

INITIAL ASSESSMENT 27 NOVEMBER 2012

LOK SHAKTI ABHIYAN, KOREAN TRANS NATIONAL CORPORATIONS WATCH, FAIR GREEN AND GLOBAL ALLIANCE AND FORUM FOR ENVIRONMENT AND DEVELOPMENT VS POSCO (SOUTH KOREA), ABP/APG (NETHERLANDS) AND NBIM (NORWAY).

EXECUTIVE SUMMARY:

The Norwegian NCP has, together with the Dutch and the South-Korean NCP received a complaint against a South Korean company (Posco) and two of its investors; Dutch ABP/APG and Norwegian Bank Investment Management (NBIM).

Concerning the notification regarding NBIM, the Norwegian NCP concludes that the specific instance merits further examination based on the following criteria:

- the notifiers are concerned parties with a legitimate interest in the matter raised in the complaint;
- NBIM is an enterprise in the sense of the OECD Guidelines for Multinational Enterprises (the Guidelines) and is operating internationally;
- the issues related to Posco and NBIM are material and substantiated;
- the link between the enterprises activities and the issue raised in the specific instance has been presented. Whether this link is sufficient is to be examined by the NCP in the process, where the Norwegian NCP procedures guarantee that both the enterprise and the NGO are heard;
- In relation to the activity of Posco and NBIM, references to the OECD guidelines and public international law have been presented. The NCP finds that the relevant provisions for further examination are the updated Guidelines¹ Chapter II (General Policies) section A paragraph 12 and Chapter III (Human Rights). The consideration of this specific instance is found to contribute to the purposes and effectiveness of the Guidelines Chapter II and IV as it provides an opportunity to examine how the Guidelines apply investors and the financial sector in more concrete terms.

Accepting the case for further examination does not mean that the companies in question have violated the Guidelines. The NCP has not considered the substance of the claims or whether the Guidelines have been violated. The Norwegian NCP will seek to collaborate with the Dutch NCP and the South Korean NCP to further investigate the claims and/or offer dialogue and mediation to all parties involved.

¹ OECD Guidelines for Multinational Enterprises, Recommendations for Responsible Business Conduct in a Global Context, adopted at the 50th Ministerial Meeting 25 May 2011. Reference is also made to the Swedish NCP in its final assessment 1 January 2008 that the OECD Guidelines for Multinational Enterprises adopted 27 June 2000) apply to the financial sector, with reference to Chapter II (General Policies), in particular paragraph 2 and 10.

If dialogue or mediation is rejected or proves unsuccessful, the Norwegian NCP is prepared to, in cooperation with the Dutch and Korean NCP as far as possible, publish a final statement on whether or not NBIM has violated the Guidelines. The procedures for the Norwegian NCP handling of complaints are available at www.responsiblebusiness.no.²

THE COMPLAINT

On 17 October 2012 the Norwegian NCP received a specific instance against the Norwegian Bank Investment Management (NBIM) for not having taken responsibility for good corporate governance and the promotion of high social and environmental standards³ through its investment management through NBIM's investment in POSCO⁴.

Reference is made by the complainers to OECD Guidelines' Chapter II, commentary 19 and 22 where enterprises are expected to "*seek to prevent or mitigate an adverse impact where they have not contributed to that impact, when the impact is nevertheless linked to their operations, products or services by a business relationship*".

RESPONSE TO THE COMPLAINT

NBIM confirmed by e-mail 23 November 2012 that the information about NBIM in this document Annex 2 is factually correct.

THE NORWEGIAN NCP'S ASSESSMENT:

In accordance with the OECD Guidelines and the Norwegian NCP procedure for handling complaints, the NCP accepts the complaint based on the following criteria.

- Is the Norwegian NCP the right entity to assess the alleged violation?
The complaint is submitted to three NCPs as stated above. The South Korean NCP is the right entity to assess the alleged violation by Posco, and the Dutch NCP regarding ABP. Concerning the Norwegian investment, the Norwegian NCP is the right entity to assess the case. The Norwegian NCP has agreed with the Dutch and South-Korean NCP to coordinate and cooperate, as well as offered to support the other NCPs throughout the dealing with the Specific Instance.
- Is NBIM a multinational enterprise according to the OECD Guidelines?
NBIM manages the Norwegian Government Pension Fund Global on behalf of the Norwegian Ministry of Finance. In addition to headquarters in Oslo, NBIM has offices in London, New York, Shanghai and Singapore, with more than 320 employees from 26 nations. As an investment management, also as state owned, the NBIM falls within the scope of the OECD Guidelines according to Chapter I "Concepts and Principles" Section 4.

