



**OECD GUIDELINES
FOR MULTINATIONAL
ENTERPRISES**

National Contact Point
for Responsible Business
Conduct Norway

Oslo, 27 February 2023

INITIAL ASSESSMENT

CIVIL SOCIETY COALITION ON NATURAL RESOURCES, GLOBAL IDÉ, LIECH VICTIMS VOICES, NORWEGIAN CHURCH AID, NORWEGIAN PEOPLE’S AID, PAX, SOUTH SUDAN COUNCIL OF CHURCHES AND SWEDWATCH

VS

AKER ASA AND AKER BP ASA

The objective of an Initial Assessment under the Procedural Guidance in the OECD Guidelines is to determine whether the issues raised in a complaint merit further examination. If so, the National Contact Point (NCP) will offer or facilitate access to consensual and non-adversarial procedures, such as dialogue or mediation to the parties.

The NCP has at this stage made no determination as to whether the company has acted consistently with the OECD Guidelines. As specific instances are not legal cases and NCPs are not judicial bodies, NCPs cannot impose sanctions, directly provide compensation nor compel parties to participate in a mediation.

EXECUTIVE SUMMARY

On 31 May 2022, the Norwegian NCP received complaints against Aker BP ASA and Aker ASA from the following eight organisations: the Civil Society Coalition on Natural Resources, Global Idé, Liech Victims Voices, Norwegian Church Aid, Norwegian People’s Aid, PAX, South Sudan Council of Churches and Swedwatch (‘the complainants’). The complainants claim that Aker BP ASA and

Aker ASA have failed to comply with the OECD Guidelines for Multinational Enterprises (the OECD Guidelines) as regards the following matters: 1) inadequate human rights due diligence relating to the merger, 2) failure to meaningfully engage with stakeholders, and 3) facilitation of ongoing (unremediated) adverse impacts.

The NCP has considered the admissibility criteria for the initial assessment and concluded that parts of the complaints merit further examination. The specific instance to be considered by the NCP is delimited to the companies' human rights due diligence in connection with the merger. The NCP considers that an offer of dialogue between the parties about the questions relating to the companies' due diligence may contribute to the purpose and effectiveness of the Guidelines. If the dialogue has not succeeded within six months after it commences, the NCP will carry out a new assessment of whether further dialogue and consideration is still appropriate. The NCP has at this stage made no determination as to whether or not the companies have acted consistently with the OECD Guidelines.

At the NCP meeting on 24 October 2022, member Gro Granden stated that she disagrees with the majority's assessment that the complaints against Aker ASA and Aker BP ASA can be considered as a specific instance without knowledge of the Lundin companies' due diligence, and that she believes the complaints should not be accepted for further consideration.

SUMMARY OF THE COMPLAINTS

On 31 May 2022, the Norwegian NCP received two complaints from the Civil Society Coalition on Natural Resources, Global Idé, Liech Victims Voices, Norwegian Church Aid, Norwegian People's Aid, PAX, South Sudan Council of Churches and Swedwatch. The complaints were submitted on behalf of an estimated 200,000 South Sudanese victims of gross and systematic human rights violations. In the complaints, Aker BP ASA and Aker ASA are accused of failing to comply with the OECD Guidelines in connection with Aker BP ASA's merger with Lundin Energy's Norwegian oil and gas business (Lundin Energy Norway AS).

The complainants claim that Lundin Energy contributed to gross and systematic human rights violations in Sudan during the period 1997 to 2003. They refer to the fact that the Chair and the former CEO of Lundin Energy (formerly Lundin Oil) are accused of complicity with violations of international law in Sweden. They also refer to how Lundin Oil signed a contract with the Sudanese authorities in 1997 for oil extraction in the concession area called Block 5A, which at that time was not under effective government control. The complainants state that this set off a war in and around the concession area. A military campaign between 1997 and 2003 aimed at securing and taking control of the oil fields in the block. It is estimated that 160,000 people were violently displaced and that 12,000 people died. Extensive international law violations were documented.

