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Recommendation to place Fincantieri
SpA under observation

Summary

The Council on Ethics recommends that the Italian company Fincantieri SpA be placed under observation due to the risk that it is contributing to serious or systematic human rights abuses. This recommendation rests on the risk that migrant workers employed by subcontractors engaged at Fincantieri's shipyards in Italy are being exploited.

Observation entails the Council monitoring the case going forward and making a new assessment at a later date.

Fincantieri is one of the world's largest shipbuilders. It has shipyards in Italy, Brazil, Norway, Romania, USA and Vietnam. The Italian state owns over 71 per cent of the company's shares.

At the close of June 2024, the Norwegian Government Pension Fund Global (GPF) owned 0.52 per cent of Fincantieri's shares, worth NOK 45.9 million.

The shipyards are vast construction sites, where Fincantieri coordinates a large number of subcontractors. In 2023, over 45,000 workers, employed by around 2,400 different companies, were involved in a variety of production processes at the company's Italian shipyards. Many of the workers come from non-European countries.

A series of legal proceedings have revealed that several thousand people who have been employed by subcontractors at Fincantieri's shipyards have been subjected to grossly exploitative working conditions. The workers' pay and employment terms have deviated sharply from statutory and collectively agreed terms and conditions. This includes non-payment of overtime or supplements for work performed at night and on public holidays. The workers have had to work illegally long working hours and have received no sick pay. The Council accords weight to the fact that these practices have, in particular, impacted immigrants who are dependent on employment contracts to obtain residence permits in Italy. In this very vulnerable situation, they are at the mercy of their employer.

Although the workers are employed not by Fincantieri but by its subcontractors, the Council takes the view that Fincantieri is contributing to the abuses. The Council accords weight to the fact that the work is performed at Fincantieri's shipyards, access to which is controlled. Furthermore, the Council finds it important that several employees and former employees of Fincantieri have been indicted for complicity in the exploitation of labour and that the company itself stands indicted for failing to have adequate systems in place to prevent this.

In its assessment of future risk, the Council attaches importance to the company's response when allegations of labour rights violations have come to light, and what the company has done to reduce the risk of such violations.

The Council notes that the company has attempted to silence criticism by taking legal action against journalists, the labour inspectorate and trade union leaders. Nor are the labour rights violations mentioned in the company's extensive sustainability reports. The Council considers that Fincantieri has persistently provided an overly positive impression of employment conditions at its yards.

The above notwithstanding, the Council acknowledges that Fincantieri has established a system to safeguard labour rights, and accords especial weight to the fact that this system seems to be under development. In the Council's opinion, the system has, so far, not been sufficiently extensive or targeted, but notes that, in 2023, the company performed its first ever due diligence assessment (on its European operations) in accordance with the UN Guiding Principles for Business and Human Rights. This has enabled the company to draw up an action plan that is intended to reduce the risk. However, no quantitative targets for the company's initiatives have been disclosed, and the system for monitoring labour rights compliance will not be in place until 2025. The Council therefore considers that uncertainty still attaches to how the situation will develop going forward.

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1 Introduction

The Council on Ethics for the Norwegian Government Pension Fund Global (GPF) has assessed the Fund's investment in Fincantieri SpA¹ (Fincantieri) against the human rights criterion in the Guidelines for Observation and Exclusion of Companies from the Government Pension Fund Global (the ethical guidelines).²

Fincantieri is one of the world's largest shipbuilders, with shipyards in Italy, Brazil, Norway, Romania, USA and Vietnam.³ The company employs almost 21,000 people, around half of whom are located in Italy.

Fincantieri outsources to subcontractors a large amount of the work undertaken at the company's shipyards.⁴ In recent years, there have been a number of court cases in Italy concerning exploitation of migrant workers employed by subcontractors at several of Fincantieri's shipyards.

At the close of June 2024, the GPF owned 0.52 per cent of Fincantieri's shares, worth NOK 45.9 million.⁵ The Italian state owns over 71 per cent of the company's shares. Fincantieri has been listed on the Italian Stock Exchange (*Borsa Italiana*) since 2014.⁶

¹ Issuer ID: 919813.

² Guidelines for Observation and Exclusion of Companies from the Government Pension Fund Global, section 4(a):
https://www.regjeringen.no/contentassets/9d68c55c272c41e99f0bf45d24397d8c/2022.09.05_gpfg_guidelines_observation_exclusion.pdf. (Last visited 4 October 2024.)

³ Fincantieri, *World Presence*: <https://www.fincantieri.com/en/group/world-presence/>. (Last visited 10 October 2024.)

⁴ Fincantieri (2023), Sustainability Report for 2023, p.144:
<https://www.fincantieri.com/globalassets/sostenibilita2/fincantieri-sustainability-report-2023.pdf>.

⁵ NBIM, shareholding at the close of June 2024:
<https://www.nbim.no/no/oljefondet/investeringsene/#/2024/investments/equities/2689/Fincantieri%20SpA> .

⁶ Fincantieri (7 March 2024), Corporate Governance Report, p. 6 and p. 21:
<https://www.fincantieri.com/globalassets/governance/corporate->

1.1 Matters considered by the Council

The Council on Ethics has assessed the GPF's investment in Fincantieri against section 4(a) of the ethical guidelines, which 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 [...] serious or systematic human rights violations.*" The Council's present assessment relates to multiple court cases concerning the exploitation of migrant workers employed by subcontractors at Fincantieri's Italian shipyards.

The Council rests its determination of what constitutes serious or systematic human rights violations under the ethical guidelines on internationally recognised conventions and authoritative interpretations thereof. The Council has previously taken the position that if the human rights abuses are of a serious nature, a few such instances are sufficient for a company to be excluded from the GPF. Correspondingly, the abuses do not need to be individually as serious if they are perpetrated systematically.

