



**OECD GUIDELINES
FOR MULTINATIONAL
ENTERPRISES**

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for Responsible Business
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DRAFT INITIAL ASSESSMENT

KOREAN TRANSNATIONAL CORPORATIONS WATCH AND SAMSUNG HEAVY INDUSTRIES MARTIN LINGE PROJECT CRANE ACCIDENT WORKERS SUPPORT TEAM

VS

SAMSUNG HEAVY INDUSTRIES CO., LTD., TECHNIPFMC PLC, TOTAL SA, TOTAL E&P NORGE AS AND EQUINOR ASA

EXECUTIVE SUMMARY INCLUDING CONCLUSION

Korean Transnational Corporations Watch (KTNC Watch) and Samsung Heavy Industries Martin Linge Project Crane Accident Workers Support Team (Workers Support Team) (complainants) filed a complaint 20 March 2019, to the NCPs in Korea, France and Norway, against Samsung Heavy Industries Co., Ltd., (Samsung HI), TechnipFMC plc, Equinor ASA, Total S.A. and its subsidiary Total E&P Norge AS (TEPN).¹

The case concerns an accident in Korea at Samsung HI's Geoje shipyard 1 May 2017, during construction of an oil platform for the Martin Linge project in Norway. Six workers were killed and 25 workers were injured.

The complainants claim that the companies involved have violated the OECD Guidelines for Multinational Enterprises (the Guidelines) with reference to Chapter II General Policies, paragraphs A10, A12 and A13, Chapter IV Human Rights, paragraphs 1 and 4, and Chapter III Disclosure, paragraph 1.

¹ KTNC Watch and Workers Support Team (20 March 2019) Complaint to National Contact Point for the OECD Guidelines for Multinational Enterprises.

KTNC Watch and Workers Support Team (24 July 2019) Response to Norway NCP concerning the complaint.

UK NCP has been included in the case since TechnipFMC was registered in the UK at the time of the incident. As Korea NCP decided to handle the complaint regarding the Korean company only, there are currently two processes in the handling of this specific instance. Korea NCP issued an initial assessment 25 June 2019, which stated that the issues raised in the complaint merits further examination through good offices.² Korea NCP has offered good offices to Samsung HI. The NCPs in France, UK and Norway will handle the case regarding the companies based in Europe, with Norway NCP as lead NCP in close collaboration with the NCPs in France and UK.³

Norway NCP finds that the issues raised in the complaint merit further consideration and will offer good offices to the parties with a view to resolve the issues. Due to Samsung HI's central role in the accident, this invitation will also be extended to the company together with the European based companies.

This initial assessment was shared for observations by Norway NCP with France and UK NCPs prior to the consultation of parties. As Norway NCP is lead NCP of handling this case, reference is made to Norway NCP only in the following text.

INTRODUCTION

1 May 2017 there was a serious accident at Geoje shipyard in Korea. Two cranes collided during construction of an oil platform for the Martin Linge project in Norway. Six workers were killed, 25 were injured.

20 March 2019 the Korean organisations KTNC Watch and Workers Support Team filed a complaint to the National Contact Points in Korea, France and Norway. The complainants claim that the companies involved in the Martin Linge project have violated the OECD Guidelines for Multinational Enterprises with reference to provisions on due diligence, human rights and disclosure. The complainants assert that inadequate due diligence was a contributory cause to the crane accident, which resulted in deaths and injuries. According to the complainants, more than 300 workers witnessed the accident of which at least 150 workers were traumatized and are in need of treatment. The complainants further allege that the companies have not provided ~~essential information~~ an investigation report about the accident or remedy for victims of the accident, which the complainants state is in violation of the Guidelines' provisions on disclosure and human rights.

² Korea NCP (25 June 2019) Initial Assessment for the complaint from the Workers Support Team and KTNC Watch: http://www.ncp.or.kr/servlet/kcab_encp/info/4001.

³ OECD (2019) Guide for National Contact Points on Coordination when handling Specific Instances, OECD Guidelines for Multinational Enterprises, page 5, footnote 3: "In practice, a lead NCP is the NCP which takes the primary responsibility for the handling of a specific instance and holds decision making power with respect to the process. A supporting NCP may have a relationship to the specific instance and be involved in an assisting capacity."
<http://mneguidelines.oecd.org/Guide-for-NCPs-on-Coordination-when-handling-Specific-Instances.pdf>

With assistance of the NCPs, through the OECD complaint mechanism, the complainants seek firstly to find out how this accident could happen, with the goal of an improvement in risk mapping and safety measures in the Korean shipbuilding industry. Secondly, they seek ~~to achieve remedyspecific support measures~~ for the allegedly ~~several hundred victims who have received neither treatment nor compensation after the accident~~affected workers to be worked out and implemented to provide those workers with substantial relief.

