

Specific instance on the Danish NCP's own instigation: The due diligence process of the Danish Ministry of Defence in regard to the contracting and building of the inspection vessel Lauge Koch

STATEMENT

6 September 2018

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The Danish Mediation and Complaints-Handling Institution for Responsible Business Conduct (the NCP) is the Danish National Contact Point based on the OECD Guidelines for Multinational Enterprises. The NCP is established by law¹ and is competent to handle specific instances concerning whether Danish companies,

public authorities and public and private organisations act in accordance with the OECD Guidelines for Multinational Enterprises.

Through information in the daily news the NCP has become aware of allegations that forced labour from North Korea may have been deployed in the construction

1. Act no. 546 on a Mediation and Complaints-Handling Institution for Responsible Business Conduct of 18/06/2012.

process to build the Danish inspection vessel Lauge Koch. The inspection vessel was built at the Polish shipyard, Crist S. A., which is alleged to have deployed forced labour of North Korean nationality. The NCP has become aware of the issue through articles from, *i.a.*, the newspapers Information, Politiken, Berlingske and Nordjylland's Avis and a documentary broadcast at the national TV channel DR2. Use of forced labour is a gross violation of the OECD Guidelines for Multinational Enterprises.

On this background and applying its competence according to the Danish NCP act to investigate cases on its own investigation, the NCP has examined the due diligence process of the Danish Ministry of Defence in regard to the contracting and construction of the inspection vessel Lauge Koch. This has been done in order to assess whether the due diligence process of the Danish Ministry of Defence is in accordance with the OECD Guidelines for Multinational Enterprises.

The NCP has not examined whether forced labour from North Korea has in fact been deployed during the construction of the inspection vessel.

1. DUE DILIGENCE REQUIREMENTS ACCORDING TO THE OECD GUIDELINES?

The OECD Guidelines for Multinational Enterprises require companies to carry out risk-based due diligence by incorporating due diligence into their risk management systems. The Danish NCP Act defines the NCP's area of competence to include public authorities and organisations. The purpose of risk-based due diligence is to identify, prevent and mitigate actual and potential adverse impacts and to report and communicate on the company's, authority's or organisation's efforts in addressing adverse impacts. This obligation also includes risks in relation to suppliers and other business relationships with which the company, authority or organisation is directly linked to through its operations, e.g. a procurement contract (see. OECD Guidelines for Multinational Enterprises, Chap. II, princ. 10-12.)

2. THE REQUIREMENT ON THE MINISTRY OF DEFENCE'S TO CARRY OUT RISK-BASED DUE DILIGENCE ITS REGARD TO THE CONTRACTING AND CONSTRUCTION OF PURCHASING THE VESSEL LAUGE KOCH

In December 2013, the Danish Ministry of Defence's Acquisition and Logistics Organisation entered into a contract with the Danish company Karstensens Skibsværft A/S (a shipyard) on the delivery of an inspection vessel. Karstensens Skibsværft A/S used a supplier in Poland, Crist Shipyard, to build the ship hull of the vessel Lauge Koch between May 2014 and April 2015.

The Ministry of Defence and the supplier Karstensens Skibsværft A/S were therefore directly linked through the contract. Accordingly, the Danish Ministry of Defence is required to request that the supplier respect the OECD Guidelines and to follow up in order to ensure that the supplier complies. The Danish Ministry of Defence's requirement to carry out due diligence is underscored by the fact that the Ministry is a Government institution and the contract and building of the vessel is based on public funds.

The NCP observes that Karstensens Skibsværft A/S is also required to carry out risk-based due diligence in accordance with the OECD Guidelines on Multinational Enterprises.

3. EXAMINATION OF THE DUE DILIGENCE PROCESS OF THE DANISH MINISTRY OF DEFENCE IN RELATION TO THE CONTRACTING AND CONSTRUCTION OF LAUGE KOCH

As an element in its examination, the NCP has requested the Ministry of Defence to provide information about the contracting and construction, including:

- Documentation of the due diligence processes of the Danish Ministry of Defence at the time of contracting on the inspection vessel Lauge Koch, as



well as how follow-up has been conducted.

- Documentation of the Ministry of Defence's due diligence processes at present.

The NCP received information in this regard from the Danish Ministry of Defence on April 11th, 2018 and May 31st, 2018.

Based on its examination of the documentation received, the NCP finds that the Ministry of Defence did not carry out due diligence in accordance with the OECD Guidelines for Multinational Enterprises in regard to the contracting and construction of the inspection vessel Lauge Koch.

