OECDs RETNINGSLINJER FOR FLERNASJONALE SELSKAPER | NORGES KONTAKTPUNKT

Oslo, May 2nd. 2017

INITIAL ASSESSMENT

INDUSTRI ENERGI – DNO ASA

SUMMARY

The Norwegian trade union Industri Energi has, on behalf of the Yemeni trade union DNO Yemen Union, filed a complaint against Det norske oljeselskapet DNO ASA (DNO) to the National Contact Point for Responsible Business Norway (NCP).

The primary issue that the NCP was asked to look into concerns lack of dialogue between DNO and the employee representatives in Yemen in connection with collective dismissals and suspension of production in 2015.

It is claimed that the Yemeni trade union wanted to engage in dialogue with DNO's representatives in Yemen, without this request being granted within reasonable and sufficient time. Industri Energi claims that the trade union representatives were not given an opportunity to discuss the collective dismissals or suspension of production with the management.

The complaint also concerns questions about the validity of the dismissals as part of a downsizing of DNO's activities in Yemen during the war-like situation in 2015 and whether DNO obstructed the workers' right to organise and collective bargaining. It is claimed that DNO has violated labour rights in Yemen.

DNO believes that the key issue in the complaint is the validity of the dismissals as part of the downsizing process in Yemen. This issue is currently the subject of a dispute case in the country. DNO believes that the aim of the complaint is to contest the lawfulness of the downsizing of the company carried out in Yemen in 2015. Furthermore, DNO claims that the complaint was not submitted by a party that is affected by the circumstances the complaint concerns, and that it is not sufficiently founded or documented. DNO is of the

view that the ongoing court case before the Yemeni courts means that the case should not be considered by the Norwegian NCP.

The NCP has decided to accept the complaint for further consideration. Formally, the conditions are met. The company that is the subject of the complaint is Norwegian, and the complainant has a written authorisation from DNO Yemen Union.

The complaint concerns lack of compliance with several important provisions in the OECD Guidelines for Multinational Enterprises, especially Chapter *V. Employment and Industrial Relations, paragraphs 6 and 8* and Chapters I and II of the Guidelines, especially *Chapter I. Concepts and Principles, paragraph 2.*

The fact that a dispute case is currently being heard by the Yemeni courts does not preclude consideration of the matter by the NCP.

The purpose of an initial assessment is to decide whether the complaint merits further consideration. This assessment does not address whether DNO has complied with the OECD Guidelines.

THE COMPLAINT

The Norwegian trade union Industri Energi has, on behalf of the Yemeni trade union DNO Yemen Union, filed a complaint against Det norske oljeselskapet DNO to the National Contact Point for Responsible Business Norway (NCP).

The complaint concerns lack of dialogue between representatives of the management of DNO Yemen and employee representatives in Yemen relating to collective dismissals and suspension of production in 2015. The complaint also concerns the validity of the dismissals as part of a downsizing of DNO's activities in Yemen in 2015 and whether DNO has obstructed the workers' right to organise and collective bargaining.

Industri Energi claims that the workers were dismissed via text message and email, and that the employee representatives were not given an opportunity to discuss the collective dismissals and suspension of production with the management.[1] Reference is made to how the local trade union tried to engage in dialogue with the company without

[1] Memo from Industri Energi dated 18 November 2016

succeeding. Among other things, the trade union attempted protests in spring and summer 2015 outside DNO's office in Sanaa in Yemen, demanding dialogue.

Reference is made to the OECD Guidelines, Chapter *V. Employment and Industrial Relations.* The introduction and the first two paragraphs of Chapter V read as follows:

'Enterprises should, within the framework of applicable law, regulations and prevailing labour relations and employment practices and applicable international labour standards:

1. a) Respect the right of workers employed by the multinational enterprise to establish or join trade unions and representative organisations of their own choosing.

b) Respect the right of workers employed by the multinational enterprise to have trade unions and representative organisations of their own choosing recognised for the purpose of collective bargaining, and engage in constructive negotiations, either individually or through employers' associations, with such representatives with a view to reaching agreements on terms and conditions of employment.'

The primary issue, concerning lack of dialogue between representatives of the management of DNO Yemen and the employee representatives in Yemen relating to the collective dismissals and suspension of production in 2015, refers in particular to Chapter V, paragraph 6, which stipulates that:

'In considering changes in their operations which would have major employment effects, in particular in the case of the closure of an entity involving collective lay-offs or dismissals, (the enterprise should) provide reasonable notice of such changes to representatives of the workers in their employment and their organisations, and, where appropriate, to the relevant governmental authorities, and co-operate with the worker representatives and appropriate governmental authorities so as to mitigate to the maximum extent practicable adverse effects. In light of the specific circumstances of each case, it would be appropriate if management were able to give such notice prior to the final decision being taken. Other means may also be employed to provide meaningful co-operation to mitigate the effects of such decisions.'

