

Final Statement by the German National Contact Point for the OECD Guidelines for Multinational Enterprises regarding a complaint by Uwe Kekeritz, Member of the German Bundestag, against KiK Textilien und Non-Food GmbH, C&A Mode GmbH & Co., and Karl Rieker GmbH & Co. KG

On 13 May 2013, Uwe Kekeritz, Member of the German Bundestag, (hereinafter “the Complainant”) submitted a complaint to the German National Contact Point for the OECD Guidelines for Multinational Enterprises (hereinafter “NCP”) against KiK Textilien und Non-Food GmbH, Bönen (hereinafter “KiK”), C&A Mode GmbH & Co., Düsseldorf (hereinafter “C&A”), and Karl Rieker GmbH & Co. KG, Bodelshausen (hereinafter “Karl Rieker”).

The OECD Guidelines for Multinational Enterprises (hereinafter “the OECD Guidelines”) form part of the OECD Declaration on International Investment and Multinational Enterprises and contain recommendations for responsible corporate conduct for enterprises acting internationally. The governments of the OECD Member Countries and other participating countries have committed themselves to promoting, via their National Contact Points, the implementation of this voluntary code of conduct and to helping to resolve issues related to the OECD Guidelines raised by complaints in confidential mediation with relevant partners.

I. Content of the complaint

The main object of the complaint is the alleged joint responsibility of C&A, KiK, and Karl Rieker for the fire in the factory of Tazreen Fashion Ltd (hereinafter “Tazreen Fashion”) in Bangladesh on 24 November 2012. As part of the complaint, it is asserted that these three German textile companies produced goods in the factory in question.

It is also claimed that independent assessment of the Tazreen Fashion factory conducted in 2011 had already indicated that the safety measures at the factory were inadequate. According to the complaint, these inadequacies stemmed in part from the fact that the purchasing behaviour of the textile companies generally led to time and pricing pressures for the manufacturers, who therefore did not make sufficient investments in safety measures. It also states that, despite the fact that the manufacturers were aware of their power to rectify this situation, inadequacies in safety measures at the factory had not been dealt with. It is maintained that this had been as much as a contributing factor to the fire as human error due to the lack of training of staff at the factory.

The complaint contends that the fact that the companies continued to produce goods at the factory despite safety measures being inadequate means that they contributed to human rights violations in breach of chapters II A. 2 and A. 11 of the OECD guidelines. It is also put forward that in breach of chapter II A. 11-12 and chapter IV A. 2-3 of the OECD Guidelines, the companies failed to eliminate negative impacts on the safety of the workers at Tazreen Fashion that were directly associated with their activities. Finally, it is also asserted that the companies did not carry out due diligence in order to identify and eliminate negative impacts of their activities on the safety and health of the workers at Tazreen Fashion, thereby breaching chapter II A. 10 and 13, and IV A. 5 of the OECD Guidelines.

Against this background, the Complainant has called for improvements to fire safety, compensation payments for those affected, and fair wages for workers in the Bangladeshi textile industry in general.

II. Arguments of the Respondents

KiK stated that it had on no occasion commissioned Tazreen Fashion with the production of clothing. It asserts that its contracting partner was Tuba Garmets Ltd and that this company had first notified KiK in April 2011 of its plans to subcontract production to Tazreen Fashion. KiK maintains that it had commissioned an audit to be carried out at Tazreen Fashion in August 2011. As the results of the audit were not satisfactory, it claims to have sent the management of Tazreen Fashion a correction plan (CAPA report), ordering that the deficiencies identified were to be dealt with and the CAPA report be sent back to KiK within 14 days of receipt. The receipt of the CAPA report was not documented, it says. KiK affirms that there was merely a handwritten date on the CAPA report indicating 18 September 2012, which is over one year later, and that this does not make any sense. It asserts that no further auditing took place as it had ended business relations with Tuba Garments Ltd. in November 2011. Outstanding orders, it claims, were still carried out by Tuba Garments and were completed by the middle of 2012, but due to quality issues, only some of these orders were accepted. It states that fire safety at the building used by Tazreen Fashion was undoubtedly insufficient due to inadequacies with regard to emergency exits linked to the design of the building itself. According to KiK, it would seem that the condition of the fire prevention systems in place and other fire safety measures had not or not sufficiently been taken into account when a licence is thought to have been issued. It asserts that the auditing report did not deal with this factor, meaning that this presumably went unnoticed by the auditors or was seen by them as “a given”, even if other deficiencies in

