



NON OFFICIAL TRANSLATION

SPECIFIC INSTANCE

“PERENCO in Tunisia”

18 February 2021

Intermediary Statement of the French National Contact Point

The French National Contact Point (NCP) for the implementation of the OECD Guidelines for Multinational Enterprises was requested on 16 July 2018¹ by two non-governmental organizations. The complainants are Lawyers without Borders (Avocats Sans Frontières or “ASF”), an international NGO based in Belgium and present in Tunisia via a permanent office, and I WATCH, a Tunisian non-governmental organization. The specific instance concerns the multinational enterprise Perenco about Perenco’s activities in Kébili in Tunisia. The referral concerns the disclosure of information by these companies, the exploration and exploitation of hydrocarbons and gases of PTCL in Tunisia and the due diligence for the responsible business conduct.

Rule 31 of the Bylaws states that “*The NCP shall strive to examine the issues raised within the best timeframe, if possible within 12 months of receipt of a specific instance, it being understood that this timeframe may be extended if circumstances so warrant (...)*”. Rule 36 of the NCP’s Bylaws provides that “*The NCP shall reserve the right to issue statements during the course of its examination of the procedure, subject to confidentiality obligations*”. The NCP decided to issue an intermediary statement to report back on the progress of the procedure. It will publish its final decision at the end of the proceedings.

1. Procedure followed by the NCP in accordance with its Bylaws

The procedure for referral to the NCP is confidential.

1.1. Summary of the initial assessment phase of the referral (August 2018 – December 2019)

The initial assessment phase of this instance has been lengthy. The NCP acknowledged receipt of the referral on 27 August 2018 and decided to accept it on 2 October 2018. It offered its good offices to the parties. The complainants accepted them. The NCP had to extend the initial assessment phase following Perenco’s questions about the territorial jurisdiction of the French NCP that the Group was challenging. In particular, Perenco considered that the issues raised were within the jurisdiction of the Tunisian NCP. The NCP met with the complainants on 29 November 2018. The complainants submitted additional information to the referral on 14 November 2018 and then on 15 January 2019. The NCP then consulted with the OECD Secretariat and the Legal Affairs Directorate of the Ministry of Economy and Finance. Their analyses confirmed the NCP’s admissibility analysis and its competence to handle with this specific instance.

On 2 December 2019, Perenco France and Perenco Tunisia (PTLC) finally agreed to join the dialogue platform proposed by the NCP. The NCP welcomed this development. The French NCP adopted an [initial assessment statement on 4 December 2019](#) announcing the acceptance of the specific instance and the opening of good offices². The initial evaluation phase has ended.

¹ The full referral was transmitted on 14 August 2018

² Webpage dedicated to the referral [here](#) & Initial Assessment Statement, 4 December 2019 [FR](#) and [EN](#)



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1.2. Actions taken during the good offices phase at that stage

The Statement of 4 December 2019 states that “*The NCP hopes to contribute to solving the issues raised by the specific instance on the effectiveness of the Guidelines*” by offering the parties a platform for dialogue (see Article 25). The NCP began its good offices with separate hearings of the parties. These hearings took place in Paris at the Ministry of Economy and Finance on 12 February 2020 for Perenco and then on 10 March 2020 for the two complainant organisations, ASF and I Watch.

The complainants sent several letters to the NCP. The company provided it with response to the referral in May 2020 and in June 2020. The company agreed to forward certain documents to the complainants subject to their signature of the confidentiality agreement³. The complainants wished to know the list of Perenco’s response elements. The NCP provided them with a summary of said documents and the titles of the four documents that Perenco agreed to transmit to them. The complainants indicated that two documents were already public and the other two other appeared to be incomplete. They therefore did not wish to sign this agreement and stressed to the NCP what they considered to be a lack of transparency and cooperation of the company towards them during the NCP’s good offices. These documents could not therefore be transmitted to them. Perenco wished to disagree with these assertions, believing that it had fully cooperated with the NCP since the opening of its good offices. As such, Perenco wished to recall that it (i) forwarded to the NCP all the documents requested by the NCP, (ii) responded to all requests and questions raised by the NCP under the procedure, and (iii) agreed to meet with the complainants under the auspices of the NCP.

