



# Decision to exclude Atal SA

January 2018

## Introduction

KLP and the KLP Funds (KLP) have decided to exclude Atal SA from their investment portfolios because of the unacceptable risk that the company contributes to gross human rights violations. This decision is based largely on the Council on Ethics' recommendation to exclude Atal SA from the Norwegian Government Pension Fund Global (GPF), which was published on 16 January 2018 when Norges Bank announced its decision to exclude the company from the GPF.

Atal SA is a Polish property development company which builds property complexes in Poland's largest cities.<sup>1</sup>

KLP had no investments in Atal SA at the time of its exclusion from the KLP investment universe.

## Events

JP Construct is one of Atal's subcontractors and uses North Korean contract workers at one of Atal's construction sites in Warsaw.<sup>2</sup> In correspondence with the Council on Ethics, the company has confirmed this information, while pointing out that the North Korean workers are not under contract to Atal and that the company abides by Polish law.<sup>3</sup>

## The Council on Ethics' recommendation

The Council on Ethics has considered whether the practice of using North Korean contract workers can be characterised as forced labour and whether Atal is thereby contributing to gross human rights violations. For an unacceptable risk that the company is contributing to such violations to exist, there must be a tangible connection between the company's

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<sup>1</sup> Atal.pl, About us, URL: <http://atal.pl/en/atal-group/About-Us> (last visited 06.02.2018)

<sup>2</sup> North Korean Forced Labour in the EU, the Polish case, How the Supply of a Captive DPRK Workforce Fits Our Demand for Cheap Labour, pages 29 and 30, University of Leiden, Asia Centre, June 2016. URL: <http://leidenasiacentre.nl/wp-content/uploads/2017/06/rapport-slaves.pdf> (last visited 06.02.2018)

<sup>3</sup> Council on Ethics, *Recommendation to exclude Atal SA from the (GPF)*, Recommendation to Norges Bank 5 August 2017. URL: <https://nettsteder.regjeringen.no/etikkradet-2017/files/2018/01/Recommendation-Atal-SA-20473.pdf>

operations and the violation concerned. In other words, the company must either have contributed to or been aware of the violation without seeking to prevent it.<sup>4</sup>

The UN Convention on Civil and Political Rights (article 8.3) and the ILO's Convention No. 29 on forced labour (article 2.1) underpin the assessment of whether gross or systematic human rights violations have taken place.<sup>5</sup>

In its recommendation, the Council on Ethics states that:

*The Council bases its assessment on reports which show that the situation for North Korean workers abroad must be deemed to constitute forced labour according to ILO indicators. The two elements constituting forced labour – that a person is put to work involuntarily, and that the work is performed under the menace of a penalty – have been shown to exist. The involuntary aspect consists of the workers being sent abroad by the regime to a work situation of which they know nothing. Nor can they choose to cease working, since they have had their passports and mobile phones confiscated, are under constant surveillance and must remain at their place of work or domicile. The work takes place under the menace of a penalty. They must continue to work under the threat that their families at home may otherwise be punished. There exists detailed material on living conditions in North Korea and the destitution and oppression to which the population is subjected. Given the conditions under which North Koreans live in their homeland, the Council considers that these workers belong to an extremely vulnerable group. The Council also considers that forced labour, as here described, constitutes a serious violation of their human rights, see section 3 a) of the GPF's ethical guidelines.<sup>6</sup>*

In its assessment of whether Atal contributes to the human rights violations by employing a subcontractor that makes use of North Korean contract workers, the Council on Ethics concludes that there is a tangible connection between the company and the violations, since Atal is aware of and accepts this practice. The Council underlines that Atal also has an independent responsibility for the human rights violations:

*It would not have been possible for the North Korean regime to engage workers in forced labour abroad if there were not companies outside of North Korea willing to use them. These companies' activities are therefore a necessary precondition for the regime's use of forced labour in other countries.<sup>7</sup>*

Although Atal confirmed the use of North Korean workers, it provided no information indicating that it was going to ban this practice in future. The Council on Ethics therefore considers the future risk of gross human rights violations to be high, and recommends the company's exclusion

A more detailed description of the case may be found in the Council on Ethics' recommendation.

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<sup>4</sup> Ibid, p. 1

<sup>5</sup> Ibid, p. 1

<sup>6</sup> Ibid, p. 5

<sup>7</sup> Ibid, p. 5

## KLP's guidelines and assessment

As at 16 January 2018, Atal SA was not part of KLP's investment universe. The company had therefore not previously been assessed by KLP until Norge Bank published the Council on Ethics' recommendation on 16 January 2018.

However, the company may in future become part of KLP's investment universe if this universe is expanded or, for whatever reason, the company becomes included in its existing investment universe. It is KLP's established practice to assess companies in light of the Council on Ethics' recommendations, even though KLP itself has no investments in them. If, after such an assessment, KLP arrives at the same conclusion as the Council on Ethics, the company concerned will be placed on KLP's list of excluded companies. This ensures that future changes in KLP's investment universe will not include Atal SA.

Section 6.3 of "Guidelines for KLP as a responsible investor" states that:

*KLP should exclude from its investments any companies that are associated with ... an unacceptable risk that they could contribute to or be responsible for... serious or systematic violations of human rights...<sup>8</sup>*

The wording of this provision is identical to the wording of the Guidelines for Observation and Exclusion of Companies from the Government Pension Fund Global (GPFG).<sup>9</sup> The assessments on which the Council on Ethics' recommendation rests are sound, and include extensive source material. KLP therefore sees no reason to deviate from the Council's conclusion.

## Decision

KLP and the KLP Funds have decided to exclude Atal SA from their investment portfolios due to an unacceptable risk that the company contributes to human rights violations.

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<sup>8</sup> *Guidelines for KLP as a responsible investor* (08.12.2017), KLP.no, URL: [http://english.klp.no/polopoly\\_fs/1.39178.1513197530!/menu/standard/file/Guidelines%20for%20KLP%20as%20a%20responsible%20investor.pdf](http://english.klp.no/polopoly_fs/1.39178.1513197530!/menu/standard/file/Guidelines%20for%20KLP%20as%20a%20responsible%20investor.pdf)

<sup>9</sup> Council on Ethics: Guidelines for Observation and Exclusion of Companies from the Government Pension Fund Global (GPFG) URL: [http://etikkradet.no/files/2017/04/Etikkradet\\_Guidelines- eng\\_2017\\_web.pdf](http://etikkradet.no/files/2017/04/Etikkradet_Guidelines- eng_2017_web.pdf)