When assessing the seriousness of the norm violations, the Council attaches importance to the human rights abuses' scope, nature and the extent to which they have occurred repeatedly. The Council also attaches importance to whether the norm violations have affected particularly vulnerable groups.

Although international human rights conventions are binding on states not companies, companies can be said to contribute to human rights violations. When assessing a company's contribution to such abuses, the Council takes the position that there must be a link between the company's operations and the norm violations in question, and the company must either have contributed actively to the norm violations or known about them without taking steps to prevent them.

Pursuant to the ethical guidelines, the norm violations must be ongoing or there must be an unacceptable risk of future norm violations for a company to qualify for exclusion from investment by the GPF. In this connection, the Council accords weight to the way a company has responded when norm violations have been uncovered, and what it has done to prevent any reoccurrences. When assessing a company's initiatives, the Council relies on the UN's Guiding Principles on Business and Human Rights (UNGPs).⁷ According

[governance/relazioni-governo-societario/fincantieri-report-on-corporate-governance-and-ownership-structure-2024.pdf](#).

⁷The United Nations (UN) (2011), Guiding Principles on Business and Human Rights (HR/PUB/11/04):

to these principles, companies must identify their business operations' actual and potential adverse impacts, and remedy any norm violations uncovered. Furthermore, the company must assess whether the initiatives it has implemented are effective and, if necessary, make adjustments to prevent any new abuses.

1.2 Human rights standards

The Council refers to Article 7 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), which protects the right to fair and decent working conditions, including fair pay and equal pay for equal work, with no discrimination of any kind. Furthermore, the Covenant establishes the right to safe and healthy working conditions, including a reasonable limit on working hours and regular days off.⁸ The Committee on Economic, Social and Cultural Rights (CESCR) has highlighted how vulnerable migrant workers are to exploitation in the labour market:

*"These workers, in particular if they are undocumented, are vulnerable to exploitation, long working hours, unfair wages and dangerous and unhealthy working environments. Such vulnerability is increased by abusive labour practices that give the employer control over the migrant worker's residence status or that tie migrant workers to a specific employer. If they do not speak the national language(s), they might be less aware of their rights and unable to access grievance mechanisms. Undocumented workers often fear reprisals from employers and eventual expulsion if they seek to complain about working conditions (...)."*⁹

www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr_en.pdf

8 UN (1966), International Covenant on Economic, Social and Cultural Rights:
<https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights>.

9 UN (27 April 2016), Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 23, On the right to just and favourable conditions of work (Art. 7 of the Covenant) (E/C.12/GC/23), section E(e), p. 12:
<https://www.refworld.org/legal/general/cescr/2016/en/122360>.

The Council refers, moreover, to the ILO's Migrant Workers Convention (No.143), whose object is to protect the rights of migrant workers.¹⁰

1.3 Sources

This recommendation rests on legal documents and newspaper articles from Italy. Fincantieri has also published information on its website and furnished the Council with information.

2 Background

2.1 Fincantieri's operations

Fincantieri has nine shipyards in Italy.¹¹ The yards act as vast building sites, with the company's own employees coordinating hundreds of subcontractors.¹² The subcontractors perform work inside the shipyard premises, access to which is controlled.¹³ The relationship between Fincantieri and the subcontractors is based on binding contracts, under which Fincantieri is entitled to supervise the subcontractors and suspend or terminate the relationship as it sees fit.¹⁴

According to the company's Sustainability Report for 2023, 80 per cent of its final products are fabricated with the help of other companies. *"Fincantieri works as de facto system integrator, taking responsibility for the project as a whole."* The company further states: *"As regards the Italian activities, Fincantieri acts as leader and group cluster for a*

¹⁰The International Labor Organization (ILO) (1975), Convention No. 143 concerning migrant workers:
https://normlex.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C143.

¹¹Fincantieri, World Presence: <https://www.fincantieri.com/en/group/world-presence/>. (Last visited 4 October 2024.)

¹²Fincantieri (2023), Sustainability Report, p. 144.

¹³Fincantieri (30 January 2024), letter to the Council on Ethics.

¹⁴Fincantieri (28 January 2020), Suppliers Code of Ethics, p. 19:
https://www.fincantieri.com/globalassets/sostenibilita2/responsabilita-economica/fincantieri_suppliers_code_of_ethics2.pdf.

large number (over 7,000) of Small and Medium Enterprises.”¹⁵

The company discloses that approx. 2,400 companies were involved in various production processes at its Italian shipyards in 2023, while the number of workers employed by subcontractors engaged at “*company sites*” exceeded 45,000. On average, 27,000 such workers were on site every day. Of these, around 42 per cent were Italian, 17 per cent from various other EU countries, while 40 per cent came from non-EU countries. The largest contingent of foreign workers (26 per cent) came from Bangladesh, while 13 per cent were from Romania.¹⁶

2.2 Report from the UN Human Rights Council’s working group on human rights and multinational enterprises

The UN Human Rights Council’s working group on human rights and multinational enterprises visited Italy in 2021 and published a report on its findings, in which it highlighted the vulnerable position of migrant workers:

“Several stakeholders described the situation of migrant workers as one of occupational blackmail where, because of their vulnerable situation, including regarding work contracts and residency permits, workers have no choice but to work under conditions of extreme exploitation, frequently falling into a cycle of debt-bondage. The current regime of regularization ties the permit for the legal stay in Italy to a work contract, which puts migrant workers in a situation of dependency, thus exposing them to the risks of an exploitative cycle.”¹⁷

2.3 Relevant legislation

Article 36 of Italy’s constitution states that “*Workers have the right to a remuneration proportional to the quantity and quality of their work and, in any case, sufficient to ensuring them and their families a free and dignified existence.*” The country’s employment tribunals apply the minimum wage established in collective agreements as a reference for

¹⁵ Fincantieri (2023), Sustainability Report, p. 144.