The NCP suggested to the parties to organize a joint meeting. After several exchanges in May and June 2020, an agreement in principle was reached to hold this meeting in Tunis with the parties and in Paris with the small-format NCP⁴. The health constraints of Covid 19 have made its organization more difficult. The mediation meeting was finally held on 24 September 2020 in the form of a video-conference between Paris and Tunis. Perenco Tunisia, ASF Tunisia and I Watch were welcomed in the premises of the Regional Economic Service of the French Embassy in Tunis. ASF, Perenco France and the NCP, in a small format, were gathered at the Ministry of Economy, Finance and Recovery in Paris.

The parties discussed directly about the issues raised by the referral, in particular on due diligence, access to information, in particular environmental impact assessments, corporate governance and its CSR policy. The NCP proposed using the diplomatic channel to request access to environmental impact assessments from the Tunisian administration. The complainant organisations refused, stating that they preferred to use the procedures provided by Tunisian law for that purpose. As such, Perenco informed the NCP and the complainant organisations that the contracts concluded with the Tunisian Oil Activities Company (ETAP) and the Tunisian authorities do not allow it to transmit this information without their prior consent.

The parties and the NCP discussed next steps and possible outcomes of the procedure. Parties agreed to continue the good offices of the NCP and to prepare an intermediary statement. The NCP then prepared the summary of the meeting, which was subject of discussions with the parties in November prior to its adoption on 10 December 2020.

³ The Statement of 4 December 2019 states that “The NCP’s procedure is confidential. In accordance with its Bylaws and the OECD Procedural Guidance, in order to establish a climate of trust with the parties, the NCP will take appropriate measures to protect sensitive, commercial or other information, as well as the interests of other stakeholders involved in this specific instance. Certain elements brought to the attention of the NCP may be subjected to confidentiality. If deemed necessary, the NCP may ask the parties to sign a commitment to respect confidentiality of exchanges in order to facilitate the implementation of its action”. The complainant organisations did not wish to sign this commitment when invited by the NCP.

⁴ NCP Chair, Secretary General, a representative of the State College, a representative of the Trade Union college, a representative of the Employers’ college.



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In October 2020, the complainant organizations ask the support of the NCP for the transmission of the list of environmental impact assessments carried out by Perenco for its activities in Kébili since 2007 in order to be able to initiate a legal proceedings to access information in Tunisia. They indicated that they were prepared to sign the confidentiality agreement to obtain it. In December 2020, Perenco advised the NCP that "*in light of the positions expressed at our last meeting and the lack of a commitment to confidentiality on the part of the complainants, we believe that it would not be appropriate to meet with them again, nor to exchange other documents with them*". Perenco informed the NCP of the progress made in formalizing its CSR report.

2. NCP's Coordination

The Tunisian NCP is not yet operational. The French NCP Secretariat regularly informs its Tunisian interlocutor and the British PCN on the progress of the procedure. Its Tunisian interlocutor told him that "*the Tunisian NCP is in the process of operationalizing*".

3. Intermediate conclusion

The NCP thanks the parties for their participation in the proceedings. It welcomes the holding of a dialogue and mediation meeting between Perenco France, Perenco Tunisia, ASF and ASF Tunisia and I Watch. The NCP considers that this dialogue, which is the direct result of its good offices, has been an important step in the process.

The rules of procedure of the NCP provide that "*The NCP shall strive to examine the issues raised within the best timeframe, if possible within 12 months of receipt of a specific instance, it being understood that this timeframe may be extended if circumstances so warrant, e.g. if the issue raised involves a country that has not adhered to the Guidelines, or in the event of parallel procedures*" (art. 31). Taking into account the length of this procedure, at its meeting on 10 December 2020, the NCP decided to close its good offices and to move to the conclusion phase of the procedure in order to prepare its final decision. The NCP encourages parties to exchange in the most appropriate format. At its meeting on 10 December 2020, the NCP also adopted the draft intermediary statement. The NCP informed the parties of these decisions as early as 11 December 2020 and informed the supportive NCPs.

The draft intermediary statement was subject of several consultations with the complainants' organisations, Perenco and the Tunisian NCP, which is in the process of operationalisation and the British NCP in order to gather their comments which it took into account. The NCP adopted the intermediary statement on 18 February 2021 by consensus with the exception of a trade union organization (the CFDT). The Statement was notified to the OECD after its publication.

The NCP is continuing its action under this specific instance. It begins the conclusion phase of the referral. It will continue its discussions with the parties and coordination with the Tunisian NCP, which is in the process of operationalization, and with the British NCP. In accordance with its Bylaws and the Procedure Guidelines established by the OECD, it will issue a Statement or report at the end of the procedure.

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