relation to fire prevention had been highlighted and corrected before the fire took place. The fact, it says, that management at the factory and security wardens had actively prevented employees from leaving the building and that emergency exits had been locked is likely to have played a crucial role in the disaster. KiK argues that it could not have foreseen that individual members of the management would act in this manner. It also argued that the fire was an accident.

Karl Rieker states that it placed orders with Granville Ltd via an agent in Bangladesh until the middle of October 2011. It asserts that in February 2012, an order was subcontracted to Tuba Garments Ltd, which was then subsequently inspected by Karl Rieker. Karl Rieker claims that in April 2012, it discovered that Tuba Garments Ltd had subcontracted parts of production to Tazreen Fashion on its own initiative and without the consent of Karl Rieker. It affirms that Tazreen Fashion was therefore inspected by staff from Karl Rieker as far as was possible in such a short space of time. Following the non-authorised subcontracting of parts of production to Tazreen Fashion, Karl Rieker claims to have ended its contractual relationship on 10 May 2012. Karl Rieker states that it has no longer employed any agents for the contracting of orders since the end of 2012 but has set up an office in Bangladesh, ensuring that all orders are contracted by its own employees to manufacturing companies which themselves have first been inspected by members of its own staff.

III. Initial evaluation

As part of the initial evaluation in line with the Procedural Guidance for the OECD Guidelines for Multinational Enterprises, the NCP examined whether the questions raised in the context of the complaint justified an in-depth investigation. Statements were therefore obtained from the Complainant and the Respondents.

This initial evaluation was concluded and a report published on 28 October 2013. Parts of the complaint against KiK and Karl Rieker were accepted for closer examination. These related to areas in which there was an alleged breach of duties of care with regard to the safety measures in the factory of Tazreen Fashion. The rest of the complaint was not accepted for the following reasons:

1. The aspects of the complaint that were directed against C&A were submitted with the prior approval of the Complainant to the Brazilian National Contact Point in accordance with figure 23 of the Procedural Guidance. The reason for this was that as C&A has shown, the contracting party of Tazreen Fashion was, at the time of the fire, a Brazilian affiliate of C&A which is independent in legal, organisational, and economic terms. The

examination of this part of the complaint by the Brazilian National Contact point is still ongoing.

2. Regarding the alleged responsibility of KiK and Karl Rieker for the fire and its consequences based on insufficient safety measures, there was found to be no relationship between the companies' business activities and the questions raised in the Complaint as required under figure 25 of the Procedural Guidance. This is because, as described above under II, both KiK and Karl Rieker had provided credible evidence that they had not produced any goods at the factory of Tazreen Fashion for a year / for half a year respectively before the fire. The only persons who can be held responsible for the fire are those who had been able to significantly influence the safety measures at the time that it occurred. Since the present case involves production activity that took place and had been terminated before the time of the fire, responsibility cannot be attributed to the companies in question. There are therefore no grounds upon which the complaint can be accepted in terms of an allegation of direct contribution to the fire.

The fire therefore does not constitute a basis for the payment of compensation claims by KiK and Karl Rieker as based on the OECD Guidelines.

3. Insofar as the complaint makes a general claim for higher wages for workers employed across the Bangladeshi textile industry, it does not make an adequate presentation of precise allegations. Under chapter V No. 4 b) of the OECD Guidelines, companies should pay their employees the best wages possible. These should be at least adequate to cover the basic needs of the workers and their families. The general demand for higher wages in the Bangladeshi textile industry is, however, not sufficient to constitute a breach of the OECD Guidelines on the part of the Respondents. The Complaint makes no specific presentation that the wages were not in line with this standard during production of goods for the Complainant at Tazreen Fashion.

IV. Mediation

After accepting part of the complaint for consideration, the NCP led mediation talks with KiK, Karl Rieker, and the Complainant on 15 January 2014.