The complainants argue that there is a direct link between the merger between Aker BP ASA and Lundin Energy Norway and Lundin Energy's future inability to remediate severe ongoing (unremediated) adverse impacts. According to the complaint, the agreement between Aker BP ASA and Lundin Energy entails that the latter retains all liabilities and covers all costs relating to the company's activities in South Sudan. The complainants claim that the merger will mean that Lundin Energy will have insufficient means to be able to address the alleged (unremediated) impacts.

They submit that Aker BP ASA and Aker ASA have breached Chapter IV (Human Rights) of the OECD Guidelines based on the following:

- 1) *Failure to conduct human rights due diligence.* According to the OECD Guidelines, the company should have carried out risk-based human rights due diligence (HRDD) in connection with the merger. The complainants claim that assertions that there are ongoing (unremediated) adverse impacts associated with Lundin Energy's activities are common knowledge. The fact that the company has repeatedly rejected proposals to conduct due diligence and assess its human rights impacts should have been a red flag.
- 2) *Failure to meaningfully engage with stakeholders about the merger.* The complainants state that neither they nor any representatives of affected communities were made aware of the proposed merger prior to its announcement on 21 December 2021. A meeting was held to present the merger. Representatives of PAX, Norwegian People's Aid and Norwegian Church Aid subsequently sought to engage in dialogue with Aker BP ASA about human rights. Meetings were held in January and March 2022. The complainants contend that the company has not engaged in meaningful stakeholder dialogue and make reference in particular to the lack of dialogue with affected communities.
- 3) *Facilitation of ongoing (unremediated) impacts.* The complainants claim that Lundin Energy AB contributed to gross and systematic human rights violations that caused severe harm to people and property, that the company has not assessed or addressed its human rights impacts, and that there are ongoing (unremediated) impacts. The merger will dramatically reduce the net asset value of Lundin Energy AB. The damages caused by the human rights violations in Block 5A between 1997 and 2003 are estimated to total USD 1.878 million. The complainants argue that it was foreseeable that the actual adverse human rights impacts associated with Lundin Energy's activities would remain unaddressed and refer to the agreement between Lundin Energy and Aker BP ASA.

If the NCP decides that the complaint merits further examination, the complainants seek the following outcome of the process:

- Suspension of the taking of effect of the merger between Aker BP ASA and Lundin Energy Norway AS until such a time as Aker BP ASA and Aker ASA carry out comprehensive risk-based HRDD on the merger in accordance with the OECD Guidelines.

- For Aker BP ASA and Aker ASA to carry out comprehensive risk-based HRDD on Aker BP ASA's acquisition of Lundin Energy Norway AS' assets, including an assessment of the company's alleged ongoing (unremediated) impacts.
- For Aker BP ASA and Aker ASA to meaningfully engage with all relevant stakeholders on Aker BP ASA's acquisition of Lundin Energy Norway from Lundin Energy's shareholders, including significantly impacted local communities.
- For Aker BP ASA and Aker ASA to take all necessary measures to ensure that the merger agreement between Aker BP ASA and Lundin Energy will be amended in order to achieve that Lundin Energy retains sufficient financial means to provide effective remedy to victims of the human rights violations that the company stands (credibly) accused of having contributed to.
- If the amendment of the merger agreement above proves to be unfeasible, for Aker BP ASA and Aker ASA to take all necessary measures to ensure that victims of adverse impacts in South Sudan access their right to effective remedy and reparation, including if this means that Aker BP ASA and Aker ASA themselves will contribute to the provision of effective remedy.

The complaints refer to the following provisions in the OECD Guidelines for Multinational Enterprises. According to Chapter II (General Policies), multi-national 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 [...] and account for how these impacts are addressed.

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.

14. Engage with relevant stakeholders in order to provide meaningful opportunities for their views to be taken into account in relation to planning and decision making for projects or other activities that may significantly impact local communities.