¹⁶ Fincantieri (2023), Sustainability Report, p. 145.

¹⁷ UN Human Rights Council (17 June 2022), p. 5: [A/HRC/50/40/Add.2 \(undocs.org\)](https://undocs.org/A/HRC/50/40/Add.2).

determining whether a company is complying with Article 36.¹⁸ Since 2016, the illegal supply and exploitation of labour has been punishable under section 603 bis of the Italian Penal Code.¹⁹ Whereas an offence was previously considered to have taken place only in connection with the use of violence or threats, under the new legal provision violence or threats are now deemed to be aggravating circumstances.²⁰ The purpose of the law was to combat the “gangmaster system” (in Italian *caporalato*) that involves the recruitment and gross exploitation of both Italian and foreign workers, particularly in the agricultural sector.²¹

In Italy, a company may be held criminally liable for offences committed on its behalf or for its benefit.²² This includes trafficking, forced labour and the illegal supply and exploitation of labour.²³ Criminal sanctions are of an administrative nature and may, for

¹⁸ Garnero, Andrea (2018), *The dog that barks doesn't bite: coverage and compliance of sectoral minimum wages in Italy*, in *IZA Journal of Labor Policy* 7:3, p. 5: <https://doi.org/10.1186/s40173-018-0096-6>.

¹⁹ Cucchiara, Maria Francesca and Baracchi, Anna, The Italian legal framework against labour exploitation. A legal assessment, specifically targeting undocumented migrants, ASGI. The article's para. 3(c) explains article 603 bis of the Italian Penal Code: https://media.business-humanrights.org/media/documents/files/documents/ASGI_HRIC_BHRRRC_May2017_REV_19.7.pdf. (Last visited 28 October 2024.)

²⁰ De Luca and Partners (30 November 2016), concerning law no. 199/2016: <https://www.delucapartners.it/en/dlp-insights/normativa/the-decree-amending-the-criminal-offence-of-illegal-intermediation-and-exploitation-of-work-set-forth-by-section-603-bis-of-the-italian-criminal-code-published-by-the-italian-official-gazette/>.

²¹ Lexology (10 November 2016), New Italian law on the ‘gangmaster system’: <https://www.lexology.com/library/detail.aspx?g=f6eeb159-2d8b-42ea-80ea-169097391a54>.

²² Law 231/2001 on the criminal liability of organisations: <https://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto.legislativo:2001-06-08;231>.

²³ Articles 601, 602 and 603 bis of the Italian Penal Code.

example, include fines, exclusion from public procurement contracts, the revocation of licences or permits, and the confiscation of profits from the illegal activity. Criminal liability does not apply to companies that have satisfactory systems to prevent the offences so covered.²⁴ These companies must have a structure in place that is responsible for ensuring compliance with specified penal clauses.²⁵

3 The Council's findings

In 2018, the Italian police opened an investigation into Fincantieri's subcontractors in response to many allegations of labour rights violations in connection with assignments at the company's shipyards. The investigation uncovered alleged abuses relating to 2,000 people at the Porto Marghera shipyards alone.²⁶ Some criminal proceedings have already been determined by the courts, while other cases remain ongoing.

²⁴ Whistlelink (22 November 2021), *Italian Law 231: The criminal liability of organisations*: <https://www.whistlelink.com/blog/italian-law-231-the-criminal-liability-of-organisations/>, and Baker McKenzie blog, *Corporate Liability in Italy*: <https://www.globalcompliance.com/white-collar-crime/corporate-liability-in-italy/>.

²⁵ Fincantieri (19 December 2023), *Modello di Organizzazioni, Gestioni e Controllo ex D.Lgs. 8 giugno 2001 n. 231*. Description of the company's model for compliance with Law 231: https://www.fincantieri.com/globalassets/sostenibilita2/business-ethics/fincantieri_modello-231-parte-generale_pubblicato-19dic23.pdf.

²⁶ Il Fatto Quotidiano (28 March 2023), *Porto Marghera, quasi 2mila lavoratori nei cantieri navali sfruttati e sottopagati: l'indagine della Guardia di Finanza*: <https://www.ilfattoquotidiano.it/2023/03/28/porto-marghera-quasi-2mila-lavoratori-nei-cantieri-navali-sfruttati-e-sottopagati-lindagine-della-guardia-di-finanza/7111740/>.

Over the years, there have also been a number of civil lawsuits in which Fincantieri has been found jointly and severally liable for subcontractors' failure to pay the wages owed to employees working on assignment at Fincantieri's shipyards.^{27, 28}

3.1 Litigation pursuant to the law on the exploitation of labour

3.1.1 Ongoing cases

Porto Marghera shipyard

Legal proceedings are currently underway before a court in Venice concerning both the exploitation of labour and corruption.²⁹ Of the 32 individuals indicted, 17 were employed at Fincantieri, with ten of these under indictment for the exploitation of labour. While 30 workers from Bangladesh have been named as aggrieved parties in the case, the indictment makes it clear that there are additional victims. The matters in question are alleged to have taken place from December 2016 to the close of 2018.³⁰

²⁷ To protect employees working under subcontracts, Italian law imposes joint and several liability on the client in the event of default by the subcontractor (article 1676 of the Italian Civil Code, article 29 of Law 276/2003). B&C Legal (19 January 2022), *The joint and several liability of the client in works/services contracts under Italian Law*: https://www.fincantieri.com/globalassets/sostenibilita2/business-ethics/fincantieri_modello-231-parte-generale_pubblicato-19dic23.pdf.

²⁸ Fincantieri has regularly included disclosures concerning such employment-related litigation in its annual reports. Fincantieri (2023), Annual Report for 2023, p. 261: <https://www.fincantieri.com/globalassets/investor-relations/bilanci-e-relazioni/2023/fincantieri-annual-report-2023-english-translation-non-esef.pdf>.

