



SPECIFIC INSTANCE: MR TEUMAGNIE – FRENCH DEVELOPMENT AGENCY (AFD GROUP)

25 March 2015

Statement of the French National Contact Point

Following its initial assessment, the NCP finds that the AFD Group is conducting adequate due diligence with respect to its Cameroonian partner Eneo (formerly AES SONEL) and is closing the referral

On 9 September 2014, the French National Contact Point (NCP) for the implementation of OECD Guidelines for Multinational Enterprises received a specific instance from Mr Edouard Teumagnie, a Cameroonian national, concerning a Cameroonian enterprise, AES Sonel (which was renamed Eneo in September 2014) and the French Development Agency (*Agence Française de Développement*), which took part in AES Sonel's investment financing plan in 2006. The referral focuses on two General Policies in the OECD's Guidelines (2000 edition) concerning human rights (II-2) and good corporate governance principles (II-6).

II. General Policies

Enterprises should take fully into account established policies in the countries in which they operate, and consider the views of other stakeholders. In this regard, enterprises should:

2. Respect the human rights of those affected by their activities consistent with the host government's international obligations and commitments.

6. Support and uphold good corporate governance principles and develop and apply good corporate governance practices.

1. Facts presented by the complainant and parallel proceedings to the referral:

AES Sonel, which was privatised in 2001, is the concession-holder for the public supply of electricity (including generation, transport and distribution) in Cameroon. AES Corporation, an American multinational enterprise, was the majority shareholder until June 2014. It sold its 56% stake to Actis, a British private equity firm. Subsequently, a new managing director was appointed in August 2014 and on 12 September 2014 the enterprise was renamed Eneo Cameroun SA (Energy of Cameroon).

- **The referral consists of two parts: a workplace dispute involving the complainant and a general complaint concerning the Cameroonian enterprises and its partners**

On one hand, the complainant claims that his basic rights were violated during a workplace disagreement between him and his employer, AES Sonel, between 2001 and 2005. He denounces his August 2002 demotion, which he challenged in court, demanding compensation. He is also complaining about wage discrimination, harassment, how his retirement in late 2014 was handled, the reconstitution of his career between 2002 and 2007, and an internal audit of his case. He links his personal situation to restructuring efforts that were carried out in connection with the privatisation of AES Sonel, as well as to its 2005–2009 investment programme.

On the other hand, he uses his case to question AES Sonel's HR management between 2001 and 2005, and denounces the enterprise's poor governance and corruption. He criticises the "collusion" between the US parent company, AES Corporation, and AES Sonel's lenders, who did not exercise sufficient due diligence when granting financing for the 2005–2009 investment programme.

The referral addresses AES Sonel's second investment programme (2005–2009); €260 million of its estimated €380 million cost was financed by loans provided in 2006 by a number of lenders, including the World Bank Group's International Finance Corporation (IFC), the European Investment Bank (EIB), the African Development Bank (AfDB), the *Banque de Développement des Etats d'Afrique Centrale* (BDEAC), the German Investment and Development Corporation (DEG), the Emerging Africa Infrastructure Fund (EAIF), the Netherlands Development

Finance Company (FMO) and Proparco. A €30 million loan was granted by Proparco, the subsidiary of the AFD Group that provides private-sector financing.

The complainant is asking the French NCP to "oblige the French Development Agency to shoulder its responsibilities" and contribute to the complainant's compensation, and to oblige AES Sonel to honour its commitments in the areas of labour relations and governance.

- **The referral to the French NCP is in parallel to many other proceedings initiated by the complainant**

The complainant has initiated a number of litigation proceedings in Cameroon. After bringing a case before the Labour Inspectorate in 2006 concerning his demotion and the withdrawal of his benefits in August 2002, he began lengthy litigation that ended with a judgment by the Cameroon Supreme Court handed down on 6 December 2012. The judgment made enforceable the decision of the Wouri Court of First Instance in Douala that was handed down on 23 April 2007¹, which ordered AES Sonel to compensate the complainant. The complainant carried forward the process with the enterprise's senior management, who complied with the judgment in late 2013.

Moreover, the complainant formulated other complaints and informed the NCP of the existence of two non-conciliation reports issued by the Cameroonian Labour Inspectorate in July and November 2011 concerning the reconstitution of his career for the years 2002 to 2007 and the calculation of compensation in connection with an agreement from 2005. The complainant also requested the enterprise to update his compensation to cover the post-2007 period.

Starting in 2011, the complainant initiated six international proceedings against some of AES Sonel's partners, in which he criticised their lack of due diligence with respect to the enterprise, and requested that they contribute to compensation for the damage that he claims to have suffered.