Chapter IV (Human Rights) provides that enterprises should:

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.

3. Seek ways to prevent or mitigate adverse human rights impacts that are directly linked to their business operations, products or services by a business relationship, even if they do not contribute to those impacts.

5. Carry out human rights due diligence as appropriate to their size, the nature and context of operations and the severity of the risks of adverse human rights impacts.

6. 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.

RESPONSE FROM THE COMPANIES

Aker BP ASA and Aker ASA submitted a joint response to the complaints on 24 June 2022. They consider it practical that the two almost identical complaints are handled together in the initial assessment phase. Moreover, they point out that one of the complaints is directed at Aker ASA as investor and the other at Aker BP ASA, the latter of which is also a direct party to the transaction with Lundin Energy.

The companies believe the complaints are not suited for further consideration as a specific instance, because they do not concern actual or potential adverse impacts on human rights, but rather the lack of remedy for alleged human rights violations that have long ceased, and that were not linked to any of the companies now acquired by Aker BP ASA. They refer to how the complaint largely concerns Lundin Energy's alleged obligation to remedy past activities, but that Lundin Energy is not a party to the complaint. The underlying issue of whether Lundin Energy did in fact contribute to human rights violations perpetuated by the military and government-backed militia groups during a civil war is subject to criminal proceedings in Sweden. The companies believe the complaints do not meet the criteria of the initial assessment phase. They consider any examination of the issues covered in the complaints problematic without the involvement of Lundin Energy and while the issues are being litigated in a Swedish court.

In their response, the companies first provide background information about the transaction and their own risk assessments with respect to human rights. The companies point out that Lundin Energy, through the merger, will divest from the Norwegian oil and gas business while retaining the following assets and liabilities: (i) the renewables business, (ii) USD 130 million, and (iii) the liabilities and obligations associated with the Sudan case. Lundin Energy will continue as a listed company in Sweden under its new name Orrön Energy AB and has plans to develop the renewables business further. Lundin Energy will thereby continue to own and operate a substantial business after the transaction.

Furthermore, the companies point out that the allegations relating to Lundin Energy's former operations in Sudan are common knowledge. They state that, in their due diligence (DD) process, they also considered whether the companies being acquired could be linked to the alleged adverse impacts. The DD showed that none of the companies Aker BP ASA sought to acquire had been involved in any activities or operations in Sudan and that Lundin Energy Norway AS had been acquired by Lundin Energy after the operations in Sudan had ended. It was also confirmed that the transaction does not limit or reduce any potential liability for or responsibilities of Lundin Energy for past activities in Sudan and that Lundin Energy would retain significant assets after the transaction.

The response refers to the complexity of the ongoing court case in Sweden. The main hearing before the district court is expected to last more than two years, the prosecutor's initial case file comprised around 80,000 pages and the charges were largely based on witness accounts. The company states that it would not have been possible to conduct a detailed review of the facts

that are currently subject to lengthy litigation. In conclusion, the companies give an account of why they believe the complaint does not meet the admission criteria for the initial phase of the NCP's handling of specific instances. The response is published in its entirety on the NCP website.

PROCEEDINGS OF THE NCP TO DATE

The NCP received the complaints from PAX and the other organisations on 31 May 2022. In accordance with the NCP's procedural guidelines for handling complaints,¹ the complaints were shared with Aker BP ASA and Aker ASA on 10 June 2022, requesting a response within ten working days. The response was received by the NCP on 24 June and shared with the complainants on 29 June 2022. The NCP sent follow-up questions to the parties on 1 August 2022 and received answers to these on 15 August 2022. The NCP sent additional follow-up questions to the complainants on 31 October and received answers on 1 November 2022. The companies sent additional comments to the NCP on 30 November 2022. The NCP consulted informally with the head of the OECD Working Party on Responsible Business Conduct on 9 December 2022 to discuss issues relating to the initial assessment.

