



OECD **GUIDELINES**
FOR MULTINATIONAL ENTERPRISES

NATIONAL CONTACT POINT
FOR RESPONSIBLE BUSINESS
NORWAY

Oslo, 9. April 2018

Final statement: Industri Energi – DNO ASA

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On 8 November 2016, the Norwegian trade union Industri Energi filed a complaint against the Norwegian company DNO ASA (hereinafter referred to as ‘DNO’) under the OECD Guidelines for Multinational Enterprises (hereinafter referred to as ‘the Guidelines’). On 7 April 2017, the Norwegian National Contact Point (NCP) decided to accept the complaint for consideration. On 10 May 2017, the parties accepted the offer of mediation, which took place over four days during the period 17 August to 16 October 2017. The mediation was unsuccessful and was concluded on 16 October 2017. The parties have subsequently submitted their final comments.

The complaint from Industri Energi was submitted on behalf of the Yemeni trade union DNO Yemen Union. The key issue in the complaint concerned lack of notification and consultation between DNO and the employee representatives in Yemen in connection with collective dismissals and suspension of production in the war-like situation that prevailed in 2015. It is claimed that the Yemeni trade union wanted to engage in dialogue with DNO’s representatives in Yemen on the dismissals and suspension of production, without this request being granted. The complaint also concerned the question of whether DNO obstructed the workers’ right to organise and collective bargaining in Yemen, and the validity of dismissals as part of the downsizing process.

DNO argues that the key issue in the complaint is the question concerning the validity of the dismissals as part of the downsizing process in Yemen. This issue was the subject of a dispute case in the country. DNO claims that the aim of the complaint is to contest the lawfulness of the downsizing in Yemen in 2015 and that the ongoing court case before Yemeni courts meant that the matter should not have been considered by the Norwegian NCP. Furthermore, DNO claims that the state of emergency in Yemen meant that the company could refrain from notifying and consulting the employee representatives in connection with the dismissals.

Since the mediation was concluded without results, the NCP has considered the complaint and arrived at the following conclusion: DNO has not complied with paragraphs 6 and 8 in Chapter V of the Guidelines on notification and consultation in connection with changes in the enterprise’s operations. DNO has fulfilled the expectations on the right to join a trade union in paragraphs 1a) and 1b) of Chapter V. The NCP recommends that DNO in future should carry out risk-based due diligence and enhance the transparency of its guidelines and procedures for responsible business conduct.

2 THE OECD GUIDELINES FOR MULTINATIONAL ENTERPRISES

The Guidelines are recommendations on responsible business conduct addressed by governments to multinational enterprises. The Guidelines set out good practice for all types of enterprises in all sectors and are based on internationally recognised standards. The Guidelines contain recommendations on transparency, human rights, employment and labour rights, the environment, bribery and extortion, consumer interests, science and technology, competition and taxation. Adhering governments are required to set up a National Contact Point (NCP) whose main role is to further the effectiveness of the Guidelines by undertaking promotional activities, handling enquiries and contributing to the resolution of issues that may arise from the alleged non-observance of the guidelines in specific instances. The Guidelines are voluntary, non-judicial recommendations, at the same time as there is a clear expectation on the part of the governments that enterprises implement the Guidelines. The Norwegian NCP consists of four independent experts and a secretariat. The NCP considers specific instances and contributes to raising awareness about the Guidelines.

The NCP has established dedicated procedural guidelines, which are available [here](#):

3 THE PARTIES

3.1 COMPLAINANT – INDUSTRI ENERGI ON BEHALF OF DNO YEMEN UNION

Industri Energi is a Norwegian trade union for employees in oil, gas and land-based industry. It has about 57,000 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 complaint on behalf of DNO Yemen Union was filed on 18 November 2016 and the final comments on 17 November 2017.

3.2 COMPANY – DNO ASA

DNO is a Norwegian oil company that operates in the Middle East and North Africa. Its parent company, DNO ASA, is listed on Oslo Børs and has subsidiaries with ongoing operations in Kurdistan in Iraq, in Oman, the United Arab Emirates, Tunisia and Somalia. DNO's turnover in 2016 amounted to USD 201.80 million. DNO established operations in Yemen in 1998 and

has until recently had licence agreements in several oil fields in the country. Up until April 2015, DNO had 242 employees in Yemen, many of whom had been with the company for a long time. The employees worked in the office in Sana'a and on the oil fields the company operated, Blocks 32 and 43, situated approximately 600 kilometres from Sana'a. DNO submitted its final comments on 14 November 2017 and its response to Industri Energi's final comments on 22 December 2017.

