsuits. U4 Blogpost, 23 November.

Basel Institute on Governance and Norges Bank. 2020. Measuring effectiveness of anti-corruption programmes: Indicators for company reporting. Guidance Note.

Norges Bank. Anti-corruption: Expectations of companies.