



The Council's work under the corruption criterion

In Section 3 of the GPFG's ethical guidelines, it says: "Companies may be put under observation or be excluded if there is an unacceptable risk that the company contributes to or is responsible for gross corruption."

The process by which the Council may recommend the exclusion or observation of companies under the corruption criterion is twofold. First, it must be possible to determine that there is an unacceptable risk that a company has been involved in gross corruption. The Council then considers the extent to which there is also an unacceptable risk that the company may once again become involved in new corrupt practices in the future. Both these conditions must be met before the Council will recommend the exclusion of a company under the corruption criterion.

Selection of companies

Through the monitoring of news reports on companies in the GPFG portfolio, performed by a consultant, and ongoing reviews of several other information sources, the Council regularly receives information about allegations of corruption levelled at companies in which the GPFG is invested – generally on a daily basis. In addition, the Council sometimes receives information about relevant corruption cases through independent approaches by NGOs or private individuals. As far as possible, all these 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 of recent date.

The companies selected as a result of this initial assessment are investigated more closely, through comprehensive searches of national and international media, as well as the companies' own websites. In addition, legal documents relating to the corruption allegations are obtained, where these are publicly available.

For companies that are investigated in further detail, the key issue is whether the corrupt practices seem to have been carried out over time, whether they relate to several unconnected incidents, whether the corruption involves the company's senior executives and whether the bribes are substantial in size. In certain cases, it can be necessary to await the outcome of an ongoing investigation or trial in order to obtain sufficient clarity about the company's association with the corrupt acts. This means that some corruption cases can take a long time to investigate fully.

Over several years, the Council has carried out studies that have focused specifically on companies in countries and business sectors where the risk of corruption is deemed to be particularly high on international corruption indices. So far, the Council has focused on companies within the construction, oil & gas, defence and telecoms sectors. These sectoral studies have given the Council a better insight into the most important corruption risks within each sector. Where several companies within the same sector have been revealed to be linked to corruption within a specific period of time, the Council has also obtained a better basis for comparing companies' anti-corruption systems than where it performs parallel assessments of companies in different sectors.

The fact that corruption involves concealed acts is a major challenge. It can therefore be difficult for the Council to gain access to sufficient documentary evidence to permit it to recommend that a company be excluded or placed under observation. 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, i.e. authoritarian states. This challenge has become gradually larger as the GPFG has invested more and more in emerging markets.

Political turmoil and regime change in countries may, however, give renewed impetus to corruption investigations and open up access to information. In general, the investigation and prosecution of widespread corruption in a country's top political circles can also be an important source of new cases, if it is revealed that many companies are involved. The most prominent example here is the so-called 'Lava Jato' case in Brazil, which has resulted in the Council paying a particular attention to this country in recent years. The food company JBS, which was excluded in 2018, is an example of a company that was picked up on in part as a result of this increased focus on Brazil.

Since 2017, the Council has adopted a more flexible approach, with a greater emphasis on selecting individual cases that are identified through ongoing portfolio monitoring activities. Companies which are selected on the basis of the initial review of corruption

allegations are systematically recorded, sorted by sector and ranked with respect to risk. This overview is continuously updated and expanded. Within certain sectors, allegations have gradually been recorded against so many companies that it is possible to perform a collective investigation into them, in the same way as a sectoral study. In 2018, for example, an in-depth review of this kind was done on 15 pharmaceutical companies,

Irrespective of sector, country or year, many of the corruption cases that the Council investigates and assesses share a few common features. They frequently relate to 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 or major orders for vehicles, defence materiel, etc. Licences can be for the production of oil & gas or the development and operation of mobile phone networks. The corruption can also be motivated by a desire to obtain other financial benefits from the state, e.g. financing from state banks or tax breaks.