The complaint also concerns the workers' right to organise and collective bargaining with a view to entering into agreements on working conditions. It is claimed that DNO does not respect local laws and standards and violates labour rights in Yemen, and that it also took some time before they respected the workers' right to establish or join trade unions or organisations of their own choosing. Here, reference is made to the OECD Guidelines, Chapter V, paragraph 8, which reads:

'Enterprises should, within the framework of applicable law, regulations and prevailing labour relations and employment practices and applicable international labour standards: Enable authorised representatives of the workers in their employment to negotiate on collective bargaining or labour-management relations issues and allow the parties to consult on matters of mutual concern with representatives of management who are authorised to take decisions on these matters.'

In connection with violation of the duty to respect national laws and established policies in the country in which the company operates, reference is made to the Guidelines Chapter I *Concepts and Principles, paragraph 2.* It reads as follows:

'Obeying domestic laws is the first obligation of enterprises. The Guidelines are not a substitute for nor should they be considered to override domestic law and regulation. While the Guidelines extend beyond the law in many cases, they should not and are not intended to place an enterprise in situations where it faces conflicting requirements. However, in countries where domestic laws and regulations conflict with the principles and standards of the Guidelines, enterprises should seek ways to honour such principles and standards to the fullest extent which does not place them in violation of domestic law.'

Reference is also made to the Guidelines *Chapter II. General Policies*, where the introduction reads as follows:

'Enterprises should take fully into account established policies in the countries in which they operate, and consider the views of other stakeholders.'

Industri Energi refers to the appealed first-instance judgment from the local labour tribunal and writes that, according to the judgment, DNO has acted in contravention of labour legislation that stipulates how a company should proceed to terminate employment contracts. The judgment concludes that DNO must pay 75% wages from the day the workers were dismissed. DNO is trying to circumvent the law, according to Industri Energi.

THE COMPANY'S REPLY TO THE COMPLAINT

In its reply, DNO states that it does not think that the complaint should be taken under consideration.

The company claims that the complaint was not submitted by a party that is affected by the circumstances the complaint concerns, and that it is not sufficiently founded or documented. DNO writes that the complaint is based on allegations and that consideration by the NCP would not contribute to the effectiveness of the Guidelines.

DNO believes that the key issue in the complaint is the validity of the dismissals as part of the downsizing process in Yemen and refers to how this issue is the subject of an ongoing dispute case in the country. They claim that the aim of the complaint is to contest the lawfulness of the downsizing that DNO carried out in Yemen in 2015.

The allegation concerning the workers' lack of right to organise and bargaining is undocumented and outdated. It is uncontested that the workers have joined trade unions and that negotiations have taken place between the parties. Here, it is emphasised that local trade unions were formed in the field on Blocks 32 and 42 in May 2013 and at the head office in Sanaa in September 2013. This is in accordance with the *Guidelines Chapter V* paragraph 1, points 1a and b.

As concerns the question of lack of consultation, cf. *the Guidelines Chapter V* paragraph 6, DNO writes that the consultation duty is not an absolute requirement and must be seen in light of what is practically possible and what other considerations, such as security considerations, should be taken into account. They add that the purpose of consultation is to afford an opportunity for cooperation to mitigate the effects of downsizing, cf. paragraph 59 in the Commentary to the Guidelines. In this context, the consultation will also concern a historical matter, and mediation between the parties or a statement from the NCP will now be of no consequence to the former employees' interests.

Concerning the question of lack of consultation in this context, DNO describes the very special security situation in Yemen as challenging and very difficult with regard to dialogue with the union representatives and the workers in connection with the downsizing.

In 2013 and the first half of 2014, the security situation in Yemen deteriorated and became extremely difficult. There were air raids on Sanaa and different armed fractions were active over large parts of the country. Travel was very dangerous and the postal service was not operational. As of April 2015, most of DNO Yemen's employees were effectively no longer in employment, and the company did not wish to call them into the workplace and expose them to unnecessary risk relating to the hostilities in the country. It was therefore not considered expedient to carry out individual or collective bargaining. Neither personal attendance nor postal delivery was considered to be a good alternative, and the company therefore chose to send notices of dismissal electronically. The notices were made available on the employees' personal areas on the network. All the workers were offered a conversation with the management by phone or in person if they so wished. These special circumstances made it difficult to envisage alternatives to dismissal,

or measures that could make the transition easier for the workers, without the company incurring major costs.

With regard to lack of dialogue between DNO and DNO Yemen Union in particular, it is claimed that no request for meetings or similar have been received directly from the trade union in Yemen. Enquiries from Industri Energi have been responded to without this leading to progress in the case.

THE NCP'S ASSESSMENT

The NCP specifies that the purpose of an initial assessment is to decide whether the complaint merits further consideration. This assessment does not address whether DNO has complied with the OECD Guidelines.

The NCP has decided to accept the complaint for further consideration. Formally, the conditions are met. The company that the complaint concerns is Norwegian and directly linked to the disputed issues.

Industri Energi files the complaint on behalf of DNO Yemen Union. DNO refers to how Industri Energi is not the trade union for DNO's employees in Yemen and is thereby not affected by the case. The NCP would like to state that it is not decisive that a trade union organises the affected workers in order for it to file a complaint. In the present case, however, the complainant also has a written authorisation from DNO Yemen Union to file a complaint on their behalf.

The company that the complaint concerns, DNO ASA, is directly linked to the disputed issues.

