

“Natixis and NGAM in the United States of America” – Specific Instance

5 December 2017

Report from the French National Contact Point

The French NCP’s good offices between the US trade union Unite Here and Natixis/NGAM directly contributed to solving the labour dispute at the Westin Long Beach Hotel, that had been ongoing since 2015, thanks to Natixis’s and NGAM’s commitment and due diligence vis-à-vis their American subsidiary, AEW Capital Management

On 15 September 2016, the French NCP for implementation of the OECD Guidelines for Multinational Enterprises received a referral from the North American trade union Unite Here Local 11 that targeted the French bank Natixis and one of its asset managers, Natixis Global Asset Management (“NGAM”). The referral concerned the activities of their American subsidiary, the real estate management company AEW Capital Management, in relation to a hotel property in California owned by one of its American clients, a Utah pension fund called Utah Retirement System (“URS”).

In February 2015, a labour dispute broke out at the Westin Long Beach Hotel in California when workers wanted to unionise. Unite Here raised a claim in the USA against the hotel’s operator which is also subject to a class action. Furthermore, Unite Here took action vis-à-vis the hotel’s operator, the hotel’s owner and its asset management advisor. As it considered the situation as a violation of freedom of association and the collective bargaining rights of workers, and as representing anti-union practices, Unite Here submitted a specific instance to the French NCP in order to enter into contact with the Natixis Group and its subsidiary NGAM to curtail the alleged adverse impact in the hotel.

Unite Here’s declaration

“Unite Here expresses its satisfaction at the positive outcome of the labour dispute at the Westin Long Beach Hotel which was the subject of a specific instance submitted to the French NCP in September 2016.

It thanks the French NCP for its commitment, availability and expertise, and for having conducted its good offices while demonstrating broad transparency towards the parties. It welcomes the French and American NCPs’ coordinated action which allowed for the involvement of all the stakeholders which are part of a complex business relationship chain in France and in the United States of America.

It agrees that the due diligence measures taken by the Natixis Group and by NGAM result from the French NCP’s good offices, and that Natixis’s and NGAM’s engagement vis-à-vis

their American subsidiary AEW Capital Management contributed to an agreement being reached between Unite Here and the hotel's new operator which brought an end to the specific instance. It considers that the sale of the Westin Long Beach Hotel that was carried out by AEW Capital Management, on behalf of its client URS, was done in compliance with the OECD standards for responsible business conduct and, in particular, social dialogue. The new operator immediately negotiated an agreement with Unite Here enabling the unionisation drive to be organised. The hotel duly became unionised on 6 September 2017 thus providing freedom of association for workers as recognised by the OECD and by the ILO”.

Summary of the French NCP's decision set out in its detailed report¹

Following a labour dispute concerning the unionisation of workers in a Californian hotel, the Westin Long Beach Hotel, which was part of the portfolio of assets of an American pension fund that was advised by the subsidiary of the French company, NGAM – itself a subsidiary of the Natixis Group – the trade union Unite Here referred a specific instance to the French National Contact Point for the OECD so that, with the support of its American counterpart, it could offer its good offices and help find a solution to remedy the dispute with the various stakeholders.

After having carried out the initial assessment of the specific instance between September 2016 and January 2017, the French NCP provided its good offices to the American trade union Unite Here, the Natixis Group and NGAM between February and August 2017, in close collaboration with its American counterpart. Initially, the NCP's work allowed for indirect contact between the Natixis Group/NGAM and Unite Here, via the NCP and, subsequently, direct contact between Unite Here and the hotel's new owner in August and September 2017. Having duly noted the success of its action and the resolution of the adverse impact which led to the hotel's unionisation, the NCP brought an end to its good offices on 11 September 2017. It subsequently adopted a final report and a detailed final report in consultation with the parties and the American NCP.

The NCP assessed the case in accordance with its mandate. It first examined the existing links between the enterprises within the investment chain and the alleged adverse impact in the hotel according to the Guidelines. It next looked at the measures taken by the Natixis Group/NGAM to determine whether they matched the due diligence recommended by the OECD. This analysis, which was based on the new OECD recommendations for responsible business conduct for institutional investors of March 2017, proved to be decisive.

¹ For further information, refer to the NCP's detailed report of 5 December 2017.

According to available information, and not having access to the URS management contract granted to AEW, the NCP raised the following assumptions concerning the due diligence of enterprises according to the OECD's guidelines²:

- On one hand, that the hotel's operator had very likely caused the alleged adverse impact (issue within the remit of the American NCP) and that the activities of the American enterprises (joint venture, holding company, owner, asset manager) could, at the very least, have been directly related or contributed to it; and
- On the other, that the Natixis Group, encompassing NGAM and AEW, which it fully owns, could be directly linked to the effects arising from the activities of NGAM and its American subsidiary, AEW.