Some of the same features can be found in several of the corruption allegations levelled at the pharmaceutical companies that the Council focused on in 2018. The cases here relate to bribery at a relatively high level, either to obtain approval for the use of a certain medicine, or to influence major procurements of medicines for public hospitals or other parts of the health service. However, what seems to be more widespread in the pharmaceutical industry is corruption at lower levels in the form of sweeteners or bribes through the payment of illegal commissions (kickbacks) to doctors and pharmacists for promoting certain medications. Sweeteners can, for example, take the form of dinners, entertainments, travel, gifts, etc. The bribery has often been camouflaged as speaking fees or consulting fees. The general impression is nevertheless that the practice of giving sweeteners and kickbacks to healthcare workers and pharmacists is less widespread now than it was ten years ago. This is not least because the US authorities have started to crack down on such practices. This applies not only to US companies, but to foreign companies that are subject to the Foreign Corrupt Practices Act (FCPA).

Assessment of future risk

The Council's assessment of future risk is based on several key elements. Firstly, how the company concerned has reacted to the corruption allegations. For example, has the company itself initiated an inquiry into the allegations and implemented specific measures to put a stop to the practices concerned? Or has it remained passive and been most preoccupied with denying responsibility? The company's response to the allegations can give a certain indication of its true willingness to prevent similar events from happening in the future.

What measures the company has initiated or plans to initiate to prevent, detect and respond to corruption constitutes the second key element. Together, these measures make up the company's anti-corruption programme, which is often part of an internal compliance system. The company's anti-corruption programme is often what the Council attaches most importance to in its assessment of future risk. It is also this aspect that the Council usually spends most time considering.

Over time, a number of international standards for compliance and anti-corruption programmes have been drawn up for multinational companies. On the basis of these, it is possible to deduce some key principles for the measures an enterprise should take to establish and implement an effective anti-corruption programme. Inter alia, the standards presume that a company's senior management must send out a clear message of zero tolerance for corruption (tone from the top), that there must be regular assessments of corruption risk throughout the organisation, written anti-corruption guidelines and procedures that apply to all managers, employees and business partners (code of conduct), effective and systematic training, background checks of third parties (due-diligence), systems and procedures for reporting and responding to wrongdoing, as well as constant monitoring and improvement of the programme. According to international standards of best practice, it is also recommended that a company's anti-corruption efforts be delegated to a dedicated unit that has the necessary resources and autonomy.

In its initial review of a company's anti-corruption programme – which normally takes as its starting point information drawn from the company's website and annual reports – the Council will normally look at whether all the elements deemed to be the most important according to best practice seem to be reflected in the programme. However, during the more in-depth investigation into the individual company, the elements the Council attaches most importance to will vary. In addition to any findings from the initial review, the Council will also take into account the sector and countries in which the company operates, and – not least – what emerge as the largest risk factors based on previous corrupt acts. This will also determine with who and which bodies within the company the Council will primarily want to speak. Irrespective of what is the focus, it is important to obtain the best possible impression of how the company's anti-corruption programme works in practice. This is generally best achieved through tangible examples. Establishing a good dialogue with the company concerned is generally a necessary, but not always sufficient precondition for gaining access to such information.

A third key element that has gradually gained in importance is the way the company's board of directors and management exercise their different roles (corporate governance). Although the primary focus in the assessment of future risk has so far been

a company's compliance systems or anti-corruption programme, experience from the largest corruption cases shows that senior executives and/or members of the board have often been directly involved in the corrupt practices. In such cases, it is generally not sufficient to note that the company has a fully operational compliance system. The Council must also be able to assure itself that the board has real and effective control of the company's day-to-day management, and that board members have the right background to perform this oversight role. The exclusion of JBS is an example of this greater focus on corporate governance.

The fourth key element relates to the company's degree of cooperation and assistance in connection with the Council's investigations. In the report to the Storting (white paper) in 2009 (Meld. St. 20 (2008–2009) on the management of the Government Pension Fund in 2008, it states that "a lack of information regarding a company's behaviour and, not least, a lack of willingness on the part of the company to provide information, may in itself contribute to the risk of contributing to unethical behaviour being deemed unacceptably high". In certain cases, therefore, a lack of willingness to share information could also have a decisive impact on the Council's assessment of the future corruption risk associated with the company concerned.