



TOTAL E&P NORGE AS

National contact point for responsible business conduct Norway (Norwegian NCP)
Post Box 8114
N-0032 Oslo

Att.: Åse K. Sand

Your date:

Your ref.:

Our ref. (please quote):
1164624

Our date:

Stavanger, 25 October 2019

REPLY TO THE COMPLAINT TO NATIONAL CONTACT POINT FOR THE OECD GUIDELINES FOR MULTINATIONAL ENTERPRISES

1. Introduction

Total E&P Norge AS (**TEPN**), being part of the Total Group, hereby responds to the Norwegian National Contact Point's (**NCP**) e-mail dated 4 October 2019. In the e-mail, the NCP refers to a complaint (**Complaint**) from the Samsung Heavy Industries Martin Linge Project Crane Accident Workers Support Team and the Korean Transnational Corporations Watch (**Complainants**).

TEPN is a company performing Exploration and Production (**E&P**) activities on the Norwegian Continental Shelf, both as a licensee and as an operator. TEPN is a company that is ultimately fully owned by Total S.A. and consequently a part of the Total Group.

TEPN would like to express again its deepest condolences to the families of the deceased, the injured workers and all those affected by the tragedy which occurred on 1 May 2017 at the Samsung Heavy Industries Co. Ltd (**SHI**) yard. It is important that lessons are learnt and that steps are taken to ensure that a similar accident cannot occur again. Safety is the core value of the Total Group and it is the cornerstone of our operational performance. We believe that accidents can be avoided both on our own sites and those of our suppliers and we continue to strive daily in order to reach the goal of zero accidents.

Various questions have been raised in your e-mail of 4 October 2019. These will be commented upon in paragraph 6 below. Prior to this TEPN, sets out some comments regarding matters which are deemed relevant on a general level and which should hopefully enable NCP to have the appropriate context when making its first assessment. In paragraph 7 we summarise our comments.

2. TEPN's role in the Martin Linge project

The Martin Linge Unit (**ML Unit**) is a unitized area on the Norwegian Continental Shelf (**NCS**), comprising of the following Norwegian production licences: PL 040, PL 043 and PL 043 BS. The unit is licensed to an unincorporated joint venture established in accordance with the Norwegian Petroleum Act (the **ML Joint Venture**). The ML Joint Venture is regulated by a joint venture agreement known as the "Hild Unit Agreement" (**ML Unit Agreement**). At the time of the accident, under the ML Unit Agreement, the ML Joint Venture participants were: TEPN holding a 51% interest,

Postal address:

Main Office P.O. Box 168 N-4001 Stavanger

Location:

Finnestadv. 44, Dusavik

Telephone:

+47 51 50 30 00

Telefax:

+47 51 72 66 66

E-mail:

firmapost@total.com

Web:

total.no

Enterprise Reg. No.:

NO 927 066 440 VAT

Statoil Petroleum AS (now Equinor Energy AS (**Equinor**)) holding a 19% interest and Petoro AS holding a 30% interest.

TEPN was appointed by the Norwegian Ministry of Petroleum and Energy (**MPE**) to act as operator of the ML Unit on behalf of the other ML Joint Venture participants. The role of operator was conducted based on Section 3-7 of the Petroleum Act and the ML Unit Agreement.

Completed in March 2018, TEPN assigned its entire participating interest in the ML Unit to Equinor. At the same date, Equinor was appointed by the Norwegian Ministry of Petroleum and Energy as the new operator of the ML Unit.

The current participants in the ML Unit are Equinor (operator) 70%, and Petoro AS 30%.

In accordance with the Norwegian Petroleum Act and the ML Unit Agreement, and the Sale and Purchase Agreement between TEPN and Equinor, upon assignment of its interest, TEPN transferred the rights and entitlements under the agreements associated with the ML Unit, including the relevant documents, information and data. It follows that TEPN no longer has rights to information relating to the ML Unit and does not now represent the ML Joint Venture.

3. The Martin Linge project and award of the EPSCC Contract

Following the discovery of hydrocarbons in the ML Unit, the MPE gave approval for the development of the field including the installation of an offshore production and processing facility to be fixated to the sea floor for the purpose of oil and gas extraction. As is usual practice for this type of installation, the work pertaining to the engineering, procurement and construction of the installation was divided into packages including topsides, jacket and work related to the tie-in of the facilities. In relation to the topsides package, the basic engineering was prepared by Aker Solutions.