This is based on the following:

- The Ministry of Defence did not include CSR requirements, including requirements on respect for human rights, as part of the 2013 contract with Karstensens Skibsværft A/S.
- The Ministry of Defence did not systematically evaluate adverse impacts on human and labour rights, environment and corruption in accordance with the OECD Guidelines for Multinational Enterprise in relation to the contract, nor did the Ministry follow up on risks of adverse impacts. For example, this could have been done when the Ministry conducted visits to the supplier to check on the construction process. The Ministry of Defence has informed the NCP that it has paid approx. 15 supplier visits to Crist S. A. in Poland, and that 11 construction meetings have been held between Karstensens Skibsværft A/S and the Ministry of Defence's Acquisition and Logistics Organisation. However, the Ministry has not provided documentation that substantiates that systematic follow-up on CSR requirements was made during these visits.

In 2012 The Danish Ministry of Defence introduced a standard annex containing CSR requirements to be included in procurement contracts.

The Ministry of Defence has informed the NCP that the construction of Lauge

Koch was linked to an option in a contract dating from 2004, and that as a result of this, the 2012 CSR Annex was not applicable.

"the option for the building of Lauge Koch was linked to the contract from 2004, and thus the Danish Defence's Acquisition Organisation's "Standard" CSR annex from 2012 was not part of the utilization of the option in 2013 and could not be added for contractual reasons".

The NCP observes that in regard to projects carried out in 2013 the Ministry of Defence was required to act in accordance of the revised OECD Guidelines from 2011. This applies although the building of Lauge Koch was related to an option in the 2004 contract. Accordingly, the fact that the contract was concluded earlier does not exempt the Danish Ministry of Defence from carrying out risk-based due diligence in accordance with the OECD Guidelines for Multinational Enterprises at the time of execution of a project. Incorporation of contractual CSR requirements is one of several key methods to perform due diligence. The Ministry of Defence has not documented or otherwise made probable that due diligence has been secured in other ways.

Furthermore, the Danish Ministry of Defence's 2012 CSR-annex states that the Ministry of Defence can follow-up on problem issues that the Ministry becomes aware of in relation with procurements. It also states that the Ministry can request information from the supplier. The NCP emphasises in this regard that this does not exempt the Danish Ministry of Defence from assessing risks before contracting to ensure the supplier's compliance with CSR requirements as part of the due diligence process.

4. RECOMMENDATIONS FOR THE FUTURE WORK OF THE DANISH MINISTRY OF DEFENCE IN REGARD TO RISK-BASED DUE DILIGENCE

The Danish Ministry of Defence has informed the NCP that at present there is an on-going work to improve the Ministry's due diligence. The NCP makes the following recommendations to the future



work of the Ministry of Defence on due diligence:

The NCP recommends that the Danish Ministry of Defence revises its risk management systems in order to systematically implement the processes by which the Ministry can meet the requirements of due diligence in regard to its suppliers in accordance with the OECD Guidelines Chapter II.

Furthermore, the Danish Ministry of Defence should ensure that the Ministry's CSR policy is in accordance with the OECD Guidelines for Multinational Enterprises, particularly with regard to human and labor rights.

The Ministry of Defence should define CSR requirements for suppliers and continuously ensure compliance with these requirements. The Ministry should request suppliers to provide self-assessments upon which monitoring by the Ministry can be based. Risk-based due diligence requirements should be part of procurement contracts with suppliers. In addition, the Ministry is encouraged to review its suppliers' self-assessments in connection with an analysis of industry and country risks. On this basis it should select issues to be monitored.

The NCP recommends that the Ministry of Defence report and communicate about these efforts and about the mea-

sures carried out in relation to suppliers to prevent actual and potential adverse impacts.

The NCP observes that the Ministry may find inspiration for its future due diligence work in guidance material issued by the UN Global Compact, the UN and the OECD. This includes the *OECD Due Diligence Guidance for Responsible Business Conduct* issued on May 31st, 2018 Inspiration to responsible supply chain management can also be found in the Danish online tool The CSR Compass (www.csrcompass.com).

5. FOLLOW-UP AFTER ONE YEAR

Pursuant to section 7 of the NCP Act, the NCP is obliged to follow up on this statement after one year to assess whether the Danish Ministry of Defence has complied with the NCP's recommendations.

On this basis, the NCP requests that the Danish Ministry of Defence no later than one year after the publication of this statement provide the NCP with a report on follow-up to the above recommendations and on the Ministry's efforts to develop decision-making and risk-management systems that meet the due diligence requirements of the OECD Guidelines.