During the initial consideration of the matter, NCP member Gro Granden asked for clarification of the circumstances the complaint concerns (acquisition and merger) and how they relate to the Guidelines, specifically whether the Guidelines and/or the commentary expects the buyer/acquiring company to conduct due diligence with regard to the consequences for the other/target company and/or the group it is part of, including whether the latter's financial situation allows for the payment of remedy under liability asserted by an external party. Granden also asked for clarification of whether the same expectations apply to listed and non-listed companies/groups. Granden has since proposed that these questions be addressed by the OECD Working Party for Responsible Business Conduct in a formal, open and hopefully broad process. Since the majority has decided to accept the applications for further consideration, this initiative has not been followed up as the specific instance now stands.

The NCP sent a draft version of its initial assessment to the parties on 9 January 2023, with a request to submit any comments within ten working days. On 20 February 2023, the NCP published its initial assessment and the submissions from the parties at www.responsiblebusiness.no:

It has not been possible to issue this initial assessment by the deadline that applies to this stage of the process, as the NCP needed to conduct more in-depth assessments of certain questions in this initial phase.

¹ National Contact Point Norway (2014), [Procedural Guidelines for Handling Complaints](#)

INITIAL ASSESSMENT BY THE NCP

The OECD Guidelines are recommendations from governments to multinational enterprises operating in or from adhering countries.² They are addressed to all the entities within the multinational enterprise (parent companies and/or local entities).³

The complaints against Aker BP ASA and Aker ASA were submitted to the Norwegian NCP. The OECD Guidelines apply to the companies. The Norwegian NCP is considered the correct entity to handle the complaints, as they concern companies registered and headquartered in Norway. Aker ASA is an industrial investment company with ownership interests in oil and gas, renewable energy and green technology, industrial software, seafood and marine biotechnology. The company is headquartered at Fornebu (outside Oslo, Norway), and it is listed on the Oslo Stock Exchange. Aker ASA is the principal shareholder of Aker BP ASA, holding its shares through the company Aker Capital AS. Aker ASA is represented on the board of Aker BP ASA. Aker BP ASA engages in exploration for and production of oil and gas. The company is headquartered at Fornebu (outside Oslo, Norway), and it is listed on the Oslo Stock Exchange.⁴

The NCP has decided to accept parts of the complaints for further consideration. The specific instance to be considered by the NCP is delimited to questions concerning the companies' human rights due diligence in connection with the transaction. The decision has been made based on the six criteria below, as outlined in para 25 of the commentary to the Procedural Guidance to the OECD Guidelines, and the NCP's procedural guidelines for handling complaints. In its assessment, the NCP's objective has been to determine whether the case concerns issues that merit further examination. In doing so, the NCP has sought to determine whether the issues are 'bona fide', in other words real or authentic, and relevant to the implementation of the OECD Guidelines.⁵

1. WHAT IS THE IDENTITY OF THE PARTY CONCERNED AND WHAT IS THEIR INTEREST IN THE MATTER?

The complaints were submitted by three South Sudanese and five European organisations: PAX, the Civil Society Coalition on Natural Resources, Global Idé, Liech Victims Voices, Norwegian Church Aid, Norwegian People's Aid, South Sudan Council of Churches and Swedwatch. It was submitted on behalf of an estimated 200,000 South Sudanese people, described as victims of

² The OECD Guidelines for Multinational Enterprises (2011) Preface, p. 3

³ The OECD Guidelines (2011), Chapter I (Concepts and Principles), paragraph 4

⁴ The major shareholders of Aker BP ASA at the time of the transaction between Aker BP ASA and Lundin Energy were Aker Capital AS (37,14 percent), BP Exploration Op Co Ltd (27,85 percent) and Folketrygdlandet (3,44 percent).

The current list of the largest shareholders of Aker BP ASA are Aker Capital AS (21,16 percent), BP Exploration Op Co Ltd (15,87 percent), Nemesia S.A.R.L (14,37 percent) and Folketrygdlandet (4,74 percent). See: [Investor - Aker BP](#).

