

REPORT OF NATIONAL CONTACT POINTS TO THE INVESTMENT COMMITTEE

Common Framework for Annual Reporting by National Contact Points for the period June 2005-June 2006

NORWAY

A. Institutional Arrangements : Unchanged

B. Information and Promotion

How have the Guidelines been made available in your country (translation, creation of a webpage or website, etc.)?

The Guidelines are translated into Norwegian and are available on the website of the Ministry of Foreign Affairs. We have also published a brochure about the Guidelines in Norwegian and English which also is posted on the website.

How is co-operation with the business community, trade unions, NGOs and the interested public carried out, with respect to information on, and promotion of, the Guidelines (consultations, distribution of the Guidelines, etc.)?

Co-operation is carried out through the NCP.

Annex 3 to this questionnaire presents Table 1 of the 2003 NCP Chair's Summary ("Linkages – The OECD Guidelines and export credit, overseas investment guarantee and inward investment promotion programmes"). NCPs are asked to update this Table. If no update is necessary, please indicate this.

No update.

C. Implementation in specific instances

One specific instance was raised with the Norwegian NCP during the June 2004-2005 cycle. In June 2005 the NCP a specific instance was received from the Norwegian NGO Forum for Environment and Development (ForUM) concerning the company Aker Kværner's activities at Guantanamo Bay. The NCP issued 29 November 2005 the following statement (translated from Norwegian) :

Statement by the National Contact Point for the OECD Guidelines for Multinational Enterprises

Enquiry from the Forum for Environment and Development (ForUM) on Aker Kværner's activities at Guantanamo Bay

The Norwegian National Contact Point for the OECD Guidelines for Multinational Enterprises received an enquiry from ForUM on 20 June 2005 relating to Aker Kværner ASA's activities at Guantanamo Bay. ForUM believes that, in providing assistance to the detention facility at Guantanamo Bay, Aker Kværner, through its wholly-owned US subsidiary Kværner Process Services Inc., is failing to comply with Recommendation no. 2 in Chapter II of the Guidelines on respect for human rights.

Background information

The OECD Guidelines for Multinational Enterprises are recommendations by the governments of the OECD countries to multinational companies in these countries. They contain voluntary principles and standards for responsible business conduct in many different areas, and make recommendations on how companies should proceed in the countries they are engaged in. The objective of the Guidelines is to promote sustainable development by encouraging companies to respect human rights, take responsibility for the environment and social development, fight corruption, etc.

The recommendation in question in this case is Recommendation no. 2 in Chapter II, which states that companies should "respect the human rights of those affected by their activities consistent with the host government's international obligations and commitments."

According to the Guidelines, adhering countries are to set up National Contact Points (NCPs), which are to promote the Guidelines, handle enquiries relating to the Guidelines and help to resolve issues concerning compliance with the Guidelines that are submitted to them. The NCPs can, for example, provide a forum for discussions between interested parties, discuss matters that are covered by the Guidelines and solve problems arising between companies and employees or arising in other areas covered.

The NCP in Norway is made up of representatives of the Ministry of Foreign Affairs, the Ministry of Trade and Industry, the Norwegian Confederation of Trade Unions and the Confederation of Norwegian Enterprise.

The NCP had meetings with Aker Kværner and ForUM on 5 September and 26 October 2005 to discuss the complaint submitted by ForUM and assist the parties in reaching agreement on this issue.

The company's operations

Aker Kværner has, through its wholly-owned US subsidiary Kværner Process Services Inc. (KPSI), carried out work for the US Department of Defense at the American Marine base at Guantanamo Bay, Cuba, since 1993.

According to the information provided, the work carried out by KPSI at the base consists of maintenance tasks, such as ensuring adequate electricity and water supplies and proper functioning of the drains. After 11 September 2001, a camp was built alongside the Marine base for the internment of terrorist suspects. This was known as Camp x-ray, and was used for persons taken prisoner in connection with military operations, for example in Afghanistan. The camp was built by other companies under contract to the US authorities. KPSI does not have a contract for the

operation of the prison, but has, on request, assisted in the event of faults with water pipes, the electricity net and other shared functions for the Marine base and the prison.