The companies addressed in the complaint are Samsung HI, TechnipFMC, Equinor, and Total through its subsidiary TEPN. The companies are based in Korea, UK, Norway and France/Norway respectively.

The Martin Linge project is referring to a unitized area on the Norwegian continental shelf comprising of three Norwegian production licences. The unit is licensed to a joint venture, which at the time of the accident was composed of TEPN (51 %), Petoro AS (30 %) and Statoil Petroleum AS (now Equinor Energy AS (Equinor), 19 %). TEPN was the operator on behalf of the other participants. In March 2018, TEPN assigned its entire participating interest to Equinor, which since then has been the operator (70%).

Samsung HI and TechnipFMC form the consortium of contractors engaged by the joint venture to build the platform for the Martin Linge project. Samsung HI is the owner of the Geoje shipyard and responsible for the construction of the platform. TechnipFMC is the leader of the consortium, and is responsible for the design of the platform.

This specific instance involves questions regarding due diligence, risk management and safety measures. Since Samsung HI is responsible for the construction of the platform, and that the accident happened at Samsung HI's shipyard, Samsung HI is at the centre of in this case. However, the case also raises important questions regarding due diligence responsibility in contracting and construction of large infrastructures for oil and gas projects, both for the operator and other participants in the joint venture and relations between the joint venture and the consortium (contractor). In March 2018, the operator responsibility was transferred from TEPN to Equinor, which further raises the question of the new operator's duty to illuminate the case, with respect to information in its possession, which possibly may contribute to resolution of the issues in the case.

In terms of practical handling of the specific instance, the NCPs in France, UK and Norway have suggested that the involved NCPs collaborate and identify a lead NCP, as the issues brought forward in the complaint are complex and interlinked with all the companies involved. This is line with the OECD Guidelines.⁴

⁴ OECD Guidelines, Part II Implementation Procedures, describes the following under the headline Coordination between NCPs in Specific Instances, paragraph 24: "When issues arise from an enterprise's activities that takes place in several adhering countries or from the activity of a group of enterprises organised as consortium, joint venture or other similar form, based in different adhering countries, the NCPs involved should consult with a view to agreeing on which NCP will take the lead in assisting the parties."

However, Korea NCP decided to handle the specific instance relating to the Korean company only, Samsung HI, as stated in their initial assessment of June 2019. As TEPN and Equinor are based in Norway and the Martin Linge field is located on the Norwegian continental shelf, France, UK and Norway NCPs agreed that Norway NCP should be lead NCP for the European part of the case handling, in close collaboration with France and UK NCPs. Norway NCP will handle the specific instance with reference to all the European companies involved in this specific instance, based in Norway (TEPN and Equinor), United Kingdom (TechnipFMC) and France (Total SA). However, TEPN has set out a clear requirement for their participating in good offices that all parties involved are included in the process. Norway NCP finds this sensible as Samsung HI is a central actor in this case.

Although Korea NCP prefers to handle the specific instance regarding Samsung HI, Norway NCP welcomes that Korea NCP in its initial assessment emphasizes that cooperation between the NCPs is necessary. Furthermore, as Korea NCP underlines, the complainants request cooperation and sharing of information about the enterprises between the NPC's involved in the specific instance.

THE COMPLAINT

The complaint concerns the above mentioned crane accident 1 May 2017 at the Samsung HI Heavy Industries Geoje shipyard. In addition to the six workers killed and 25 physically injured, the complainants assert that more than 300 workers witnessed the accident. Of these, at least 150 workers are suffering from trauma due to the accident and are in need of treatment, but only 14 workers have been approved treatment and compensation officially recognized as suffering from industrial injury caused by trauma from this incident, according to the complainants.

In Norway NCP's understanding, the complainants seek through a mediation process: 1) to uncover the causes of the accident and to find measures to reduce risk in the shipbuilding industry in Korea in the future; 2) remediation for workers traumatized by the accident – "the unofficial victims".

The complainants claim that the enterprises violated the OECD Guidelines for Multinational Enterprises after a change of design of the platform and consequently a change in construction method. This change required a different type of crane, which allegedly heightened risk of collision between the cranes as range of operation for the new crane type (jib crane) overlapped with the other crane (goliath crane). All enterprises involved failed to conduct thorough due diligence in order to prevent the accident from happening, according to the complainants, with reference to the Guidelines, Chapter II General Policies, paragraph A10.

Furthermore, the complainants claim that TechnipFMC, TEPN and Equinor failed to prevent and mitigate adverse impacts and encourage business partners to apply principles of responsible business conduct, with reference to Chapter II General Policies, paragraphs A12 and A13. The complainants also assert that TEPN and Equinor reject to disclose essential information an investigation report about the accident, contrary to Chapter III Disclosure, paragraph 1. All enterprises are also answerable to violations of the Guidelines with reference to respect for

human rights and to have a policy commitment to respect human rights, as stated in Chapter IV Human Rights, paragraphs 1 and 4.