In 2012 TEPN, acting as operator on behalf of the ML Joint Venture participants, launched a call for tenders based on this basic engineering (initial design dossier) for the Engineering, Procurement, Supply, Construction, Transportation and Commissioning of the ML Topsides (**ML EPSCC Contract**).

The tender for the ML EPSCC Contract was performed in accordance with Total Group requirements for the award of such contracts, as implemented by TEPN, and also in accordance with the requirements of the ML Unit Agreement.

Total Group's procedure holds Safety performance as a key element in the selection criteria. Indeed, a two stage evaluation process is conducted including the technical/Health Safety and Environment (**HSE**) component and a separate commercial component.

HSE evaluation includes:

- HSE/safety statistics and recent HSE performance;
- HSE Management Plan;
- HSE Policy;
- Risk evaluation and management; and
- Competence and Training.

For the ML EPSCC Contract, the review was based on information in the NCS industry Achilles JQS system,¹ as well as responses to a detailed HSE survey performed by TEPN. Clarification meetings were held with the tenderers and written clarifications supplemented where necessary. In addition TEPN visited the yards to be used by tenderers prior to contract award to conduct on-site HSE evaluation.

A consortium of contractors was selected made up of SHI (Respondent 1), Technip France S.A.S and Technip Norge AS (**Technip**) (Respondent 2) (together the **Consortium**). The Consortium was led by Technip.

The ML EPSCC Contract was negotiated by TEPN as Operator appointed to represent the ML Joint Venture and included stringent provisions and detailed annexes in relation to HSE. The Consortium was required to comply with law and beyond this to apply high standards of workmanship known for similar kinds of work in the oil and gas industry (including well-accepted safe working practices). The Consortium was required to have an HSE Management System in place complying with HSE rules at least as stringent as the Operator's own HSE rules. Procedures to systematically identify hazards and manage change were required, as well as safety training of personnel.

As is necessary for this type of project, the Consortium was responsible for the method of construction, including the development of the detailed design, and the manner of work at its own cost and risk. It provided the equipment necessary for the performance of the work. It was also responsible for the management, control and supervision of performance of the work by subcontractors.

4. The follow-up of the EPSCC Contract

The ML Topsides were constructed at the SHI owned yard located in Geoje, South Korea. At the yard, there is extensive and continuous building of ultra-large container ships, LNG carriers, LNG-FPSO's, offshore rigs and facilities for offshore developments. Being a multi-project construction yard, it consists of three dry docks and five floating docks, in addition to the onshore construction facilities. The yard is certified by the world's three highly recognized international standards; ISO 9001 (Management Quality), ISO14001 (Environment Management) and OHSAS 18001 (Safe and Healthy Working Environment Management). As is necessary for this type of work, the Consortium subcontracted specialised parts of the work to experts present on the yard and supervised by SHI. The photograph below indicates the scale of operations at the yard.

¹ The Achilles JQS community is an industry qualification system facilitating assessments of contractors and suppliers and their prequalification to relevant oil and gas industry standards.



 The red square indicates the approximate location of the ML construction site.

It is best industry practice for the owner of construction yards to remain solely responsible for the HSE of facilities, employees and subcontractors. Not only does this principle honour the fundamental rights and obligations of the owner of the yard. It is also a reflection of best HSE practice, ensuring that the yard owner with the appropriate experience, local knowledge, training and expertise has direct control. In light of the scale of projects and activities being conducted simultaneously on a yard of this size, this also ensures that a consistent approach is taken to safety culture across all operations.

The role of the joint venture represented by its operator, is to exercise its due diligence to ensure that the Consortium's HSE Management Systems are in place and to audit these systems. These rights under the contract were diligently carried out by TEPN on behalf of the ML Joint Venture. Following careful selection of the contractor, review of its HSE Safety Systems and negotiation of the relevant provisions of the contract as described above, TEPN established a project team to follow up on implementation of the contract including the HSE provisions. Several personnel both located at TEPN's main office and physically present at the SHI yard were dedicated to this follow-up. The personnel present at the SHI yard included technical experts reviewing the construction process as well as a team of HSE personnel including both head-office employees and local hires. Through site presence, visits, and audits, such personnel performed monitoring and follow-up including of subcontracted work. In addition, the team was visible and interacted with SHI's workforce encouraging activities focusing on good safety behaviour taking into account the culture at the yard.