⁵ OECD (2019), Guide for National Contact Points on Coordination when handling specific instances, p. 5

gross and systematic human rights violations. The companies do not dispute that the complainants have a legitimate interest in the case.

The NCP considers that the complainants' interest in the case is legitimate. The organisations have interests and mandates relating to human rights and humanitarian issues of relevance to the issues raised in the complaint. Some of the organisations represent victims of human rights violations in the area in question in South Sudan.⁶

2. ARE THE ISSUES RAISED MATERIAL AND SUBSTANTIATED?

For the NCP to accept the complaint for further consideration, the issues raised must be material and substantiated. This means that the issues must be related to matters covered by the OECD Guidelines and, as far as possible, be substantiated by relevant documentation. At this stage, the NCP bases its consideration on the fact that it is an *initial* assessment, and not a final assessment of whether or not the companies have complied with the Guidelines.⁷

In the complaints, it is submitted that Aker BP ASA's merger with Lundin Energy Norway is in breach of Chapter II (General Policies) and Chapter IV (Human Rights) of the OECD Guidelines. More specifically, the complainants claim that Aker BP ASA and Aker ASA have failed to observe the OECD Guidelines Chapter II, para 10, 12 and 14 and Chapter IV, para 1 and 3 and para 5–6. As grounds for their submissions, the complainants refer to documentation from various sources, including press releases and other statements from Lundin Energy, Aker ASA, Aker BP, statements from the Swedish prosecuting authority, the report Unpaid Debt from the European Coalition on Oil in Sudan (ECOS) and documentation contained on the website www.unpaiddebt.org, as well as media coverage.

The companies hold that the complaints do not concern matters covered by the OECD Guidelines. Among other things, they refer to the fact that they concern lack of remedy for alleged human rights violations and assert that this in itself constitutes an ongoing human rights violation. Furthermore, they believe the complaints have not been substantiated by documentation relevant to key questions regarding the value of the remaining business in Lundin Energy after the merger and the cost of remediating the alleged human rights violations.

The NCP considers that the complaints against Aker BP ASA and Aker ASA raise questions of relevance to the OECD Guidelines. However, the specific instance must be delimited to the expectations under the Guidelines that apply to the companies against which the complaints are brought, and, consequently, to these companies' due diligence in connection with the transaction, cf. Chapter II and Chapter IV of the OECD Guidelines. The right to an effective remedy is a human

⁶ Liech Victims Voices is a network of victims of the 1997–2003 oil war in Block 5A in South Sudan. Since 2016, the organisation has advocated for the right to remedy and reparation

⁷ OECD (2019), Guide for National Contact Points on Coordination when handling specific instances, p. 7

right in itself.⁸ It follows from this that a merger or acquisition of a company or a group of companies may, depending on the concrete circumstances, be linked to an adverse impact on the right to an effective remedy. The OECD Due Diligence Guidance for Responsible Business Conduct (2018) points out that the risk assessment should be updated with new information when the company makes significant changes, such as mergers and acquisitions.⁹ In this context, it is important to underline that the expectations expressed in the OECD Guidelines can go further than what follows from national legislation. However, due diligence does not shift responsibility from the entity causing the adverse impacts to the company with which it has a business relationship, cf. Chapter II of the Guidelines.

Moreover, the complaints are supported by references to relevant documentation and have, in the NCP's view, and the parts of the complaint that relate to the companies' due diligence have been substantiated sufficiently to be accepted for further consideration. The NCP has at this stage made no determination as to whether the companies have observed the OECD Guidelines.