On 5 May 2014, further mediation talks took place in which the Complainant and KiK took part. With the agreement of the Complainant, it was decided that it was not necessary for Karl Rieker to attend at the meeting on 15 January 2014 since it had sufficiently demonstrated that it had taken comprehensive and effective measures to improve fire safety as early as 2012. The Complainant and the NCP both agreed that this provided the basis for an amicable settlement.

KiK also presented the NCP with written statements after the talks had taken place. The company organised for the Complainant to visit a production site in Bangladesh. The Complainant said himself that he was most satisfied with what he had seen. In his letter of 12 September, the Complainant rejected an amicable agreement with KiK, but agreed, however, to issuing a joint final statement with Karl Rieker (see annex).

Based on what was said in the talks of 15 January 2014 and 5 May 2014, the ensuing written statements, and the visit to the local production site, the NCP was of the view that there was scope for coming to an amicable agreement – also with KiK. Based on the talks, the NCP considers the following measures – some of which have already been taken and some of which are still to be agreed upon – to be a basis for this agreement:

1. Voluntary commitment of KiK to continued involvement in the Accord on Fire and Building Safety in Bangladesh

KiK (like Karl Rieker) is a signatory to the Accord on Fire and Building Safety in Bangladesh. The Accord was signed on 15 May 2013 and is an agreement between international trade union associations (IndustriALL and UniGlobal) and a coalition of what are now more than 180 international companies, many of which are from Europe. As an independent, specialised agency of the United Nations, the ILO acts as chair of the Accord. The Accord is legally binding and sets out what needs to be done to improve fire and building safety in supplier factories in Bangladesh over a period of five years. It also stipulates that inspection results are to be disclosed and a quarterly progress report produced to ensure transparency concerning the measures that are taken – not least for the future. Independent monitoring is also undertaken.

The measures undertaken by the companies in accordance with the Accord comprise the following in particular:

- Risk analysis in all supplier factories, preliminary inspections across all factories; initial concentration of the improvement measures upon the factories with a particularly high risk or with the largest order volumes;
- Comprehensive and credible inspections by independent, certified inspectors;
- Measures for improvement in the supplier factories that are subject to implementation within a certain deadline, and for which the signatory companies have committed themselves to provide their support;

- Commitment of the signatory companies to work to ensure that necessary improvement measures in factories / the severance of business relations with unsafe suppliers do not have a negative impact on the workers; commitment that workers can refuse to work if conditions are unsafe without being subject to any disadvantage;
- Development of a joint training programme involving representatives of trade unions designed to teach staff at supplier factories about fire safety and occupational safety;
- Establishment of a complaints mechanism for staff concerned about safety risks;
- Disclosure of the list of suppliers used inc. subcontractors, mutual disclosure of inspection results, progress reports (quarterly) that are publicly accessible;
- The financing of the steering committees, safety inspections, and training sessions by the signatory companies.

2. Possible supplementary measures to the Accord

In view of the fact that the measures envisaged in the Accord did not enter into force within the planned time scale due to the large number of different players involved and the need to develop more specific individual commitments with these players, all those involved in the process agreed that supplementary measures to the Accord would play a role in helping to achieve the recommendations under No. II A 10 of the OECD Guidelines.

The NCP fundamentally considers that the following, non-exhaustive measures within the meaning of No. 2 a), b), and c) can help to ensure effective fire safety:

i) Increase in the proportion of orders awarded directly to manufacturers and limitation of the use of sub-contractors by the manufacturers: It is true that the use of agencies for order placement and of sub-contractors for production is considered common practice – also by KiK – in many of the procurement markets due to commercial considerations on the part of the manufacturers and their contractors. However, the NCP believes that, when agencies are used to contract orders and when subcontractors are used by manufacturers, there is an increased risk that orders will be passed to manufacturers that are not audited, do not receive further training, and whose fire safety measures are insufficient. The use of contracting agencies and of sub-contractors by manufacturers should therefore be avoided as far as possible. For cases in which this is not possible, it must be ensured that equivalent auditing checks are

conducted and that the manufacturers and sub-contractors have an equivalent level of training.