Regarding inadequate due diligence, reference is made to Chapter II General Policies, paragraphs A10, A12 and A13, which read as follows:

Enterprises should:

10. Carry out risk-based due diligence, for example by incorporating it into their enterprise risk management systems, to identify, prevent and mitigate actual and potential adverse impacts as described in paragraphs 11 and 12, and account for how these impacts are addressed. The nature and extent of due diligence depend on the circumstances of a particular situation.

12. Seek to prevent or mitigate an adverse impact where they have not contributed to that impact, when the impact is nevertheless directly linked to their operations, products or services by a business relationship. This is not intended to shift responsibility from the entity causing an adverse impact to the enterprise with which it has a business relationship.

13. In addition to addressing adverse impacts in relation to matters covered by the Guidelines, encourage where practicable, business partners, including suppliers and sub-contractors, to apply principles of responsible conduct compatible with the Guidelines.

Regarding information about the accident, the complainants are especially requesting an investigative report produced after the accident by a Joint Investigation Committee consisting of representatives of Total, TEPN, TechnipFMC and Samsung HI. Reference is made to Chapter III Disclosure, paragraph 1, which reads as follows:

Enterprises should ensure that timely and accurate information is disclosed on all material matters regarding their activities, structure, financial situation, performance, ownership and governance. This information should be disclosed for the enterprise as a whole, and, where appropriate, along business lines or geographic areas. Disclosure policies of enterprises should be tailored to the nature, size and location of the enterprise, with due regard taken of costs, business confidentiality and other competitive concerns.

The complainants also refer to Chapter IV Human Rights, paragraph 1 and 4, which reads as follows:

States have the duty to protect human rights. Enterprises should, within the framework of internationally recognised human rights, the international human rights obligations of the countries in which they operate as well as relevant domestic laws and regulations:

1. Respect human rights, which means they should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved.

4. Have a policy commitment to respect human rights.

Regarding TEPN, the complainants assert that, as the operator, TEPN was responsible for exerting due diligence throughout the course of the business relationship. According to the complainants, it is general shipbuilding practice to reside in the worksite of the main contractor and manage the progress of the project. It is common that the buyers are involved in decision-making processes for changes of design or significant work methods, the complainants claim. Thus, TEPN should have approved the change of construction method and should have recognized that Samsung HI's safety measures were insufficient. The complainants assert that TEPN has violated the Guidelines, Chapter II General Policies, paragraphs A10, A12 and A13, Chapter III Disclosure, paragraph 1, and Chapter IV Human Rights, paragraph 1 and 4.

TechnipFMC was and is the leader of the consortium of contractors. According to the complainants, it is common that the leader of a consortium participates in processes of changes of design and construction methods, as it alters conditions in the contract. Furthermore, the complainants assert, the leader of the consortium of contractors is responsible for risk assessment and that proper risk management and safety measures are in place before change of construction method. The complainants claim that TechnipFMC has violated the Guidelines, Chapter II General Policies, paragraphs A10, A12 and A13 and Chapter IV Human Rights, paragraph 1 and 4.

Equinor was a participant at the time of the accident and is now the current operator. Thus, the complainants assume that Equinor has received all relevant documents about the Martin Linge project from TEPN, including the investigation report about the accident made by Total, TEPN, TechnipFMC and Samsung HI. The complainants consider disclosure of the report essential to understand the causes of the accident and have requested the report from Equinor, which Equinor has not accommodated. The complainants therefore argue that Equinor has violated the Guidelines, Chapter III Disclosure. The complainants also claim that Equinor has violated Chapter II General Policies, paragraphs A10, A12 and A13 and Chapter IV Human Rights, paragraph 1 and 4 without further explanation.

Samsung HI is responsible for construction of the platform to the Martin Linge project on contract for the joint venture. According to the complainants, Samsung HI ordered change of work method, and change of crane, without prior risk assessment or implementation of safety measures. The complainants claim that Samsung HI earlier has experienced seven similar crane collisions. Nevertheless, these accidents have not resulted in improvement and implementation of risk assessments and safety regulations. The complainants also specifically address Samsung HI managers for negligence of supervising their workers and crane watchmen for negligence of surveillance duties. The complainants claim that Samsung HI has violated Chapter II General Policies, paragraphs A10, and Chapter IV Human Rights, paragraph 1 and 4 of the Guidelines.

THE COMPANIES' RESPONSE

TEPN⁵, TechnipFMC and Equinor have send written response to the complaint to Norway NCP.

