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Chain of negligence: analysis of the decision-making in the proposed sale of Bergen Engines to a Russian- controlled entity

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ABSTRACT

The proposed sale of the Norwegian company Bergen Engines (BE) in 2020–2021 from Rolls Royce, UK, to Russian-controlled Transmashholding, listed for US sanctions, would have increased Russian military capability in a way that was not consistent with Norwegian or NATO security interests. Yet, the Norwegian Ministry of Foreign Affairs initially had no objections. In the New Cold War situation, lessons from this case are relevant beyond Norway as regulatory loopholes can be exploited by non-allied powers. This article integrates perspectives from intelligence and organisation theory, using public documents as data, to analyse the BE case processing, its compliance with the established regulatory framework, sanctions and public threat assessments to understand and explain why the sale to sanctioned Russian-controlled entity was not administratively stopped, under the Export Controls Act or as Foreign Direct Investment (FDI) under the Security Act, before the decision-making process escalated into public scrutiny and parliamentary critique. This article suggests that regulatory frameworks for Norwegian Export Controls and FDI need to be strengthened and reorganised. It is also important to define and operationalise considerations to national security across ministries in Norway. Joint operationalisation is also relevant for NATO and the EU in the current security situation.

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Intelligence; governance; export control; decision-making; organisational bias; Foreign Direct Investments

Introduction

Since the end of the Second World War, the prevailing western ideology was to secure peace through trade and economic integration. The return to a New Cold War situation following Russia's invasion of Ukraine on 24 February 2022, forces western governments to rethink their own vulnerabilities and threats to national and allied security. According to Lodge and Wegrich (2014) a research gap exists related to the administrative and analytical capacity of governments. It is relevant to examine organisational facilitators and barriers to analytical capacity to understand, detect and manage threats from inter alia Foreign Direct Investments (FDI) and Export Controls which may have far-reaching

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and long-lasting consequences for national and allied security. Post-Ukraine 2022, the potential consequences of supplying Russia with world-leading engine technology for military vessels hardly bear considering.

This article focuses on the decision-making process in 2021 of the proposed sale of Norwegian engines-producing company Bergen Engines (BE) from UK-based Rolls Royce (RR) to a Russian-controlled entity Transmash Holding (TMHI) on the US Sanctions List (Congressional Research Service 2018, 2019 and 2020; RR's notification Appendix 1, 1). The proposed sale started its "bureaucratic journey" as a matter of Export Controls on 15 December 2020 and remained so until March 2021 when it was re-defined as a matter of FDI under the Security Law. After intense public scrutiny, the sale was stopped using the Security Act on 26 March 2021. The invasion of Ukraine in 2022, less than a year after the BE-incident, demonstrates how quickly the global security situation can change. This highlights the need for the national ability to detect, evaluate and manage security threats in changing geopolitical situations. Hence, strategic risk perception and decision-making in the BE case are relevant to study.

This article examines why the sale of a Norwegian engines company to a sanctioned Russian-controlled entity was not administratively stopped earlier, under the Export Controls Act or the Security Act. The article aims to uncover institutional and instrumental factors behind the decision-making related to the proposed sale of BE. The research question is: What can explain the decision-making related to the proposed sale of Bergen Engines? More specifically, was it caused by lacking intelligence, lacking regulatory framework, external pressure or organisational bias? The analysis also aims to clarify whether BE was a matter of Norwegian Export Controls or FDI under the Security Act.

First, data, method and theoretical framework are presented, followed by an introduction of the BE case, its wider context and relevance. In the analysis key findings related to the research question are presented. The discussion structures the findings according to the theoretical framework and the conclusion includes some general take-aways.

Data and method

The object of this analysis is the Norwegian decision-making process in the proposed sale of BE to a Russian- controlled entity TMHI. In order to understand what happened, we must include several ministries and the intelligence and security agencies as the BE case shifted between two regulatory decision-making domains. The BE case was initially treated as a rather uncontroversial case of Export Control under the Ministry of Foreign Affairs (MFA). Later, it was seen as an FDI-related issue, to be dealt with under the Security Act and transferred to the domain of the Ministry of Justice and Public Security (MJPS) and the National Security Authority (NSM).

Public documents, related to the decision-making processes in the BE case, sourced online and especially requested, are analysed through a qualitative approach to evaluating compliance with established laws, processes and available warnings. Many documents related to the case are either classified or withheld, which hinders especially a deeper examination of strategic coordination, documented in the detailed timeline (Appendix 3, p. 2). The tendency to withhold public documents, particularly in the MFA, has been severely criticised (OAG 2021b, Sivilombudet 2022). However, in order

to examine at which level BE could be an intelligence failure, public threat assessments are available and used in this article. No classified documents related to the case are part of this analysis and all findings are accessible for others to explore and verify. Key documents used in this analysis are

- Norwegian Acts regulating Export Controls and National Security
- Minutes from hearing and debates in the Norwegian Parliament, Stortinget
- Public threat assessments by the domestic Norwegian intelligence agency PST
- Audit report on Export Control
- White Papers (Meld.St.) and Official Norwegian Reports (NOU)
- Media articles
- Interviews with associate professor A. Romarheim and journalist G. Flaaten[1]
- Requested documents from multiple ministries, specified in Appendix 1

Actors and abbreviations are listed in Appendix 2. For a detailed timeline, see Appendix 3.

Through document analysis, I searched for disparities between available threat reports and established processes detailed in laws and regulations, and the actual decision-making as described by ministries and intelligence agencies in the documents from one hearing and debates in Parliament. This can clarify whether the "near-miss" of the BE-decision-making was a result of instrumental factors such as lack of intelligence or legal framework or lack of compliance with available intelligence and established procedures, caused by institutional factors such as worldviews and ministerial culture. It is also possible to find a combination of instrumental and institutional factors.

We cannot research the future as it has not yet happened. But we can study cases to describe and explain incidents that delivered undesired results, to learn and identify improvements for the future. That is why it is important to research the BE case. Case-studies have been criticised for being non-replicable, descriptive narratives. Yin (2009, p. 52) argues that single-case design is justifiable when a case presents "a critical test of theory, … or where the case serves a revelatory purpose". I aim to dig deeper into the complexities of the decision-making in the BEcase, searching for explanatory factors which policy-makers can learn from, and contribute to the literature on decision-making, intelligence, analytical capacity and organisational vulnerabilities.

Theoretical framework

For understanding the use of information in strategic decision-making, classics such as Allison (1971) and George (1980) offer important insights. There is extensive academic literature on challenges related to coordination, stove piping and implications of inter alia New Public Management, NPM, which is relevant to the wider context of the BE case, see e.g. Christensen *et al*. (2015). Challenges with implications for different areas of policy and levels of government are often referred to as «wicked problems» (Rittel and Webber 1973, Alford and Head 2017), characterised by complexity, uncertainty and lack of unified solutions. This can result in non-coordination and reputation management, see inter alia Bach and Wegrich (2019).

Organisational factors can be *instrumental* such as the legal framework for Export Control and FDI screening or information shared between sectors or agencies and *institutional*, conveying worldviews, cultures, identities and traditions shaping how institutions see the world and define their responsibilities. In Norway, compartmentalisation, tribalism and fragmentation hinder the effective coordination of matters of national security (Romarheim 2022).

The argument in this article is that organisational factors i.e. laws and procedures, organisation, institutional cultures, worldviews and different perceptions of risk, can represent vulnerabilities to be exploited by adversaries under cover of legal activities. Vulnerabilities linked to and resulting from the way we organise our societies and public governance are here referred to as organisational vulnerabilities. Such vulnerabilities can be exploited by hostile agents, thus being of particular relevance to counterintelligence. This article integrates intelligence theory related to providing situational understanding for decision-makers (Heuer 1999, Clark 2013, Phythian 2013, Hatlebrekke 2019) with organisation theory by Bach and Wegrich (2019) for analysing "dominant frames and Blind Spots influencing perceptions of threats and risk in the public domain" and "major blunders on the part of public organisations" (Bach and Wegrich 2019, p. 14). These theoretical perspectives are not often combined, but it is argued that such an approach can be fruitful in analysing the BE case, especially in the current geopolitical situation.

Organisational silos and strategic risk-perceptions constitute or contribute to grey zones allowing adversaries to prepare and execute attacks under the guise of legitimate business and below thresholds of war – when we are all busy with everyday life. Examples are as follows:

- The reluctance to change the Norwegian Pilot Exemption Certificate, PEC, offering more than 253 Russians the opportunity to operate unsupervised along the Norwegian coast (NTB 2022).
- Harbour authorities insisted that Russian trawlers cannot be denied access to Norwegian harbours after EU sanctions following the 2022 invasion of Ukraine because "it constitutes a matter of (Norwegian) Foreign Affairs" (Olaisen 2022). Thus, Russian vessels anchored next to Norwegian warships at the same time NATO vessels patrolled Norwegian waters after the sabotage of Nord Stream 1 and 2.
- Norway shared seismic data with the Russian oil company Rosneft that offers a full and digital picture of the Norwegian seabed and are considered so sensitive that they were stored in former NATO secure bunkers. Despite EU sanctions, it was deemed appropriate to continue "business as usual" (Ekroll and Skjeggestad 2022).

These matters are at the core of counterintelligence and the ability to understand and uncover activities related to "espionage, other intelligence activities, sabotage … conducted by or on behalf of foreign governments or elements thereof, foreign organizations, or foreign persons, … " (US National Security Act (1947), § 401a., 3). Exploring the relation between available information and established regulatory processes in the BE case, intelligence theory is used to understand how available information was used in the decision-making process and organisation theory is employed to explain why the decision-making process shifted arena. By integrating these theoretical perspectives,

this article aims to bring about a broader set of aspects and a deeper understanding of the complexities of deliberations in strategic decision-making. This approach can also be applied to other cases, to broaden the general understanding of organisational vulnerabilities. Let us look closer at how strategic situational understanding is formed.

