

# COUNCIL ON ETHICS

THE GOVERNMENT PENSION FUND GLOBAL

**To the Ministry of Finance**

3 April 2014

**UNOFFICIAL ENGLISH TRANSLATION**

**Recommendation concerning Repsol S.A. and Reliance Industries Limited**

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## 1 Summary

The Council on Ethics no longer recommends the exclusion of the companies Repsol S.A. (Repsol)<sup>1</sup> and Reliance Industries Limited (Reliance) from the investment universe of the Norwegian Government Pension Fund Global (GPFG). On 1 December 2010, the Council on Ethics issued a recommendation to exclude Repsol and Reliance from the GPFG because of the risk of contributing to serious or systematic violations of human rights in connection with the exploration for oil and gas in Peru. The Ministry of Finance has yet to conclude on this case.

The companies have taken part in a joint venture that has explored for oil and gas in block 39 in the Peruvian Amazon. Repsol has informed the Council on Ethics that the company has sold its share in the joint venture and that there is currently no ongoing activity in the block.

At the core of the Council's recommendation lies the question of whether or not there is a risk that indigenous peoples in voluntary isolation – so-called uncontacted indigenous peoples – live in block 39. On the basis of an overall assessment of available information, the Council concluded in its recommendation that there is a probability that indigenous people live in voluntary isolation in block 39 and that continued exploratory activity in the block entails an unacceptable risk of the company contributing to human rights violations insofar as it exposes them to contact. The Council also maintained that the uncertainty concerning the presence or otherwise of the uncontacted indigenous peoples in the block was due to the fact that necessary scientific studies had not been carried out to clarify their existence.

The Ministry of Finance requested an update on the recommendation in May 2012. In its letter to the Ministry of 20 June 2012, the Council on Ethics upheld its recommendation to exclude Repsol and Reliance.

Now that Repsol has sold its share in the joint venture, the risk of the company contributing to human rights violations in block 39 is no longer present. The foundation on which the recommendation on exclusion was built is therefore no longer present. As concerns Reliance, the Council will consider the risk of contributing to human rights violations when a new joint venture is established and activities in the block begin anew. The Council on Ethics does not presently recommend excluding the company from the GPFG.

## 2 Background

Repsol is an international integrated oil and gas company listed on the Madrid stock exchange. As of the end of 2013, the GPFG held shares in the company worth NOK 2.47 billion, amounting to 1.24 per cent of the company.

Reliance is listed on a number of stock exchanges in India and operates in the oil, gas and petrochemical industries. As of the end of 2013, the GPFG held shares in the company worth NOK 618.7 million, amounting to 0.22 per cent of the company.

Repsol and Reliance have been partners in a joint venture that explores for oil and gas in Block 39 in the Peruvian Amazon. Repsol is the operator. Repsol has explored the block since the middle of the 1990s and was awarded 55 per cent of the concession in 1991. Reliance holds a 10 per cent share through its subsidiary, Reliance Exploration and Production DMCC. PetroVietnam holds 35 per cent of the block.

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<sup>1</sup> Formerly Repsol YPF.

On 1 December 2010, the Council on Ethics recommended that Repsol and Reliance be excluded from the GPFG due to an unacceptable risk of contributing to violations of human rights. At the core of the case was the question of whether or not there live indigenous people in voluntary isolation in Block 39.<sup>2</sup>

The Council wrote the following on this matter:

‘The question of the existence of uncontacted indigenous peoples in Block 39 is clearly controversial. In this regard the Council finds it noteworthy that neither the government nor the companies have initiated systematic scientific studies with the aim of verifying the existence of isolated indigenous peoples in this area [...]. The Council’s task is to assess the risk of future breaches of the Fund’s guidelines. As part of this assessment the Council must adopt a position on whether it is probable that uncontacted indigenous peoples live in block 39. Based on an overall assessment of the available information, the Council concludes that there is a probability that uncontacted peoples are present in the block. The existing uncertainty emanates from the lack of necessary and thorough on-the-ground investigations aimed at determining the presence of these peoples. Insofar as necessary investigations have not been carried out, the Council on Ethics will let this count against those who gain from the question remaining unresolved.’<sup>3</sup>

As concerns the question of human rights violations, the Council operated under the understanding that it is scientifically undisputed that contact between extraneous people and uncontacted indigenous peoples will lead to the introduction of new diseases, which poses a serious threat to their existence.