All the companies expressed their deepest condolences to the families of the deceased, the injured workers and all those affected by the accident 1 May 2017 at Samsung HI yard.

In its written response to the complaint⁶ to Norway NCP, dated ~~27-25~~ October 2019, TEPN states that it is willing to continue contribute to the review of the complaints by the NCP, and subject to the assurances and additional information described below, it is willing to cooperate and to participate with a view to entering into good offices ~~offered by Norway NCP, on the condition that all respondents, in particular Samsung HI, will be involved~~ discussions with the complainant. However, TEPN underlines that TEPN and the Total Group's participation in good offices should not "include discussion or investigation of the facts of an incident which occurred on the site of Samsung HI or the management and compensation of Samsung HI personnel or subcontractors". Furthermore, TEPN's participation in good offices is conditional receipt of the following assurances and additional information:

- all respondents, including in particular SHI, be involved in such process;
- the Norway NCP ensures that the respondents will not be subject to parallel proceedings by other OECD NCPs concerned;
- further clarity being given in relation to the nature of the complaint against TEPN and the outcome sought by the complainant in relation to TEPN and the Total Group; and
- on all parties agreeing that the process will not interfere with Korean legal processes.

TEPN also stated that in their opinion it is essential that a coordinated and aligned approach involving all respondents is taken in terms of the process(es) themselves, scheduling and the substantive issues to be examined.

Regarding claims of inadequate due diligence, TEPN and the Total Group consider that they have acted in accordance with best industry practice, applicable laws and the Guidelines in relation to this matter. TEPN states that Total Group's procedure holds safety performance as a key element in the selection criteria for contractors, and that it followed a two-stage evaluation process which included specific HSE components. This entails amongst other elements that review of contractors was based on information in the NCS industry Achilles JQS system, an industry qualification system, and responses to a detailed health, safety and environment (HSE) survey performed by TEPN. The elected consortium of contractors, Samsung HI and TechnipFMC, was, in addition to other obligations, required to have an HSE Management System in place complying with HSE rules at least as stringent as the operator's own HSE rules. Procedures to systematically identify hazards and manage change were required, as well as safety training of personnel, according to TEPN.

TEPN underlines that as is necessary for this type of project, the consortium was responsible for the method of construction, including development of the detailed design, manner of work at its own cost and risk, provision of necessary equipment and for management, control and supervision of performance of work by subcontractors. Furthermore, TEPN claims-states that it is best industry practice that the owner of construction yards (Samsung HI) remains solely responsible for the HSE facilities, employees and subcontractors.

TEPN states that the role of the joint venture represented by its operator is to conduct due diligence to ensure that the consortium's HSE Management Systems are in place and to audit these systems. According to TEPN the company, as operator, carried out this responsibility in a diligent way ~~and established~~, including through establish a project team to follow up implementation of the contract, including HSE provisions, consisting notably of various personnel at TEPN's main office and present at the Samsung HI yard.

- ° TEPN has coordinated its response to the complaint, and other dialogue with Norway NCP, with Total SA.
- ° TEPN (27 October 2019) Response to the complaint.

After Immediately after the accident, HSE experts from TEPN participated as operator of the ML Unit Joint Venture, took several actions including offering the services of HSE experts to assist in the Consortium's post-accident investigation and participating in a Joint Investigation Committee that was set up with representatives of Total, TechnipFMC and Samsung HI. This initial investigation began on the day following the incident 2 May 2017, in parallel with the Korean Police and the Ministry of Labor Investigations. The committee produced an accident report, which is "TEPN states is subject to strict confidentiality provisions", TEPN emphasizes. TEPN understands that a more in depth official investigation was conducted by the police and the South Korean authorities in the months following the accident. TEPN also states that it ensured that Samsung HI took necessary actions to apply lessons learned from the accident, according to TEPN through continuous follow-up at yard and management visits. In addition, TEPN refers to its participation in the Korean Shipyard Safety Standardisation project.

Regarding claims of lack of disclosure, TEPN states that after the assignment of all its interests to Equinor in March 2018, TEPN transferred the rights and entitlements to relevant documents, information and data to Equinor. Consequently, TEPN no longer has rights to information relating to the Martin Linge project.

In Equinor's written response to the complaint⁷ to Norway NCP, dated 7 February 2020, the company underlines that regarding the issue of disclosure of documents about the accident, "Equinor is, as a matter of law, bound by confidentiality provisions in the applicable contracts". The company has sought independent legal counsel in this matter. The law firm concludes that Equinor is bound by "extensive confidentiality obligations", stated in three different agreements related to the Martin Linge project, and cannot lawfully disclose any document produced by the parties in response to the incident.⁸

With reference to the alleged violations of Chapter Chapter II General Policies and Chapter IV Human Rights, Equinor asserts that the complaint does not describe how Equinor has violated provisions under these chapters and does not include documentation on Equinor's alleged wrongdoing. Equinor therefore finds that these allegations are insufficiently substantiated to merit further investigation with the inclusion of Equinor.