In August 2011, the complainant filed a referral with the British NCP, claiming that he had been the victim of wage and race discrimination between July 2001 and August 2002 by AES Sonel, which at that time was owned by AES Sirocco, a UK-based multinational. Since AES Sirocco is a subsidiary of AES Corporation, a US-based multinational, the US and British NCPs decided that the referral should be handled by the US NCP, the home country of the multinational. In September 2011, the British NCP informed the complainant that his referral would be transferred to its US counterpart. After contacting the parties, the US NCP noted the persistence of the disagreement between them. **It published its decision on 13 September 2012², and decided to not propose its good offices.** It found that the referral did not sufficiently prove that the complainant had suffered racial discrimination. It observed that discrepancies in the wages paid to local workers and those paid to expatriates was a common practice among multinational enterprises that did not run counter to the OECD's Guidelines. Given the lack of convincing evidence concerning AES's practices, the NCP did not deem it useful to continue with the referral. It also stated that the existence of parallel court proceedings was not a factor in its refusal to propose its good offices.

Subsequently, **the complainant, who had challenged the transfer of the referral to the US NCP, once again submitted a specific instance to the British NCP**, which decided that it was the same referral and rejected it.

In February 2013, the complainant **brought a case before the Compliance Advisor Ombudsman (CAO), the dispute resolution body of the International Finance Corporation.** The Ombudsman led mediation efforts between July³ and December 2013, which were unsuccessful as AES and the complainant were unable to reach an agreement⁴. The case was then transferred to the compliance authority at the CAO, which concluded on 26 June 2014⁵ that the IFC had fully complied with CSR and environmental standards when it provided financing to AES Sonel in 2006. The complainant challenges this assessment.

In 2014, he filed an application with the **EIB's dispute settlement body**. On 23 January 2016⁶, the application was found to be admissible and is currently being processed. **He then filed an application with the AFD in April**

¹ The Supreme Court rejected AES Sonel's appeal against the Littoral Court of Appeal's ruling of 25 February 2009, which rejected the enterprise's appeal against the Court of First Instance's ruling of 23 April 2007.

² Decision by the US NCP: www.state.gov/e/eb/oece/usncp/links/rls/197766.htm

³ CAO Assessment Report dated 3 July 2013: http://www.cao-ombudsman.org/cases/document-links/documents/AESSonelCAOAssessmentReport_July3_2013.pdf

⁴ CAO Assessment Report dated 3 July 2013: http://www.cao-ombudsman.org/cases/document-links/documents/AESSonelCAOAssessmentReport_July3_2013.pdf

⁵ <http://www.cao-ombudsman.org/cases/document-links/documents/CAOAppraisalReportAESSonel.pdf>

⁶ <http://www.eib.org/about/accountability/complaints/cases/index.htm>

2014, and submitted a referral to the French NCP in September 2014, to which he appended the application he filed with the AFD.

2. Initial assessment of the specific instance

The NCP Secretariat received the referral by e-mail on **9 September 2014**. The NCP Chair immediately recused himself due to a possible conflict of interest with the AFD Group. The Director General's legal affairs advisor served as the NCP Chair during the processing of this referral. For the same reasons, a member of the trade union group also recused himself.

In accordance with its bylaws, the NCP should strive to complete an initial assessment of a referral within three months of acknowledging receipt, and then to conclude the procedure within twelve months of receipt.

At its meeting on **8 October 2014**, the NCP acknowledged receipt of the referral and that the formal criteria for admissibility had been met, despite a certain number of significant reservations: the referral had to do with a personal and professional dispute between the complainant and his Cameroonian employer that was not directly within the jurisdiction of either the French NCP or the AFD, several aspects of the referral were not elaborated on (claims of human rights violations and accusations of poor governance on the part of AES Sonel), the referral provided no evidence concerning the relationship between the AFD Group and AES Sonel, and several attachments were missing from the electronic submission. The NCP nevertheless decided to carry out an initial assessment and to examine the other admissibility criteria as set out in its bylaws (Articles 18, 22, 23 and 25). The NCP Secretariat informed the complainant of the formal admissibility of his referral, and then submitted it to the AFD and to Proparco on 17 October 2014. At the NCP Secretariat's request, the complainant provided the missing documents, the parallel administrative decisions and court rulings as well as supplementary information. These were sent to the members of the NCP and to the AFD Group.

At its meeting on **17 December 2014**, the NCP confirmed the admissibility of the referral, although several aspects were not admissible and others were poorly documented. It nevertheless expressed a desire to meet with the AFD Group, and informed the complainant of this. The deadline for initial assessment was extended to 8 February 2015.

At its meeting on **28 January 2015**, the NCP met with the AFD Group and finalised its initial assessment. It decided to close the referral and to draft a statement. Prior to its publication on the NCP's website, the present statement was the subject of exchanges with the parties and with the American and British NCPs.

