



## **Initial Assessment of the Korean NCP for the OECD Guidelines for Multinational Enterprises**

**Complaint from the Samsung Heavy Industries Martin Linge Project Crane Accident Workers Support Team and the Korean Transnational Corporations Watch (KTNC WATCH) regarding the activities of Samsung Heavy Industries, Total, Technip FMC and Equinor**

**June 25, 2019**

---

### **1. Introduction**

The OECD Guidelines for Multinational Enterprises (hereinafter, “the Guidelines”) are a set of voluntary and non-binding recommendations aimed at minimizing adverse impacts from the activities of multinational enterprises and strengthening their responsible business conducts.

The government of the Republic of Korea (ROK) established and is operating the Korean National Contact Point (KNCP) to promote the Guidelines and to handle specific instances regarding the activities of multinational enterprises which are based or operating in the ROK.

The KNCP offers good offices for parties to resolve issues raised in specific instances in accordance with the Implementation Procedures of the Guidelines. These procedures are to be used only upon agreement of the parties and their commitment to participate in good faith during the procedures.

The decision of a multinational enterprise to participate in good offices does not imply that its activities do not comply with the Guidelines. No parties participating in good offices would be compelled to make a concession, waive their legal rights, or violate the law.

### **2. Substance of the Specific Instance and the Respondent’s Position**

#### 1) Progress

On March 29, 2019, the ‘Samsung Heavy Industries Martin Linge Project Crane Accident Workers

Support Team’ and the ‘Korean Transnational Corporations Watch (KTNC WATCH)’ submitted a Specific Instance with the Korean, French and Norwegian NCPs regarding an accident related to the Martin Linge project against Samsung Heavy Industries, Total, Technip FMC and Equinor.

In addition, as the complainant requested cooperation among NCPs in order to identify the facts through the systemic gathering of information, the KNCP notified the other relevant NCPs that the KNCP will carry out the procedures focusing on the company based in the ROK, and suggested that French and Norwegian NCPs carry out the related procedures with a focus on the companies headquartered in their countries. The NCPs will then mutually share their progress and results.

Meanwhile, the respondent submitted its written responses to the KNCP on May 13, 2019, and the complainants presented additional submissions on June 3, 2019. The KNCP forwarded the submissions to each party, and on June 11, 2019, the respondent informed the KNCP that no further comments would be submitted in response to the complainants’ additional submissions.

## 2) Substance of the Specific Instance

The complainants raised the following three issues, pointing out that the respondent should have conducted a risk assessment in advance before changing its work method to an unusual and dangerous method.

- ① The respondent did not adopt measures to prevent crane collisions such as developing the procedures for passing an overlap area and for preventing collisions. (Guidelines II. General Policies A. and IV. Human Rights 1, 4)
- ② Managers under the respondent’s responsibility for management were negligent in their duty to direct the work. (Guidelines II. General Policies A. and IV. Human Rights 1, 4)
- ③ A sufficient number of signalmen were not deployed and the Goliath crane signalman was also negligent in monitoring. (Guidelines II. General Policies A. and IV. Human Rights 1, 4)

## 3) Respondent(Samsung Heavy Industries)’s Position

Based on the ruling in the first trial made by Tongyeong Branch under Changwon District Court on May 7, 2019, the respondent notified its position on the issues raised by the complainants as follows.

- ① The procedures for passing an overlap area and how to tune the signal are included in the transport safety procedures, the work standard procedures and the guidance for the provision of an additional walkie-talkie.
- ② The head of the work crew belonging to the respondent admitted to negligence regarding his/her duty of care for the work.
- ③ This accident did not occur because the respondent did not deploy a sufficient number of signalmen, but was caused by the workers’ occupational negligence.

### 3. KNCP's Initial Assessment

In compliance with the Procedural Guidance in the Guidelines, the NCP makes an initial assessment once a specific instance is received. The initial assessment is the process to determine whether the issue raised is bona fide and relevant to the implementation of the Guidelines. In making an initial assessment, the following six factors are taken into account.

- *the identity of the party concerned and its interest in the matter.*
- *whether the issue is material and substantiated.*
- *whether there seems to be a link between the enterprise's activities and the issue raised in the specific instance.*
- *the relevance of applicable law and procedures, including court rulings.*
- *how similar issues have been, or are being, treated in other domestic or international proceedings.*
- *whether the consideration of the specific issue would contribute to the purposes and effectiveness of the Guidelines.*

Accordingly, the KNCP considered these factors based on the documents submitted by the parties.