Equinor points out that ongoing legal proceedings in Korea does not preclude examination of the specific instance by Norway NCP. However, Equinor questions how the offer of good offices by Norway NCP will make a positive contribution to the resolution of the issues raised in the complaint, further to the court proceedings and Korea NCP's handling of the specific instance.

TechnipFMC describes, in the written response to the complaint⁹ to Norway NCP, dated 7 February 2020, the roles and responsibilities of the two parties of the consortium of contractors, TechnipFMC and Samsung HI, which were engaged by Total to build an offshore oil platform for the Martin Linge project. TechnipFMC states that "TechnipFMC and Samsung HI had specifically defined roles with respect to the platform: (i) TechnipFMC was responsible for engineering, procurement, and the development of designs for the platform; and (ii) Samsung HI was responsible for the construction and fabrication works." According to TechnipFMC, Samsung HI was responsible for the construction works and the operation and interaction of the cranes at the Geoje shipyard. TehcnipFMC also takes a similar position as TEPN, claiming that it is best industry practice for the owner of construction yard to remain solely responsible for the HSE of facilities, employees and subcontractors. Consequently,

- 7 Equinor (7 February 2020) Response to the complaint.
- 8 Wiersholm (6 February 2020) Legal opinion.
- 9 TechnipFMC (6 February 2020) Response to the complaint.

Samsung HI is best placed to provide clarifications and information regarding the accident, TechnipFMC states.

In short, TechnipFMC does not understand the complainants' specific allegations against the company and does not believe it is "appropriate for TechnipFMC to be involved in the good offices process". TechnipFMC also refers to the ongoing court proceedings in Korea as "the proper fora for the resolution of the disputes". Hence, in the view of TechnipFMC, NCPs should suspend further examination of the complaint until conclusion of the Korean court proceedings.

THE NCP'S ASSESSMENT

Norway NCP finds that the issues raised in the complaint merit further examination and has accepted the complaint for further consideration. This decision does not determine whether the companies involved have acted inconsistently with the Guidelines.

Based on the complaint and information from the companies there appears to be a link between the companies' activities and the issues raised. TEPN was the operator of the Martin Linge project when the accident occurred and in a joint venture with Statoil (now Equinor) and Petoro. The joint venture entered a contract with a consortium of contractors, consisting of Samsung HI and TechnipFMC, for construction of the Martin Linge platform. The consortium was led by TechnipFMC. The accident happened at Samsung HI's shipyard. Equinor was a participant in the joint venture at the time of the accident and is now the current operator, with the responsibility for following up lessons learned regarding risk management and safety measures after the accident 1 May 2017.

Norway NCP finds that the complainants have a legitimate interest in the matter submitted to the NCPs. Workers Support Team was established after the accident to support workers who were injured or traumatized due to the accident. KTNC Watch is a coalition of NGOs, which advocate for human rights, protection of the environment and local communities, and responsible business conduct.

The complainants claim that the companies have failed to comply with the Guidelines on three accounts. Firstly, the complainants assert that the enterprises have failed to conduct adequate due diligence to ensure that proper risk management and safety measures were in place prior to change of platform design and construction method, which allegedly could have prevented the accident from happening. Reference is made to Chapter II General Policies, paragraphs A10, A12 and A13. Secondly, the complainants claim that the enterprises reject to disclose essential information an investigation report about the accident, contrary to Chapter III Disclosure. Thirdly, the complainants raise the issue of remediation for adverse human rights impacts and accuse the enterprises for violations of Chapter IV Human Rights, paragraph 1 and 4. Relevant to the issue of remediation is paragraph 6, same chapter, which states that

companies should: “Provide for or co-operate through legitimate processes in the remediation of adverse human rights impacts where they identify that they have caused or contributed to these impacts.”

The complainants have provided information about the accident, in terms of a police report from the Gyeongnam Geoje Police Station dated 30 July 2017. Norway NCP has acquired an unofficial English translation of the Korean document.¹⁰ According to the report, the Korean police has investigated three suspects accused of “professional negligence resulting in death” and “professional negligence resulting in injury”. Two of the suspects had leading positions at the shipyard related to health and safety at the time of the accident, more specifically Chief of Geoje shipyard and Chief of Support Part 3, which operates the goliath crane. The third suspect was the driver of the goliath crane. The police found all three suspects guilty of their alleged crimes. This is part of a criminal case pending in the Korean court system (referred to on page 12).