5. Post-Incident Follow-Up

Immediately after the accident TEPN's senior management wrote to SHI to express their profound sadness and condolences to the families of the victims, to SHI and to the employees on the site. The

CEO of the Total Group, also sent his condolences to the CEO of SHI and an offer was made to provide any assistance which might be appropriate. A few days after the accident, the ML project director and the Managing Director of TEPN, visited the site to express their condolences in person and to meet with representatives of SHI to discuss implementation of initiatives to prevent future incidents.

Following the accident, works related to the project were suspended until 1 June 2017 when it was agreed that construction could recommence safely.

TEPN as Operator of the ML Unit Joint Venture, immediately offered the services of HSE experts to assist in the Consortium's post-accident investigation and participated with such personnel in a Joint investigation Committee that was set up with representatives of Total, Technip and SHI. 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. Based on available interviews and documentation review, the primary objective of the investigation was to understand the causes, check compliance with project requirements and regulatory standards, and to reduce the potential likelihood of any similar event occurring in the future. The report from this investigation is subject to strict confidentiality provisions in accordance with the ML EPSCC Contract. TEPN understand that a more in depth official investigation was conducted by the police and the South Korean authorities in the months following the incident. TEPN does not have access to the resulting report from said authorities.

Through continuous follow-up at yard, and management visits, TEPN ensured that SHI took necessary actions to apply lessons learned. Central elements in this were SHI's expansion and strengthening of the safety management organization; further promoting a safety culture; implementing further measures to prevent crane collisions; and strengthening the process for finding and eliminating potential safety risks. TEPN conducted a regular follow-up of SHI's corrective action plan until the operatorship was transferred.

As part of its engagement on safety, Total also participates in the Korean Shipyard Safety Standardisation (KSSS) project. The aim of this project is to simplify and improve safety on South Korean shipyards, and therefore to collaborate and produce common safety standards that both the shipyards and the client companies can use.²

6. First assessment issues

On the basis of the OECD Guidelines for Multinational Enterprises (2011 Edition) (**Guidelines**), a number of issues have been raised in your above referred e-mail:

6.1 Whether the Norwegian NCP is the correct entity to assess the complaint

TEPN understands that the complaint has been made to the French, Korean and Norwegian NCPs and that the UK NCP has been invited to participate. We are concerned that parallel processes conducted by such NCPs could potentially lead to conflicting requests on the companies involved. Indeed we observe that each NCP has its own procedural rules and discretion in the conduct of cases referred to it. In TEPN's opinion it is essential that a co-ordinated and aligned approach involving all Respondents is taken in terms of the process(es) themselves, scheduling and the substantive issues to be examined.

² For more information regarding this project, please see the following: http://ksss.koshipa.or.kr/page/about/about_01.php

TEPN would like to emphasise that legal proceedings concerning SHI are on-going in Korea. We are concerned with the risk that an OECD process might either directly or indirectly interfere with such judicial processes.

Prior to TEPN agreeing to participate in any "Good Offices" process proposed by the Norwegian NCP, the Norwegian NCP should ensure that the Respondents will not be subject to parallel proceedings by the other OECD NCPs concerned.

In relation to TEPN and the Total Group, the scope of any investigation or "Good Offices" should be exclusively limited to their role in supporting, contributing and respecting good practices in its suppliers, and should not include discussion or investigation of the facts of an incident which occurred on the site of SHI or the management and compensation of SHI personnel or subcontractors. Such matters are legally and practically under the sole control of SHI.

6.2 The identity of the party concerned and its interest in the matter

As explained in more detail in paragraph 4, it is best industry practice for the owner of construction yards to remain solely responsible for the HSE of facilities, employees and subcontractors. TEPN's role in relation to the ML Unit and the ML ESPC Contract was as Operator acting on behalf of the ML Joint Venture. The role of the joint venture represented by its operator, is to exercise its due diligence. Such due diligence was diligently carried out by TEPN on behalf of the ML Joint Venture.

We would also point out that that the role of operator is now held by Equinor. Therefore, TEPN no longer has the rights or obligations to take decisions in relation to the ML Unit or the ML Joint Venture.

