

Consultation response issued to the Ministry of Finance on 19 December 2022

Council on Ethics' consultation response regarding NOU 2022:12

The Council on Ethics refers to the letter of 29 September, in which the Council is invited to submit a consultation response regarding the Official Norwegian Report NOU 2022:12 The Fund in a changing world – The Government Pension Fund Global and new economic and political developments [Fondet i en brytningstid – Statens pensjonsfond utland og endrede økonomiske og politiske utviklingstrekk].

The Commission was appointed to assess which international economic and political developments could be relevant for the Government Pension Fund Global (GPF) in a few years' time and what significance they may have for the control and management of the Fund. As far as the Council on Ethics can see, none of the Commission's recommendations touch directly on the Council's mandate or activities. However, the Commission does point to several key issues and developments which could impact the Council's ability to exercise its mandate and to potential consequences of the Council's activities. The Council would like to make some remarks concerning these matters.

The Council points to the importance of the GPF's framework for responsible investment for its legitimacy and public trust, and to the Council's role as part of this.

In section 12.2 of the report, the Commission points out that the conditions for engaging in responsible investment may be impaired if the GPF increases its investments in companies domiciled in countries with weaker democratic institutions and less favourable conditions for freedom of expression and a free press, or in countries where the apparatus of the state and the market are more closely bound together. The Commission also writes that the opportunity to alter companies' behaviour through the exercise of shareholder influence will often also be more limited in countries where companies and the state are closely related. This corresponds with the Mestad Commission's findings in the Official Norwegian Report NOU 2020:7.

The Commission underlines the importance of the GPF being perceived as a purely financial investor – in other words, not as a political actor or a tool for Norwegian foreign policy. At the same time, the Commission recognises that such a perception of the Fund may, in some circumstances, be difficult to uphold. In section 12.3, the Commission points out that the Council's recommendations to Norges Bank concerning the observation or exclusion of companies does, on occasion, attract considerable media attention. The Council writes:

UNOFFICIAL ENGLISH TRANSLATION

“The starting point for the Council on Ethics’ assessments and application of the ethical guidelines is the activities of companies, not the actions of states. For some types of cases, however, it is inevitable that criticism of companies will also be perceived as criticism of the authorities in other states. This will apply particularly in cases where companies operate under licence from the authorities or even at their behest, or in cases relating to state-controlled companies.”

In Part 3 of the report, the Commission discusses risk management and risk tolerance in a new risk picture. Here, the Commission envisages a growing gap between expectations and what can realistically be achieved through responsible investment of the GPFG’s funds. In section 14.1, the Commission writes:

“Responsible investment management will be more important, but also more challenging. There are rising expectations with regard to what can and should be achieved through responsible investment management, and often also a desire to be among those who lead the world in this area. Demands and expectations for responsible investment management have become more comprehensive in their breadth, depth and execution. At the same time, the conditions for engaging in responsible investment management may become more challenging in that a steadily growing proportion of the Fund is invested in states with less democracy, transparency and press freedom, as well as less appetite for investments by funds that may be perceived as critical of the governing regime.”

The Council on Ethics concurs with these assessments.

As the Commission points out, the starting point for the ethical guidelines and the Council on Ethics’ assessments has been the actions of companies, not states. The idea has been that it is possible to establish and maintain a distinction, so that criticism of companies is not perceived as criticism of states, and thereby attempt to shield the GPFG from the consequences that criticism of states could have for the GPFG’s other investments and, ultimately, for other Norwegian interests and foreign policy objectives. As the Commission also points out, such a distinction may be difficult to sustain. In this connection, the Council would like to remark that the introduction of section 4(c) in the Guidelines for the Observation and Exclusion of Companies from the Government Pension Fund Global (GPFG) in 2021 requires the Council to assess the Fund’s investments in companies on the basis of states’ breaches of international law.

The Council assesses companies domiciled all over the world and endeavours to have a broadly sourced pool of information on which to base its assessments. The Council’s annual reports for 2018 and 2019 show that the geographic distribution of the companies with which the Council has worked largely reflects the geographic

UNOFFICIAL ENGLISH TRANSLATION

distribution of companies in which the GPF is invested, although some geographic areas may be overrepresented in relation to some criteria.

All the recommendations regarding the observation or exclusion of companies which the Council issues must be deemed to constitute a criticism of the companies concerned. To varying degrees, they may also be perceived as criticism of states. This is particularly clear in cases relating to state-controlled companies, companies which act directly on behalf of a state, or companies which contribute to state's norm violations in other ways. The extent to which this creates problems that result in unacceptable consequences for the GPF or other Norwegian interests is not something the Council on Ethics can, by itself, mitigate within the framework of its mandate.

Yours sincerely,

Johan H. Andresen
Chair of the Council on Ethics for the
Government Pension Fund Global