4 MAIN POINTS IN THE COMPLAINT FROM INDUSTRI ENERGI

The NCP considers the main issue to be lack of notification by DNO and lack of prior notice and consultation with representatives of the management of DNO Yemen and the trade union relating to collective dismissals and suspension of production in 2015. Industri Energi claims that the workers were dismissed via text message and email, and that the local trade union was not given an opportunity to discuss the collective dismissals and suspension of production with the management. Reference is made to how the trade union tried to engage in dialogue with the company without succeeding. Among other things, the trade union protested in spring and summer 2015 outside DNO's office in Sana'a in Yemen, demanding dialogue. In support of the primary issue, reference is made to the OECD Guidelines Chapter V, paragraphs 6 and 8. Paragraph 6 states that:

'[I]n 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 Guidelines Chapter V paragraph 8 states that:

'Enterprises should ... 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.'

The other issue in the complaint is whether DNO has obstructed the workers' right to organise and collective bargaining. Industri Energi claims that DNO did not respect local laws and standards and that it violated labour rights in Yemen, and that the company also took some time

before respecting the workers' right to establish or join trade unions or organisations of their own choosing.

In support of this, reference is also 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.'

Industri Energi also refers to the Guidelines *Chapter II. General Policies* to substantiate its complaint, in which 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.'

As the basis for this, Industri Energi refers to the 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 third point in the complaint concerns the lawfulness of dismissals as part of the downsizing of DNO's operations in Yemen in 2015. Industri Energi refers to the appealed judgment from a local tribunal in the dispute between the workers and DNO, and argues 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. In Industri Energi's opinion, DNO is trying to circumvent the law. For this point in the complaint, Industri Energi also relies on the introduction to the Guidelines Chapter V and the first two paragraphs of Chapter V., 1a) and 1b), as quoted above.

In its final comments of 17 November 2017, after the mediation was concluded, Industri Energi raised a new matter that was not addressed in the original complaint. Industri Energi believes it

is likely that DNO violated the production sharing contracts for Blocks 32 and 43 and national legislation when withdrawing from Yemen in December 2015. It is said that this matter was not raised in the original complaint because DNO had not returned the licences at the time. According to Industri Energi, this is relevant because the trade union's wage demands are contingent on when the production licences for Blocks 32 and 43 were returned.

5 DNO'S RESPONSE TO THE COMPLAINT

DNO claims in its final comments that the only question in the case that falls within the scope of the OECD Guidelines is whether DNO should have initiated discussions with the employee representatives before it decided to go ahead with the dismissals in 2015. According to DNO, this must be answered in the negative. Given the security situation in Yemen, the war-like conditions that prevailed and in the interest of staff security, DNO had no other option than to pursue the dismissal procedure it followed in Yemen in 2015. DNO justifies this by referring to how the NCP, in its initial assessment, decided to accept the complaint for consideration exclusively based on the issue of whether DNO should have initiated discussions with the employee representatives prior to the dismissals in 2015. DNO believes, with reference to the NCP's procedural guidelines and the initial assessment, that the core of the case and the only question that needs to be answered is whether DNO failed to comply with the Guidelines by not consulting employee representatives in Yemen before the final decision was made to reduce the workforce in 2015.

DNO claims the reality was such that the conditions in Yemen in spring 2015 precluded meaningful consultations between employee representatives and representatives of the management authorised to make decisions of relevance to the downsizing process. DNO was facing extraordinary circumstances such as terrorist attacks, civil war, air raids and poor means of communication. The fact that DNO's management was prevented from re-entering the country meant, in practice, that consultations with employee representatives could not take place without jeopardising both staff and management's personal safety. The decision not to consult with employee representatives was a consequence of the security situation in Yemen at the time in 2015.

Furthermore, DNO argues that the protection of staff and representatives' personal safety is a vital interest that justifies an exception from the general principle in the Guidelines Chapter V paragraph 6. This provision – which DNO considers to be the most relevant in this specific instance – does not entail an absolute obligation to consult with employee representatives,

irrespective of the concrete situation at hand. DNO underlines that the Guidelines do not constitute an absolute obligation.

