



**OECD GUIDELINES
FOR MULTINATIONAL
ENTERPRISES**

National Contact Point
for Responsible Business
Conduct Norway

Oslo, 13 May 2020

INITIAL ASSESSMENT

KOREAN TRANSNATIONAL CORPORATIONS WATCH AND SAMSUNG HEAVY INDUSTRIES MARTIN LINGE PROJECT CRANE ACCIDENT WORKERS SUPPORT TEAM

VS

SAMSUNG HEAVY INDUSTRIES CO., LTD., TECHNIPFMC PLC, TOTAL SA, TOTAL E&P NORGE AS AND EQUINOR ASA

EXECUTIVE SUMMARY INCLUDING CONCLUSION

Korean Transnational Corporations Watch (KTNC Watch) and Samsung Heavy Industries Martin Linge Project Crane Accident Workers Support Team (Workers Support Team) (the complainants) filed a complaint on 20 March 2019 to the National Contact Points (NCP) in Korea, France and Norway, against Samsung Heavy Industries Co., Ltd. (Samsung HI), TechnipFMC plc, Equinor ASA, Total S.A. and its subsidiary Total E&P Norge AS (TEPN).¹

The case concerns an accident in Korea at Samsung HI's Geoje shipyard on 1 May 2017, during the construction of an oil platform for the Martin Linge project on the Norwegian continental shelf. Six workers were killed and 25 workers were injured.

The complainants claim that the companies involved have violated the OECD Guidelines for Multinational Enterprises (the Guidelines)² with reference to Chapter II General Policies,

¹ KTNC Watch and Workers Support Team (20 March 2019) Complaint to National Contact Point for the OECD Guidelines for Multinational Enterprises.

KTNC Watch and Workers Support Team (24 July 2019) Response to Norway NCP concerning the complaint.

² OECD (2011) *OECD Guidelines for Multinational Enterprises*. OECD Publishing.
<http://dx.doi.org/10.1787/9789264115415-en>

paragraphs A10, A12 and A13, Chapter IV Human Rights, paragraphs 1 and 4, and Chapter III Disclosure, paragraph 1.

UK NCP has also been included in the case since TechnipFMC was registered in the UK at the time of the incident. As Korea NCP decided to handle the complaint regarding the Korean company only, there are currently two processes involved in the handling of this specific instance. Korea NCP issued an initial assessment on 25 June 2019, which stated that the issues raised in the complaint merit further examination through good offices.³ Korea NCP has offered good offices to Samsung HI. The NCPs in France, the UK and Norway will handle the case regarding the companies based in Europe, with Norway NCP as the lead NCP, but in close collaboration with the NCPs in France and the UK.⁴

Norway NCP finds that the issues raised in the complaint merit further consideration and will offer good offices to the parties with a view to resolve the issues. Due to Samsung HI's central role in the accident, this invitation will also be extended to that company together with the European based companies.

This initial assessment was shared for observations with the NCPs in France and the UK prior to consultation with the parties. As Norway NCP is the lead NCP in the handling of this specific instance, reference is made to Norway NCP only in the following text.

INTRODUCTION

On 1 May 2017, there was a serious accident at Geoje shipyard in Korea. Two cranes collided during the construction of an oil platform for the Martin Linge project on the Norwegian continental shelf. Six workers were killed and 25 were injured.

On 20 March 2019, the Korean organisations KTNC Watch and the Workers Support Team filed a complaint to the National Contact Points (NCP) in Korea, France and Norway. The complainants claim that the companies involved in the Martin Linge project have violated the OECD Guidelines for Multinational Enterprises with reference to the provisions on due diligence, human rights and disclosure. The complainants assert that inadequate due diligence was a contributory cause to the crane accident, which resulted in deaths and injuries. According to the complainants, more than 300 workers witnessed the accident, of whom at least 150 were traumatised and in need of treatment. The complainants further allege that the companies have not provided an investigation report about the accident or

³ Korea NCP (25 June 2019) Initial Assessment of the complaint from the Workers Support Team and KTNC Watch. http://www.ncp.or.kr/servlet/kcab_encp/info/4001

⁴ OECD (2019) *Guide for National Contact Points on Coordination when handling Specific Instances*, OECD Guidelines for Multinational Enterprises, page 5, footnote 3: "In practice, a lead NCP is the NCP which takes the primary responsibility for the handling of a specific instance and holds decision making power with respect to the process. A supporting NCP may have a relationship to the specific instance and be involved in an assisting capacity."