²http://www.regjeringen.no/upload/UD/Vedlegg/ncp/ncp_prosedyrer_e.pdf

³ <http://www.nbim.no/no/Investeringer/Eierskapsutovelsen/>

⁴ The complaint also concerns the activity of the South Korean company POSCO for failing to prevent or mitigate adverse human rights impacts, failing to conduct comprehensive human rights due diligence and failing to carry out environmental due diligence in its project to set up a steel plant near Paradip, Jagastinghpur District, Odisha, controlled by the wholly owned subsidiary Posco India Private Limited.

- Have the notifiers a legitimate interest in the matter submitted to the NCP? *Forum for Environment and Development (hereafter ForUM) is a Norwegian NGO and a think tank, inter alia specialising in corporate responsibility advocacy and lobbying. ForUM represents 51 NGOs in Norway, has a broad network of international partners and is also represented in OECD Watch. In the field of corporate responsibility ForUM actively promotes and advocates implementation of the OECD Guidelines in general and in particular to ensure implantation of the OECD Guidelines by the State as an investment manager and owner.*

ForUM has a broad international network through OECD Watch, and contributes to capacity building and training on the OECD Guidelines in non-OECD countries. ForUM aims to contribute to local communities being able to raise and handle issues related to alleged violations of the OECD Guidelines by enterprises that are expected to follow the OECD Guidelines.

- Is the complaint material and substantiated?

The complaint regarding Posco refers to relevant provisions in the OECD Guidelines and public international law and is substantiated with facts. Upon request to ForUM from the Norwegian NCP the OECD Watch/Somo by mail 23 november 2012 substantiated the material presented in relation to NBIM and ABP. In correspondence with the Norwegian NCP, the notifiers have expressed preparedness to present further material to substantiate their claim if requested.

- Does there seem to be a link between the enterprise's activities and the issue raised in the specific instance?

The issues raised in the specific instance concerns the responsibility to prevent and reduce factual and potential negative impacts related to the enterprise's activity through their investment in Posco. The notifiers refer to the Guidelines⁵ Chapter IV (Human Rights) paragraph 1, 2, 5 and Chapter II (General Policies), Section A, paragraphs 2, 10, 11 and 14 and Chapter VI (Environment), paragraph 2a and 3, in addition to public international law. In relation to the investors, the Norwegian NCP finds that the relevant provisions for further examination in relation to the Norwegian investor are the updated Guidelines⁶ Chapter II (General Policies) section A paragraph 12 and Chapter III (Human Rights) as well as the previous Guidelines⁷ Chapter II, in particular paragraphs 2 and 10.

- What is the relevance of applicable law and procedures, including court rulings?

There are no relevant parallel procedures identified at this stage.

- How have similar issues been, or are being, treated in other domestic or international proceedings?

⁵ OECD Guidelines for Multinational Enterprises, Recommendations for Responsible Business Conduct in a Global Context, adopted at the 50th Ministerial Meeting 25 May 2011.

⁶ OECD Guidelines for Multinational Enterprises, Recommendations for Responsible Business Conduct in a Global Context, adopted at the 50th Ministerial Meeting 25 May 2011.

⁷ OECD Guidelines for Multinational Enterprises adopted 27 June 2000.

In the Specific Instance CEDHA vs Nordea ⁸the Swedish NCP considered the Guidelines (2000-version) applicable to the financial sector, and “encouraged Nordea and other actors in the financial sector to practice as much transparency and freedom of information as possible”. With the update 25 May 2011 the Guidelines made clear that investments and supply chain issues are covered by the OECD Guidelines.

- Would the consideration of the specific instance contribute to the purposes and effectiveness of the Guidelines?

The NCP finds that the issues raised in the specific instance would contribute to the purpose and effectiveness of the Guidelines by contributing to clarify due diligence recommendations for investment management. The Norwegian NCP will in accordance with the Norwegian NCP Procedure for Handling Complaints offer its good offices, and if relevant mediation to the parties.

ATTACHMENTS

1. The Norwegian NCP process in this Specific Instance
2. Details on the parties involved
3. Information about the Norwegian NCP and the OECD Guidelines
4. The complaint and the Companys response to the complaint

⁸ 1 January 2008, Swedish NCP Final Statement CEDH vs Nordea.

ANNEX 1: DETAILS OF THE NORWEGIAN NCP PROCESS IN THIS SPECIFIC INSTANCE

On 17 October 2012 the Norwegian NCP received a specific instance against the Norwegian Bank Investment Management (NBIM) for not having taken responsibility for good corporate governance and the promotion of high social and environmental standards⁹ through its investment management through NBIM's investment in POSCO¹⁰. The complaint was forwarded to NBIM on 17 October 2012, and NBIM was invited to comment upon the complaint and invited to a meeting with the NCP. NBIM commented on 12 November that they did not have any further comments to the complaint at this stage. NBIM confirmed by e-mail 23 November 2012 that the information about NBIM in this document Annex 2 is factually correct.