The complaint concerns lack of compliance with several important provisions in the OECD Guidelines, especially Chapter *V. Employment and Industrial Relations,* paragraphs 6 and 8.

The key issue in the complaint concerns lack of dialogue between DNO and the employee representatives in Yemen in connection with collective dismissals and suspension of production in 2015. The NCP considers this to be the key issue in the case.

As regards the points of the complaint that concern employment protection, lack of respect for the workers' right to organise and lack of or obstruction of dialogue relating to organisation and collective bargaining, the Guidelines clearly state that, if changes are considered in the operations that would have major employment effects, reasonable notice shall be provided of such changes. Such notice shall be provided to representatives of the workers and their organisations, so as to mitigate the adverse effects to the extent possible.

The point of the complaint that concerns the validity of the dismissals as part of the downsizing process in Yemen, which is the subject of the ongoing dispute before the Yemeni courts, does not preclude consideration by the NCP.

In its decision, the NCP can also take into account how similar questions are being or have been dealt with by other countries' contact points. A Belgian multinational enterprise, Etex, has been the subject of a complaint to the Belgian NCP for dismissing workers in its subsidiary in Argentina, without having engaged with trade unions to mitigate the negative effects of downsizing. On 14 July 2016, the Belgian NCP published its initial assessment[2], in which it decided to accept the complaint for further examination. The Belgian NCP offers dialogue and mediation and facilitates dialogue between the parties.

The Norwegian NCP finds that consideration of the specific instance would contribute to the purpose and effectiveness of the Guidelines. For example, it may result in clarifications about the extent to which DNO has complied with the OECD Guidelines when it comes to lack of dialogue and the procedure applied in connection with dismissals. The NCP also believes that dialogue between the complainant and the company that the complaint concerns, about applicable international labour right standards, can help to create an understanding of meaningful cooperation and constructive dialogue between the parties in future.

Moreover, the NCP considers that it is not unlikely that DNO, as a multinational enterprise with activities in several demanding areas, can find itself in a situation similar to that in Yemen in the future. Well-established procedures and policies for how the company should deal with employees both before, during and after a force majeure situation like the one that arose in Yemen will be important in such case.

On this basis, the NCP concludes that lack of dialogue between the parties relating to collective dismissals and suspension of production in Yemen in 2015 is significant and closely linked to key provisions in the Guidelines and their application in a demanding war-like situation.

THE NCP'S CONCLUSION

The Norwegian NCP has decided to accept the complaint for consideration.

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[2] http://economie.fgov.be/fr/binaries/Communiqu%C3%A9%20Evaluation%20Initiale%20Etex-BWI_tcm326-279687.pdf OR http://mneguidelines.oecd.org/database/instances/be0016.htm

ANNEXES

1) Information about the NCP's procedure for specific instances
2) Information about the affected parties

ANNEX 1: BACKGROUND FOR THE NCP'S PROCEDURES IN SPECIFIC INSTANCES

The purpose of an initial assessment is to decide whether the complaint merits further consideration and examination. It is not the aim of the initial assessment to consider whether DNO, in this case, has complied with the OECD Guidelines.

The NCP's Procedural Guidelines are available here:

http://nettsteder.regjeringen.no/ansvarlignaringsliv-en/files/2013/12/FINAL_KPprosedyreregler_eng_godkj1.pdf

The handling of specific instances is divided into four stages:

1. Initial assessment: An assessment of whether the case merits consideration, based on the complaint, the company's reply and any other information from the parties or other sources.
2. Mediation or examination: If a case is accepted for consideration, the NCP offers dialogue/mediation to the parties with a view to achieving a joint agreement. If dialogue/mediation is declined or is unsuccessful, the NCP will examine the case and assess whether it merits examination.
3. Final statement: If the parties reach agreement, the NCP publishes a final statement with information about the agreement. If mediation is declined or is unsuccessful, a final statement is published about whether the Guidelines are considered to have been followed, with recommendations for the company's future conduct, if relevant.
4. Feedback and follow-up: The NCP gives the parties an opportunity to submit feedback on their experience of the process. The NCP may also invite the parties to follow-up meetings about mediated agreements and about whether/how the recommendations set out in the NCP's final statement have been followed up.

ANNEX 2: INFORMATION ABOUT THE AFFECTED PARTIES

THE COMPANY:

DNO is a Norwegian oil company that operates in the Middle East and North Africa. Its parent company, DNO ASA, is listed on Oslo Stock Exchange and has subsidiaries with operations in Kurdistan in Iraq, in Yemen, Oman, the United Arab Emirates, Tunisia and Somaliland. DNO's turnover in 2015 amounted to USD 187.40 million.[3]

THE COMPLAINANT:

Industri Energi is a trade union for employees in oil, gas and land-based industry. It has about 60,000 members and is the fourth biggest union under the Confederation of Norwegian Trade Unions (LO).

DNO Yemen Union is the employee organisation for DNO in Yemen.

THE OECD GUIDELINES FOR MULTINATIONAL ENTERPRISES

http://www.responsiblebusiness.no/

[3] Key financials sales http://www.dno.no/en/about-dno/key-figures/