Intelligence theory

The primary function of intelligence services is to provide updated situational understanding for strategic decision-makers – to warn and protect (Grabo 2002). Key to this work is the process of sourcing, analysing and reporting known as the Intelligence Cycle (Clark 2013, Phythian 2013). Hulnick (2013) highlights the need to extend the Intelligence Cycle and include Counterintelligence and Covert Measures, which is relevant to a discussion of organisational vulnerabilities, FDI, Export Control and the BE case.

According to Heuer (1999, p.1) "Intelligence analysis is fundamentally a mental process, but understanding this process is hindered by the lack of conscious awareness of the workings of our own minds". Heuer points to the way mental models, frames or bias are an integral part of all analysts – and I may add all public officials, indeed all of us. We see "reality" through our education and forming experiences. Decision-makers should understand and acknowledge the potential failures that can follow from such dominant frames or worldviews. Opportunities go hand-in-hand with new risks, one cannot cherry-pick only the opportunities and neglect the risks.

Hatlebrekke (2019) notes that "real threats are those that have not yet been understood and those that have not yet materialized" (Hatlebrekke 2019, p. 31), and points to the threats we fail to notice because we don't acknowledge that threats will occur in new variations outside our established thinking. This illustrates that people and organisations prepare for a previous crisis, not future scenarios that may seem unthinkable. And then it becomes difficult to admit one was in the wrong (Hatlebrekke 2019, p. 199). It can also be difficult for analysts or intelligence agencies to produce recommendations which are contradicting the preferred "political assumptions and orthodoxies" (Hatlebrekke 2019, p. 51). Hatlebrekke highlights that the problem (of intelligence) is rarely a problem of a collection "but generally one of interpretation" (Hatlebrekke 2019, p. 34). In the BE case, it is relevant to search for evidence as to ***where***, at which level of decision-making, was there a problem of interpretation; was it a problem located in the intelligence agencies, MFA or the Government?

Clark (2013) summarises three types of known intelligence failures, all related to bias such as wishful thinking, parochial interests, status quo or premature closure (Clark 2013, xxii). These three types are (1) failure of collectors and analysts to share information, (2) analysts' failure to analyse the material collected objectively and (3) failure of customers to act on intelligence. This classification enables a closer examination of whether the BE-decision-making was a failure of intelligence agencies or at the administrative or political level.

Organisational Bias

From an instrumental perspective, public governance is expected to be rational and predictable to serve national interests and keep the citizens safe. However, competing

goals and ways to understand "reality" can result in counterproductive incidents. Especially when biases are institutionalised in bureaucratic practices. Bach and Wegrich (2019) present a conceptual framework for analysing "bureaucratic malaises" and what they term "major blunders" which can help "understanding how organizations process information" (Bach and Wegrich 2019, pp. 3, 4, 8). Such blunders can be caused by organisational factors, revealing problems in day-to-day decision-making which can result in solutions for one problem that is likely to create new challenges (Bach and Wegrich 2019, p. 4). This implies balancing between instrumental structures such as laws, procedures and threat assessments on one side, and institutional worldviews, internal culture and risk perceptions on the other, which is relevant to this analysis. Bach and Wegrich (2019, pp. 9–11) point to "interpretative frames that result in biased processing of information as a distinct weakness of institutionalized organizations" and present a model for defining four organisational biases. Based on whether the organisational behaviour is either (a) Intended, (b) Unintended, (c) Instrumental (focus on structures) or (d) Institutional (focus on identity), they present four categories termed (1) *Selective Perspectives*: characterised by intended behaviour, limiting attention to one's own formal jurisdiction or know-how. This perspective could explain a check-list mentality isolating matters, i.e. whether a company is nominated as a subject under the Security Act. (2) *Achilles's Heels*: would be "unintended effects of formal organizational structure" that are "potentially known weaknesses". (3) *Bureaucratic Politics*: characterised by intended behaviour with a focus on internal culture and identity resulting in "deliberate forms of selective attention with the purpose of nurturing and protecting organizational identity" manifested in organisational turf protection, blame avoidance and non-coordination. This perspective could explain the shifting between different regulatory domains. (4) *Blind Spots*: characterised by unintended "limitations or gaps in attention that result in risk perceptions and frames embedded in an organization through institutionalization processes".

This framework allows assessments of whether formal structures were established and followed, and examination of expressed goals and intentions of the actors involved. The analysis of compliance with established processes, procedures and intentions may explain the disparity between threats reports and actions of decision. Or indeed, whether the explanations lie in a combination of instrumental and institutional factors. This will enable classification of the findings from the Bergen Engines case into the matrix of four categories of instrumental and institutional factors, according to Table 1 by Bach and Wegrich.

Bergen Engines: what happened and why it is relevant beyond Norway?

In 2020, Norway supplied 22% of the EU gas demand (Norsk Petroleum 2021).[2] Norway is a small country in terms of population, with substantial natural resources, the world's

Table 1. Bach and Wegrich's (2019, p. 11) Matrix of Organisational Bias.

	Instrument – structures	Institution – values and identity
Intended	*Selective perception*	*Bureaucratic politics*
Unintended	*Achilles' heels*	*Blind Spots*

largest archipelago and the second-longest coastal line. Norway is a NATO-member, shares a border with Russia and is an open economy, strategically located near the Arctic, wedged between geopolitical interests that are fluid and beyond Norwegian control. Adversaries can secure efficient leverage by subversion and sabotage of infrastructure if worldviews and risk-perceptions among policymakers fail to consider vulnerabilities. It is in this context the BE case must be considered. Norway – at the Arctic frontier – needs decision-makers who understand, detect and act to prevent threats against the ability to govern and defend national interests in this New Cold War. Other countries may face similar organisational vulnerabilities and learn from this case study, and the method can be applied to study other cases of organisational vulnerabilities.

Mechanisms for controlling trade with strategic products and restricting negative foreign influence

For the regulation of international trade of defence products and foreign acquisitions in strategic sectors and entities, there are two main types of regulatory frameworks: Export Controls and FDI. These mechanisms can also be linked. Allied partners on both sides of the Atlantic discuss tools to uncover threats related to Export Controls and acquisitions "done not for commercial purposes but rather for strategic reasons, such as facilitating the transfer of technology" (Benson 2022). Mendenhall and Terney (2019) provide a summary of laws and procedures in the U.S. where FDI issues are addressed and regulated through the Committee on Foreign Investments in the United States, CFIUS. Recently the CFIUS process was extended by legislation known as Foreign Investment Risk Review Modernization Act, FIRRMA (US Treasury 2022). Danzman and Meunier (2022) describe how competition to attract FDI increasingly changed focus from commercial opportunities to matters of national security. They present a dataset of FDI-screening mechanisms in OECD countries, including Norway, discussed in more detail in the analysis.

The export of strategically sensitive technology from Norway requires a licence. The law and regulation related to Export Control was passed in 1987, following the scandal of exporting Norwegian "silent propellor" technology for use in Russian submarines, known as the Toshiba-Kongsberg case (Wicken 1988) characterised by commercial objectives and disregard for allied security interests. The BE case demonstrates the importance of top-level situational understanding not limiting the focus to commercial opportunities, and also considering potentially negative implications as security situations can change substantially and fast.

Had the sale of BE gone through in 2021, it would equate to offering a "Kinder Surprise" to Putin's regime, enabling Russia to improve military capability in ways that could threaten Norwegian security by (1) developing new engines for military vessels, (2) acquiring know-how and access to military, commercial and industrial processes and networks, including NATO procurement and standards, making the new owners part of the "normal situation". It would also (3) provide the Russians with a legitimate presence at a strategically important location in Norway, including deep water harbour facilities in proximity to vital oil- and gas installations and a military testing facility.

Given existing regulatory frameworks and Norwegian dependency on NATO, the proposed sale of BE to Russian-controlled TMHI, listed on the US Sanctions List (Congressional

Research Service 2018, 2019 and 2020; RR's notification Appendix 1, 1), should have raised several red flags. Yet, the MFA did not stop the proposed sale. What can explain this? First, we will look briefly at what happened.

Characteristics of the Bergen Engines case

In 2020–2021 RR wanted to sell their subsidiary Norwegian engines company BE due to failing revenues. The prospective buyer TMHI was described to have "ultimate beneficial ownership in Russia" and would "make Bergen Engines financially viable and help it grow by significantly accelerating its growth into the Russian power market" (Appendix 1, 1). RR also disclosed that TMHI was owned by "Russian citizens including two individuals who appear on the US Oligarch list (Iskander Makhmudov, Andrey Bokarev)" (Appendix 1, 1).

BE has produced engines and gas turbines since 1943 and was acquired by RR in 1999 (Bergen Engines, 2022). BE's technology powers inter alia Norwegian and NATO warships. This technology was of particular interest to the Russian Navy, struggling to replace the supply of Ukrainian engines after the annexation of Crimea in 2014 (Regjeringen 2021c). The proposed sale would have increased Russian military capability in a way that was not consistent with Norwegian or NATO security interests. To finalise the acquisition, RR needed to clear the sale with Norwegian authorities.

The BE process started formally on 15 December 2020 with a letter from RR to MFA. Initially, RR and the Norwegian authorities represented by MFA, MJPS and Ministry for Trade and Fisheries (MTIF), treated the sale as a matter of Export Controls, on its course to go through, with journalists being invited to a press meeting on 4 February 2021.[3] The fact that the press was invited (Appendix 1, 3) is indicative of the situational understanding and risk perception among decision-makers at the time and RR's expectation that the sale would happen. On 21 February 2021 State Secretary in MTIF stated that "We regard this as a transaction between two commercial companies, something the ministry shall not or should not interfere with" (Flaaten *et al*. 2021). This statement expresses the goals and bias of trade-oriented worldviews and communicated directly that a sale to a Russian-controlled entity was not a problem requiring state intervention. The statement created much confusion, both between various governmental bodies and also between members of Parliament and the public.