3. NCP Decision

In the course of a detailed examination of the case, the legal proceedings underway in Cameroon, and decisions handed down by the US NCP and the IFC's Compliance Advisor Ombudsman, the French NCP completed its initial assessment⁷ of the referral.

3.1 The NCP finds that two parts of the referral are inadmissible

- **The personal and professional dispute between the complainant and AES Sonel does not fall within the French NCP's jurisdiction**

The complainant mentions human rights violations, however the referral makes reference to the chapter on Employment and Industrial Relations in the OECD Guidelines. The specific instance is based on a personal and professional dispute between a Cameroonian national and his Cameroonian employer, the parent company of which was, at the time of the incidents in the referral, an American multinational enterprise. The AFD Group did not have a business relationship with AES Sonel at the time, and thus cannot be held responsible. By its very nature, the ongoing dispute between the complainant and his employer does not fall within the jurisdiction of the French NCP, but rather the competent Cameroonian authorities. Moreover, the complainant did not directly call for the good offices of the NCP.

- **General allegations against AES Sonel between 2002 and 2005 are not admissible**

Based on his personal situation, the complainant is questioning AES Sonel's HR management between 2002 and 2005 and is criticising the enterprise's poor governance and corruption. The referral does not provide substantial evidence to support these claims. This part of the referral is inadmissible.

⁷ Admissibility criteria as set out in Articles 16, 22, 23 and 25 of the NCP bylaws.

3.2 The AFD Group's due diligence with respect to AES Sonel/Eneo is in line with OECD recommendations

The complainant asked the French NCP to "oblige the French Development Agency to shoulder its responsibilities" to ensure that AES Sonel complies with its standards and settles his personal case. The NCP identified two issues: 1) the due diligence of the AFD Group concerning the activities of AES Sonel in order to identify social compliance-related risks and to promote the enterprise's principles of good governance; and 2) due diligence measures by the AFD Group to ensure that its partner responded to the complainant's case by respecting the decisions by the competent Cameroonian courts and the principles of responsible business conduct in order to lastingly settle this dispute.

The NCP factored in the date that the business relationship between the AFD Group and AES Sonel took effect (2006), the 2000 and 2011 editions of the Guidelines and the relative weight of the AFD in relation to AES Sonel compared with other partners (AES Corporation, the Cameroonian government and the IFC in particular).

Following its meeting with the AFD Group, the NCP took note of the credibility and sincerity of the Group, which presented its 2014–2018 strategy, its environmental, social, good governance and impact due diligence arrangements applied to Proparco's projects financed since 2010, along with the Group's financial security mechanism (customer identification requirements as stipulated in the French Monetary and Financial Code, corruption risk management). The NCP believes that Proparco's due diligence system, based on IFC standards that were strengthened in 2012, is adequate. On the other hand, the referral revealed the lack of a formal mechanism for handling complaints. Nevertheless, the NCP observes that Proparco is making efforts to put such a mechanism in place and is planning to provide increased transparency into the performance of its projects.

As regards AES Sonel, the NCP observes that in 2006, when the loan was granted to AES Sonel, the AFD Group's due diligence was in line with the 2000 and, subsequently, with the 2011 Guidelines. At the time, the assessments coordinated by the IFC did not reveal any non-compliance with social or environmental standards (cf. CAO decision of 26 July 2014). The NCP notes that the AFD Group then followed up on social and environmental issues in collaboration with the IFC, which included taking part in a field mission to monitor labour issues. This follow-up enabled it to detect certain labour risks starting in 2008. Efforts were then undertaken with the various partners to improve how AES Sonel handled internal complaints.

The NCP notes that the AFD Group then carried out adequate due diligence measures – based on the 2011 Guidelines – with respect to Eneo⁸ to ensure that the enterprise dealt effectively with the complainant's case. Proparco indicates that Actis considers that it is "accountable with respect to environmental and social criteria vis-à-vis its investors" and that Eneo's executive management is currently looking at ongoing disputes in the enterprise and is committed to implementing any court rulings that may be handed down.

Conclusion

The NCP is ending the referral's initial assessment. It notes that the AFD Group has taken responsibility and carried out adequate due diligence measures with respect to Eneo as recommended in the OECD Guidelines. It encourages the Group to find lasting solutions in line with court rulings concerning the disputes set out in the referral.

Now that Actis is a shareholder in Eneo, the AFD Group could examine, with its partners, the possibility of carrying out an in-depth social and governance audit of Eneo, based on the OECD's standards for responsible business conduct.

The NCP thanks the AFD for its openness and encourages it to continue its efforts. It is prepared to help the AFD set up a dispute settlement mechanism and encourages its supervisory authorities to support these efforts.

The NCP does not think it is necessary to propose its good offices to the parties. It is closing the referral.

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⁸ AES Sonel's new company name since September 2014.