ii) Promotion of long-term supplier relations: In order to promote trusting cooperation between contractors and manufacturers, it is important that supplier relations are as long-standing as possible. Long-term relations help to ensure that investments in occupational health and safety, and staff training, are economical for both manufacturers and trading companies and that safety standards – which, in the producing countries, are often not firmly established – are fully complied with and improved upon. The building of long-term relations is promoted by guaranteeing a manufacturer certain order volumes. The early planning and placing of orders by contractors lead to a positive slow-down in the supply chain and reduce the risk of contracts being passed on to sub-suppliers at short notice before they are due.

iii) Contracts and their content: Compliance with safety standards and a ban on unauthorised and undisclosed sub-contracting should – to the extent that this has not already happened – be made binding in the contracts with the manufacturers. If these contractual obligations are breached, appropriate penalties should be sanctioned.

iv) Premium suppliers: Premium supplier programmes are being established which contain a training programme dealing with the implementation of social standards, particularly in the key areas of occupational health and safety (inc. fire safety), core labour standards in accordance with the ILO Declaration of 1998, and the best possible wages, benefits, and working conditions. Regular monitoring is conducted to assess how well the programme is being implemented and how effective it is.

v) A sufficient number of trained staff to ensure compliance with standards of corporate social responsibility (CSR): The companies task a number of trained staff locally with the implementation of CSR standards.

vi) Comprehensive and unannounced assessments of safety standards: Checks to ensure that safety standards are being complied with should be conducted on an ongoing basis, as well as unannounced. These assessments can be undertaken by staff that are employed by the contractor locally or by external auditors. In both cases, it must be ensured that the staff conducting the assessments have received training and are reliable. The corporate headquarters are informed of the results of the assessments so that they can react to any negative findings.

vii) Fire-safety training for suppliers: Management and staff at the supplier company must be informed and educated about the need for comprehensive fire-safety measures by means of training sessions, practical fire-training exercises, and guidelines. Establishing a structure for the exchange of information between management and staff is the best guarantee for being able to identify and close safety gaps as early as possible.

viii) Multi-stakeholder initiatives: Joining a multi-stakeholder initiative to help ensure sustainability within the textile supply chain in general, as well as active involvement in such an initiative, enables expertise to be made available and used by other players, and makes it possible for a critical evaluation of procurement practices and existing CSR measures to take place. The participation of trade unions and / or non-governmental organisations in such initiatives ensures that credible improvement processes are put in place.

3. Measures undertaken by KiK

KiK had already undertaken supplementary measures to the Accord before the complaints procedure began. These include the following: a fire-safety campaign involving information workshops featuring specific fire-safety exercises and visits designed to empower the suppliers with the knowledge and skills they need; the creation of a uniform listing procedure, whereby production sites are checked by local KiK staff to ensure that standards are being complied with before the listing takes place; the creation of a premium supplier programme for a certain number of factories, selected not only to receive training on compliance with minimum fire-safety standards, but also on the key areas of drinking water and wages. In addition, KiK joined a local buyers' forum in which contractors in Bangladesh can discuss how they can jointly protect social standards at the production sites; the company also supports other social projects in a range of different areas. KiK had also signalled its readiness to take additional steps to improve fire safety and building safety through the introduction of supply chain management (inc. the introduction of a supplier rating system, concentration of the pool of suppliers, central planning early on in order to minimise the risk of sub-contracting, revision of the sanction mechanism for violations of fire safety and building safety requirements). Lastly, KiK had announced that it planned to join a further, unnamed multi-stakeholder initiative to help ensure compliance with sustainability standards in global supplier chains. KiK said that it was willing to report back on these measures to both the NCP and to the Complainant over a period of two

years; this reporting could take the form of a sustainability report published by KiK on a regular basis.

V. Conclusion of the procedure

1. Letter from the Complainant

In a letter of 12 September 2014, the Complainant agreed to come to an amicable agreement with Karl Rieker. This agreement can be found as an annex to this final statement; please refer to it regarding its content.

In the same letter, the Complainant stated that he did not have any basis upon which to come to an amicable agreement with KiK in the mediation procedure. The main reasons cited by the Complainant in this regard are described below.