After the proposed sale became public, media attention soared and critical questions were asked in Parliament, putting the Government under pressure. Until 1 March 2020, the Minister for Defence maintained that the Security Act was not applicable. Simultaneously, the confusion among top-level decision-makers mounted. During three weeks in March 2021, the proposed sale of BE was redefined from Export Controls Act to Security Act, and the sale was stopped on 26 March 2021. This article's focus on why the BE case was not administratively stopped much earlier, before escalation to public scrutiny and a vote of confidence in Parliament on 28 May 2021. The timeline (Appendix 3, p. 5 for a more readable version) is presented in Figure 1.

In the BE case, none of the ministries MFA, MJPS or MTIF raised the alarm when first alerted mid-December 2020. The Ministry of Defence (MoD) was not alerted but its subordinate agency Norwegian Intelligence Service (NIS) was on copy along with the Norwegian Police Security Service (PST), a subordinate agency of MJPS (Stortinget 2021c, p. 55; 61). MTIF acted, however, on a call from a whistleblower in mid-January 2021 which

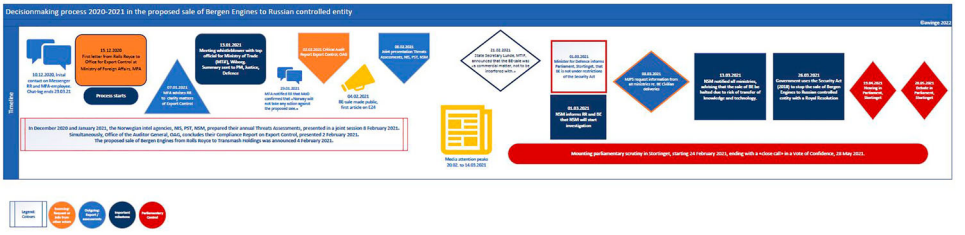

Figure 1. Timeline of the BE decision-making process from 10 December 2020 to 1 June 2021.

resulted in a meeting that kickstarted deliberations at the Government level (Stortinget 2021c, p. 41). Three months after initial contact between RR and MFA and pressured by the media and mounting scrutiny in Parliament, the Government applied the Security Act (2018) to stop the proposed sale.

Analysing the BE decision-making process

In their first letter to MFA (Appendix 1, 1) RR presented their own legal assessment of the TMHI acquisition stating that "no formal regulatory approvals would be required for any disposal of Bergen Engines to TMHI". RR introduced the necessity to comply with the Norwegian Security Act Norway, stating that "we (RR) do not consider that Bergen Engine's activities would fall within the potential application of the National Security Act". Nor would other elements of the sale, including "Acquisitions of land" where "we (RR) understand that no consent from the relevant local authorities would be required under the Concession Act". RR also concluded that Merger Control would not be a problem. RR did not mention Export Control in its letter but sent its deliberations to MFA Export Control (Appendix 1, 1).

Simultaneously as the BE case started, The Office of the Auditor General, OAG, finalised a general compliance report for the Export Control of Strategic Goods (2021a). The OAG critique was severe stating inter alia:

- Prevention had been given a low priority by PST, thereby increasing the risk of the export of strategic products requiring a licence
- MFA had granted licences for the sale of defence material on an insufficient basis
- MFA processing of export licenses did not offer adequate certainty to meet expectations from the standards set by the Parliament.

The first bullet-point could indicate that the BE case was an agency-level failure of intelligence. Let us explore this through Clark's (2013) classification, and examine if and at which level BE was an intelligence failure.

Was the BE case a result of lacking intelligence?

PST is the domestic Norwegian security agency with responsibility for prevention, shared with the MFA and investigation in the Export Controls, a process described in the OAG audit report (2021a, p. 6) and illustrated in Figure 2 in this article. By examining public

threat assessments from PST in 2018, 2019 and 2020 we can evaluate whether the information was gathered and analysed objectively, shared and acted upon by decision-makers (Clark 2013).

PST (2018) warned about the export of goods, technology and services can be a threat to Norwegian security, stressing the need to act in accordance with the Export Controls regime.

> Some countries request defence-related goods and technology as well as civilian technology with a military use. This includes the demand for goods and technology with quite advanced specifications that are not included in the list of goods under the export control regulations. In this context, Norwegian companies should be particularly vigilant when exporting for instance composite materials, control technology, advanced production, testing and measuring equipment, submarine technology and fibre optics. (p. 12)

> Companies should be aware that in some countries, the connection between the private industry, the government and the military is very tight. This means that export of goods and technology to the private industry could imply a risk of transfer to the military authorities of these countries. (p. 13)

PST reinforced these warnings in the Threat Assessment 2019, including FDI, stating inter alia:

> By purchasing shares in certain Norwegian enterprises, foreign actors could get insight into decision processes, preparedness plans or critical infrastructure. Foreign actors may also want to purchase strategically placed properties, which can be used for covert intelligence activity against Norwegian and allied military activity. (p. 12)

Thus, PST had warned about potential threats related to acquisitions of companies, FDI and Export Controls. The intelligence was relevant and shared in time to be used. Consequently, the BE case is not a failure of intelligence agencies to analyse and share relevant and timely information.

These findings also show that there would have been time to update the Norwegian regulatory framework with stronger mechanisms for regulating FDI by non-allied entities. To answer the question of whether or how BE was an intelligence failure, we can conclude that BE is a case of the decision-makers not acting upon available intelligence. This means that explanations for the BE decision-making "near-miss" will be sought among organisational factors and compliance with laws, regulations and procedures.

Going forward, key findings related to the instrumental, regulatory frameworks are presented. As acquisition of a Norwegian company could be a matter of FDI, the Security Act is examined first before examining the Export Controls regime where the BE case started its bureaucratic journey.

Bergen Engines caused by lacking legal framework and procedures?

The terror attack on 22 July 2011 in Norway revealed severe organisational shortcomings, especially in situational understanding, detection of threats and coordination. The 22-July Commission (NOU 2012:14, 19.2) described "different acknowledgement of risk and vulnerability". The Conservative Party won the 2013 election on an agenda that promised to strengthen national security (Regjeringen 2013). Measures to increase the ability to

detect and respond to threats more efficiently have since been introduced (Regjeringen 2021a), in particular, is the new Security Act (2018) important for the BE case.

The Norwegian Security Act

The Norwegian Security Act (Lovdata 2018) was thoroughly revised in 2015–2018 and NSM is the expert body, under MJPS. The Security Act's purpose, §1-1, states inter alia to

> protect Norway's sovereignty, territorial integrity and democratic system of government, and other national security interests … prevent, detect and counter activities which present a threat to security.

The Security Act applies to all levels of governance and all companies involved with some part of public safety and security. The holistic approach aimed to strengthen overall security through several organisational layers and value chains. Simultaneously, the scope widened considerably by including infrastructure for societal functions, and fragmentation brings vulnerabilities of its own (Romarheim 2022).

Danzman and Meunier (2022) include Norway on their list of FDI screening mechanisms with reference to the Security Act of 2018 (Lovdata 2018). According to Romarheim, secretary to the Security Committee from March 2015 to November 2016 (NOU 2016:19), the main priorities for the work with the new Security Act were (a) modernising the outdated law, (b) including Information Communication Technology, ICT, (c) updating Object and Infrastructure Security and extending the scope to include new sectors and institutions, and (d) addressing Acquisitions as "Restrictions on ownership" in Chapter 10.

Norway's notification to the OECD (2020) regarding new limitations to foreign investments following the new Security Act states (author's highlight in bold) inter alia that "Chapter 10 … sets out notification requirements and procedural rules. Anyone who wants to acquire a qualified ownership in a business **that is subject to the Act**, is obliged to notify the relevant ministry". The notification also makes clear that governmental decisions will be "limited to exceptional cases" and that "In general, Norway regards foreign investment as beneficial to its economy" and "wants to continue being an attractive destination for foreign direct investment" (OECD 2020). This description of goals indicates that "national security" will struggle when competing with "commercial opportunities".

Norway's FDI screening of acquisitions is at the mercy of the ministries, as Romarheim also points out: "In order to activate the Security Act, the responsible ministry must 1) regard that the "case in question" in their sector falls under the purpose and scope of the Security Act, and 2) initiate reviews and mitigation" (Interview 2022). This means that Norway has no FDI screening unless the ministries initiate active steps. Neither MFA nor MJPS considered BE as an FDI case initially (Stortinget 2021c) as BE was not "subject to the Act".

NSM concluded in mid-January 2021 that the proposed sale of Bergen Engines to a Russian-controlled entity did not fall under the jurisdiction of the Security Act as BE was not listed as a subject under the law (Stortinget 2021c, p. 4). On 1 March 2021, the Minister for Defence maintained that the Security Act was not applicable (Stortinget 2021a). This went against the recommendation from the Chief of Defence who stressed the need to find alternative suppliers for engines and equipment, with required security agreements (Hermansen *et al*. 2021). So, there was no joint understanding of what kind of

problem the BE case represented. Given that responsibility for various infrastructures falls under a wide variety of ministries in Norway (e.g. DSB 2016, pp. 10–18), the opportunities for cross-sectorial stove piping issues are abundant.

After the Russian invasion of Crimea in 2014, the then Minister for Defence, from 2017 Minister for Foreign Affairs, Søreide Eriksen, took a clear position on Russia, calling out covert and not-so-covert threats. Against this agenda and all the measures implemented by the government to improve national security, strategic decision-makers appeared unprepared for issues that a) were identified and presented in threat assessments and b) emerged under existing Export Controls legislation in the BE case. In order to understand why we will look closer at the process of Norwegian Export Controls.

Norwegian export control regime

Norwegian Export Control is regulated by the Export Control Act (Lovdata 1987), regulations and guidelines. In the established Export Controls process at the time of the BE case, prevention was a joint responsibility for PST and MFA, licensing was the sole responsibility for MFA along with reporting to Parliament, and Customs was responsible for control after export (OAG 2021a, p. 6). Key actors are described in Figure 2.

