

## SPECIFIC INSTANCE

### “PERENCO IN TUNISIA”

4 December 2019

#### Statement from the French National Contact Point

**Following its initial assessment, the NCP accepts the referral. The NCP welcomes the fact that Perenco finally agreed to join the dialogue process it is offering.**

On 26 July and 14 August 2018, a specific instance concerning the multinational enterprise Perenco was referred to the French National Contact Point (NCP) for the implementation of the OECD Guidelines for Multinational Enterprises by an international non-governmental organisation based in Belgium and present in Tunisia via a permanent office, Avocats Sans Frontières<sup>1</sup> (hereinafter “ASF”), and a Tunisian non-governmental organisation, I WATCH. This referral concerns the activities of the Perenco, a public limited company<sup>2</sup> with its registered office in France (hereinafter Perenco France), and of Perenco Tunisia Company Ltd, established in the Cayman Islands (hereinafter “PTCL”). The referral concerns the publication of information by these companies, the exploration and development of hydrocarbons and gas by PTCL in Tunisia and due diligence for responsible business conduct. The complainants state that they are submitting the referral to the French NCP due, according to the specific instance, to the fact that Perenco France’s registered office is located there. They asked it to coordinate with its Tunisian counterpart and note its apparently non-operational character at the time of the referral’s submission.

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

The specific instance referral procedure to the NCP is confidential. The NCP must endeavour to carry out the initial assessment of a referral within an indicative time limit of three months after acknowledgement of receipt of the referral, but an additional period may be granted if it is necessary to gather the necessary information for an informed decision (art. 26). After its initial assessment, the NCP sends its response to the parties concerned and then prepares a statement on the admissibility of the referral (art. 19). If the NCP considers that the issues raised by the specific instance merit a thorough examination, it offers its good offices to help the parties involved to deal with them (art. 27). It then publishes a statement or a report at the end of the procedure (art. 35). In the absence of an agreement between the parties or where one of the parties does not wish to participate in the procedure, the NCP also publishes a statement (art. 35).

**1.1. Receipt of the referral:** Avocats Sans Frontières and I Watch referred the specific instance to the French NCP by electronic means on 26 July and then on 14 August 2018. On 20 August 2018, the NCP Secretariat indicated that it had not received the supporting documents announced in the referral letter and invited them to send them to it in order to be able to acknowledge receipt of the referral. All constitutive elements of the referral were received on 27 August 2018. The NCP acknowledged receipt of the referral on the same day.

**1.2. Formal admissibility of the referral:** The French NCP referred to the specific instance at its meeting of 4 September 2018. It validated the referral’s formal admissibility and started its initial assessment. It recognised its territorial jurisdiction, since the referral concerns a French company, Perenco France, which is based in Paris in the form of a public limited company, and whose activities have an international dimension.<sup>3</sup> The NCP has the jurisdiction to discuss questions raised by the referral with this French company and to carry out the initial

<sup>1</sup> Or Lawyers Without Borders

<sup>2</sup> “*Société anonyme*” in France

<sup>3</sup> Consultation of the company’s certificate of registration (Kbis) and articles of association at the “Infogreffe” registry on 3 October 2018.

assessment. It found that the referral also covered activities of the Perenco Group in Tunisia carried on by the company Perenco Tunisia Company Ltd, a company governed by the law of the Cayman Islands. According to the complainants, this company is considered locally as a subsidiary of a company based in France.

The French NCP found that complainants made the referral to the French NCP for two reasons: Firstly, because of the Perenco Group's ([www.perenco.com](http://www.perenco.com)) links with France, where Perenco France has its registered office; secondly, as the complainants could not identify a functional NCP in Tunisia in July 2018.

The NCP noted that prior to sending the referral to it, the complainants sent a copy of the referral to “the enterprise Perenco” as well as to the Tunisian government department in charge of investment (Ministry of Development, Investment and International Cooperation) which they had identified as the entity designated to host the Tunisian NCP. The complainants are asking the French NCP to cooperate with its Tunisian counterpart. As Tunisia adheres to the OECD Guidelines, the French NCP considered that coordination with Tunisia should be dealt with during the initial assessment (see 2).

**1.3. Initial assessment:** The NCP informed the complainants of the referral's formal admissibility on 7 September 2018 and asked them to confirm whether they were seeking its good offices. The NCP wrote to Perenco France on 17 September 2018 to inform it about the existence of the specific instance, and to send a full copy of the file and information on the NCP and on the referral procedure. The NCP invited Perenco France to reply to the referral as soon as the initial assessment had started. The NCP Secretariat presented the referral procedure to the complainant organisations on 24 September 2018 at a phone-conference it organised between Paris, Brussels and Tunis. The Secretariat contacted Perenco France on 3 October 2018 to confirm receipt of the referral and then presented the NCP and the referral procedure on 11 October 2018 to the company and its legal counsel. The NCP Secretariat informed the parties that the NCP would undertake actions to identify a contact in Tunisia.

