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Response to Criticism Concerning the Exclusion of Companies from the Norwegian Government Pension Fund

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Both the Ethical Guidelines for the Norwegian Pension Fund, and the manner in which they have been implemented, have been subject to criticism voiced in major Norwegian newspapers. The Council on Ethics, which has been tasked with implementing the Ethical Guidelines, would like to comment on the part of the criticism that pertains to the exclusion process. The Council's task is to give recommendations to the Ministry of Finance on exclusion of certain companies from the Fund's portfolio. Our recommendations contain factual descriptions of the case at hand as well as discussions on how the ethical guidelines are being applied to these facts. Our recommendations are publicly available both in Norwegian and English. We do not wish to give additional comments on individual recommendations. We do, however, wish to comment on the process, and to what extent this process satisfies basic rule of law safeguards.

All companies (approximately 4000) in the Fund's portfolio are subject to regular screening by the Council on Ethics. On the basis of monthly reports, as well as other available information, the Council decides which companies to look at more closely. Our mandate is to find companies that are involved in production of certain types of weapons, and to assess whether ownership in companies can entail an unacceptable risk of contributing to certain unethical acts. Only companies that may be involved in serious or systematic violations will be subject to assessment.

The Ethical Guidelines specifies that all companies that are being assessed for exclusion shall have the opportunity to comment on the basis for this assessment. When the Council on Ethics has gathered facts about a case, the company in question receives a letter where they are asked to comment on the allegations that form the basis for the proposed exclusion. In these letters, the companies are often requested to comment on specific questions. It is important for the Council on Ethics to describe the allegations in detail, and to substantiate them as thoroughly as possible. We use both publicly available information as well as information gathered specifically for the Council. Allegations are substantiated with concrete references to sources. Controversial allegations are normally substantiated with several different sources. This material is sent out, in the form of the above mentioned letters, to the companies for their potential comments or clarifications. In these letters, companies are also informed about the Ethical Guidelines. The companies are asked to respond within a certain period of time. In several cases, companies have taken direct contact with the Council for clarifications. Companies have also been given extensions when they have asked for it. The Council's secretariat has, in several cases, had meetings with companies in order to receive additional information.

Parts of the criticism that have been raised pertain to this procedure. It has been alleged that the procedure does not secure the principle of contradiction, in other words, that the company

is not given a real opportunity to give its version of the case. It has moreover been alleged that the companies in question have already been “condemned” to exclusion when they receive a communication from the Council; when detailed information on the allegations and the background for them have been presented, it is “too late” for them to be part of the process. I have difficulties understanding this criticism. In fact, I would assume that this process represents a more or less universal method for processing allegations and accusations. Whether one wants to complain about an administrative decision, respond to a complaint from the neighbour or challenge a criminal indictment, it is a basic requirement that the claims which are presented are concrete and that they are well substantiated and documented. It is much more difficult to respond to, or counter, vague allegations or rumours.

It has also been alleged that even if a company responds to the communications from the Council on Ethics, this has no effect; companies that have answered have still been excluded. The latter claim is correct. To answer is not necessarily the same as not being excluded; we obviously have to assess the content of the answer. The Ethical Guidelines were, however, drafted with a view to securing a fair process and giving companies real possibilities for contradicting allegations. This was seen as important both with regard to the companies’ interests and with regard to the quality of the recommendations. We find it appropriate to point out that the system works as intended: because of their responses to the Council on Ethics, several companies that were assessed for exclusion were not excluded.