The MFA case manager mentioned the compliance audit of Export Control in the Messenger chat with RR (Appendix 1, 4), on 1 February 2021, one day before the OAG press conference criticising MFA for their handling of export control and three days before the proposed BE sale was presented to the press by RR. Yet, the MFA case manager, who was described as experienced (Stortinget 2021c, p. 65), appeared oblivious to any connection between the audit critique and the proposed sale of strategic engine technology to a Russian-controlled entity under US sanctions.

The purpose of the Norwegian Export Controls Act (Lovdata 1987) states (translation by MFA, author's highlight in bold):

> The King may decide that goods and technology that may be of significance for other countries' development, production or utilisation of **products for military use or that**

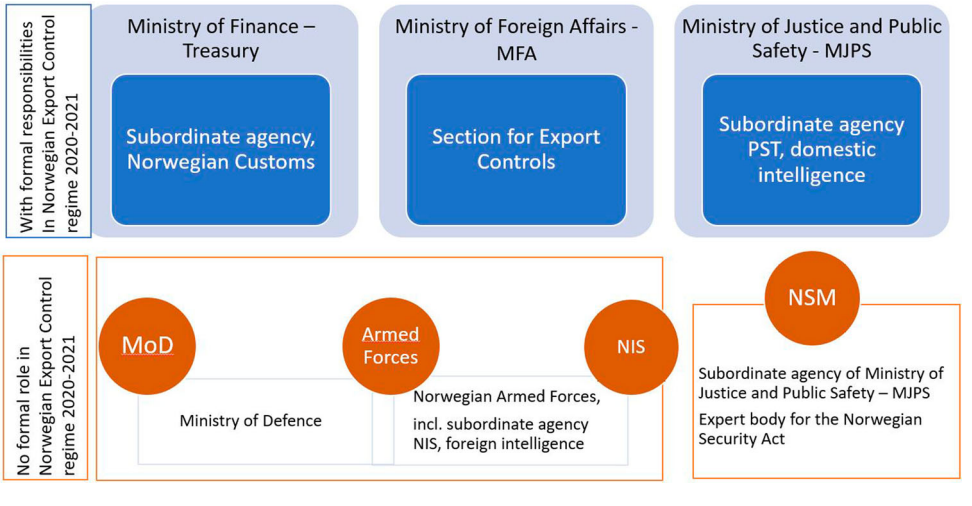

Figure 2. Ministries and agencies with responsibilities in Norwegian Export Controls 2020-2021.[10]

> **may directly serve to develop the military capability of a country**, including goods and technology that can be used to carry out terrorist acts, … …

The law is detailed in the Export Act Regulation (Lovdata 2013) with instructions, categories and lists of dual-use products. The categories and lists define inter alia weapons and ammunition. National security and defence represent one of four Catch-All provisions (OAG 2021a, p. 53). The guidelines laid out in a White Paper on Export Controls (Meld. St. 26 2018–2019) describe the explanation of Category A, defence-related products specifically "**other material of strategic capacities which can influence military balance of power in a significant way**"[4] (authors' translation and highlighted in bold). Furthermore, the White Paper states (Meld. St. 26, 3.4.2., ref. K4 and K5).

> this means that licence cannot be granted when inter alia the designated receiver will use the military technology or equipment … to attack another state or forcibly execute territorial demands (ref. K4) … and give particular consideration to the need to consider national security for Norway, allied and friendly countries[5]

In fact, List 1 of Export Controls Regulation (Lovdata 2013) complies with the EU Common Military List (2020) and specifies in ML9, a. (author's highlight in bold):

"Vessels (surface or underwater) specially designed or modified for military use, … **components therefor specially designed for military use**". The next item on the same list, ML9, b. specifies (author's highlight in bold) "**Engines and propulsion systems**, .., specially designed for military use and components therefor.."

This shows that BE case processing in the MFA deviated from the purpose of the Export Control Act, as well as existing procedures and guidelines. PST had warned against FDI-related issues which characterise the BE case, thus offering an opportunity for prevention. The MFA insisted BE was not a matter of Export Controls and shifted the focus shifted to the Security Act. Was the BE case so unique that the Export Controls regime did not apply?

Was the BE case a matter of FDI or export controls?

From March onwards, the BE case was presented as being so unique that the existing export controls regime was not applicable because it was about the sale of a company, not exporting products or services. This shifting of the arena may be the result of legal barriers or political decision-making hiding behind legal argumentation. In the parliamentary hearing (Stortinget 2021c, p. 55), the then Minister of Foreign Affairs explained the MFA:

> .. quickly assessed that this was not a case of Export Control as it was a sale of a Norwegian company. The Export Controls regime does not have rules/mechanisms regarding the transfer of ownership of companies. The Export Controls regime regulates the export of goods, services and technology; thus MFA was not the correct ministry to handle this case.[6]

The MFA advised RR on 7 January 2021, to "include reference to Norway's Export Controls and sanctions regime legislation" (Appendix 1, 2). Thus, in January 2021, the MFA considered the BE sale a matter of Export Controls. The Minister for Trade confirmed (Stortinget 2021c, p. 28) that upon receiving the initial information of the proposed sale, MTIF considered it as export-control-related, for information only to MTIF.

Addressing Parliament on 23 March 2021 (Stortinget 2021b), the Minister for Justice repeated the argument of the Export Controls regime having no legal basis to stop the

sale of Bergen Engines. However, in the same address, the minister also contradicts this by stating that the reason for stopping the sale is that "the planned acquisition could have been an attempt to circumvent (Norwegian) Export Controls regime or our restrictive measures, in order to covertly access knowhow and technology of great military importance for Russia", concluding that "Export of technology and engines to Russia would be in conflict with Norwegian and allied security interests" (Stortinget 2021b). This equals the purpose of the Export Controls Act.

The Government acknowledged (Regjeringen 2021c) that THMI's close affiliation to the Russian regime and defence industry made it likely that "information and technology acquired by TMHI will be shared with Russian authorities" and "can contribute to strengthening Russian military capabilities" in a way "which is contrary to Norwegian and allied interests" and "very likely can lead to attempts to circumvent the export controls rules through covert operations" [7] which concurs with the Export Controls Act (Lovdata 1987).

The Royal Resolution (Regjeringen 2021c) also states that "Even though these are products and technology not included by the export controls lists, Russia has had considerable problems accessing such (products) due to western sanctions since 2014".[8] This raises two issues. Firstly, as shown, military vessels and engines were listed (Lovdata 2013, ML 9, a and b). Secondly, the statement acknowledges that Russia has had problems securing engine technology due to international sanctions subsequently the BE case is export-control-related.

The Royal Resolution (Regjeringen 2021c, p. 5) made it clear that BE was not under restrictions according to the Security Act through security agreements and did not store classified information, consequently, the Security Act was not applicable. The Prime Minister confirmed (Stortinget 2021c) that the BE case was not a matter for the Security Act, stating that "the Bergen Engines case is **not primarily** a matter of this" and further that "The main reason for the Governments decision in this case is that the technology which Bergen Engines possess, would have had great military strategic importance for Russia's military capabilities".[9]

Despite general warnings of risk related to hostile acquisitions from PST, "vessels and engines" being listed and information about a Russian-controlled entity on the U.S. Sanctions Lists, the MFA employee apparently saw no problems and communicated to RR by SMS on 29 January 2021 that "Norway will not take any actions against the sale" (Appendix 1, 5). As the USA is a critical security partner for Norway, one must expect the MFA to be aware of US Sanctions. Improvising a new ruling under the Security Act may not have been required, had List 1 under the Export Control Act been observed at the start. Admitting to such failures of a case processing may be very difficult, thus, this may explain the re-focusing of the BE case. An amended timeline in Figure 3 shows the shifting between the two regulatory arenas.

The BE problem occurred in the MFA licensing part of the Export Controls process. None of the ministries involved, MFA, MTIF or MJPS, considered BE as an FDI matter under the Security Act initially (Stortinget 2021c). The argument changed at the beginning of March which could be related to "Bureaucratic Politics" (Bach and Wegrich 2019) as non-coordination and reputational management may explain the arena shifting. Public records indicate a haphazard process where the BE case was propelled forward by actors outside the administrative process.

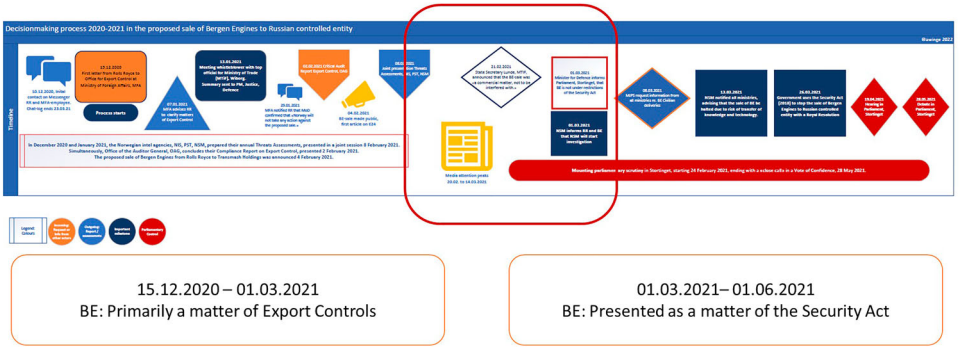

Figure 3. Bergen Engines timeline – shifting from export controls to security.

Did external factors such as whistleblower(s), media attention and political scrutiny impact decision-making?

Paradoxically, the BE case started only a few weeks after the Government presented its goal of Joint Situation Awareness, SA, (Meld. St. 5 (2020–2021), Winge 2022) and when the intelligence and security agencies PST, NSM and NIS prepared their annual threat reports, jointly presented on 8 February 2021 (Regjeringen 2021b). Joint SA would require unified goals and a joint understanding of what national security means. The analysis shows that publicly, the proposed BE sale did not become a matter of national security until mid-March 2021, three months after RR formally notified MFA mid-December 2020 (Figures 1 and 3 and Appendix 3).