²⁹ Corriere de Veneto (18 April 2024), *Venezia, il racconto degli operai di Fincantieri: "Eravamo sfruttati, ma solo così mandavamo i soldi alla famiglia"*: https://corrieredelveneto.corriere.it/notizie/veneziamestre/cronaca/24_aprile_18/veneziamestri-racconto-degli-operai-di-fincantieri-eravamo-sfruttati-ma-solo-cosi-mandavamo-i-soldi-alla-famiglia-0e123789-6828-43cc-9bef-dc0ff16edxlk.shtml.

³⁰ Court of Venice (28 April 2022), Indictment (RGNR NO. 3173/19, GIP NO. 1538/22). Information concerning employment terms in the following paragraphs is drawn from pages 8 and 10.

Fincantieri is charged under Law 231 for failing to prevent the exploitation of labour.³¹

According to the indictment, the owners of two of Fincantieri's subcontractors, along with Fincantieri employees and agents, exploited workers in a vulnerable situation. The workers, who are from Bangladesh, depended on being able to produce employment contracts in order to obtain or retain residence permits in Italy. They are alleged to have accepted a lower rate of pay than that specified in collective agreements or commensurate with the work performed.

Pay was set at a fixed hourly rate of EUR 5–7, irrespective of when the work was carried out or how many hours were worked (so-called "global pay"). The workers therefore lost out on overtime supplements, supplements for working on public holidays and at night, paid holidays and sick pay. False timesheets, with fewer hours paid according to collective agreements, were fabricated to give the impression of lawful working conditions. The incorrect information on the workers' payslips also meant they lost out on pension accruals.

Fincantieri employees are alleged to have contributed to the exploitation by squeezing prices to such an extent that it was obvious that payments did not correspond to the work performed. Based on a system of standard costs, time spent is alleged to have been calculated on the basis of ideal working conditions that did not reflect the real situation. According to the indictment, Fincantieri practically had a monopoly on the procurement market for certain services in the district and exploited the situation to force subcontractors to accept extremely one-sided contractual relations.

There was, allegedly, also an element of extortion with regard to the payment of work performed without formal prior agreement because the subcontractors were told that they had to accept the terms Fincantieri set if they wanted further commissions.

Fincantieri is alleged to have failed to perform adequate checks to ensure that

³¹ Il Gazzettino (28 September 2022), Marghera. Fincantieri, a processo 32 persone: 'Operai sfruttati per costruire le navi': https://www.ilgazzettino.it/nordest/venezia/operai_sfruttati_fincantieri_marghera_metodo_consolidato_sfruttamento_costruzione_navi-6954901.html. Il Gazzettino (16 November 2022), Fincantieri, la Procura: 31 indagati per sfruttamento e corruzione. Chi sono, le accuse e la difesa: https://www.ilgazzettino.it/nordest/venezia/fincantieri_sfruttamento_indagati_subappalti_inchiesta_porto_marghera-6323710.html.

employment terms and conditions at the subcontractors were satisfactory:

*"(Fincantieri) failed to perform real checks on the conditions under which the employees of Venice Group s.r.l. and Naval Welding s.r.l. were working, despite the fact that such checks should have been performed and were essential, and even though they were very familiar with the illegal wages system [...] Venice Group s.r.l., Naval Welding s.r.l. and others had practised for many years at Fincantieri S.p.A.'s facility in order to reduce their costs and offset Fincantieri's untenable financial terms and conditions. The practice was known as a result of numerous complaints that various trade unions had submitted over many years (and widely published in the newspapers) about the illegal "global pay" scheme that Fincantieri's subcontractors used, and the failure to pay employees for some of the hours they actually worked."*³²

Several Fincantieri employees have been indicted for receiving bribes from companies in return for contracts.³³

Ancona shipyard

Legal proceedings are currently underway before the Court of Ancona against one of Fincantieri's subcontractors. It is alleged that workers from Bangladesh were forced to pay half of their EUR 1,200 monthly salary to managers at the company they worked for. This company had undertaken assignments relating to insulation work aboard ship. The workers are alleged to have worked up to 260 hours a month, although it should have been 173 hours. These offences are alleged to have taken place between 2017 and 2019.³⁴

³² Court of Venice, Indictment (2022), p. 8. (Translation by the Council on Ethics.)

³³ Il Gazzettino (12 January 2023), «Sistema Fincantieri, lavoro sottopagato», via al processo contro dirigenti e funzionari:
https://www.ilgazzettino.it/nordest/venezia/fincantieri_lavoro_sottopagato_processo_dirigenti_funzionari-7162167.html.

³⁴ Today Cronaca (2 February 2024), Operai ridavano indietro metà busta paga: "Meglio avere 600 euro che vendere rose in strada":
<https://www.today.it/cronaca/operai-bengalesi-cantiere-navale-ancona.html>.

3.1.2 Court rulings

Porto Marghera shipyard

In January 2023, ten individuals from seven of Fincantieri's subcontractors were sentenced to terms of imprisonment of between one and two years for exploitation of the labour force.³⁵ In addition, three people were convicted of aiding and abetting this by fabricating documentation to make it look as though the terms of employment were legal. Around 80 people were listed as aggrieved parties in the case.

As immigrants, many workers depended on having employment contracts in order to retain their residence permits in Italy, and were obliged to accept pay and working conditions in violation of laws and collective agreements. The workers were paid a fixed hourly rate of EUR 7 or less, irrespective of when the work took place (no supplements for night work or work on public holidays) or how many hours they had worked in excess of normal working hours (no overtime payment).