<http://mneguidelines.oecd.org/Guide-for-NCPs-on-Coordination-when-handling-Specific-Instances.pdf>

remedy for victims, which the complainants state is in violation of the Guidelines' provisions on disclosure and human rights.

With the assistance of the NCPs, through the OECD complaint mechanism, the complainants seek firstly to find out how this accident could have happened, with the goal of improving risk mapping and safety measures in the Korean shipbuilding industry. Secondly, they seek specific support measures for the allegedly more than 150 affected workers to be worked out and implemented to provide those workers with substantial relief.

The companies addressed in the complaint are Samsung HI, TechnipFMC, Equinor, and Total through its subsidiary TEPN. The companies are based in Korea, the UK, Norway and France/Norway, respectively.

The Martin Linge project refers to a unitised area on the Norwegian continental shelf comprising three Norwegian production licences. The unit is licensed to a joint venture, which at the time of the accident was composed of TEPN (51%), Petoro AS (30%) and Statoil Petroleum AS (now Equinor Energy AS (Equinor), 19%). TEPN was the operator on behalf of the other participants. In March 2018, TEPN assigned its entire participating interest to Equinor, which has since been the operator (70%).

Samsung HI and TechnipFMC form the consortium of contractors engaged by the joint venture to build the platform for the Martin Linge project. Samsung HI is the owner of the Geoje shipyard and responsible for the construction of the platform. TechnipFMC is the leader of the consortium, and is responsible for the design of the platform.

This specific instance involves questions regarding due diligence, risk management and safety measures. Since Samsung HI is responsible for the construction of the platform, and the accident happened at Samsung HI's shipyard, Samsung HI is at the core of this case. However, the case also raises important questions regarding due diligence responsibility in the contracting and construction of large infrastructures for oil and gas projects, both for the operator and other participants in the joint venture, and in terms of relations between the joint venture and the consortium (contractor). In March 2018, the operator responsibility was transferred from TEPN to Equinor, which further raises the question of the new operator's duty to illuminate the case with respect to information in its possession. This may possibly contribute to resolution of the issues at hand.

In terms of the practical handling of the specific instance, the NCPs in France, the UK and Norway have suggested that the involved NCPs collaborate and identify a lead NCP, as the issues brought forward in the complaint are complex and interlinked between all the companies involved. This is in line with the OECD Guidelines.⁵

⁵ The OECD Guidelines, Part II Implementation Procedures, describes the following under the heading Coordination between NCPs in Specific Instances, paragraph 24: "When issues arise from an enterprise's activities that takes place in several adhering countries or from the activity of a group of enterprises organised as consortium, joint venture or other similar form, based in different adhering countries, the NCPs involved should consult with a view to agreeing on which NCP will take the lead in assisting the parties."

However, Korea NCP decided to handle the specific instance relating to the Korean company Samsung HI only, as stated in its initial assessment of June 2019. As TEPN and Equinor are based in Norway and the Martin Linge field is located on the Norwegian continental shelf, the NCPs in France, the UK and Norway agreed that Norway NCP should be lead NCP for the European part of the case handling, in close collaboration with the French and UK NCPs. Norway NCP will handle the specific instance with reference to all the European companies involved in this specific instance based in Norway (TEPN and Equinor), the UK (TechnipFMC) and France (Total SA). However, TEPN has set out a clear requirement for its participation in good offices that all parties involved are included in the process. Norway NCP finds this sensible since Samsung HI is a central actor in this case.

Although Korea NCP prefers to handle the specific instance regarding Samsung HI, Norway NCP welcomes that Korea NCP, in its initial assessment, emphasises that cooperation between the NCPs is necessary. Furthermore, as Korea NCP underlines, the complainants request cooperation and sharing of information about the enterprises between the NCPs involved in the specific instance.

THE COMPLAINT

The complaint concerns the above-mentioned crane accident on 1 May 2017 at the Samsung HI Heavy Industries Geoje shipyard. In addition to the six workers killed and 25 physically injured, the complainants assert that more than 300 workers witnessed the accident. Of these, according to the complainants, at least 150 workers are suffering from trauma due to the accident and are in need of treatment, but only 14 workers have been officially recognized as suffering from industrial injury caused by trauma from this incident.

The complaint was somewhat unclear as to what the complainants wanted to achieve through a process of good offices. Norway NCP engaged with the complainants to achieve more information and has allowed them to clarify and modify the complaint. As Norway NCP understands the case, the complainants seek through a mediation process: 1) to uncover the causes of the accident and find measures to reduce risk in the shipbuilding industry in Korea in the future; 2) remediation for workers traumatised by the accident – “the unofficial victims”.