It is clear (Stortinget 2021c) that one (or more) whistleblower(s) contacted NSM and MTIF, warning against Russian control of the engines that powered Norwegian warships and Marjata, owned and operated by NIS (Stortinget 2021c, p. 1; 4). NSM concluded with "no follow-up" (Stortinget 2021c, p. 9), while MTIF met the whistleblower on 13 January 2021 and wrote a summary (Stortinget 2021c, p. 27) which kickstarted more coordinated processes in the Government.

Outside government proceedings, mounting media attention after the initial press meeting on 4 February 2021 (Flaaten *et al.* 2021) spurred questions in Parliament, increasing pressure on the Government which came to a peak in weeks 8 to 10 in 2021. Figure 4 shows the mounting media attention sourced from the Retriever media archive, and Figure 5 shows a consecutive list of questions asked in Parliament following the media attention. Combined, this amounted to public scrutiny which the Government could not ignore.

The Messenger dialogue between the MFA and RR shows that questions from journalists following BE press conference worried RR, and MFA-employee's response turned more guarded (Appendix 1, 4). On 24 February 2021 RR comments that "I'm seeing a lot more press interest and understand there are now questions in parliament". To which the MFA employee replied "Yes. Someone suddenly woke up…an I ask: did you ir BIS check the tmsi and particular persons in your process in regard to their connection to the mil in R?" (sic). This indicates that in-depth assessments related to national security had not been observed. The following re-focusing of the BE case can be seen as reputational management and can be classified as Bureaucratic Politics (Bach and Wegrich 2019).

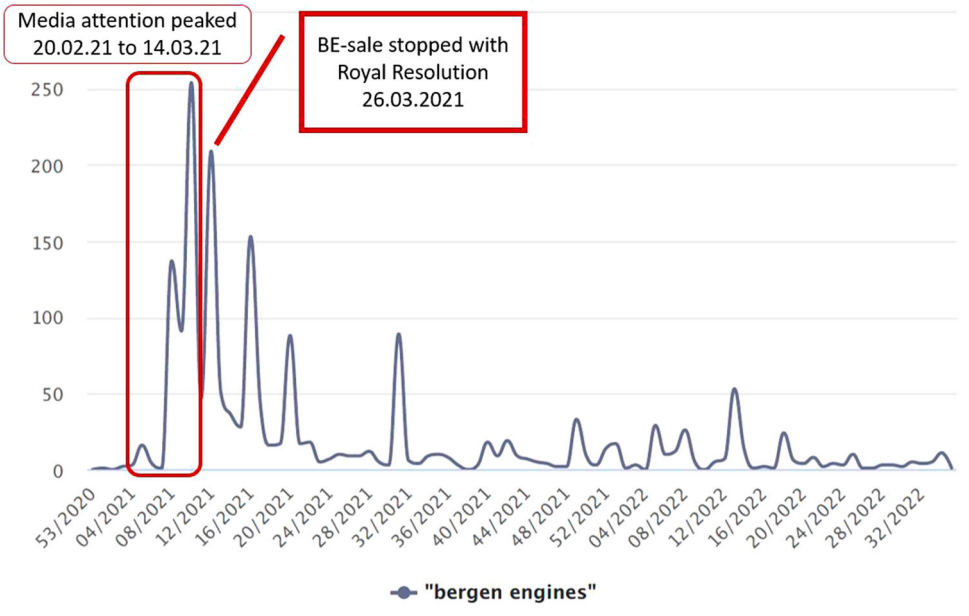

Figure 4. Media attention related to Bergen Engines in 2021.

Timeline	Political scrutiny of the Bergen Engines-case in the Norwegian Parliament, Stortinget
04.02.2021	Public announcement by Rolls Royce to sell Bergen Engines to Russian oligarchs, Transmash Holdings
24.02.2021	Question from Mehl (Centre Party) to Minister Foreign Affairs Søreide
01.03.2021	Question from Mehl (Centre Party) to Minister Defence Bakke-Jensen
01.03.2022	Question from Christensen (Labour) to Minister Defence Bakke-Jensen
09.03.2021	Debate in Parliament: Minister Justice Mæland gives presentation
10.03.2021	Question from Tybring-Gjedde (Progress Party) to Minister Defence Bakke-Jensen
12.03.2021	Proposal by MPs from Centre Party for a new White Paper on the need to strengthen FDI in Norway
12.03.2021	Question from Lysbakken (Socialist Left) to Minister Defence Bakke-Jensen
15.03.2021	Question from Christensen (Labour) to Minister Defence Bakke-Jensen
17.03.2021	Question from Lysbakken (Socialist Left) to Minister Foreign Affairs
22.03.2021	Question from Moxsnes (Red) to Minister Defence Bakke-Jensen
22.03.2021	Debate in Parliament of the proposal and call for new White Paper on stronger FDI control in Norway
23.03.2021	Interpellation from Mehl (Centre Party) to Minister Justice Mæland
23.03.2021	Presentation by Minister Justice and Public Security Mæland to Committee Foreign Affairs and Defence
24.03.2021	Question from Moxsnes (Red) to Minister Defence Bakke-Jensen
24.03.2021	Question from Huitfeldt (Labour) to Prime Minister Solberg
07.04.2021	Question from Christensen (Labour) to Minister Defence Bakke-Jensen
08.04.2021	Question from Christensen (Labour) to Minister Trade Nybø
19.04.2021	Hearing in Parliament, Stortinget, Comittee Foreign Affairs and Defence
23.04.2021	Question from Navarsete (Centre Party) to Minister Justice Mæland
28.04.2021	Question from Vågslid (Labour) to Minister Justice Mæland
04.05.2021	Debate in Parliament, Stortinget, with adresses by Støre and Henriksen (both Labour)
20.05.2021	Proposed text to plenary debate on the Solberg Government's handling of the Bergen Engines case
26.05.2021	Question from Huitfeldt to Minister Defence Bakke-Jensen
28.05.2021	Plenary debate in Parliament, Stortinget. Vote ends with "Daddelvedtak", almost vote of no confidence

Figure 5. Political attention in Parliament, Stortinget, related to Bergen Engines, 2021.

The escalating media attention prodded Members of Parliament to inquire whether the Government's SA and risk perceptions were adequate. Figure 5 shows that more than 15 questions, debates, interpellations and a committee hearing put the Government under severe pressure and forced a decision.

Bach and Wegrich's (2019) framework for organisational bias can be applied to examine how existing regulations and procedures were neglected and relevant and timely information was not acted upon by strategic decision-makers until the pressure from the media and Parliament became too great. Plotting key findings into the matrix, we can assess what type of bias in the organisational attention is more prominent in the case of Bergen Engines.

Bergen Engines was caused by Organisational Bias

Elements of all four categories in the framework of Bach and Wegrich (2019) are present in the BE case, albeit the types "Achilles' Heels" and "Blind Spots" are less dominant. Indeed, some findings can fit more than one category, i.e. the limitations of the Export Controls regime resulting in lists of specific companies and products may be intended and have unintended effects. The types of Bach and Wegrich's matrix (2019, p. 11) can also allow for fluctuation from one type to another, based on whether the intention can be proven. Maybe new information will come to light later, which could alter the classification in this article. Judging by statements (Stortinget 2021c), hesitancy among agencies to act in case processing may be linked to (1) perceived political goals, or (2) fear of "butting in" on others' turf in that e.g. they appear to be waiting for someone else to do what is necessary. Especially NSM seems hesitant, not concluding until after NIS gave their assessment on 12 March 2021. It is possible that NSM's reluctance is connected to uncertainty as to how the Security Act could be used in this case, given their initial conclusion that the BE case was not a matter for the Security Act.

Sorting the findings using the matrix of Bach and Wegrich it is clear that instrumental information, framework and procedures as required for ***Selective Perspectives*** were in place and intent or mindsets of "business-as-usual" can be identified. Norway maintained its commitment to "being an attractive destination for foreign direct investment" (OECD 2020). Thus, Selective Perceptions can explain the inertia in the first phase of the BE case when the predominant understanding seemed to be that BE was an export control matter.

As public attention and political pressure mounted, the BE case was described as something new, thus made to represent an unprecedented situation. This does not hold up as (1) the reason for stopping the sale is consistent with the purpose of the Export Controls Act and (2) components, such as engines or turbines, to military vessels were specified on List 1 (Lovdata 2013, ML9, a, b) guiding the MFA's work at the time. Despite observations of poor coordination and stove-piping, lack of compliance with established procedures, international sanctions and available intelligence is the root cause of the BE blunder. This indicates that the explanation for the BE-decision-making is to be found in the ministerial culture.

With the formal structures in place, the factors which can explain the initial inertia and subsequent re-focusing are found to be more consistent with ***Bureaucratic Politics***. This perspective includes reputation management which may explain the arena shifting between the regulatory domains of the Norwegian Export Control and Security Act.

Institutional factors such as bias and culture dominate and intent can be identified, resulting in "deliberate forms of selective attention with the purpose of nurturing and protecting organizational identity" (Bach and Wegrich 2019, p. 15).

The most direct sign of organisational turf protection and blame avoidance from the MFA happened through withholding documents from scrutiny, even from the OAG (2021b), and re-focusing the BE case as an FDI matter under the Security Act. The general secrecy and refusal by the MFA to disclose documents that should have been public are established MFA practices which have been repeatedly critiqued by the OAG (2021b) and The Parliamentary Ombudsman for Scrutiny of the Public Administration (Sivilombudet 2022). This could be a way to protect institutional reputation and avoid scrutiny of case-processing, consistent with the tendency for "preventive blame engineering" which Bach and Wegrich (2019, p. 18) describe as "public organizations (…) will use instruments (…) such as the redesigns of policy measures (which may entail the deliberate neglect of using evidence-based policy measures) as well as limiting the type of available information on the organization's activities". The Bureaucratic Politics-perspective considers "public organizations to be political actors in their own right rather than cogs in well-oiled governmental machines steered by those at the top" and "organizational behaviour to be driven by the desire to defend organizational interests" (Bach and Wegrich 2019, p. 15), despite Export Controls-lists describing "strategic capacities", "vessels of war … and engines … for military use" (Lovdata 2013, ML9, a, b) and the purpose of the Export Controls Act: that the sale would have improved Russian military capabilities substantially.

