



## Company's sale of arms to certain states

Section 4 of the guidelines states that: "Companies may be excluded or placed under observation if there is an unacceptable risk that the company contributes to or is responsible for: [...]"

- g. the sale of weapons to states engaged in armed conflict that use the weapons in ways that constitute serious and systematic violations of the international rules on the conduct of hostilities
- h. the sale of weapons or military materiel to states that are subject to investment restrictions on government bonds as described in section 2-1(2)(c) of the Management mandate for the Government Pension Fund Global."



The contents of section 4(d) are not new. However, in connection with the amendment of the guidelines in 2022, it was changed from a product-based to a conduct-based criterion. The actual government bond exception, to which this provision refers, is administered by the Norwegian Ministry of Finance. Its object is to prevent the GPFG from investing in government bonds issued by certain states. The exception currently applies to Syria and North Korea. Previously, it also applied to Iran and Myanmar. The Ministry of Finance decides which states fall under this rule.<sup>6</sup> Section 4(d) of the guidelines means that the GPFG shall not invest in companies that sell weapons or military equipment to those states to which the government bond exception applies. The Council's task under section 4(d) is therefore to identify and recommend the exclusion of companies that sell weapons or military equipment to the governments of those states which the Ministry of Finance has already proscribed.

The Council has commissioned the service provider contracted to monitor the portfolio for companies covered by the product-based criteria to also find companies that sell weapons or military equipment to states covered by the government bond exception. Other information sources are also used. For example, the Council subscribes to regular updates from the US authorities who monitor weapons sales to certain states. This activity will be maintained. The change of section 4(d) from a product-based to a conduct-based criterion has no bearing on the gathering of relevant information.

No companies are currently excluded under section 4(d) of the guidelines. Previously, one company was excluded under this criterion.

Section 4(c) is a new criterion. Its objective is to prevent the GPFG from investing in companies that sell weapons to states that use them in ways that violate humanitarian law. The issue has been made relevant following criticism of the GPFG's investment in companies that sell weapons to the warring parties in the ongoing conflict in Yemen.

This new criterion is discussed in great detail in the Ethics Commission's report (NOU 2020:7), which sets

out clear guidance on its application. Among other things, it is stated that:

- There should be no restrictions on the conflicts to which the criterion shall apply, the size of the companies or deliverables, or the size of specific deliverables as a percentage of a company's total revenues.
- The criterion should encompass military materiel that may be used in combat and that *directly* impacts civilians. Here, the Ethics Commission highlights powerful weapons, including high-tech weapons, whose consequences are particularly extensive for civilians when they are consistently used in ways that violate the rules of combat set out in international law.
- The criterion is intended to target companies' sales to parties whose poor target selection, proportionality assessments and precautionary procedures constitute a *consistent characteristic*.
- The term *serious and systematic violation of the provisions of international law* means repeated incidents where weapons are used in violation of humanitarian law, particularly those provisions intended to protect civilians. The term *systematic violation* means that the violations must be enduring and reflect a systematic failure to comply with procedures due to an inability or unwillingness to do so.
- The criterion is *not* meant to target companies' sales to warring states that have established necessary systems to apply the principle of distinction.
- Before the exclusion of a company may be recommended under this criterion, it must be substantiated to a reasonable degree of certainty that the company knew about or should have foreseen that the use of its products would result in the violation of humanitarian law. Any company assessment should commence with current deliveries or sales that have taken place in the previous 1–2 years.

<sup>6</sup> Section 2-1(2) of the Management Mandate for the Government Pension Fund Global states that: "The Bank may not invest the investment portfolio in: [...] c. Interest-bearing instruments issued by governments or government-related issuers in the exceptional cases in which the Ministry has barred such investments based on the adoption of particularly large-scale UN sanctions or other international initiatives of a particularly large scale that target a specific country and where Norway has supported the initiatives."



In its Report to the Storting (white paper) (Meld St 24 (2020-2021)), the Norwegian Ministry of Finance endorsed the Ethics Commission's recommendations.

To date, the Council's task, pursuant to the guidelines, has been restricted to assessing *companies'* behaviour. The Council has not previously adopted a position on *states'* responsibility for serious norm violations, whether they be human rights violations or violations of other kinds. With the introduction of section 4(c), this is no longer the case. It is up to the Council to assess which states shall be the starting point for the application of section 4(c), based on the specific state's serious and systematic violation of the rules of combat set out in international law. Although the criterion shall be applied only to *companies* for their sales to certain states, the Council must first determine which states this refers to. This is something new for the Council and is completely different from assessing the behaviour of companies.

Since the assessment criteria will be very different, it will be necessary to keep the assessment of states separate from the assessment of companies. The Council will therefore operationalise section 4(c) through three stepwise assessments:

**Step 1) Assess which conflicts the criterion shall be applied to.**

**Step 2) Identify states participating in the conflicts determined in Step 1.**

**Step 3) Identify companies in the GPFG portfolio that sell relevant weapons types to states identified in Steps 1 and 2.**

In connection with the introduction of this criterion, the Council will, in 2022, perform an initial assessment of ongoing armed conflicts to see whether the criterion should be applied to any of them. On the basis of this assessment, the Council will consider whether there are grounds to recommend the exclusion of companies that sell weapons to states engaged in any of these conflicts. The preparatory works make it clear that the threshold for exclusion under section 4(c) of the guidelines is intended to be high. A large number of exclusions under this criterion are therefore not expected.