The complainants claim that the enterprises violated the OECD Guidelines for Multinational Enterprises after a change was made to the platform’s design and consequently to the construction method. This change required a different type of crane, which allegedly heightened the risk of collision between the cranes as the range of operation for the new crane type (jib crane) overlapped with the other crane (goliath crane). All enterprises involved failed to conduct thorough due diligence in order to prevent the accident from happening, according to the complainants, with reference to the Guidelines, Chapter II General Policies, paragraph A10.

Furthermore, the complainants claim that TechnipFMC, TEPN and Equinor failed to prevent and mitigate adverse impacts and encourage business partners to apply the principles of responsible business conduct, with reference to Chapter II General Policies, paragraphs A12 and A13. The complainants also assert that TEPN and Equinor reject disclosing an investigation report about the accident, contrary to Chapter III Disclosure, paragraph 1. All enterprises are also accountable for violations of the Guidelines with reference to respect for human rights and to have a policy commitment to respect human rights, as stated in Chapter IV Human Rights, paragraphs 1 and 4.

Regarding inadequate due diligence, reference is made to Chapter II General Policies, paragraphs A10, A12 and A13, which read as follows:

Enterprises should:

10. Carry out risk-based due diligence, for example by incorporating it into their enterprise risk management systems, to identify, prevent and mitigate actual and potential adverse impacts as described in paragraphs 11 and 12, and account for how these impacts are addressed. The nature and extent of due diligence depend on the circumstances of a particular situation.

12. Seek to prevent or mitigate an adverse impact where they have not contributed to that impact, when the impact is nevertheless directly linked to their operations, products or services by a business relationship. This is not intended to shift responsibility from the entity causing an adverse impact to the enterprise with which it has a business relationship.

13. In addition to addressing adverse impacts in relation to matters covered by the Guidelines, encourage where practicable, business partners, including suppliers and sub-contractors, to apply principles of responsible conduct compatible with the Guidelines.

As regards information about the accident, the complainants are in particular requesting an investigative report produced after the accident by a Joint Investigation Committee comprising representatives from Total, TEPN, TechnipFMC and Samsung HI. Reference is made to Chapter III Disclosure, paragraph 1, which reads as follows:

Enterprises should ensure that timely and accurate information is disclosed on all material matters regarding their activities, structure, financial situation, performance, ownership and governance. This information should be disclosed for the enterprise as a whole, and, where appropriate, along business lines or geographic areas. Disclosure policies of enterprises should be tailored to the nature, size and location of the enterprise, with due regard taken of costs, business confidentiality and other competitive concerns.

The complainants also refer to Chapter IV Human Rights, paragraphs 1 and 4, which read as follows:

States have the duty to protect human rights. Enterprises should, within the framework of internationally recognised human rights, the international human rights obligations of the countries in which they operate as well as relevant domestic laws and regulations:

1. Respect human rights, which means they should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved.

4. Have a policy commitment to respect human rights.

As concerns TEPN, the complainants assert that, as the operator, TEPN was responsible for exerting due diligence throughout the course of the business relationship. According to the complainants, it is general shipbuilding practice to reside in the worksite of the main contractor and manage the progress of the project. They also claim that it is common that buyers are involved in decision-making processes for changes to design or significant work methods. Thus, TEPN should have approved the change of construction method and should have recognised that Samsung HI's safety measures were insufficient. The complainants assert that TEPN has violated the Guidelines, Chapter II General Policies, paragraphs A10, A12 and A13, Chapter III Disclosure, paragraph 1, and Chapter IV Human Rights, paragraphs 1 and 4.

TechnipFMC was and is the leader of the consortium of contractors. According to the complainants, it is common that the leader of a consortium participates in processes relating to changes to designs and construction methods, as it alters the conditions of the contract. Furthermore, the complainants assert, that the leader of the consortium of contractors is responsible for risk assessment and that proper risk management and safety measures are in place before a change of construction method. They thereby claim that TechnipFMC has violated the Guidelines, Chapter II General Policies, paragraphs A10, A12 and A13 and Chapter IV Human Rights, paragraphs 1 and 4.

Equinor was a participant in the joint venture at the time of the accident and is now the current operator. Thus, the complainants assume that Equinor has received all relevant documents about the Martin Linge project from TEPN, including the investigation report about the accident compiled by Total, TEPN, TechnipFMC and Samsung HI. The complainants consider disclosure of the report essential to understand the causes of the accident and have requested the report from Equinor, which Equinor has not accommodated. The complainants therefore argue that Equinor has violated the Guidelines, Chapter III Disclosure, in addition to Chapter II General Policies, paragraphs A10, A12 and A13 and Chapter IV Human Rights, paragraphs 1 and 4. Norway NCP notes that Equinor's alleged violations of paragraphs under Chapter II and IV are not substantiated by the complainants. As Norway NCP understands the complaint, the complainants refer to Equinor's role in the joint venture in general with respect to these allegations.