Re-focusing the BE case from an Export Controls-matter to an FDI matter under the Security Act aligns with the Bureaucratic Politics-perspective as "patterns of deliberate non-coordination and the shifting of problems between different government entities" (Bach and Wegrich 2019, p. 245). The purpose of the Security Act is to protect national interests, not bureaucratic reputation. When Selective Perceptions rule case processing in siloed ministries, it is crucial to define what constitutes considerations of National Security across all ministries, and coordinate operationalisation in each ministry (Table 2).

The BE case "ended well" in terms of the sale being stopped, but this result was not a product of the public officials following procedures, goals or paying attention to threat assessments. Quite the contrary. The heroes of the BE case are the unknown whistleblower(s) and the journalists who uncovered problems of the proposed sale and kept a vigilant focus on national security, to which members of Parliament responded. The Fourth Estate saved the day in the BE case. As China poses new challenges for the future (Gjerstad 2022), Norway needs public servants to level up.

Given the new Cold War situation, it would be prudent to reorganise and strengthen Norwegian Export Controls and FDI, transferring responsibility to institutions and people who understand the need to heed threat assessments, involving e.g. NSM and the joint centre for counterintelligence (Regjeringen 2021d).

Conclusion: a chain of negligence caused the Bergen Engines "near-miss"

The "near-miss" of selling a Norwegian engines company to a sanctioned Russian-controlled entity was not caused by lacking intelligence or lacking regulatory framework.

Table 2. Organisational Bias in the case of Bergen Engines.

	Instrument – structures	Institution – values and identity
Intended	*Selective perception* • An FDI mechanism was introduced in the new Security Act (2018). • US sanctions listed the Russian-State-Controlled Entity "Transmashholding". • PST warned repeatedly of threats related to Export Controls, including FDI • A regulatory framework for Export Controls (1987) was in place. • The guidelines for the procedures in the MFA define and limit Export Control to specific types of technology or companies. • Yet, vessels and engines specified on List 1, ML9, a and b, were neglected. • Check-List Mentality limiting case processing solely to whether the involved companies were identified on lists for the Security Act led to a conclusion of "N/A". • Bergen Engines was not under restrictions according to the Security Act through security agreements, nor did BE store classified information. • The conclusion and formulation of the decision presented in the Royal Resolution is consistent with § 1 of the Export Controls Act, confirming that the use of the Security Act was not required.	*Bureaucratic politics* • The State secretary's statement was consistent with political or ideological worldviews focusing on market mechanisms, ref. Norway's letter to OECD re. changes in the new Security Act. • BE case was guided by commercial interests at the political and bureaucratic levels. • The Minister for Defence was reluctant to accept that the engines from BE represented some sort of risk to national security – contrary to statements from the Chief of Defence. • RR's request to proceed with the sale was accepted by MFA Export Controls Section, despite the information of sanctioned Russian oligarchs and PST threat reports. • The case processing appears to have been guided by personal friendship overruling procedures and risk assessments at the time of case processing. • Case processing on Messenger could be a way to bypass public procedures. • The massive media attention led to a heated public debate and critical questions being raised in Parliament, Stortinget, forcing the Government to "do something". • Re-focusing the BE-case from Export Controls to Security Act "saved face" for MFA.
Un-intended	*Achilles' heels* • Perhaps the various categories and lists which regulate much of the work in the Export Controls Section of the MFA led to bounded proceedings, establishing routines and perceptions that – unintended and un-acknowledged – resulted in excluding the proposed sale of Bergen Engines as it did not fit with the "normal cases". • If so, that must be remedied under the Export Controls regime – not addressed as something else.	*Blind Spots* • It is possible that the internal confusion became so extensive that the idea of the "Uniqueness of the BE case" as having no legal basis for halting a sale of a company, filled the debate and took precedence, without active intent or awareness that the reason given for stopping the sale was, in fact, consistent with the Export Controls Act. • Apparently, Norway seems to have no coordinated definition of "what constitutes considerations of national security" across ministries, nor operationalisation for each ministry or sector.

Rather it seems to have been caused by the different actors' organisational bias and hubris that resulted in a Chain of Negligence. Clark's (2013) types of intelligence failures point to the BE case being an intelligence failure at the strategic level, located in MFA as the ministry in charge of Norwegian Export Controls **failed to comply** with:

- Available threat reports from PST (2018, 2019).
- U.S. sanctions on the proposed new owners, TMHI 2018, 2019 and 2020.
- Export Controls Act (1987) Catch-All provisions and list of products for military use, ML9 a and b.
- Security Act (2018), as MFA should have notified NSM when the ministry detected an issue or security threat that the MFA considered not to fall under their own jurisdiction.

This analysis concludes that the BE blunder may have started due to Selective Perceptions but became a case of reputation management and ***Bureaucratic Politics*** in the matrix by Bach and Wegrich (2019) through "blaming regulatory short-comings". This can be seen as a case of arena-shifting from Export Controls to Security explained by external pressure from the media and the Parliament.

The BE case could have ended very differently were it not for persistent journalistic efforts, the whistleblower(s) and questions raised in Parliament. However, national security cannot be left to the mercy of media attention, but requires public servants to comply with laws, processes and heed intelligence warnings and international sanctions. Considering the findings here and the critique from OAG (2021a), one must wonder whether other cases have been "slipping through". There is a pressing need to define and operationalise what constitutes considerations of national security across Norwegian ministries. The Government should also consider reorganising the responsibility for Norwegian Export Controls outside of the MFA and offer systematic training of policymakers in how to use intelligence.

Evaluating whether the BE case was a matter of FDI or Export Control, this analysis shows that it was related to both regulatory domains, but it could have been stopped earlier through the Export Controls regime at the time.

Given the changed security situation it seems clear that a stronger legal framework and control with coercive economic activities through inter alia Export Controls and FDI is required in Norway. In order to reduce internal threats to allied security in the New Cold War situation, more coordinated tools for Export Controls and FDI among members of the EU and NATO are required.

Take-aways for further research

Closer scrutiny of inter-departmental bargaining and coordination in the BE case would be relevant for further examination by scholars and compliance audits, and in the future, more documents will be available.

Strategic handling of the BE case indicates that national security is important if it provides commercial opportunities, but not if it restricts commercial opportunities. This constitutes political implications that require more research. Also, future research could study the effects of New Public Management and efficiency dividends for public services, to identify how these policies support or hinder analytical capacity for national security.

In a New Cold War situation, increasing attention to issues related to foreign interference and coordinated mitigation within alliances will require research on how multi-level controls can be effective within alliances such as NATO and EU, especially examinations of how smaller states can offer regulatory loopholes that become internal threats to the alliance.

Bio:

Alfa Winge's public Ph.D. is part of a project by Bergen municipality and NORCE and builds upon Winge's experience in analysis, compliance and security. The Ph.D. is funded by The Regional Research Fund Vestland and Bergen municipality, Norway. Winge also held a part-time position as a researcher at the Royal Norwegian Naval Academy (RNoNA) while working on this article.

Notes

1. I thank associate professor A. Romarheim, Norwegian Institute for Defence Studies, and journalist Gerhard Flaaten, BT/E24, for clarifying questions. Quotes from interviews are confirmed per e-mail.
2. The Russian invasion of Ukraine on 24th February 2022 makes Norway an even more critical player in the EU energy market, and increasingly susceptible to manipulations and attacks. But this scenario was not part of the strategic decision-makers' situation awareness, SA, at the time of the Bergen Engines case.
3. Flaaten in Bergens Tidende, BT//E24, confirms that their journalistic efforts started with the Rolls Royce Bergen Engines press briefing on 4 February 2021. Flaaten also assisted with sourcing the list of media coverage of the BE case from Retriever media archive, to create the graph in Figure 4, with the author's highlights and comments in red.
4. Quote in Norwegian state: "Omfatter våpen, ammunisjon og visse typer militært materiell. I tillegg omfattes annet materiell med strategisk kapasitet som vesentlig kan påvirke de militære styrkeforhold i nærområdet."
5. Quote in Norwegian states: "Dette betyr at det ikke kan påregnes innvilget lisens når" … "det åpenbart er fare for at den påtenkte mottakeren vil bruke den militære teknologien eller det militære utstyret som skal eksporteres, til å angripe en annen stat eller tvinge gjennom territorialkrav med makt (jf. K4), … den nasjonale sikkerheten i Norge, allierte og vennligsinnede land (jf. K5)".
6. Quote in Norwegian, p. 55, states: «Utenriksdepartementet vurderte raskt at dette ikke var en sak som gjaldt eksportkontroll, da den gjaldt salg av et norsk selskap. Eksportkontrollregelverket har ikke regler som rammer overføring av eierskap til selskapene. Eksportkontrollregelverket regulerer eksport av selskapets varer, tjenester og teknologi, og UD var derfor ikke rette departement til å håndtere denne saken».
7. Quote in Norwegian states, p. 4: «Grunnet TMHs nære tilknytning til det russiske myndighetsapparatet, må det etter departementets vurdering legges til grunn at informasjon og teknologi som TMH tilegner seg gjennom oppkjøpet vil tilflyte russiske myndigheter. Oppkjøpet vil således kunne bidra til å styrke russiske militære kapabiliteter gjennom tilgang til diesel- og gassturbinteknologi i Bergen Engines sin besittelse. … vurderes det som svært sannsynlig at oppkjøpet vil kunne lede til forsøk på omgåelse av reglene ved å søke å innhente sensitiv kunnskap og teknologi».
8. Quote in Norwegian states, p. 4: "Selv om dette er produkter og teknologi som ikke er omfattet av eksportkontrollistene, har Russland hatt betydelige utfordringer med å få tilgang til disse siden de vestlige sanksjonene mot landet ble innført i 2014".
9. Quote in Norwegian, p. 72 states «Regjeringen stanset ikke oppkjøpet av Bergen Engines fordi selskapets teknologi er så viktig for våre nasjonale funksjoner. … Hovedbegrunnelsen for regjeringens beslutning i saken er at teknologien Bergen Engines besitter, ville hatt stor militær strategisk betydning for Russlands militære kapabiliteter.»