The Court found this to be a deliberate act for the purpose of infringing the workers' legal and collectively agreed rights, since false payslips indicating that the workers had received the official rate of pay had been fabricated. The workers had not received sick pay or holiday pay or other statutory benefits.³⁶ Many had worked extremely long hours, in some cases 12 hours a day.³⁷ The Court also pointed to safety violations and to the fact that these workers undertook the most hazardous and physically onerous work.³⁸

³⁵ Court of Venice (19 January 2023), Ruling (RGNR 8149/21, 6855/2018). *Il Gazzetion* (20 January 2023), *Sfruttavano i lavoratori di Fincantieri, tredici condanne per 17 anni di carcere*:

https://www.ilgazzettino.it/nordest/venezia/sfruttavano_i_lavoratori_di_fincantieri_tredici_condanne_per_17_anni_di_carcere-7178482.html.

³⁶ Court of Venice (19 January 2023) pp. 12–17.

³⁷ Documentation relating to overtime in the ruling shows 180–200 working hours per month. At the same time, however, normal working hours were stated as 11 hours per day, including a one-hour lunch break, on weekdays, and six hours on Saturdays, which adds up to a higher monthly figure for working hours.

³⁸ Court of Venice (19 January 2023) pp. 40–57.

Neither Fincantieri nor the company's employees were indicted in connection with this case. Nevertheless, the Court presumes that Fincantieri used its position of power to dictate contractual terms that contributed to the gross exploitation of vulnerable workers by its subcontractors. This was deemed to constitute mitigating circumstances in the Court's sentencing decision.³⁹

Monfalcone shipyard

In May 2023, three employees of one of Fincantieri's subcontractors were sentenced to terms of imprisonment of between seven and ten years, in part for illegal labour supply and exploitation of labour. This case also related to migrant workers who were subjected to wage theft in that a fixed, low hourly rate was paid out regardless of when the work was performed. The Court found that statutory rest periods had not been complied with. The workers were also pressured, in some cases through the use of physical violence, to hand over part of their wages to the guilty parties and to pay them a sum of money in return for work.⁴⁰

An earlier, similar, case involved a Venezuelan contractor who, when working for Fincantieri between 2017 and 2019, allegedly exploited 11 workers from a variety of African countries. The workers are alleged to have worked 240 hours per month and received illegally low wages. They were also forced to hand over part of the wages they received, corresponding to EUR 200–400, on pain of losing their jobs. The contractor pleaded guilty and was sentenced to imprisonment for three years and ten months.⁴¹

3.2 Defamation suit

In June 2018, Fincantieri accused two journalists, a trade union leader and an employee at the Italian National Labour Inspectorate's regional office in Venice of defamation in

³⁹ Court of Venice (19 January 2023) pp. 113–128.

⁴⁰ Court of Gorizia (4 May 2023), Ruling 504/2023 (RGNR 696/21). La Nuova di Venezia e Mestre (16 February 2021), Subappalti Fincantieri inchiesta fotocopia Arresti a Monfalcone:

<https://nuovavenezia.gelocal.it/venezia/cronaca/2021/02/16/news/subappalti-fincantieri-inchiesta-fotocopia-arresti-a-monfalcone-1.39911198>.

⁴¹ Il Piccolo (15 August 2021), Processo bis per caporalato dopo il rinvio per un cavillo: <https://ilpiccolo.gelocal.it/trieste/cronaca/2021/08/14/news/processo-bis-per-caporalato-dopo-il-rinvio-per-un-cavillo-1.40601502>.

the wake of a TV programme broadcast by the media company RAI.⁴² Part of the programme discussed reforms being implemented at the Italian National Labour Inspectorate and the exploitation of workers at Fincantieri's Porto Marghera shipyard. The defamation case was thrown out of court as being without legal merit, with the judge stating that if such litigation were allowed to go forward, it would have a "chilling effect" that would adversely impact freedom of the press and freedom of expression.⁴³

In response to this, Fincantieri stated that it: *"found itself forced to file a complaint because in said report it was accused, erroneously and totally unfounded, of organizational deficiencies and omissions attributable, by law, exclusively to the supervisory bodies in the field of employment protection, as well as conduct and behavior which are illegal or border on the limits of legality, not only all to be demonstrated in concrete terms, but, above all, even in this case, attributable exclusively to the related companies working in the shipyards of Fincantieri, with particular reference to the Marghera shipyard."*⁴⁴

3.3 Other matters

Over the past few years, several cases relating to the death of workers exposed to asbestos at the company's shipyards in the 1980s have been brought before the courts. These cases relate both to criminal liability for certain former Fincantieri employees and the company's liability for compensation.⁴⁵ The Council has not examined this issue in further detail.

⁴² RAI (14 May 2018), "Fuori Controllo":

<https://www.rai.it/programmi/report/inchieste/Fuori-controllo-742a49c3-7bdc-4b4c-b451-2d6abbb68425.html>.

⁴³ Court of Trieste (10 April 2019), Decision to dismiss the case (RGNR 4352/18), p. 3.

⁴⁴ Fincantieri (31 May 2024), email commenting on the Council on Ethics' draft recommendation.

⁴⁵ Ansa Italy (12 June 2024), *Amianto, Cassazione annulla assoluzione dirigenti Fincantieri*: https://www.ansa.it/sito/notizie/cronaca/2024/06/12/amianto-cassazione-annulla-assoluzione-dirigenti-fincantieri_aab546b8-460c-4a1e-9f2f-08a40a1d0d78.html, and Ansa Italy (3 October 2024) *Amianto nel cantiere, risarcimento da un milione per operaio*: <https://www.ansa.it/campania/notizie/2024/10/03/amianto-nel-cantiere->

4 Information provided by the company

Fincantieri has published a number of court filings as well as extensive reports on its website. The Council on Ethics has corresponded with the company on several occasions and has also held a video conference with its representatives.