Samsung HI is responsible for the construction of the platform for the Martin Linge project on contract for the joint venture. According to the complainants, Samsung HI ordered a change of work method, and change of crane, without performing a risk assessment or implementing safety measures. The complainants claim that Samsung HI has previously experienced seven similar crane collisions. Nevertheless, these accidents have not resulted in improvement and the implementation of risk assessments and safety regulations. The complainants also specifically address Samsung HI managers for their negligence in supervising their workers and crane watchmen, and negligence of their surveillance duties. The complainants claim that Samsung HI has violated Chapter II General Policies, paragraph A10, and Chapter IV Human Rights, paragraphs 1 and 4 of the Guidelines.

THE COMPANIES' RESPONSE

TEPN⁶, TechnipFMC and Equinor have sent written responses to the complaint to Norway NCP.

All of the companies expressed their deepest condolences to the families of the deceased, the injured workers and all those affected by the accident that took place on 1 May 2017 at the Samsung HI yard.

In TEPN's written response to the complaint⁷ to Norway NCP, dated 25 October 2019, TEPN states that it is willing to contribute to the review of the complaint by the NCP, and subject to the assurances and additional information described below, it is willing to cooperate and to participate into good offices discussions with the complainants. However, TEPN underlines that TEPN's and the Total Group's participation in good offices should not "include discussion or investigation of the facts of an incident which occurred on the site of Samsung HI or the management and compensation of Samsung HI personnel or subcontractors". Furthermore, TEPN's participation in good offices is conditional on receipt of the following assurances and additional information:

- All respondents, including in particular SHI, be involved in such process.
- The Norway NCP ensures that the respondents will not be subject to parallel proceedings by other OECD NCPs concerned.
- Further clarity being given in relation to the nature of the complaint against TEPN and the outcome sought by the complainant in relation to TEPN and the Total Group.
- On all parties agreeing that the process will not interfere with Korean legal processes.

TEPN also states that in their opinion it is essential that a coordinated and aligned approach involving all respondents is taken in terms of the process(es) themselves, scheduling and the substantive issues to be examined.

As regards the claims of inadequate due diligence, TEPN and the Total Group consider that they have acted in accordance with best industry practice, applicable laws and the Guidelines in relation to this matter. TEPN states that Total Group's procedure holds safety performance as a key element in the selection criteria for contractors, and that it followed a two-stage evaluation process, which included specific HSE components. This entails amongst other elements that the review of the contractors was based on information from the NCS industry Achilles JQS system, an industry qualification system, and responses to a detailed health, safety and environment (HSE) survey conducted by TEPN. The elected consortium of contractors, comprising Samsung HI and TechnipFMC, was, in addition to other obligations, required to have an HSE Management System in place complying with HSE rules at least as stringent as the operator's own HSE rules.

⁶ TEPN has coordinated its response to the complaint, and other dialogue with Norway NCP, with Total SA.

⁷ TEPN (25 October 2019) Response to the complaint.

TEPN underlines that, as is necessary for this type of project, the consortium was responsible for the method of construction, including development of the detailed design, manner of work at its own cost and risk, provision of necessary equipment, and for management, control and supervision of subcontractors' performance of work. Furthermore, TEPN states that it is best industry practice that the owner of the construction yards (Samsung HI) remains solely responsible for the HSE facilities, employees and subcontractors.

TEPN states that the role of the joint venture, represented by its operator, is to conduct due diligence to ensure that the consortium's HSE Management Systems are in place and to audit these systems. According to TEPN, the company, as operator, carried out this responsibility in a diligent way, including through establishing a project team comprising notably various personnel from TEPN's main office and who are present at the Samsung HI yard, to follow up implementation of the contract, including HSE provisions.

Immediately after the accident, TEPN as operator of the ML Unit Joint Venture, took several actions including offering the services of HSE experts to assist in the consortium's post-accident investigation and participating in a Joint Investigation Committee. This initial investigation began on the day following the incident 2 May 2017, in parallel with the Korean Police and the Ministry of Labor Investigations. The committee produced an accident report, which, as TEPN emphasises, is "subject to strict confidentiality provisions". TEPN also asserts that it has ensured that Samsung HI took necessary action to apply lessons learned from the accident.