10. Note that the bodies here depicted in orange had no formal role in the Norwegian Export Controls-process in 2021 but could be consulted on matters of risk potential of acquisitions according to Norway notification to OECD (2020), which may explain why these agencies were included in the parliamentary hearing in Parliament regarding BE (Stortinget 2021c).

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Appendices

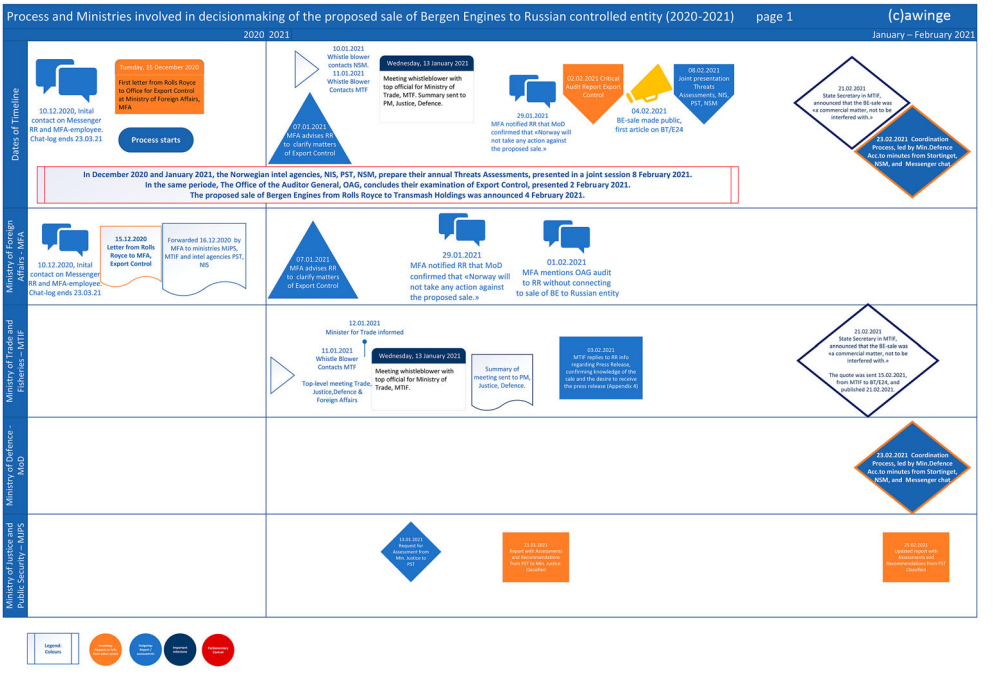
Appendix 1. Documents requested from ministries "title"

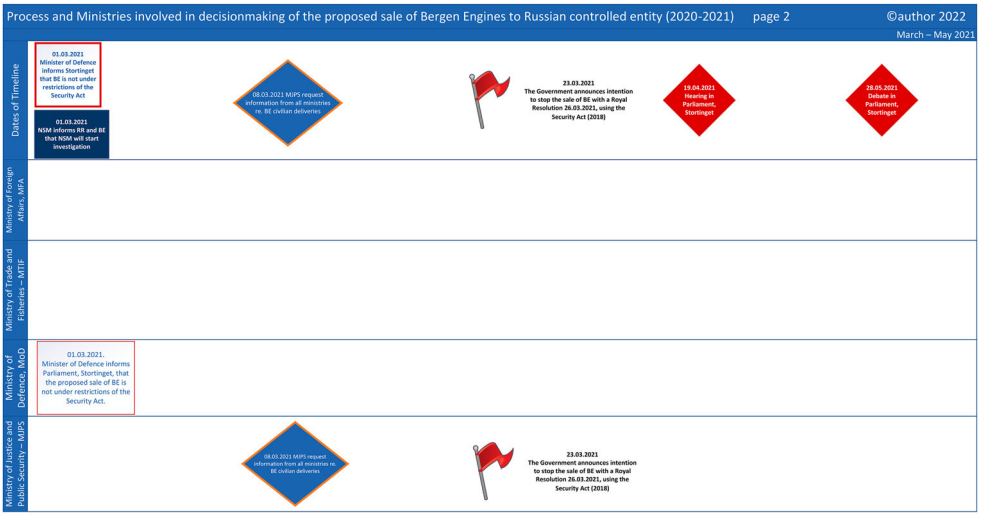
1: RR initial letter. "Project Prime Briefing Note 15 Dec 2020".
2: Reply from MFA regarding Project Prime Briefing Note. "Kommunikasjon 7. Januar".
3: Emails between RR and MTIF regarding the press conference presenting the sale of BE, 03.02.2021. "Ministry of Trade Orientering om pressemelding ifb. salg av motorvirksomheten Bergen Engines til TMH Internati"
4: Transcript Messenger-chat. "210330 innsyn kommunikasjon UD RR"
5: Screenshot of SMS 29.01.2021. "Melding 29. Januar"

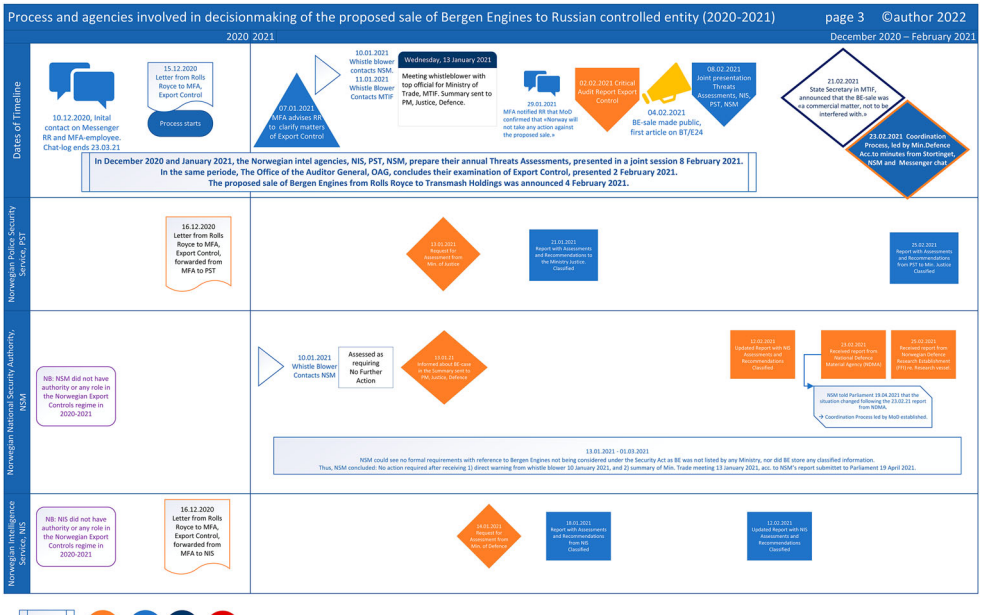
Appendix 2. Abbreviations key actors in the BE-case

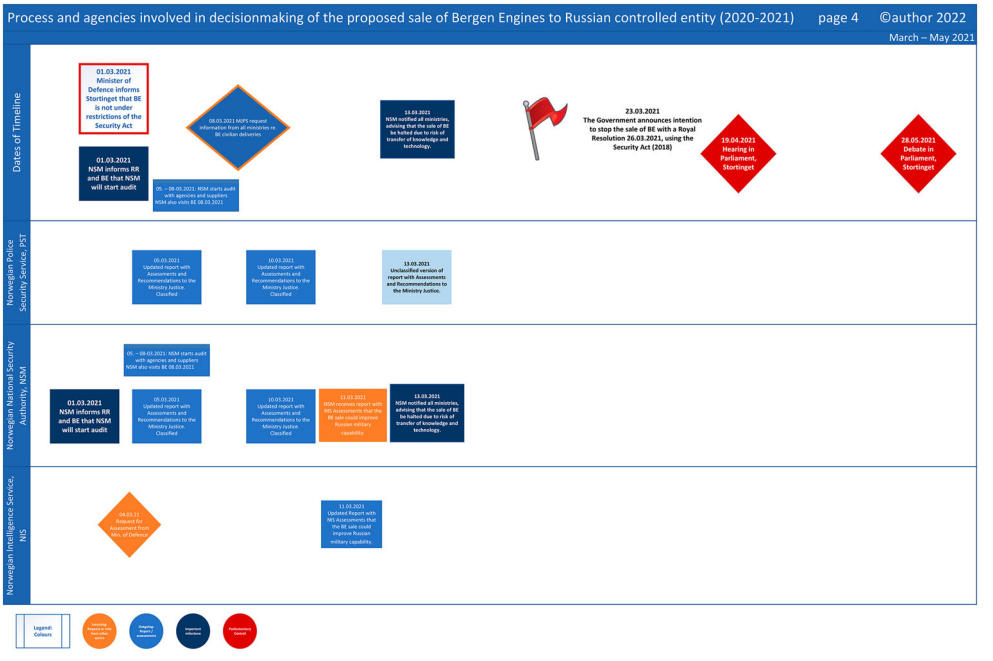
BE Bergen Engines, company located in Bergen, Norway, owned by Rolls Royce
FFI Norwegian Defence Research Establishment
MFA Ministry of Foreign Affairs, including the Office of Export Control
MJPS Ministry of Justice and Public Security
MoD Ministry of Defence
MTIF Ministry of Trade, Industry and Fisheries
NDMA National Defence Material Agency
NIS Norwegian Intelligence Service, Norway's foreign intelligence service
NSM National Security Authority, responsible for the Security Act (2018)
OAG Office of the Auditor General
PST Police Security Service, Norway's domestic intelligence service
RR Rolls Royce, UK company, selling its subsidiary Bergen Engines
TMHI Transmash Holdings International, prospective buyer of Bergen Engines