The police explains in detail changes in plans for the construction, that is, that the height of the platform was elevated and thus required change of construction method, involving change of crane type. The police also ascertains that the change of construction method was unusual and increased the risk of collision between the two cranes. The police refers to the Samsung HI Safety and Health Management Regulations, which state that when new work orders are issued and/or work orders are modified, or when worksite accidents occur, a risk-level assessment must be performed and preventive measures must be implemented. According to the police, both the Chief of the shipyard and other persons in charge of management and oversight were aware of the potential risk of collision of the jib crane and the goliath crane. Nevertheless, they failed to initiate a risk assessment and implement risk mitigation measures, which could have prevented the accident from happening, the police concludes. However, the police found that none of the documents being part of Samsung HI’s Geoje safety-related manuals and regulations contained measures and rules on how to secure space clearance when cranes are operated in close proximity or on how to prevent collisions. Consequently, the police states, it is imperative that Samsung HI perform risk assessment on those areas and define risk mitigations measures.

Further to that, the police explains that after being appointed to the position of Chief of Geoje shipyard in December 2014, there had been a total of 14 safety incidents on his watch, including crane accidents, resulting in several deaths. Norway NCP notes that the fact of multiple fatal accidents during a rather short time span of two and half years could raise the question why Samsung HI had not included safety rules and measures in the safety-related

¹⁰ Gyeongnam Geoje Police Station (30 July 2017) Written Statement, to the Chief Prosecutor of Tongyeong at Changwon District Public Prosecutor’s Office.

manuals and regulations for Geoje shipyard. Furthermore, it could also raise the question of the operator's, as well as the joint venture's, responsibility to require improvements in the shipyard's safety regulations.

With reference to disclosure of information about the accident, the complainants have by letter required an investigation report about the accident from the current operator Equinor, which the company is not willing to share with reference to confidentiality provisions in applicable contracts in the Martin Linge project.

The complainants have also referred to information regarding workers traumatized by the accident, but who have not received treatment or compensation.

The complaint is substantiated by some documents in Korean, unavailable in English. Norway NCP refers to Korea NPC's initial assessment on this point, related to Samsung HI:

Given that the complainants alleged violations of chapter II (General Policies), paragraph A. 10 and chapter IV (Human Rights), paragraphs 1 and 4 of the Guidelines and submitted relevant data, following which the respondent also responded to these allegations, the issues raised in the complaint are considered to be material and substantiated.¹¹

In addition to the Guidelines, there is applicable law in Norway relevant to this case. The Norwegian Petroleum Act November 1996 No. 72 provides that the licensee (in this case, TEPN and Equinor) has a "see to duty", which implies that "the licensee shall see to it that anyone performing work for him, either personally, through employees or through contractors or subcontractors, shall comply with the provisions laid down in or pursuant to the Act" (section 10-6). The "see to duty" also implies that the licensee shall have necessary qualifications to perform work related to petroleum activities and to make sure that anyone carrying out work for the licensee is qualified (section 9-7).¹²

Regulations relating to health, safety and the environment in the petroleum activities and at certain onshore facilities (the Framework Regulations) is relevant as they specifically address the responsibility of the operator to ensure compliance with requirements stipulated in the health, safety and environment legislation, also for "everyone who carries out work on its behalf" (section 7). The Framework Regulations also stipulate that when "entering into a contract, the responsible party shall follow up to ensure that the participants comply with the

¹¹ Korea NCP (25 June 2019) Initial Assessment for the complaint from the Workers Support Team and KTNC Watch.

¹² Act 29 November 1996 No. 72 relating to petroleum activities:
<https://www.npd.no/en/regulations/acts/act-29-november-1996-no2.-72-relating-to-petroleum-activities/>

requirements while performing the assignment in the activities covered by these regulations” (section 18).¹³

Relevant to the case are also two court proceedings in Korea. Firstly, there is a criminal case against Samsung HI related to the requirements for the crime of death and injury by occupational negligence under Korea’s Criminal Act and Industrial Health and Safety Act. Changwon District Court concluded 7 May 2019 that supervisors of Samsung HI were deemed not guilty. On-site workers under the supervisors were convicted of negligence. Samsung HI was found not guilty for violating precautionary safety measures in accordance with the Occupational Safety and Health Act. However, Samsung HI was sentenced to a fine for other violation of the same act.¹⁴ Both parties appealed.¹⁵

The second judgement was delivered by the court 21 February 2020. Three senior management supervisors of Samsung HI and a representative of its jib crane subcontractor, who all had been deemed not guilty in the first trial, were convicted for their negligence with respect to their duties in the crane crash accident. However, the court reiterated that Samsung HI was not guilty for violating precautionary safety measures in accordance with the Occupational Safety and Health Act as sentenced in the first trial. It is reported that Workers Support Team has been consulting with the prosecution whether to appeal or not.¹⁶

Secondly, there is a civil case involving 14 workers, who have been recognized as victims of the accident and have received compensation by the state. The workers have filed a case for higher compensation. ¹⁷ Norway NCP has so far not been able to acquire information about the status of this case, and have requested information from various of the involved parties to the case. To Norway NCP’s knowledge, the process is ongoing or has been settled through arbitration.