As regards the new matter addressed by Industri Energi after the mediation was concluded, DNO considers that it was put forward too late to be taken into consideration in the final statement.

6 THE NCP'S CONSIDERATION OF THE MATTER

The NCP's secretariat had initial communication with the parties, by both phone and email, as well as meetings with both parties for the purpose of information and clarification relating to the Guidelines, roles, responsibilities and procedures in specific instances.

The NCP decided to accept the complaint for consideration and published its initial assessment of the specific instance on 7 April 2016. The formal conditions for accepting the complaint for consideration were met: The company that was the subject of the complaint was Norwegian, and the complainant had a written authorisation from DNO Yemen Union. The complaint concerned lack of compliance with several key provisions in the Guidelines. The NCP also considered whether, and concluded that, an ongoing court case before Yemeni courts would not preclude consideration of the matter by the NCP. The NCP referred to how the NCP arrangement is a non-judicial mechanism, and that the Guidelines provide for the possibility that the NCPs can assess whether an offer of dialogue and mediation can make a constructive contribution to resolving the issue. The parties confirmed that they wanted mediation and agreed on NCP member Frode Elgesem as the mediator. Dialogue and mediation were conducted and concluded without results. The mediator has stated that the parties took part in the mediation in good faith.

After the mediation, the parties have submitted final comments. On 22 December 2017, the NCP received DNO's last response to Industri Energi's final comments, which concluded the preparation of the final phase. On DNO's request, Frode Elgesem has not been involved in the preparation of the final statement. This is in line with the NCP's procedural guidelines, which state that a member of the NCP who has acted as mediator will not participate in the further examination unless both parties consent.

7 THE NCP'S ASSESSMENT OF DNO'S COMPLIANCE WITH THE OECD GUIDELINES

7.1 WHICH POINTS IN THE COMPLAINT DOES THE NCP CONSIDER?

In section 7, the NCP will take a stand on the different questions raised by the case. DNO has claimed that the only issue the NCP can consider is the question concerning lack of notification and consultation prior to the collective dismissals in Yemen in 2015. In support of this, DNO refers to the NCP's initial assessment. The NCP believes there are no objective grounds for this claim. The conclusion in the initial assessment was as follows: 'The Norwegian NCP has decided to accept the complaint for consideration'. The conclusion was made without reservations. The first and second points in the complaint are therefore discussed below.

The third point in the complaint concerns the lawfulness of dismissals as part of the downsizing of DNO's operations in Yemen in 2015. This is a question that falls outside the scope of what the NCP can consider under the Guidelines. The NCP refers to how the Guidelines Chapter I paragraph 2 states that 'obeying domestic laws is the first obligation of enterprises' and assumes that DNO respects this.

As regards the new matter concerning the production sharing contracts in Yemen, addressed by Industri Energi after the mediation was concluded, the NCP agrees with DNO that it was put forward too late to be taken into consideration in this case.

7.2 HAS DNO COMPLIED WITH THE OECD GUIDELINES ON NOTIFICATION AND CONSULTATION IN CONNECTION WITH COLLECTIVE DISMISSAL AND SUSPENSION OF PRODUCTION IN 2015?

This point in the complaint concerns lack of notification and consultation with the workers or their representatives prior to the collective dismissals in Yemen. The question concerns paragraph 6 of the Guidelines Chapter V. *Employment and Industrial Relations*, which reads as follows:

'[I]n 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.'

These provisions on notification and meaningful cooperation must be seen in conjunction with paragraph 8 of Chapter V, which reads as follows:

'Enterprises should ... 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.'

It is clear that DNO did not notify or consult with the workers or their representatives before the dismissals were made and production suspended in Yemen.

DNO has stated that the company did not consider it expedient to carry out individual or collective consultations based on the risk the workers were exposed to in the war-like situation that prevailed in the country. DNO also writes that it has not subsequently received any input or other indications that consultations would be of any real significance.

The NCP wishes to underline that DNO's opinion on the latter point is not relevant. The topic for assessment is not whether notification and consultation would have resulted in a different outcome. It is nonetheless a requirement in such processes. Furthermore, it is difficult to understand how DNO can conclude that it would not be of any real significance when other companies in the same situation seem to have handled the situation differently.