As regards the claims concerning a lack of disclosure, TEPN states that after the assignment of all its interests to Equinor in March 2018, TEPN transferred the rights and entitlements to relevant documents, information and data to Equinor. Consequently, TEPN no longer has rights to information relating to the Martin Linge project.

In Equinor's written response to the complaint⁸ to Norway NCP, dated 7 February 2020, the company underlines that as concerns the issue of disclosure of documents about the accident, "Equinor is, as a matter of law, bound by confidentiality provisions in the applicable contracts". The company has sought independent legal counsel in this matter. The law firm concludes that Equinor is bound by "extensive confidentiality obligations", stated in three different agreements related to the Martin Linge project, and cannot lawfully disclose any documents produced by the parties in response to the incident.⁹

With reference to the alleged violations of Chapter II General Policies and Chapter IV Human Rights, Equinor asserts that the complaint does not describe how Equinor has violated provisions under these chapters and does not include documentation of Equinor's alleged wrongdoing. Equinor therefore finds that these allegations are insufficiently substantiated to merit further investigation with the inclusion of Equinor.

⁸ Equinor (7 February 2020) Response to the complaint.

⁹ Wiersholm (6 February 2020) Legal opinion.

Equinor points out that ongoing legal proceedings in Korea do not preclude examination of the specific instance by Norway NCP. However, Equinor questions how the offer of good offices extended by Norway NCP will make a positive contribution to the resolution of the issues raised in the complaint, and further to the court proceedings and Korea NCP's handling of the specific instance.

In TechnipFMC's written response to the complaint¹⁰ to Norway NCP, dated 7 February 2020, TechnipFMC describes the roles and responsibilities of the two parties forming the consortium of contractors, TechnipFMC and Samsung HI, which were engaged by TEPN to build an offshore oil platform for the Martin Linge project. TechnipFMC states that TechnipFMC and Samsung HI had "specifically defined roles with respect to the platform: (i) TechnipFMC was responsible for engineering, procurement, and the development of designs for the platform; and (ii) Samsung HI was responsible for the construction and fabrication works." According to TechnipFMC, Samsung HI was responsible for the construction works and the operation and interaction of the cranes at the Geoje shipyard. TechnipFMC states that it "did not have control and responsibility for: (i) construction works at the Geoje shipyard; nor (ii) the operation and interaction of the cranes at the Geoje shipyard both of which were under SHI's control." TechnipFMC also takes a similar position to TEPN, claiming that it is best industry practice for the owner of the construction yard to remain solely responsible for the HSE of facilities, employees and subcontractors. Consequently, TechnipFMC states that Samsung HI is best placed to provide clarifications and information regarding the accident.

In short, TechnipFMC does not understand the complainants' specific allegations against the company as they, according to TechnipFMC, appear to relate to, and can be best addressed by, SHI's actions at the Geoje shipyard. The company does not believe it is "appropriate for TechnipFMC to be involved in the good offices process". Instead, TechnipFMC states that a mediation is "best explored between SHI, as owner of the Geoje shipyard and operator of the cranes involved, and the Complainants", as is currently planned by the Korea NCP. TechnipFMC also refers to the ongoing court proceedings in Korea as "the proper fora for the resolution of the disputes". Hence, in the view of TechnipFMC, NCPs should suspend further examination of the complaint until conclusion of the Korean court proceedings.

THE NCP'S ASSESSMENT

Norway NCP finds that the issues raised in the complaint merit further examination and has accepted the complaint for further consideration. This decision does not determine whether the companies involved have acted inconsistently with the Guidelines.

¹⁰ TechnipFMC (6 February 2020) Response to the complaint.

Based on the complaint and information provided by the companies, there appears to be a link between the companies' activities and the issues raised. TEPN was the operator of the Martin Linge project when the accident occurred and was in a joint venture with Statoil (now Equinor) and Petro. The joint venture entered into a contract with a consortium of contractors, consisting of Samsung HI and TechnipFMC, for the construction of the Martin Linge platform. The consortium was led by TechnipFMC. The accident took place at Samsung HI's shipyard. Equinor was a participant in the joint venture at the time of the accident and is now the current operator, with the responsibility for following up lessons learned regarding risk management and safety measures after the accident on 1 May 2017.

Norway NCP finds that the complainants have a legitimate interest in the matter submitted to the NCPs. The Workers Support Team was established after the accident to support workers who were injured or traumatised due to the accident. KTNC Watch is a coalition of NGOs, which advocates for human rights, protection of the environment and local communities, and responsible business conduct.