Regarding the issue of parallel proceedings, the Guidelines state:

NCPs should not decide that issues do not merit further consideration solely because parallel proceedings have been conducted, are under way or are available to the parties concerned. NCPs should evaluate whether an offer of good offices could make a positive

¹³ Regulations relating to health, safety and the environment in the petroleum activities and at certain onshore facilities (the Framework Regulations) Last amended 26 April 2019:

https://www.ptil.no/contentassets/f18375b7184d4cd68fc1c733b318b3dc/rammeforskriften20_e.pdf

¹⁴ Korea NCP (25 June 2019) Initial Assessment for the complaint from the Workers Support Team and KTNC Watch.

¹⁵ Workers Support Team, KTNC Watch (24 July 2019) Response to the Norwegian NCP.

¹⁶ Information acquired from the Royal Norwegian Embassy in Seoul, based on Korean news articles.

¹⁷ Workers Support Team, KTNC Watch (24 July 2019) Response to the Norwegian NCP.

contribution to the resolution of the issues raised and would not create serious prejudice for either of the parties involved in these other proceedings or cause a contempt of court situation. In making such an evaluation, NCPs could take into account practice among other NCPs and, where appropriate, consult with the institutions in which the parallel proceeding is being or could be conducted.¹⁸

TechnipFMC argues that the ongoing court proceedings in Korea are the proper forum for the resolution of the disputes, and suggests that Norway NCP should suspend further examination of the complaint until conclusion of the Korean court proceedings. However, Norway NCP notes that Korea NCP has considered the court proceedings in Korea and has concluded that this does not prevent a case handling by Korea NCP. Thus, Korea NCP has decided to offer their good offices to Samsung HI. Norway NCP also notes that the criminal case in Korea only addresses Samsung HI and not the role and possible responsibility of the other companies involved in the Martin Linge project. As to the civil case, it addresses the level of compensation for the 14 workers who already were approved compensation, and not the more than 150 workers that the complainants claim were traumatized by the accident with no compensation. Norway NCPs finds that this specific instance covers a broader area and other issues than the court proceedings, and that the court proceedings give no reason to suspend further examination (as TechnipFMC argues in its response to the complaint).

Regarding parallel proceedings in Korea and Europe, by Korea NCP and Norway NCP respectively, we find that the case handling in Korea does not prevent a case handling in Europe as the latter will have a broader scope including all companies involved in the complaint.

Norway NCP finds that this specific instance will contribute to the purpose and effectiveness of the Guidelines. The complaint involves a serious accident which resulted in several deaths and injuries. It addresses the issue of adequate due diligence prior to the accident and responsibility of the enterprises involved, both related to an operator and other participants in a joint venture, as well as a consortium of contractors. The complaint addresses the issue of disclosure and transparency of the operations of the enterprises involved to find out how the accident could happen. Norway NCP notes that the confidentiality obligations between the parties involved appear to be based on contracts only. Accordingly, they may be lifted by the involved parties. The complaint also addresses the enterprises' duty to respect human rights and the issue of remediation of adverse human rights impacts.

¹⁸ **OECD (2011) OECD Guidelines for Multinational Enterprises. Commentary on the Implementation Procedures, p. 83, paragraph 26.**

Furthermore, the issues in this specific instance are complex and involves several NCPs and enterprises based in two regions. In cases like this, with several NCPs, the Guidelines encourage cooperation and coordination between the NCPs involved. As Korea NCP argues in its initial assessment, cooperation being part of the case handling will likely contribute to the purposes and effectiveness of the Guidelines separately from ongoing court proceedings in Korea.

Norway NCP informs regularly UK and France NCP of its actions and consulted them on the draft initial assessment statement.

THE NCP'S DECISION

Norway NCP finds that the issues raised in the complaint merit further examination and has accepted the complaint for further consideration. The decision is based on information offered by the parties. The decision is not an assessment of whether the companies' have violated the Guidelines.

NEXT STEPS

Based on the decision that the issues raised merit further consideration, Norway NCP will offer good offices to the parties with an intention to resolve the issues. The parties in this case are the enterprises based in Europe, TEPN, Total SA, TechnipFMC and Equinor.

Norway NCP will come back with more technicalities regarding how and when the offer of good offices can be realised, in the light of the current restrictions on international travel due to the Covid-19 outbreak.