The NCP notes that DNO recognises that oil activities in areas exposed to risk have an inherent risk of non-compliance with labour rights in the form of challenging circumstances for dialogue concerning lay-offs and dismissals in crisis situations. The NCP also notes that Industri Energi and DNO have an agreed understanding that a special security situation prevailed in Yemen that could be characterised as challenging and very difficult with regard to dialogue with the union representatives and workers in connection with the downsizing.

In the course of 2013 and the first half of 2014, the security situation in Yemen deteriorated, as DNO writes. There is reason to believe that this made it increasingly difficult for companies, including DNO, to operate abroad. Road blocks, threats and kidnappings became a big problem. DNO did nonetheless not notify the workers of the dismissals until spring 2015, and they were dismissed as of 26 April 2015.

The NCP would like to point out that the Guidelines' recommendations on reasonable notice are important to try to mitigate the adverse impact of collective dismissals. This is also

emphasised in comment 59 on the Guidelines. Advance notice would enable the employee representatives and the individual workers to prepare for the upcoming situation. Consultations with the company can be held with a view to deciding between dismissals and lay-offs, how such measures shall be implemented and the appropriate financial compensation. Advance notice can reduce the negative consequences for the workers by giving them an understanding of what is actually going on in the company and why, and allow them to take any necessary precautions.

In the situation concerned, DNO could, in the NCP's opinion, have notified the employee representatives far earlier of a possible suspension of production. DNO should, as the crisis unfolded, have carried out a risk-based due diligence in line with the Guidelines' general requirements in Chapter II paragraph 10. Although a war-like situation prevailed in Yemen in 2015, it must have been possible for DNO to engage in meaningful dialogue with employee representatives relating to collective dismissal and suspension of production, at least with the help of electronic communication. A company like DNO, with operations in high-risk, demanding areas of the world, must be expected to have considered alternative ways of giving reasonable notice of collective dismissals to the employee representatives and their organisations. It is the NCP's opinion that it would be natural for DNO to have consulted with the employee representatives in advance on alternative notification procedures, if the security situation were to indicate a temporary suspension of production and possible lay-offs. Nor has DNO refuted that other international companies in Yemen managed to meet the expected standards for notification and consultation.

On this basis, the NCP finds that DNO has not complied with the OECD Guidelines on this point.

7.3 HAS DNO COMPLIED WITH THE GUIDELINES' EXPECTATIONS RELATING TO THE WORKERS' RIGHT TO ORGANISE?

This point in the complaint concerns the right to organise, which is addressed in the Guidelines Chapter V, paragraphs 1a) and 1b), quoted in section 5 above.

The trade union in DNO Yemen was not established until 2013, fifteen years after DNO started operations in Yemen in 1998.

There is no disagreement between the parties that the workers were organised and that DNO Yemen Union is an established trade union. In the situation that arose, and which the complaint

concerns, DNO had already established relations and dialogue with the trade union. The NCP notes that DNO, on a general basis, acknowledges and values trade unions and the role of employee representatives, and that, under normal circumstances, consultation with employee representatives is both desirable and necessary.

The NCP also notes that the parties in the case differ in their description of the process up until the point when the workers were organised. This could raise the question of whether DNO has spent longer time than necessary and should have made better arrangements at an earlier time to facilitate the workers' right to organise. The NCP does not find it expedient to go into this historical development in more detail, but concludes that, from 2013, a trade union had been established and recognised.

The NCP has not found any grounds for concluding that DNO has not complied with the OECD Guidelines on this point.

8 THE NCP'S RECOMMENDATIONS FOR DNO

In line with the NCP's procedures for specific instances, the NCP may issue recommendations to DNO on how the company can ensure greater compliance with the Guidelines. The NCP makes the following recommendations to DNO:

1. The NCP recommends that DNO, especially in connection with activities in high-risk areas, carry out risk-based due diligence. DNO should also establish proper emergency-planning procedures for how to give notification and how to establish meaningful cooperation between representatives of the trade union and the management in a crisis situation and/or in situations where the circumstances prevent the possibility of ordinary dialogue.
2. The NCP recommends that DNO make the company's guidelines and procedures easily available to both employees and other stakeholders in order to ensure compliance with the Guidelines. Such information should be made available via relevant internal information channels and on the company's website.

The NCP will contact the parties again within a year for an update on DNO's follow-up of the recommendations.