ANNEX 2: DETAILS OF THE PARTIES INVOLVED

THE COMPANY:

Norges Bank Investment Management (NBIM) is the asset management unit of the Norwegian central bank (Norges Bank).¹¹ NBIM manages the Government Pension Fund Global (often referred to as the Norwegian oil fund) and most of Norges Bank's foreign exchange reserves. NBIM owns 0.79 % in Posco.

NBIM was set up by the Norwegian central bank in January 1998 to manage the Government Pension Fund Global and most of Norges Bank's foreign exchange reserves. NBIM aims to get the highest possible return on the fund within the investment mandate set by the Ministry of Finance. NBIM seeks to safeguard the long-term financial interests of Norway's future generations through active management and active ownership. NBIM is an integrated global organisation with about 330 employees from 25 countries. NBIM has offices in Oslo, London, New York, Shanghai and Singapore.

THE COMPLAINANT:

The complaint against Posco is filed by the Indian NGO Lok Shakti Abhiyan and supported by Korean Trans National Corporations Watch, the Dutch NGO Fair Green Global Alliance and the Norwegian NGO Forum for Environment and Development (ForUM).

ForUM is a Norwegian think-tank, and a national and international contact point for the coordination of policy initiatives and recommendations. ForUM represents 51 NGOs in Norway, and has a broad

⁹ <http://www.nbim.no/no/Investeringer/Eierskapsutovelsen/>

¹⁰ The complaint also concerns the activity of the South Korean company POSCO for failing to prevent or mitigate adverse human rights impacts, failing to conduct comprehensive human rights due diligence and failing to carry out environmental due diligence in its project to set up a steel plant near Paradip, Jagasthingpur District, Odisha, controlled by the wholly owned subsidiary Posco India Private Limited.

¹¹ Registration number 937 884 117/Norwegian Bank, CEO Oystein Olsen.

network of international partners. It is represented in OECD Watch, which is an umbrella NGO based in the Netherlands.

ANNEX 3: GENERAL INFORMATION ABOUT THE GUIDELINES AND THE NORWEGIAN NCP

APPLICATION OF THE OECD GUIDELINES FOR MULTINATIONAL ENTERPRISES

The initial assessment is based on the 2011 version of the Guidelines as the complaint was submitted after the updated OECD Guidelines for Responsible Business Conduct¹² entered into force for the Norwegian NCP on 1 September 2011.

The Guidelines comprise a set of principles and standards for responsible business conduct in areas including human rights, disclosure, employment and industrial relations, environment, combating bribery, consumer interests, science and technology, competition, and taxation. The Guidelines are not legally binding. However, OECD governments and a number of non-OECD members are committed to encouraging multinational enterprises operating in or from their territories to observe the Guidelines, while taking into account the particular circumstances of each host country.

The Guidelines are implemented in adhering countries by National Contact Points (NCPs), which are charged with raising awareness of the Guidelines amongst businesses and civil society. NCPs are also responsible for dealing with complaints that the Guidelines have been breached by multinational enterprises operating in or from their territories.

THE NORWEGIAN NCP COMPLAINT PROCEDURE

The Norwegian NCP complaint process is broadly divided into the following key stages:

- 1) *Initial assessment* – This consists of a desk-based analysis of the complaint, the company's response, and any additional information provided by the parties. The Norwegian NCP uses this information to decide whether further consideration of a complaint is warranted.
- 2) *Conciliation/mediation OR examination* – If a case is accepted, the Norwegian NCP offers conciliation/mediation to both parties with the aim of reaching a settlement agreeable to both. Should conciliation/mediation fail to achieve a resolution, or should the parties decline the offer, the Norwegian NCP will examine the complaint in order to assess whether it is justified. The NCP may commission fact-finding or other services to support the processing of the case if deemed necessary.
- 3) *Final statement* – If a mediated solution has been reached, the Norwegian NCP will publish a final statement with details of the agreement. If conciliation/mediation is refused or fails to achieve an agreement, the Norwegian NCP will examine the complaint and prepare and

¹²Updated OECD Guidelines for Responsible Business Conduct were adopted at ministerial level on 25 May 2011. The Norwegian NCP general policy is to apply the old Guidelines to actions of the company before September 2011, and the new Guidelines to actions from September 2011. If a company formed a business relationship before September 2011, we apply the old Guidelines to the decision to form the business relationship. If the business relationship continues after September 2011, we would look for any evidence that events or actions from that time should have made the company to handle the relationship in a different manner according to its responsibilities under the new Guidelines.

publish a final statement on whether or not the Guidelines have been breached and, if appropriate, recommendations to the company for future conduct.

The complaint procedures, together with the Norwegian NCP's initial assessments, final statements, and follow-up statements, are published on the Norwegian NCP's website: www.responsiblebusiness.no.

ANNEX 4: THE COMPLAINT

See separate attachment.