Good offices is to assist the parties involved to resolve the issues in the complaint, with an aim to reach an agreement. There is an ongoing process in Korea where Korea NCP has offered good offices to Samsung HI. Norway NCP will strive to coordinate information with Korea NCP. However, the link between Samsung HI's activities and the issues raised in the complaint is an important part of the case. Norway NCP will therefore invite Samsung HI to participate in Norway NCP's process of good offices with the European companies. We find that a separate process in Korea does not preclude Norway NCP to invite Samsung HI to take part in our offer of good offices, and that Samsung HI's participation can make positive contributions to the resolution of the issues in this specific instance.

ATTACHMENTS

- 1) Details of the NCP process in this Specific Instance
- 2) Details of the parties involved (UNLESS ANONYMITY GRANTED)
- 3) Information about the OECD NCPs and the OECD Guidelines
- 4) The complaint and the Company's response to the complaint (IF AGREED BY THE PARTIES)

ANNEX 1: DETAILS OF THE NCP PROCESS IN THIS SPECIFIC INSTANCE

The NCP received the complaint on 20 March 2019.

ANNEX 2: DETAILS OF THE PARTIES INVOLVED

THE COMPANIES:

Samsung Heavy Industries is one of South Korea's top-three shipbuilders and one of the largest shipbuilders in the world.

TechnipFMC plc provides oilfield services. The company offers subsea, surface, onshore, and offshore solutions for oil and gas projects. TechnipFMC serves customers worldwide.

Equinor ASA is a Norwegian, partly state owned, energy company. The company develops oil, gas, wind, and solar energy projects, as well as focuses on offshore operations and exploration services. Equinor serves customers worldwide.

Total S.A. is a major global energy company, producer and supplier of oil, natural gas and low-carbon energy. Total S.A. is active in more than 130 countries.

Total E&P Norge is involved in exploration and production of oil and gas on the Norwegian continental shelf. The company is a wholly owned subsidiary of the Total Group.

THE COMPLAINANTS:

Samsung Heavy Industries Martin Linge Project Crane Accident Workers Support Team is a coalition of Korean NGOs. It was established to provide support to workers who suffer from either significant physical or mental damage due to the accident at Samsung's Geoje shipyard during construction of top sides of an oil platform for the Martin Linge project in Norway.

Korean Transnational Corporations Watch is a coalition of Korean NGOs that advocate for human rights and the protection of the environment and local communities against corporate malfeasance.

ANNEX 3: INFORMATION ABOUT THE NORWEGIAN NCP AND THE GUIDELINES

APPLICATION OF THE OECD GUIDELINES FOR MULTINATIONAL ENTERPRISES

The initial assessment is based on the 2011 version of the Guidelines as the complaint was submitted after the updated OECD Guidelines for Responsible Business Conduct. The Guidelines comprise a set of principles and standards for general policies, human rights,

disclosure, employment and industrial relations, environment, combating bribery, consumer interests, science and technology, competition and taxation. The Guidelines are not legally binding. However, OECD governments and a number of non-OECD members are committed to encouraging multinational enterprises operating in or from their territories to observe the Guidelines, while taking into account the particular circumstances of each host country.

The Guidelines are implemented in adhering countries by OECD National Contact Points (NCPs), which are charged with raising awareness of the Guidelines amongst businesses and civil society. NCPs are also responsible for dealing with complaints concerning allegations that multinational enterprises operating in or from their territories have failed to observe the Guidelines.

THE NCP COMPLAINT PROCEDURE

The NCP process is broadly divided into the following key stages:

- 1) *Initial assessment* – This consists of a desk-based analysis of the complaint, the company’s response, and any additional information provided by the parties. The NCP uses this information to decide whether the complaint warrants further consideration.
- 2) *Conciliation/mediation OR examination* – If a case is accepted, the NCP offers conciliation/mediation to both parties with the aim of reaching a settlement agreeable to both. Should conciliation/mediation fail to achieve a resolution, or should the parties decline the offer, the NCP will examine the complaint in order to assess whether it is justified. The NCP may commission fact-finding or other services to support the processing of the case if deemed necessary.
- 3) *Final statement* – If a mediated solution has been reached, the NCP will publish a final statement with details of the agreement and on the procedure followed. If conciliation/mediation is refused or fails to achieve an agreement, the NCP will examine the complaint and publish a final statement on whether or not the Guidelines have been observed and, if appropriate, recommendations to the company for future conduct.
- 4) *Follow-up* - If a mediated solution has been reached, the “parties may agree to seek the assistance of the NCP in the following-up on the implementation of the agreement and the NCP may do so on terms agreed between the parties and the NCP”¹⁹.

ANNEX 4: THE COMPLAINT AND THE COMPANYS RESPONSE TO THE COMPLAINT

¹⁹ OECD (2011) OECD Guidelines for Multinational Enterprises. Commentary on the Implementation Procedures, p. 84-85, paragraph 34.