For these reasons, if any "Good Offices" process is to take place, we consider that it is essential that all Respondents, including in particular SHI, be involved in such process.

Respect of the OECD Guidelines is not a guarantee that no incident will occur. While TEPN and the Total Group are willing to cooperate in relation to their obligations to exercise due diligence in relation to their suppliers, any questions surrounding the incident itself or management by SHI of its personnel and subcontractors (including potential compensation) must necessarily be addressed to SHI.

6.3 Whether the complaint is material and substantiated

Prior to responding to this question and to agreeing to participate in any "Good Offices" process, TEPN and the Total Group seek further clarity 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.

6.4 Whether there is a link between the activities of the company subject to the complaint and the issue raised in the specific instance

TEPN and the Total Group consider that they have acted in accordance with best industry practice, applicable laws and the OECD Guidelines in relation to this matter.

6.5 The relevance of applicable law and procedures, including court rulings

The Complaint concerns an incident which is currently subject to court proceedings in South Korea. No Total entity, nor any member of the ML Unit joint venture, has been invited to participate in such proceedings either as defendant or as witness. TEPN was not party to the investigations or findings of any in depth police study which we understand was conducted following the incident.

Agreement for TEPN to participate in any “Good Offices” as proposed by the Norwegian NCP, would be conditional on all parties agreeing that the process will in no way interfere with Korean legal processes.

6.6 How similar issues have been or are being handled in other domestic or international proceedings

Our understanding is that the South Korean court proceedings in relation to this incident are ongoing. The final decision by the courts in relation to this case will have a substantial effect on how the elements raised in the Complaint are to be managed.

Prior to responding to this question TEPN and the Total Group seek further clarity in relation to the nature of the Complaint and its direct relevance to Total in addition to the processing by South Korean courts and authorities of the issues addressed.

6.7 Whether the consideration of the specific instance would contribute to the purposes and effectiveness of the Guidelines

In TEPN’s opinion, the purpose and effectiveness of the Guidelines would be best served if there is sufficient clarity on the matters being addressed towards the various involved parties and a coherent approach to how these matters are processed.

7. Summary

The Total Group and TEPN support the objectives of the OECD Guidelines and are committed to implementing them fully. Safety is the Core Value of our Group and the bedrock on which all our operations depend. We have strong and rigorous HSE processes and systems in place both in relation to our own operations and also in relation to our supply chain. These processes were all applied in relation to the ML Unit.

As has been demonstrated by our active participation in meetings with the Norwegian and French NCPs to date, we are willing to contribute to the review of the Complaints by the NCP.

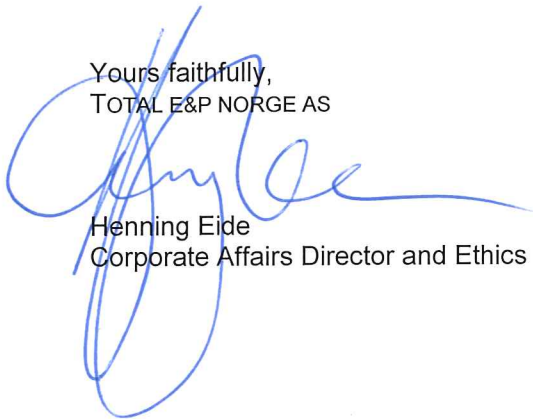
Total firmly believes in the importance of respecting the OECD Guidelines. We are concerned however that stemming from the complaint there is a certain degree of confusion around the roles and responsibilities of the parties involved. Unfortunately this does not contribute to the purposes and effectiveness of the Guidelines.

In spite of that and subject to the assurances and additional information set out above, including SHI’s necessary participation in such a process, we are willing to continue to cooperate with a view to entering into “Good Office” discussions with the Complainant. As far as TEPN is concerned any such discussions would be limited strictly to the role of TEPN and the Total Group in exercising their

due diligence in relation to their suppliers. For the reasons set out above TEPN will not be able to discuss matters relating to the detailed facts of the incident occurring on the SHI yard, or management by Samsung of its personnel and subcontractors (including potential compensation) as this is for SHI to address.

We remain at your disposal to discuss how the process can be managed in the most constructive manner.

Yours faithfully,
TOTAL E&P NORGE AS



Henning Eide
Corporate Affairs Director and Ethics Officer