KPSI's contract will expire in the near future. In the spring of 2005, the company submitted a tender for further works at the Guantanamo Bay base, but was not selected. The company will therefore discontinue its engagement at Guantanamo Bay by March/April 2006, and as a result will be closed down.

The arguments put forward by the parties

ForUM is of the opinion that Aker Kværner, through KPSI, is involved in activities that conflict with Recommendation no. 2 in Chapter II of the Guidelines. It refers to the fact that the International Committee of the Red Cross, Human Rights Watch and Amnesty International have all pointed out that the operation of the facilities is in breach of international humanitarian and human rights norms, including the prohibition against torture and other forms of cruel, inhuman or degrading punishment, and that it fails to ensure basic legal safeguards. For this reason, ForUM wants Aker Kværner ASA's company KPSI to discontinue its activities at Guantanamo Bay.

Aker Kværner states that it has considered on an ongoing basis the ethical issues these activities raise, but has not found them to weigh heavily enough to discontinue its work. It furthermore points out that the detention facilities were built ten years after KPSI started to work at the Marine base. The company has nothing to do with the operation of the detention facilities. Nevertheless, as several of the operational and supply functions are shared, KPSI has occasionally, on request, provided maintenance services relating to the operation of the facilities, such as maintenance of the electricity and water supply, drains, etc. These services have also been carried out in the detention facilities, including the cells. Aker Kværner does not consider KPSI's activities at Guantanamo Bay to be at variance with the OECD Guidelines.

The NCP's assessment

This case is not a question of whether Aker Kværner has violated human rights. The human rights conventions apply to states only, and companies cannot therefore be held responsible for violations of human rights. However, companies can, through their own actions or failure to act, be complicit in or profit from violations of human rights by states. Recommendation no. 2 in Chapter II of the Guidelines addresses the ethical aspect of such cases. Therefore, the question that has to be asked in this case is whether the company has failed to "respect the human rights of those affected by (its) activities consistent with the host government's international obligations and commitments."

The NCP refers to a number of reports from international organisations and bodies that express serious concern about the operation of the detention facilities at Guantanamo Bay being in violation of human rights. Although this criticism is not directed at the activities at the Marine base itself, it is generally known that in recent years alterations have been made to the detention facilities.

Aker Kværner and its subsidiary KPSI are not primarily engaged in the operation of the base, but have on occasion carried out maintenance on shared operational and supply functions for the prison and the base. The Guidelines state that the company should, "respect the human rights of those affected by (its) activities." It is the NCP's opinion that the activities carried out by the company at least in part can be considered to have affected the inmates of the prison. The operation of the prison depends on the maintenance of infrastructure of the type carried out in this case.

It is the NCP's opinion that the nature and extent of Aker Kværner's activities are unclear. Despite several enquiries from the NCP, the company has not provided specific information about its activities at Guantanamo Bay. It is the NCP's opinion that Aker Kværner could have provided extensive documentation without compromising its obligation of confidentiality towards the other party to the contract. Neither has the company submitted documentation of the ethical assessments that have been made internally in the company in relation to its activities at Guantanamo Bay, including any board discussions of these issues. No documentation has been provided of any formalised, concrete framework, guidelines, rules, etc., that have been applied in assessing the ethical aspects of the activities in question. It has, however, been ascertained that the OECD Guidelines have not been included in the basis for Aker Kværner's assessments.

The NCP underlines the importance of Norwegian companies continually assessing their activities in relation to human rights. The provision of goods or services in situations such as those at Guantanamo requires particular vigilance with respect to corporate social responsibility. It would therefore have been appropriate if the company had undertaken a thorough and documented assessment of the ethical issues in connection with its tender for the renewal of the contract in 2005.

The NCP has noted that the company does not seem to have drawn up ethical guidelines for its activities. The NCP therefore urges the company to draw up such guidelines and to apply them in all countries in which it operates. The NCP emphasises that the norms referred to in Recommendation no. 2 in Chapter II of the OECD Guidelines for Multinational Enterprises are international norms and are therefore equally relevant and important in all countries.