4.1 Fincantieri's follow up of its subcontractors

Due diligence and risk assessments

Fincantieri updated its human rights policy on 10 October 2024. According to this, the company explicitly pledges to abide by the UN Guiding Principles on Business and Human Rights (UNGPs).⁴⁶ The company's previous policy from 2020 also referred to these principles.⁴⁷ In 2023, with the help of a major international firm of consultants, Fincantieri carried out its first human rights due diligence assessment, as required by the UNGP. However, this assessment encompassed only its European shipyards.⁴⁸

During this process, the company identified *"which risk events Fincantieri needs to manage more carefully, including forced labour, modern slavery and human trafficking, inadequate working conditions and violation of freedom of association, violation of health*

[risarcimento-da-un-milione-per-operaio_de04ef09-8f39-48de-b156-e3811ca2d828.html](https://www.fincantieri.com/en/media/press-releases/2024/fincantieri-releases-new-human-rights-policy).

⁴⁶ Fincantieri (29 September 2024) *Policy Human Rights Commitment to Respect Human Rights and Diversity*: <https://www.fincantieri.com/en/media/press-releases/2024/fincantieri-releases-new-human-rights-policy>.

⁴⁷ Fincantieri (28 January 2020) *Policy on Human Rights – Commitment for the Respect of Human Rights and Diversity*: https://www.fincantieri.com/globalassets/sostenibilita2/responsabilita-risorse-umane/diversita-e-pari-opportunita/fincantieri_policy_on_human_rights2.pdf.

⁴⁸ Fincantieri previously performed risk assessments that included matters relating to labour rights, but these did not comply with the UNGP's requirements. In an email to the Council on Ethics dated 9 September 2022, Fincantieri wrote that: *"(...) the Group has not yet implemented a fully structured due diligence process able to map potential human rights violations during its operations."*

and safety at work and violation of the rights of local communities.” The initiatives that were adopted on the basis of this risk assessment will be implemented by the end of 2025: *“In 2024, we will continue implementing the action plan defined after the due diligence activity and in 2025 we will implement the monitoring systems for human rights.”*⁴⁹

Suppliers’ Code of Ethics

Fincantieri requires all its subcontractors to sign the company’s Suppliers’ Code of Ethics and thereby commit to ensuring their employees receive reasonable terms and conditions in compliance with legislative provisions and collective agreements.⁵⁰

Suppliers must also monitor compliance with the Code’s provisions, both internally and in their own supply chains. For its part, Fincantieri pledges to *“closely monitor Suppliers’ compliance with this Code, reserving for itself the right to request them all the necessary documentation and to conduct independent audits at their facilities / premises / buildings / plants.”*⁵¹

Companies commissioned to perform work for Fincantieri must also sign an agreement of a more practical nature in order for their workers to enter the shipyards.⁵² For example, the subcontractors undertake to register the names of the employees, electronically record working hours, submit timesheets, provide access to payslips etc, and undertake specific HSE procedures.

Qualification and follow-up of suppliers

Fincantieri has a qualification process for suppliers that includes occupational health, safety and environment (HSE) and respect for labour rights.⁵³ If they so wish, particularly

⁴⁹ Fincantieri (2023), Sustainability Report, pp. 91–92.

⁵⁰ Fincantieri (28 January 2020), Suppliers’ Code of Ethics, p. 4:
https://www.fincantieri.com/globalassets/sostenibilita2/responsabilita-economica/fincantieri_suppliers_code_of_ethics2.pdf.

⁵¹ Fincantieri (28 January 2020), Suppliers’ Code of Ethics, p. 19.

⁵² Fincantieri (1 July 2021), Rules for the Companies Operating within the Fincantieri Working Units: https://www.fincantieri.com/globalassets/supplier/041-035_nousengl.pdf.

⁵³ Fincantieri (2023), Sustainability Report, p. 133.

important suppliers are subjected to thorough assessments and are registered in the company's supplier database. In 2023, this comprised 1,000 suppliers.⁵⁴

In 2023, the company established a dedicated ESG assessment programme for these suppliers. Under this scheme, strategic suppliers accounting for 32.4 per cent of the total procurement volume were assessed.⁵⁵

The most serious problems identified are followed up by the Supplier Observatory, an internal body drawn from several departments that may order suppliers to implement improvement plans or, if appropriate, decide to phase them out entirely. In 2023, 221 suppliers were followed up – 151 with improvement plans and 32 with phase-out plans (12 of which on ethical grounds).⁵⁶

The company also performs an extended due diligence assessment of strategic suppliers engaged in businesses with a high risk of mafia infiltration (e.g. transport of waste to landfills, equipment leasing and on-site security services).⁵⁷

In response to questions relating to the follow-up of suppliers not defined as strategic, Fincantieri states: *"Non-strategic suppliers, namely occasional or not critical to our manufacturing process, are monitored if specific critical issues arise."*⁵⁸

⁵⁴ Fincantieri (2023), Sustainability report, p. 133. According to the company website, suppliers are "considered strategic in terms of presence in the Supplier Register and turnover developed with Fincantieri S.p.A.": <https://www.fincantieri.com/en/sustainability/economic/sustainable-supply-chain/>. (Last visited 15 October 2024.)

⁵⁵ Fincantieri (2023), Sustainability Report, p. 135.

⁵⁶ Fincantieri's (2023), Sustainability Report, p. 135.

⁵⁷ Fincantieri and Italy's Ministry of the Interior (27 February 2017), National Framework Tender Protocol Between the Ministry of Interior and Fincantieri SpA for the Prevention of Infiltration Attempts by Organized Crime: <https://www.fincantieri.com/globalassets/supplier/national-framework-tender-protocol.pdf>.

⁵⁸ Fincantieri (30 January 2024), email to the Council on Ethics.