‘In light of the fatal and long-term consequences caused by any contact with the outside world, the Council considers that provoking any such contact, which furthermore is unwanted on the part of the indigenous peoples, is tantamount to serious violations of human rights. This is in accordance with the assessment of the Office of the High Commissioner for Human Rights, which determined that forced or undesired contact with uncontacted indigenous peoples violates their human rights.’<sup>4</sup>

The Council also concluded that there could be no doubt that the companies’ activities in block 39 contributed to increase the risk that any uncontacted indigenous groups living in the block would come into contact with extraneous people. The Council also found that Repsol’s contingency plans would be insufficient to avoid contact insofar as the very presence of workers posed the biggest threat to the uncontacted. ‘In the Council’s view, it seems to be virtually impossible to combine concern for the uncontacted indigenous peoples’ life and health with oil exploration in block 39, insofar as this takes place within their territories.’<sup>5</sup> On these grounds, the Council on Ethics recommended excluding Repsol and Reliance from the GPFG as ownership of these companies would imply an unacceptable risk of contributing to serious violations of human rights.

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<sup>2</sup> Indigenous people living in voluntary isolation (also known as uncontacted indigenous people) have not developed social relationships to other members of society and have taken a voluntary and conscious choice to live without contact with the outside world.

<sup>3</sup> The Council on Ethics’ recommendation on the exclusion of Repsol YPF and Reliance Industries Limited from the GPFG, 1 December 2010.

<sup>4</sup> See footnote 3.

<sup>5</sup> See footnote 3.

On the request of the Ministry of Finance, the Council on Ethics provided an update of the case on 20 June 2012.<sup>6</sup> The Ministry requested that the case be reconsidered in light of ‘signs that authorities in Peru have changed their attitude towards the question of indigenous peoples’. The Council on Ethics concluded that the political developments in Peru concerning indigenous peoples did not seem to be of any consequence for this particular case.

‘Consequently the Council finds no reason to do otherwise than to uphold the recommendation on the exclusion of Repsol YPF and Reliance Industries’.<sup>7</sup>

### **3 Changes in the joint venture for block 39**

In a meeting with members of the Council on Ethics in February 2014, Repsol informed the Council that it had entered into an agreement to sell its share in the joint venture in Block 39. The sale depends on the Peruvian Government’s approval. Repsol also confirmed that all operations in the block had ceased.<sup>8</sup> News articles have later announced that the private company Perenco has purchased Repsol’s share in the joint venture.<sup>9</sup>

The Council on Ethics assumes that the sale and handover of Repsol’s share will be approved. Whether or not the agreement that regulates the partners’ roles and responsibilities in the joint venture will be changed following the inclusion of a new partner and operator is currently unknown, as is the degree to which this may have consequences for Reliance.

### **4 The Council on Ethics’ assessment**

The Council on Ethics has assessed whether the grounds for recommending the exclusion of Repsol and Reliance remain, given that Repsol has sold its share of the joint venture. Repsol can no longer be considered to contribute to possible violations of human rights in block 39 insofar as it no longer is a partner in the joint venture. Consequently the grounds for recommending Repsol’s exclusion are no longer present.

To the Council’s knowledge there has been no new information shedding light on the existence or otherwise of uncontacted indigenous peoples in block 39. In this regard the situation remains unchanged. As there is currently no exploratory activity taking place in the block, and since the organisation of the new joint venture is as yet unknown, the grounds for Reliance’s exclusion has also changed. The Council on Ethics does not currently recommend the exclusion of the company from the fund. The Council will nevertheless reassess the risk of the company contributing to human rights violations when the new joint venture is established and activity in the block starts anew.

### **5 Recommendation**

The Council on Ethics no longer recommends excluding Repsol S.A. and Reliance Industries Limited from the investment universe of the Norwegian Government Pension Fund Global.

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<sup>6</sup> Letter from the Ministry of Finance to the Council on Ethics of 25 May 2012 concerning the recommendation on exclusion.

<sup>7</sup> Letter from the Council on Ethics to the Ministry of Finance of 20 June 2012 concerning the recommendation on exclusion.

<sup>8</sup> Meeting between representatives of Repsol and the Council on Ethics on 12 February 2014 and e-mail from Repsol to the Council on Ethics dated 10 March 2014.

<sup>9</sup> See for example <http://upsidedownworld.org/main/peru-archives-76/4744-repsol-sells-oil-stake-in-isolated-indigenous-peoples-territory-in-peruvian-amazon>.

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