The complainants claim that the enterprises have failed to comply with the Guidelines on three accounts. Firstly, they assert that the enterprises have failed to conduct adequate due diligence to ensure that proper risk management and safety measures were in place prior to the change of platform design and construction method, which allegedly could have prevented the accident from happening. Reference is made to Chapter II General Policies, paragraphs A10, A12 and A13. Secondly, the complainants claim that the enterprises reject disclosing an investigation report about the accident, contrary to Chapter III Disclosure. Thirdly, the complainants raise the issue of remediation for adverse human rights impacts and accuse the enterprises of violations of Chapter IV Human Rights, paragraphs 1 and 4. Relevant to the issue of remediation is paragraph 6, same chapter, which states that companies should: "Provide for or co-operate through legitimate processes in the remediation of adverse human rights impacts where they identify that they have caused or contributed to these impacts."

The complainants have provided information about the accident, in the form of a police report from the Gyeongnam Geoje Police Station dated 30 July 2017. Norway NCP has acquired an unofficial English translation of the Korean document.¹¹ According to the report, the Korean police has investigated three suspects accused of "professional negligence resulting in death" and "professional negligence resulting in injury". Two of the suspects had leading positions at the shipyard related to health and safety at the time of the accident, more specifically Chief of Geoje shipyard and Chief of Support Part 3, where the goliath crane operated. The third suspect was the driver of the goliath crane. The police found all three

¹¹ Gyeongnam Geoje Police Station (30 July 2017) Written Statement, to the Chief Prosecutor of Tongyeong at Changwon District Public Prosecutor's Office.

suspects guilty of their alleged crimes. This forms part of a criminal case pending in the Korean court system (see below).

The police explains in detail the changes to the construction plan, that is, that the height of the platform was elevated and thus required a change of construction method and a different type of crane. The police also ascertains that the change of construction method was unusual and increased the risk of collision between the two cranes. The police refers to the Samsung HI Safety and Health Management Regulations, which state that when new work orders are issued and/or modified, or when worksite accidents occur, a risk-level assessment must be performed and preventive measures must be implemented. According to the police, both the chief of the shipyard and other persons in charge of management and oversight were aware of the potential risk of collision between the jib crane and the goliath crane. They nevertheless failed to initiate a risk assessment and implement risk mitigation measures, which could have prevented the accident from happening, the police concludes. The police also found that none of the documents forming part of Samsung HI's Geoje safety-related manuals and regulations contained measures and rules on how to secure space clearance when cranes are operated in close proximity or on how to prevent collisions. Consequently, the police states, it is imperative that Samsung HI perform risk assessments in these areas and define risk mitigations measures.

Further to that, the police explains that after the suspect was appointed Chief of Geoje shipyard in December 2014, there have been a total of 14 safety incidents on his watch, including crane accidents, resulting in several deaths. Norway NCP notes that the fact of multiple fatal accidents during a somewhat short period of time of two and half years could raise the question of why Samsung HI had not included safety rules and measures in the safety-related manuals and regulations for Geoje shipyard. Furthermore, it could also raise the question of the operator's, as well as the consortium participant TechnipFMC's and the joint venture's, responsibility to demand improvements to the shipyard's safety regulations.

It should be noted that the Korean police report makes no mention of TechnipFMC, the other part in the consortium, or any wrongdoing or negligence on the part of TechnipFMC or its employees.

With reference to disclosure of information about the accident, the complainants have by letter required an investigation report about the accident from the current operator Equinor. Equinor has informed Norway NCP that it has been advised that it is prohibited from disclosing it unless all parties expressly consent to such disclosure with reference to confidentiality provisions in applicable contracts relating to the Martin Linge project.

The complainants have also referred to information regarding workers who were traumatised by the accident, but who have not received treatment or compensation.

The complaint is substantiated by a number of documents in Korean, unavailable in English. Norway NCP refers to Korea NCP's initial assessment on this point, related to Samsung HI, where it is stated:

Given that the complainants alleged violations of chapter II (General Policies), paragraph A. 10 and chapter IV (Human Rights), paragraphs 1 and 4 of the Guidelines and submitted relevant data, following which the respondent also responded to these allegations, the issues raised in the complaint are considered to be material and substantiated.¹²