1) identity of the party concerned and its interest in the matter

- identity of the party concerned (whether the party is a multinational enterprise)

The respondent, Samsung Heavy Industries, is a shipbuilding, repair and sales company. And it is headquartered in the ROK and operates overseas affiliates in China, India and the United States. It is therefore a multinational enterprise under the Guidelines.

- its interest in the matter

Given that the complainant, the 'Samsung Heavy Industries Martin Linge Project Crane Accident Workers Support Team' can be seen as a legal representative of the accident victim workers and the 'Korean Transnational Corporations Watch' is an NGO that provides extensive monitoring of business activities, they are regarded as having an interest in the matter.

2) whether the issue is material and substantiated

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.

3) whether there seems to be a link between the enterprise's activities and the issue raised in the specific instance

Since the respondent received an order for the Martin Linge modules and is the site of the workplace accident where the modules were being built by the respondent, there seems to be a link between the

enterprise's activities and the issue raised.

- 4) the relevance of applicable law and procedures, including court rulings

This case is found to be related to the requirements for the crime of death and injury by occupational negligence under the Criminal Act and the Occupational Safety and Health Act.

Regarding the crime of death and injury by occupational negligence under the Criminal Act, on May 7, 2019, at the first trial, the court concluded that the supervisors were not guilty because it is difficult to recognize a violation of the obligation to pay particular attention and the causation between the insufficiency of the measures and the accident. However, the workers under the supervisors were convicted of negligence.

In addition, regarding the violation of the obligation to adopt measures for preventing hazards under the Occupational Safety and Health Act, the court concluded that Samsung Heavy Industries and its shipyard were not guilty since the Ministry of Employment and Labor determined that there was no problem with the implementation of the safety measures, and there was no evidence that the safety measures were insufficient when compared to other shipbuilders.

However, the Guidelines state that 'NCPs should not decide that issues do not merit further consideration solely because parallel proceedings are available to the parties concerned.'

- 5) how similar issues have been, or are being, treated in other domestic or international proceedings

Before this specific instance was submitted, the respondent paid a fine in violation of the Occupational Safety and Health Act at the special supervision of the Ministry of Employment and Labor on the occasion of the crane accident.

- 6) whether the consideration of the specific issue would contribute to the purposes and effectiveness of the Guidelines

According to the Guidelines, the NCP not only offers a forum for discussion for the parties but also cooperates with foreign NCPs, where necessary, in supporting the resolution of issues related to the Guidelines. The complainants also requested cooperation with French and Norwegian NCPs to share data on the foreign companies participating in the Martin Linge project. It is therefore likely that the consideration of this specific instance would contribute to the purposes and effectiveness of the Guidelines separately from the court's decision.

#### **4. Conclusion**

The KNCP reviewed all the factors that should be considered in the initial assessment on the basis of the submissions and interviews of the parties concerned with the Korean company. As a result, given that the issues are material and that both sides are actively responding, it is recognized that there is a need to contribute to the resolution of the issues by offering an NCP-level forum for the discussion.

Therefore, the KNCP determines that the issues raised merit further examination through good offices.

In particular, since this complaint was received by the Korean, French and Norwegian NCPs simultaneously and the processes for handling the specific instance are currently underway in the NCPs, cooperation between the NCPs is necessary.

However, since the initial assessment is a process to determine whether the NCP can help to resolve the issues by offering good offices for a dialogue between the parties, continuing the case to good offices does not necessarily mean that the respondent has violated the Guidelines.

## **5. Future Plan**

The KNCP will contact the parties to check whether the parties are willing to participate in the process of good offices to discuss with each other and to reach a mutually acceptable agreement. This initial assessment statement will be published on the NCP's website ([www.ncp.or.kr](http://www.ncp.or.kr)), and the final statement will also be published after the conclusion of the procedures for good offices. The KNCP will communicate and cooperate with other NCPs by sharing the progress and the results with the French and Norwegian NCPs involved in handling this specific instance.

Korean National Contact Point  
for the OECD Guidelines for Multinational Enterprises