According to the Complainant, KiK had not devoted sufficient attention to the issue of its duty of care; this was particularly the case with regard to potential for avoiding sub-contracts, determining the number of audits, reducing the number of suppliers, and strengthening the area of CSR at the company. In addition, he maintained that KiK had not made sufficient efforts to ensure that its in-house code of conduct was complied with. The letter stated that overall, the company had remained too vague on key issues and that it was missing a clear strategy for improving its understanding of its duty of care in Bangladesh. The Complainant stated that, on the contrary, KiK tried to shift responsibility to the consumers. He maintained that most of the measures listed by KiK that were designed to improve working conditions were “supplementary” projects that had no effect on KiK’s fulfillment of its duty of care. The letter also asserted that KiK’s sustainability report was insufficient as it lacked clarity on key issues within the proceedings. The Complainant agreed that the signing of the Accord on Fire and Building Safety in Bangladesh was an important step towards improving building and fire safety in Bangladesh and said that it was a very welcome development. However, he also went on to say that the Accord was not a cure-all as the standards set out in it were low – which, he said, was often the case in agreements for which there is broad support. The Complainant additionally maintained that the arbitration mechanism envisaged in the Accord and confidentiality clauses in mediation agreements were also problematic. He said that in the event that the Accord were to fail, there was no sufficient reference system in place that could be used by KiK to ensure that it fulfilled its duty of care. The Complainant claimed that measures that the NCP proposed could be set out in a joint final declaration were not specific enough.

2. Assessment by the NCP

The NCP maintains its view that the measures it proposes reflect the main findings of the proceedings. While the NCP agrees with the Complainant that it would have been desirable for KiK to have made the measures more specific, the Complainant signalled to the NCP that this aim could no longer be reached, even if the various parties were to engage in further talks.

All parties agree on the importance of safeguarding human rights, on fair working conditions, and particularly on a high level of safety, especially in the textile industry in Bangladesh and in other countries. The NCP believes that implementation of the measures described above could have helped to improve the situation in the textile factories in Bangladesh that supply KiK and Karl Rieker, within the meaning of the OECD Guidelines.

The NCP therefore regrets that the Complainant has decided not to make a joint statement with KiK.

This final statement will be published on the NCP's website. The proceedings are thus terminated.

Berlin,

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For the National Contact Point

Dr. Ursina Krumpholz, Head of Division

Federal Ministry for Economic Affairs and Energy

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Joint Final Statement by the German National Contact Point for the OECD Guidelines for Multinational Enterprises, Uwe Kekeritz, Member of the German Bundestag, and Karl Rieker GmbH & Co. KG (Karl Rieker) regarding a complaint by Uwe Kekeritz, Member of the German Bundestag, against KiK Textilien und Non-Food GmbH, C&A Mode GmbH & Co., and Karl Rieker

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After the mediation talks on 15 January, all participants agreed that Karl Rieker had fulfilled its obligations to improve fire safety and safety standards in its supplier factories in Bangladesh since the middle of 2012 commensurate with the requirements for a

company of its size. It did so by introducing its own measures, including in particular a reduction in the number of its supplier factories, the establishment of long-term supplier relations with the remaining suppliers, and close supervision of and assistance for supplier factories provided by staff based locally, as well as the signing of the Accord on Fire and Building Safety in Bangladesh.

As a member of the Business Social Compliance Initiative (BSCI), Karl Rieker champions respect for human rights, the payment of fair wages, fair working hours, and the guaranteeing of trade union rights irrespective of this specific complaints procedure. The parties agree on the importance of safeguarding human rights, on fair working conditions, and particularly on a high level of safety, especially in the textile industry in Bangladesh and in other countries.

The parties agree that appropriate solutions were found thanks to the mediation procedure that was launched because of the complaint.

This joint final statement is published on the NCP's website.

Berlin,

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For the National Contact Point
Dr. Ursina Krumpholz, Head of Division
Federal Ministry for Economic Affairs and Energy

Uwe Kekeritz, Member of the German Bundestag

For Karl Rieker GmbH & Co. KG