It is outside the task of the NCPs to pronounce judgements on the basis of applicable law. However, respecting domestic law and regulation is the first and foremost obligation of the companies and existing legislation can inform the reasoning of NCPs' assessment of a specific instance. In Norway, there is oil and gas legislation relevant to the issues raised in this case. The Norwegian Petroleum Act states that the licensee (in this case, TEPN and Equinor) has a "see to duty", which implies that "the licensee shall see to it that anyone performing work for him, either personally, through employees or through contractors or subcontractors, shall comply with the provisions laid down in or pursuant to the Act" (Section 10-6). The "see to duty" also implies that the licensee shall have necessary qualifications to perform work related to petroleum activities and to make sure that anyone carrying out work for the licensee is qualified (Section 9-7).¹³

Further, the regulations relating to health, safety and the environment in the petroleum activities and at certain onshore facilities (the Framework Regulations) are relevant as they specifically address the responsibility of the operator to ensure compliance with requirements stipulated in the health, safety and environment legislation, also for "everyone who carries out work on its behalf" (Section 7). The Framework Regulations also stipulate that when entering into a contract, "the responsible party shall follow up to ensure that the participants comply with the requirements while performing the assignment in the activities covered by these regulations" (Section 18).¹⁴

Closely related to the complaint are also two court proceedings in Korea. Firstly, there is a criminal case against Samsung HI related to the requirements for the crime of death and

¹² Korea NCP (25 June 2019) Initial Assessment of the complaint from the Workers Support Team and KTNC Watch.

¹³ Act No. 72 of 29 November 1996 relating to petroleum activities.
<https://www.npd.no/en/regulations/acts/act-29-november-1996-no2.-72-relating-to-petroleum-activities/>

¹⁴ Regulations relating to health, safety and the environment in the petroleum activities and at certain onshore facilities (the Framework Regulations), last amended 26 April 2019.
https://www.ptil.no/contentassets/f18375b7184d4cd68fc1c733b318b3dc/rammeforskriften20_e.pdf

injury by occupational negligence under Korea's Criminal Act and Occupational Safety and Health Act. Changwon District Court concluded on 7 May 2019 that the supervisors of Samsung HI were deemed not guilty, while on-site workers under the supervisors were convicted of negligence. Samsung HI was found not guilty of violating precautionary safety measures in accordance with the Occupational Safety and Health Act. However, Samsung HI was sentenced to a fine for other violations of the same act.¹⁵ Both parties appealed.¹⁶

The appellate court judgement was delivered by the Changwon District Court on 21 February 2020. Three senior management supervisors of Samsung HI and a representative of its jib crane subcontractor, who had all been found not guilty in the first trial, were convicted for their negligence with respect to their duties in the crane crash accident. However, the court upheld that Samsung HI was not guilty of violating precautionary safety measures in accordance with the Occupational Safety and Health Act. It is reported that the Workers Support Team has been in consultation with the prosecution as to whether or not to appeal the verdict.¹⁷

Secondly, there is a civil case involving 14 workers, who have been recognised as victims of the accident and have received compensation from the state. The workers have filed a case for more compensation.¹⁸ Norway NCP has so far not been able to acquire information about the status of this case, and has requested information from a number of the involved parties to the case.

These cases raise the issue of parallel proceedings to this specific instance. As regards the issue of parallel proceedings, the Guidelines state:

NCPs should not decide that issues do not merit further consideration solely because parallel proceedings have been conducted, are under way or are available to the parties concerned. NCPs should evaluate whether an offer of good offices could make a positive contribution to the resolution of the issues raised and would not create serious prejudice for either of the parties involved in these other proceedings or cause a contempt of court situation. In making such an evaluation, NCPs could take into account practice among other NCPs and, where appropriate, consult with the institutions in which the parallel proceeding is being or could be conducted.¹⁹

¹⁵ Korea NCP (25 June 2019) Initial Assessment of the complaint from the Workers Support Team and KTNC Watch.

¹⁶ Workers Support Team, KTNC Watch (24 July 2019) Response to the Norwegian NCP.

¹⁷ Information acquired from the Royal Norwegian Embassy in Seoul, based on Korean news articles.

¹⁸ Workers Support Team, KTNC Watch (24 July 2019) Response to the Norwegian NCP.

¹⁹ OECD (2011) *OECD Guidelines for Multinational Enterprises*. Commentary on the Implementation Procedures, p. 83, paragraph 26. OECD Publishing.

TechnipFMC argues that the ongoing, anticipated and potential, court proceedings in Korea or elsewhere are the proper fora for the resolution of the disputes. TechnipFMC suggests that Norway NCP should suspend further examination of the complaint until conclusion of such proceedings, including any anticipated or potential claims that may be brought in any jurisdiction by the workers that suffered physical injury as a result of the accident, by workers who claim to have been traumatized by the accident, and any other relevant parties that may wish to bring a claim. However, Norway NCP notes that Korea NCP has also considered the court proceedings in Korea and has concluded that this does not prevent Korea NCP from handling the specific instance in relation to Samsung HI, which is a direct party to the criminal case. Thus, Korea NCP has decided to offer its good offices to Samsung HI. Norway NCP also notes that the criminal case in Korea only addresses Samsung HI and not the role and possible responsibility of the other companies involved in the Martin Linge project.