Whistleblowing system

Fincantieri has operated a whistleblowing system since 2009. The system enables violations of the law and company guidelines to be reported.⁵⁹ With respect to reports relating to Fincantieri's Italian operations in 2023, the company writes: *"It should be noted that in 2023 Fincantieri S.p.A received only 7 reports and all were investigated."*⁶⁰ The company has not received any reports about the subcontractors that have been convicted or are under investigation.⁶¹

Monitoring

Fincantieri performs *"annual second-party audits"* in order to monitor strategic suppliers.⁶² The companies are selected for this kind of audit on the basis of, for example, the size of their contracts with Fincantieri, their type of business and geographic location. Some random checks are also performed on the strategic suppliers.⁶³

In the latest five-year period, Fincantieri has performed 162 such audits. In 2023, 49 *"second-party audits [were performed] on the Group's suppliers of priority/strategic interest regarding the issues of respect for human rights and health and safety. Furthermore, with the same purposes, but with the support of external companies with proven experience in the sector, 37 additional audits were carried out. During 2023, no audit proved to be below expectations."*⁶⁴ The company considers that the scale and design of the audits complies with relevant guidelines, such as those set out in the UNGP.

⁵⁹ Fincantieri (2023), Sustainability Report, p. 93.

⁶⁰ Fincantieri (31 May 2024), email commenting on a draft recommendation.

⁶¹ Fincantieri (30 January 2024).

⁶² Fincantieri (May 2023), Sustainability Plan 2023–2027, https://www.fincantieri.com/globalassets/sostenibilita2/piano-di-sostenibilita/pdf/fincantieri_2023-2027-sustainability-plan.pdf

⁶³ Fincantieri (30 January 2024).

⁶⁴ Fincantieri (31 May 2024).

Access and identity checks at the shipyards

Access to the shipyards is controlled. *"Each subcontractors' worker is provided with a photo ID badge, that must be requested before the first entrance and visible during the permanence in the shipyards."*⁶⁵

All those present are clocked in and out. Fincantieri discloses that it stores data on its own employees' attendance. Others are simply registered as present for security reasons. Fincantieri further states that: *"The company is committed in strengthening sample checks to match the presence of the contractors' employees recorded on the attendance registration system and the ones reported in the Single Labour Register. Any discrepancies may result in the termination of the order and cancellation from the supplier register."*

In its comments on a draft recommendation, the company stated: *"The control takes place for safety purposes but it is not up to Fincantieri to carry out an investigation into the concrete personnel management methods, also considering the number of workers to access the factories on a daily basis. The return of the money took place in cash and therefore it was not possible to have an account of it."*

4.2 Other initiatives

During the video conference, Fincantieri said that the recruitment of qualified staff is strategically important and that good employment conditions are inextricably bound up with this. The company pointed to measures to both reduce the need for manual labour (automation and the use of industrial robots) and to improve access to qualified personnel (direct employment, education/training and social initiatives). The company will also reduce the length of its supply chains. Otherwise, the company stated that dialogue with the trade unions was better than before and that it would improve its dialogue with the workers at its shipyards. The major personnel changes that have taken place in the company's top management and at the shipyards in recent years was also highlighted.

4.3 The company's reaction to and reporting on the investigations

In its Sustainability Report for 2023, the company discloses that *"Fincantieri has not received any final convictions for unfair competition practices, tax evasion, corruption or*

⁶⁵ Fincantieri (31 January 2023).

*bribery, nor has it been involved in violations of human rights or labour rights. Moreover, no queries were submitted by the Business and Human Rights Resource Centre (BHRRC) and no cases were handled by the OECD National Contact Point (NCP)."*⁶⁶

In response to queries concerning the cases currently before the courts, Fincantieri states that it *"applies the highest operational and regulatory compliance standards across all its activities, and consistently bases its conduct on ethical and utmost transparency principles."*

It further states that *"With regard to the alleged corruption and worker exploitation case referred to in the press article 'Italian police search shipbuilding companies linked to Fincantieri' please note that Fincantieri is extraneous to any illegitimate behavior and fully cooperated with the investigating authorities. Should the allegations be confirmed, the Company will take prompt measures against any employees who may have committed illegal activities, harming its reputation."*⁶⁷

In response to queries about whether any of the companies under investigation have been looked into by the internal control unit, the company states that it *"is not a party to the investigation and has no direct evidence on the matter. Should the Company be involved in the proceedings, it will adopt the appropriate measures and procedures."*⁶⁸

With respect to sanctions imposed on employees charged with corruption or exploitation of the labour force, the company disclosed that two individuals have had their contracts of employment terminated.

In response to queries about how the board and senior management have addressed the Court's finding that the terms set by Fincantieri are a driver for the abuse of labour rights, the company states: *"Fincantieri constantly monitors the compliance and observance of the laws and its own procedures within its sites. The Company is not a party to the proceedings mentioned above, becoming aware of the matter from press articles. Should the Company be involved in the proceedings, it will take the proper measures and procedures."*⁶⁹

⁶⁶ Fincantieri (2023), Sustainability Report, p. 113.

⁶⁷ Fincantieri (9 September 2022), email to the Council on Ethics.

⁶⁸ Fincantieri (30 January 2024).

⁶⁹ Fincantieri (30 January 2024).