3. DOES THERE SEEM TO BE A LINK BETWEEN THE ACTIVITIES OF THE ENTERPRISE AND THE ISSUES RAISED IN THE COMPLAINT?

The NCP considers that both parties have presented relevant points regarding the question of whether there is a link between the companies' activities and the issues raised in the complaints. The NCP considers that, the way the specific instance is delimited above, there is a link between the companies and the issues raised in the complaint concerning risk-based due diligence. The companies have different roles when it comes to the due diligence expectations under the OECD Guidelines as the acquiring company and shareholder company respectively. Under the OECD Guidelines, all enterprises have an independent responsibility to carry out due diligence with a view to identifying, preventing and mitigating actual and potential adverse impacts, and accounting for how these impacts are addressed.

4. WHAT IS THE RELEVANCE OF APPLICABLE LAW AND PROCEDURES, INCLUDING COURT RULINGS?

National law and court rulings can provide useful information for the NCPs when it comes to seeing how related issues are assessed by other stakeholders and what expectations exist in different countries.¹⁰ At the same time, the OECD Guidelines state that they 'extend beyond the law in many cases'.¹¹ In rare instances, domestic law requirements may conflict with the recommendations of the OECD Guidelines. In such situations, the Guidelines provide that

⁸ The UN Declaration of Human Rights Article 8, the International Covenant on Civil and Political Rights Article 2(3) and the European Convention on Human Rights Article 13

⁹ OECD (2018), OECD Due Diligence Guidance for Responsible Business Conduct, pp. 25–26

¹⁰ OECD (2018), Guide for National Contact Points on the Initial Assessment of Specific Instances, p. 9

¹¹ The OECD Guidelines (2011), Chapter I (General Guidelines), paragraph 2

‘enterprises should seek ways to honour such principles and standards to the fullest extent which does not place them in violation of domestic law’.¹²

It has not been argued that the merger was conducted in violation of national law. The merger between Aker BP ASA and Lundin Energy’s Norwegian oil and gas business is regulated by Norwegian and Swedish company law. The NCP bases itself on this, without it being decisive for its assessment of the companies’ compliance with the OECD Guidelines and their due diligence at the time of the transaction.¹³

The Swedish prosecuting authority has indicted two leading employees of Lundin Energy, and at the same time demanded confiscation of company assets. The criminal case will also consider a claim for compensation from 32 victims. However, the NCP is of the view that the legal proceedings will not be decisive either for the NCP’s consideration of the issues relating to the companies’ due diligence at the time of the transaction.

5. HOW HAVE SIMILAR ISSUES BEEN, OR ARE BEING, TREATED IN OTHER DOMESTIC OR INTERNATIONAL PROCEEDINGS?

In their response, the companies refer to, inter alia, the PAX report ‘Unpaid Debt’, which was written in 2010 for the European Coalition of Oil in Sudan (ECOS). In the report, the government of Sweden is called on to pursue accusations that Lundin Energy was complicit in war crimes and gross human rights violations. Shortly thereafter, the Swedish government started its investigations that resulted in an indictment in November 2021. According to the companies, the underlying issue at the heart of the complaint is identical to that of the ongoing criminal proceedings in Sweden involving Lundin Energy. The complainants also refer to the ongoing court case and point out that 200,000 other South Sudanese victims have no legal recourse. They believe that this makes it all the more paramount that Aker BP ASA prevents Lundin Energy from becoming incapacitated to address ongoing (unremediated) impacts.

According to the Procedural Guidance of the OECD Guidelines, the NCP 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. In such cases, the Procedural Guidance provides the following recommendations:

NCPs should evaluate whether an offer of good offices could make a positive 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.

¹² The OECD Guidelines (2011), Commentary on Chapter IV (Human Rights), paragraph 38

¹³ The company acquired by Aker BP ASA was the newly established company Kommstart 157 AB. The value of the company was USD 11 billion. The company that has now taken over responsibility for the Sudan accusations is Orrön Energy AB, after the change of name from Lundin Energy was approved. See [Aker BP ASA \(OB:AKRBP\) agreed to acquire Kommstart 157 AB from Lundin Energy AB \(OM:LUNE\) for USD 11 billion. | MarketScreener.](#)

Although parallel proceedings do not prevent the NCP from accepting a case for further consideration, an assessment must be made of the relevance of this court case and whether handling the specific instance will be expedient nonetheless. The NCP refers to the delimitations of the specific instance described above and considers that the ongoing legal proceedings in Sweden will not be decisive for the questions raised about the Aker-companies' due diligence in connection with the acquisition. Such due diligence as the complaint to the NCP concerns must, under any circumstances, be carried out prior to a merger and on the basis of the information known at the time.