The NCP noted that according to available information at the time of the specific instance's submission in September 2016, Natixis and NGAM had not taken due diligence measures in compliance with the OECD Guidelines vis-à-vis their American subsidiary AEW Capital Management. As it did not have access to the URS management contract granted to AEW, the NCP factored in AEW's advice activity to the hotel's indirect owner (URS) and its role during the hotel's acquisition. The NCP assumed that, on one hand, AEW did know that American enterprises were causing, contributing to, or that their activities were directly linked to, the adverse impact alleged by Unite Here, and that, on the other, AEW's activities were potentially linked or contributed to the adverse impact alleged by Unite Here since it did not act to remedy the situation.

The NCP noted the positive evolution of Natixis's and NGAM's position during the initial assessment which resulted in a high level commitment to send a general message to their American subsidiary³ concerning the OECD Guidelines, the OECD recommendations for RBC in the financial sector and CSR issues. Following the discussions between the NCP and Unite Here, this message finally made reference to the specific instance. Moreover, at the end of 2016, the complainant informed the NCP of the hotel's potential sale and the NCP took account of this in its work.

In July 2017, following a large number of exchanges with the parties, the NCP sent them a preliminary analysis of the SI, questions for the American enterprises and invited them to have direct dialogue or dialogue through Natixis's American subsidiary. The NCP asked them to report back on the actions carried out and progress achieved by the end of August 2017. Concurrently, it asked the American NCP to forward the questions to the American enterprises.

² Due diligence for enterprises and due diligence measures are set out in Articles 10, 11 and 12 of chapter II on the General Policies of the Guidelines and are explained in the Commentary on said chapter (in particular, in paragraphs 14, 15 and 19). The OECD has also published key considerations for responsible business conduct for institutional investors which includes a figure on the scope of due diligence (see "Addressing adverse impacts", p. 35).

³ Abstract of the French NCP' initial assessment statement, 26 April 26 2017: "*The Natixis Group agreed to meet with the NCP during the initial assessment. (...) The Natixis Group informed the NCP of the constraints arising from Securities and Exchange Commission regulations and said it was willing to send a general message to its US subsidiary*".

The situation changed dramatically during the summer of 2017. At its 11 September meeting, the NCP noted the positive outcome of its good offices between Natixis/NGAM and Unite Here: the hotel had been sold to another American group in the hospitality sector and unionised within a month, thus bringing an end to a labour dispute that had lasted for more than two years in the United States at the Westin Long Beach Hotel.

The NCP notes that:

- Natixis and NGAM put in place appropriate due diligence measures in engaging with their American subsidiary AEW so that the latter integrated the new OECD recommendations for institutional investors published in March 2017 into its activities, and in particular as part of its management contract concerning the Westin Long Beach Hotel.
- The hotel's sale conducted by AEW Capital Management on behalf of its client URS obviously took due consideration of the OECD Guidelines and notably the importance of social dialogue on one hand, in the choice of new buyer and, on the other, in the choice of the new operator made by the new owner. Indeed, the new operator of the hotel and the workers' employer, HighGate Hotels, which operates in the American hospitality sector, immediately negotiated the organisation of the unionisation vote for the workers with Unite Here. On 8 September 2017, Unite Here announced at a press conference, with the Long Beach Mayor and a County Supervisor of Los Angeles, that the hotel is now unionised⁴.

The NCP welcomes the results obtained, the end of adverse impact and the remediation achieved. Freedom of association has now been applied in the hotel. The Natixis Group and its subsidiary NGAM used their influence vis-à-vis their business relationships and thus helped end an adverse impact in the field. Building a trust-based relationship with the parties allowed for high quality dialogue and full transparency throughout the procedure, thus contributing to the success of the French good offices. The French NCP thanks the US NCP for its interaction with the American enterprises concerned by the specific instance. This coordination was key to obtaining these results.

This specific instance shows the entire scope of due diligence of stakeholders in the financial sector towards their business relationships all along the value chain and that due diligence is essential to remedy OECD Guideline violations within the value chain, and that it can take the form of a disinvestment when conducted with diligence as recommended by the OECD.

For further details, refer to the NCP's detailed report of 5 December 2017

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⁴ New Owners Take Long Beach Westin Union, 8 September 2017 http://www.gazettes.com/news/new-owners-take-long-beach-westin-union/article_ad321940-94d0-11e7-9acb-dbe4adfcf3f8.html