

SPECIFIC INSTANCE

« EDF– EDF ENERGIES NOUVELLES IN MEXICO»

14th May 2019

Intermediate Statement of the French National Contact Point

The NCP keeps on delivering its good offices to EDF Group and EDF EN, Mexican NGO ProDESC and representatives of the indigenous and agrarian community of Union Hidalgo

The French National Contact Point (NCP) for the implementation of the OECD Guidelines for Multinational Enterprises received a referral on 8 and 12 February 2018 from a Mexican non-governmental organisation ProDESC¹ and from two representatives of the Union Hidalgo agrarian and indigenous community of a specific instance concerning the EDF Group and its subsidiary EDF Energies Nouvelles (EDF EN) concerning a wind farm project located in the territory of two municipalities (Union Hidalgo and La Ventosa) of the district of Juchitan de Zagarzo in the state of Oaxaca in Mexico.

Article 31 of the NCP 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, e.g. if the issue raised involves a country that has not adhered to the Guidelines, or in the event of parallel*”. Article 36 of the Bylaws of the NCP notably provides that “*The NCP shall reserve the right to issue statements during the course of its examination, subject to confidentiality obligations*”.

The French NCP published on 12th June 2018 a statement announcing the acceptance of the specific circumstance and the opening of its good offices² ([here](#)). At its meeting of 5th February 2019, it decided to issue an intermediate statement to report on procedure’s progress twelve months after acknowledging receipt of the referral. It will publish its final decision at the end of the procedure.

1. Procedure followed by the NCP according to its Bylaws

The referral procedure of the NCP is confidential. The communiqué of 12th June 2018 states that “*The NCP offered its good offices to the parties who accepted them. It hopes that it can contribute positively to the resolution of the issues raised by this specific instance by offering the parties a platform for dialogue (see Article 25). During its good offices, the NCP will meet with the parties and offer them mediation. It may seek the advice of competent authorities or experts. It will take into account treaties, laws and regulations applicable in this case and the ongoing concurrent legal proceedings*”.

At this stage of the procedure, the NCP has carried out following actions:

The NCP heard the complainants on 22^d June 2018 and it auditioned the company on 4th September 2018. These meetings took place at the Ministry of Economy and Finance in Paris.

¹ Project of Economic, Social and Cultural Rights, ProDESC

² <https://www.tresor.economie.gouv.fr/Articles/2018/06/13/communique-du-pcn-francais-su-12-juin-2018-edf-edf-energies-nouvelles-au-mexique>

The NCP received updates of the referral which complainants brought only to its attention as they relate to ongoing parallel proceedings. The NCP received a several pieces of answers forwarded by the company that the NCP forwarded to the complainants on a confidential basis,

The article 27 of the NCP Bylaws states that “*Where the issues raised merit further examination, the NCP shall offer its good offices to help the parties involved to resolve them [by providing a forum for dialogue. During its good offices and the examination of the specific instance³], the NCP shall consult with these parties and, [where appropriate], according to the cases [examined], the NCP shall consult with these parties and, where appropriate seek advice from competent authorities, and/or representatives of the business community, worker organisations, other non-governmental organisations, and experts*”. In this framework and in response to a request raised by the complainants, the NCP interviewed the non-governmental organization European Center for Constitutional and Human Rights (ECCHR) based in Berlin as an expert to the case. This hearing took place on 10th January 2019 in the form of a visio-conference from the Economic Service of the Embassy of France in Berlin. The organization presented to the NCP lessons learned from its report “Tricky Business: Space for Civil Society in Natural Resource Struggles” and its knowledge on free prior and informed consent of indigenous peoples. The organization forwarded several documents to the NCP in addition to its hearing. The NCP will continue promoting its good offices in order to facilitate dialogue among the parties, which shall include if necessary meetings with EDF Group, concerned party in the specific instance.

NCPs provide a platform for dialogue to help parties resolve their conflict. Since the start of the good offices, the NCP proposed to the parties to meet together to discuss issues raised by the referral. The company proposed that EDF EN participates to a local dialogue in Mexico. Several exchanges took place between the parties and the NCP Secretariat to prepare it. The meeting gathering the parties took place on 19th March 2019 at the premises of the Regional Economic Service of the French Embassy in Mexico City in the presence of a representative of the NCP, in liaison by visio-conference.

2. Intermediate conclusion

The NCP thanks the parties for their participation in the procedure. It welcomes that parties met together. It believes that this dialogue, which is a direct result of its good offices, is an important step in the process. The NCP is therefore continuing its action in the framework of this specific instance, including providing a platform for keeping dialogue to help parties resolve issues at stake. According to its Bylaws and the Procedural Guidelines laid down by the OECD, it will issue a statement or report at the end of the procedure.

The NCP is informed of the existence of several administrative and judicial procedures parallel to the referral (see NCP statement of 12th June 2018). It notes that the free, prior and informed consultation procedure concerning the Gunaa Sicaru wind farm project developed by the company is underway and is being conducted by the competent Mexican authorities.

The NCP adopted a draft communiqué on 10th April 2019, and consulted with the parties and with the Mexican NCP. The NCP adopted this intermediate statement on 14 May 2019 which was sent to the parties and to the Mexican NCP prior to its publication on the NCP website and its inclusion in the database of NCP's specific instances of NCPs managed by the OECD.

³ [changes adopted at the Bylaws revision decided on 5th February 2019]