As to the civil case, it addresses the level of compensation for the 14 workers who had already had compensation approved, and not for the more than 150 workers who the complainants claim were traumatised by the accident with no compensation. Norway NCP finds that this specific instance covers a broader area with other issues beside the court proceedings, and that the court proceedings give no reason to suspend further examination.

Concerning the parallel proceedings in Korea and Europe by Korea NCP and Norway NCP, respectively, the case handling in Korea which has been agreed between the NCPs, does not prevent the case from being handled in Europe as the latter will have a broader scope that includes all companies involved in the complaint.

Norway NCP finds that this specific instance will contribute to the purpose and effectiveness of the Guidelines. The complaint involves a serious accident which resulted in several deaths and injuries. It addresses the issue of adequate due diligence prior to the accident and the responsibility of the enterprises involved, both in relation to an operator and other participants in a joint venture, as well as a consortium of contractors. The complaint addresses the issue of disclosure and transparency in terms of the operations of the enterprises involved to find out how the accident could have happened. Norway NCP notes that the confidentiality obligations between the parties involved appear to be based on contracts only. This would imply that the involved parties may expressly consent to disclose any relevant documents. The complaint also addresses the enterprises' duty to respect human rights and the issue of remediation of adverse human rights impacts.

Furthermore, the issues in this specific instance are complex and involve several NCPs and enterprises based in two regions. In cases such as this involving several NCPs, the Guidelines encourage cooperation and coordination between the NCPs involved. As Korea NCP argues in its initial assessment, cooperation being part of the case handling will likely contribute to the purposes and effectiveness of the Guidelines as a separate matter from the ongoing court proceedings in Korea.

Norway NCP regularly informs the NCPs in the UK and France of its actions and has consulted with them on the draft initial assessment statement.

THE NCP'S DECISION

Norway NCP finds that the issues raised in the complaint merit further examination and has accepted the complaint for further consideration. The decision is based on information offered by the parties, and is not an assessment of whether the companies have violated the Guidelines.

As is stated in the Guide for National Contacts Points on the Initial Assessment of Specific Instances:

The stated objective of the initial assessment process is to determine “whether the issue raised merits *further examination*.” In this respect, it is important to note that initial assessments are intended to be *initial*. It is not necessary to undertake fact-finding or a thorough assessment of all the issues raised on their merits during this stage of the process as further examination is envisioned in the next stage of the process.²⁰

NEXT STEPS

Based on the decision that the issues raised merit further consideration, Norway NCP will offer good offices to the parties with the intention of resolving the issues. The parties in this case are the enterprises based in Europe: TEPN, Total SA, TechnipFMC and Equinor.

Good offices means to assist the parties involved in resolving the issues in the complaint, with an aim to reach an agreement. The NCP will usually first offer to meet separately with each party to discuss the complaint. If the parties choose to proceed with the mediation, the NCP will, as a rule, convene a joint “pre-mediation meeting” to agree on the framework for the mediation process.

²⁰ OECD (2019) *Guide for National Contact Points on the Initial Assessment of Specific Instances*, OECD Guidelines for Multinational Enterprises.

<https://mneguidelines.oecd.org/Guide-for-National-Contact-Points-on-the-Initial-Assessment-of-Specific-Instances.pdf>

There is an ongoing process in Korea where Korea NCP has offered good offices to Samsung HI. Norway NCP will strive to coordinate information with Korea NCP. However, the link between Samsung HI's activities and the issues raised in the complaint is an important part of the case. Norway NCP will therefore invite Samsung HI to participate fully in its process of good offices with the European companies. We find that a separate process in Korea does not preclude Norway NCP from inviting Samsung HI to take part in its offer of good offices, and that Samsung HI's participation can make positive contributions to the resolution of the issues in this specific instance.

Norway NCP will come back with more technicalities regarding how and when the offer of good offices can be realised, in light of the current restrictions on international travel due to the Covid-19 outbreak.

APPENDIX

NCP Norway's procedural guidelines for handling specific instances:

https://nettsteder.regjeringen.no/ansvarlignaringsliv2/files/2014/01/FINAL_KPprosedyreregler_eng_godkj.pdf