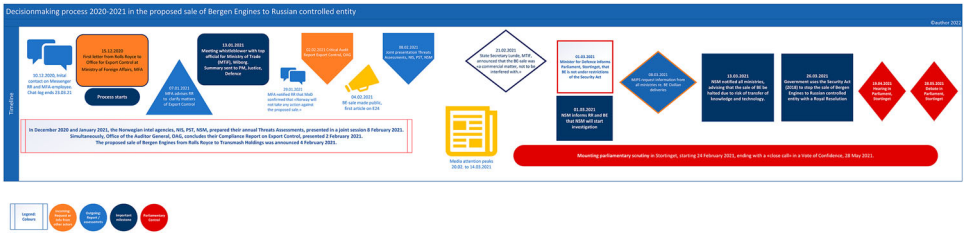
Appendix 3. Detailed timeline of the decisionmaking process of the proposed sale of Bergen Engines, available in pdf format




Process and Ministries involved in decisionmaking of the proposed sale of Bergen Engines to Russian controlled entity (2020-2021) page 2 ©author 2022
March – May 2021
Dates of Timeline
01.03.2021 Minister of Defence informs Stortinget that BE is not under restrictions of the Security Act
01.03.2021 NSM informs RR and BE that NSM will start investigation
08.03.2021 MJPS request information from all ministries re. BE civilian deliveries
23.03.2021 The Government announces intention to stop the sale of BE with a Royal Resolution 26.03.2021, using the Security Act (2018)
19.04.2021 Hearing in Parliament, Stortinget
28.05.2021 Debate in Parliament, Stortinget
Ministry of Foreign Affairs, MFA
Ministry of Trade and Fisheries – MTIF
Ministry of Defence, MoD
01.03.2021. Minister of Defence informs Parliament, Stortinget, that the proposed sale of BE is not under restrictions of the Security Act.
Ministry of Justice and Public Security – MJPS
08.03.2021 MJPS request information from all ministries re. BE civilian deliveries
23.03.2021 The Government announces intention to stop the sale of BE with a Royal Resolution 26.03.2021, using the Security Act (2018)
Legend: Colours


Process and agencies involved in decisionmaking of the proposed sale of Bergen Engines to Russian controlled entity (2020-2021) page 3 ©author 2022
2020 2021
December 2020 – February 2021
Dates of Timeline
10.12.2020, Inital contact on Messenger RR and MFA-employee. Chat-log ends 23.03.21
15.12.2020 Letter from Rolls Royce to MFA, Export Control
Process starts
07.01.2021 MFA advises RR to clarify matters of Export Control
10.01.2021 Whistle blower contacts NSM.
11.01.2021 Whistle Blower Contacts MTIF
Wednesday, 13 January 2021
Meeting whistleblower with top official for Ministry of Trade, MTIF. Summary sent to PM, Justice, Defence.
29.01.2021 MFA notified RR that MoD confirmed that «Norway will not take any action against the proposed sale.»
02.02.2021 Critical Audit Report Export Control
04.02.2021 BE-sale made public, first article on BT/E24
08.02.2021 Joint presentation Threats Assessments, NIS, PST, NSM
21.02.2021 State Secretary in MTIF, announced that the BE-sale was «a commercial matter, not to be interfered with.»
23.02.2021 Coordination Process, led by Min.Defence Acc.to minutes from Stortinget, NSM and Messenger chat
In December 2020 and January 2021, the Norwegian intel agencies, NIS, PST, NSM, prepare their annual Threats Assessments, presented in a joint session 8 February 2021.
In the same periode, The Office of the Auditor General, OAG, concludes their examination of Export Control, presented 2 February 2021.
The proposed sale of Bergen Engines from Rolls Royce to Transmash Holdings was announced 4 February 2021.
Norwegian Police Security Service, PST
16.12.2020 Letter from Rolls Royce to MFA, Export Control, forwarded from MFA to PST
13.01.2021 Request for Assessment from Min. of Justice
21.01.2021 Report with Assessments and Recommendations to the Ministry Justice. Classified
25.02.2021 Report with Assessments and Recommendations from PST to Min. Justice Classified
Norwegian National Security Authority, NSM
NB: NSM did not have authority or any role in the Norwegian Export Controls regime in 2020-2021
10.01.2021 Whistle Blower Contacts NSM
Assessed as requiring No Further Action
13.01.21 informed about RR-case in the Summary sent to PM Justice, Defence
12.02.2021 Updated Report with NIS Assessment and Recommendations Classified
23.02.2021 Received report from National Defence Material Agency (NDMA)
25.02.2021 Received report from Norwegian Defence Research Establishment (FFI) re. Research vessel
NSM told Parliament 19.04.2021 that the situation changed following the 23.02.21 report from NDMA.
→ Coordination Process led by MoD established.
13.01.2021 - 01.03.2021
NSM could see no formal requirements with reference to Bergen Engines not being considered under the Security Act as BE was not listed by any Ministry, nor did BE store any classified information.
Thus, NSM concluded: No action required after receiving 1) direct warning from whistle blower 10 January 2021, and 2) summary of Min. Trade meeting 13 January 2021, acc. to NSM's report submitted to Parliament 19 April 2021.
Norwegian Intelligence Service, NIS
NB: NIS did not have authority or any role in the Norwegian Export Controls regime in 2020-2021
16.12.2020 Letter from Rolls Royce to MFA, Export Control, forwarded from MFA to NIS
14.01.2021 Request for Assessment from Min. of Defence
18.01.2021 Report with Assessments and Recommendations from NIS Classified
12.02.2021 Updated Report with NIS Assessments and Recommendations Classified
Legend: Colours


Process and agencies involved in decisionmaking of the proposed sale of Bergen Engines to Russian controlled entity (2020-2021) page 4 ©author 2022
March – May 2021
Dates of Timeline
Norwegian Police Security Service, PST
Norwegian National Security Authority, NSM
Norwegian Intelligence Service, NIS
01.03.2021 Minister of Defence informs Stortinget that BE is not under restrictions of the Security Act
01.03.2021 NSM informs RR and BE that NSM will start audit
08.03.2021 MoFS request information from all ministries re. BE civilian deliveries
05. – 08.03.2021: NSM starts audit with agencies and suppliers NSM also visits BE 08.03.2021
13.03.2021 NSM notified all ministries, advising that the sale of BE be halted due to risk of transfer of knowledge and technology.
23.03.2021 The Government announces intention to stop the sale of BE with a Royal Resolution 26.03.2021, using the Security Act (2018)
19.04.2021 Hearing in Parliament, Stortinget
28.05.2021 Debate in Parliament, Stortinget
05.03.2021 Updated report with Assessments and Recommendations to the Ministry Justice. Classified
10.03.2021 Updated report with Assessments and Recommendations to the Ministry Justice. Classified
13.03.2021 Unclassified version of report with Assessments and Recommendations to the Ministry Justice.
05. – 08.03.2021: NSM starts audit with agencies and suppliers NSM also visits BE 08.03.2021
01.03.2021 NSM informs RR and BE that NSM will start audit
05.03.2021 Updated report with Assessments and Recommendations to the Ministry Justice. Classified
10.03.2021 Updated report with Assessments and Recommendations to the Ministry Justice. Classified
11.03.2021 NSM receives report with NIS Assessments that the BE sale could improve Russian military capability.
13.03.2021 NSM notified all ministries, advising that the sale of BE be halted due to risk of transfer of knowledge and technology.
04.03.21 Request for Assessment from Min. of Defence
11.03.2021 Updated Report with NIS Assessments that the BE sale could improve Russian military capability.
Legend: Colours


Decisionmaking process 2020-2021 in the proposed sale of Bergen Engines to Russian controlled entity
©author 2021
Timeline
15.12.2020 First letter from Rolls Royce to Office for Export Control at Ministry of Foreign Affairs, MFA
Process starts
17.01.2021 MFA advises RR to clarify matters of Export Control
19.01.2021 Meeting whistleblower with top official for Ministry of Trade and Industry. Summary sent to PM, Justice, Defence
01.02.2021 Clinical Audit Report Export Control, DNV
08.02.2021 Joint presentation Ministry Assessments, NIS, PST, NSM
01.03.2021 Government announced that the BE-sale was a commercial matter, not to be interfered with.
01.03.2021 Minister for Defence informs Parliament, Stortinget, that BE is not under restrictions of the Security Act
01.03.2021 NSM informs RR and BE that NSM will start investigation
08.03.2021 MoFS request information from all ministries re. BE civilian deliveries
13.03.2021 NSM notified all ministries, advising that the sale of BE be halted due to risk of transfer of knowledge and technology.
26.05.2021 Government uses the Security Act (2018) to stop the sale of Bergen Engines to Russian controlled entity with a Royal Resolution
19.04.2021 Hearing in Parliament, Stortinget
28.05.2021 Debate in Parliament, Stortinget
In December 2020 and January 2021, the Norwegian intel agencies, NIS, PST, NSM, prepared their annual Threats Assessments, presented in a joint session 8 February 2021. Simultaneously, Office of the Auditor General, DAG, concludes their Compliance Report on Export Control, presented 2 February 2021. The proposed sale of Bergen Engines from Rolls Royce to Transmash Holdings was announced 4 February 2021.
Media attention peaks 28.02. to 14.03.2021
Mounting parliamentary scrutiny in Stortinget, starting 24 February 2021, ending with a «close calls» in a Vote of Confidence, 28 May 2021.
Legend: Colours