In a subsequent response, Fincantieri asserts that: *"The rates for the contracts were determined at reasonable conditions determined between the parties and the economic parameters are higher than the minimum wages, in an unfavorable market situation for Fincantieri due to a growth in the workload in the context of scarcity of skilled labour availability."*⁷⁰

In response to queries about whether the company has altered its control system, since the monitoring of employment terms and conditions, including wages, does not seem to be legally compliant and since the subcontractors have submitted false payslips, the company states: *"The statement is not correct. Fincantieri's control systems are fully in accordance with applicable laws and stock exchange rules (...)." The company then adds: "In order to further strengthen our controls, after becoming aware of the facts regarding Marghera shipyard, we have intensified the existing forms of control and launched an additional system of sanctions against companies with the provision of potential penalties up to the exclusion from the supplier register."*

In a subsequent response, Fincantieri writes that the company took steps to remove the supplier Venice Consorzio and related consortium members from its list of suppliers as far back as 2018. This was due, in part, to irregularities *"in the remuneration/contribution area"*, which could be illegal and constitute a risk because Fincantieri has joint and several liability for employee salaries. It then adds that: *"This proves the effectiveness of the control system."*⁷¹

5 The Council's assessment

The Council on Ethics has assessed the GPF's investment in Fincantieri against the human rights criterion in the Fund's ethical guidelines.

Through a number of court cases, it has emerged that several thousand employees of subcontractors that have worked at Fincantieri's shipyards have been subjected to grossly exploitative employment terms and conditions. In the most serious cases, employees at subcontractors have used violence or threats of violence to demand that workers hand over a portion of their wages. These workers have also had to pay recruitment fees. The majority of cases relate to non-payment of overtime, non-payment of supplements for work at night and on public holidays, and non-payment of

⁷⁰ Fincantieri (31 March 2024).

⁷¹ Fincantieri (31 March 2024).

sick pay. The workers concerned also had long working hours without statutory rest periods. The Council accords particular weight to the fact that this practice has impacted immigrants who depended on an employment contract to obtain a residence permit in Italy. In this very vulnerable situation, they are at the mercy of their employer.

The Council considers that the abuses have a considerable scope and do not appear to be isolated incidents. Ten of Fincantieri's subcontractors have been found guilty and indictments have been drawn up against executives at two more in relation to such abuses. In court documents, it has also emerged that such employment conditions have been common over a period of many years. The Council therefore considers that the practice constitutes a systematic human rights abuse.

Although the workers were not employed by Fincantieri but by its subcontractors, the Council considers that Fincantieri is contributing to the abuses. The Council attaches importance to the work having taken place at Fincantieri's shipyards, access to which is controlled. Fincantieri's responsibility is underlined by the fact that the company is jointly and severally liable for the wages paid to the employees of subcontractors at its shipyards. It is also material that Fincantieri's role as client has been deemed a mitigating circumstance in the sentencing of two convicted subcontractors.

Furthermore, the Council attaches significant weight to the fact that several employees and former employees of Fincantieri stand indicted for complicity in worker exploitation and that the company has itself been indicted for failing to have adequate systems in place to prevent this.

When assessing future risk, the Council attaches importance both to the company's response when allegations of labour rights violations have come to light and to what the company has done to reduce the risk of such violations. The Council notes that the company has attempted to silence criticism by taking legal action against journalists, the labour inspectorate and trade union leaders. Fear of such reprisals may contribute to fewer instances of wrongdoing being discovered.

The Council also considers it noteworthy that the company's Sustainability Report does not mention labour rights violations at its shipyards, despite the court cases being well underway. The Council considers that Fincantieri has persistently provided an overly positive impression of employment conditions at its shipyards. Nor does the Council give much credence to Fincantieri's claims to have learnt of the cases being pursued against its subcontractors through the press.

Nevertheless, the Council attaches importance to the fact that Fincantieri has established a system to safeguard labour rights.

The company points to policy documents and also discloses information about its whistleblowing channel and supplier qualification processes and monitoring systems. The Council considers that the company has relied too heavily on document checks and that the scope of the most thorough control measures has been insufficient. The most extensive checks, second party audits, focus on the 1,000 so-called strategic suppliers. Seen in light of the 2,400 subcontractors that worked at the company's shipyards in 2023, 49 such audits appears to be a small selection. Nor can the Council see that the checks are implemented where the risk of norm violations is greatest, since the suppliers' financial and strategic significance for Fincantieri is the most important selection criterion. Furthermore, the Council considers that the absence of whistleblowing reports and negative findings in the audits could indicate that the company's control regime does not adequately identify problems relating to the working environment.

Despite of these shortcomings, the Council places considerable weight on the fact that this system seems to be under development. Due diligence assessments in line with the UNGP's specifications are one important new initiative, which the company performed for the first time in 2023. Using this process the company has performed a more systematic survey of the risk of human rights abuses at its European shipyards than it has done previously. This has enabled the company to draw up an action plan to reduce this risk. The company plans to have a labour rights compliance monitoring system in place by the end of 2025. Although this is a positive step, it also indicates that the company does not currently have a system against which to measure progress. Nor has the company disclosed any quantitative targets that could provide an indication of whether conditions are improving.

The Council further notes that there is a certain gap between policy and practice on Fincantieri's part. The Council fails to see why due diligence assessments are not performed on the company's shipyards in Asia and America, since the relevant policies apply to the entire Fincantieri Group – not just its European operations. The due diligence assessments which are now explicitly mentioned in the new human rights compliance policy were, moreover, a cornerstone of the core values referenced in the company's policy from 2020. In other words, it took three years from the adoption of these guidelines until one of their most important elements was in place. How firmly the company's compliance efforts are rooted and what force they have internally is therefore unclear to the Council.

Although the Council acknowledges that the company's new initiatives may reduce the risk of systematic labour rights violations at Fincantieri's shipyards, the Council considers

that substantial uncertainty remains. This is due both to the paucity of information about actual employment conditions and the fact that many of the company's initiatives are of recent date or are still at the planning stage. The Council therefore recommends that the company be placed under observation for a period of two years.

6 Recommendation

The Council on Ethics recommends to place Fincantieri under observation for two years.

*

Svein Richard
Brandtzæg
Chair

(Sign.)

Siv Helen Rygh
Torstensen

(Sign.)

Cecilie
Hellestveit

(Sign.)

Vigdis Vandvik

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