6. WOULD CONSIDERING THIS SUBMISSION CONTRIBUTE TO THE PURPOSE AND EFFECTIVENESS OF THE GUIDELINES?

The questions for the NCP to consider here is whether accepting part of the complaint for consideration as a specific instance could make a positive contribution to resolving the issues raised and to promoting the purpose and effectiveness of the Guidelines.¹⁴ The OECD Guidelines aim, among other things, to promote the positive contributions multinational enterprises can make to economic, environmental and social progress worldwide.

An important objective of the OECD Guidelines is to minimise and resolve difficulties the enterprises' various operations may give rise to.¹⁵ The NCP has recently handled other cases where it was considered that further consideration of the issues raised could contribute to clarifications and solutions.¹⁶ The way the specific instance is delimited, as described above, the issues will not be linked to the final clarification of Lundin Energy's liability or other aspects concerning the outcome of the ongoing court case in Sweden. The specific instance cannot, and is not intended to, resolve the conflict between the complainants and Lundin Energy – a company that is not included in the complaint to the NCP. The NCP's further handling of the specific instance will address the disagreement between the complainants and the Aker companies relating to the due diligence of these companies and may thereby contribute to the purpose and effectiveness of the Guidelines.

The right to an effective remedy is a key right, and decisive for the effective protection of human rights. The expectation of carrying out due diligence in connection with an acquisition that may be linked to potential adverse impacts on the right to remedy for victims of alleged widespread

¹⁴ OECD (2019), Guide for National Contact Points on the Initial Assessment of Specific Instances, pp. 9–10

¹⁵ See the OECD Guidelines (2011), Foreword and Preface

¹⁶ One of the specific instances concerned, among other things, how the recommendations on due diligence in the OECD Guidelines can be applied in conflict-affected areas ([Committee Seeking Justice for Alethanyaw \(CSJA\) – Telenor – Ansvarlig Næringsliv \(responsiblebusiness.no\)](#)). The handling of another specific instance was considered to have the potential to contribute to a better understanding of the recommendations for due diligence for institutional investors ([IUF, EFFAT-IUF, SEIU and UGT vs. NBIM – Ansvarlig Næringsliv \(responsiblebusiness.no\)](#)).

human rights violations has not been clarified to any great extent through NCP practices. The NCP is of the view that the issues raised in the complaint concern important matters of principle.

Taken together, this supports the view that the handling of this specific instance may contribute to promoting the purpose and effectiveness of the Guidelines.

CONCLUSION

The NCP has considered the above criteria for the initial assessment process and has determined that the issues raised in the complaints relating to the companies' human rights due diligence merit further consideration. The NCP will offer the parties a dialogue on the companies' due diligence in connection with the transaction. Aker BP ASA and Aker ASA have different roles in relation to the transaction as the acquiring company and shareholder company respectively. The main issue in the specific instance is the due diligence expectations with respect to Aker BP ASA. The extent to which Aker ASA is included in the dialogue should be discussed with the parties and determined at the outset of the dialogue.

If the dialogue has not succeeded within six months after it commences, the NCP will carry out a new assessment of whether further dialogue and consideration is still appropriate.

The NCP's conclusion in this initial assessment is based on the information received from both parties. The NCP has not hereby expressed any view as to the correctness of statements or the validity of the documentation provided, nor on their possible impact on the issues raised in the specific instance. The NCP has made no determination as to whether the companies in this specific instance have observed the recommendations of the OECD Guidelines.