At its meeting on 2 October 2018, the French NCP finalised the initial assessment of the referral and confirmed its leadership. It decided to accept it and to offer its good offices to the parties. It informed the parties on 9 October 2018 and asked them to reply by 22 October 2018. The complainants accepted the French NCP's good offices on 22 October 2018. Perenco France did not reply to it during this time period.

The French NCP adopted a draft statement on 6 November 2018 which it sent to the parties for comments before 16 November 2018. Perenco France wrote to the NCP on 8 November 2018 to state that it was rejecting the territorial jurisdiction of the French NCP and did not agree to the proposed interview. On 13 November 2018, the French NCP's Secretariat forwarded the draft statement to its Tunisian contact. The complainants submitted their comments on the draft statement on 14 November 2018 and were interviewed on 29 November 2018 in Paris. They sent additional information on 15 January 2019. On 22 January 2019, the NCP adopted a second draft statement confirming its jurisdiction that it submitted to the parties and to the Tunisian NCP for comments by 30 January 2019. On 28 January 2019 it wrote to Perenco France to again offer its good offices.

The Tunisian NCP sent the draft statement to its Tunisian counterpart, which acknowledged receipt on 29 January 2019. On 30 January 2019, Perenco France confirmed that it was rejecting French NCP's jurisdiction. The complainants submitted their comments on the draft statement on 30 January 2019. At its meeting on 5 February 2019, the NCP took note of the situation and decided to hold consultations. The parties were informed on 6 February 2019. The NCP then contacted the OECD Secretariat and the Directorate for Legal Affairs (“DAJ”) of the Ministry for the Economy and Finance. Consultations were held in March, June and July 2019, leading to a delay in the finalisation of the initial assessment statement. The NCP also consulted the decisions of the Norwegian NCP in the “due diligence in the financial sector” referral,<sup>4</sup> of the Dutch NCP in the “Heineken, Bralima and former employees of Bralima” referral<sup>5</sup> and of the Danish NCP in the “due diligence of an

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<sup>4</sup>“Due diligence in the financial sector”, Norwegian NCP's decisions of 2 July 2015,

<http://mneguidelines.oecd.org/database/instances/no0012.htm>

<sup>5</sup>“Heineken, Bralima and trained employees of Bralima”, Dutch NCP's Statement of 18 August 2017 and 28 June 2016,

<http://mneguidelines.oecd.org/database/instances/nl0027.htm>

undertaking financing a mining company in Armenia” referral.<sup>6</sup> Furthermore, as Perenco France rejected the NCP’s jurisdiction, the good offices phase was not able to start *de facto*.

At its meeting on 24 June 2019, the NCP took note of the consultations’ results and decided to finalise the initial assessment statement. It informed the parties on 15 July and the Tunisian NCP on 16 July 2019. It sent an additional question to the DAJ which replied to it in early July 2019. On 3 September 2019, Perenco stated that it was maintaining its position. The NCP adopted a new version of this statement on 15 October 2019. It sent it to the parties and to the Tunisian and United Kingdom NCPs. On 2 December 2019, Perenco France and PTCL indicated that they were joining the dialogue platform proposed by the NCP. The NCP adopted this statement on 4 December 2019, with the exception of two trade unions. It forwarded it for information to the parties and to the Tunisian and United Kingdom NCPs prior to its publication on the French NCP’s website. The NCP Secretariat then formally notified the referral to the OECD Secretariat for integration into the NCP database.

## 2. NCPs’ coordination

The referral concerns two entities of the Perenco Group: Perenco France and Perenco Tunisia Company Ltd, which is active in Tunisia and governed by the law of the Cayman Islands. In accordance with the Procedural Guidance of the OECD Guidelines,<sup>7</sup> when a referral concerns two OECD Guideline adhering countries, it is appropriate to designate the NCP that will be responsible for handling the referral.

When acknowledging receipt of the referral, the French NCP noted that according to the OECD annual reports on responsible business conduct in 2016<sup>8</sup> and 2017,<sup>9</sup> Tunisia had not established an NCP. In accordance with the Procedural Guidance of the OECD Guidelines,<sup>10</sup> it requested the OECD Secretariat’s support in order to identify a Tunisian contact. Contact was made with the government department representing Tunisia on the Investment Committee. After discussions with that contact, it was agreed that the French NCP would lead the referral. Technical exchanges have taken place on several occasions to discuss the functioning of an NCP and how to handle a specific instance.

The Tunisian NCP has now been identified but is not yet operational. In line with the OECD Guide for NCPs on Coordination<sup>11</sup> and after consulting the two NCPs and the OECD Secretariat, the French NCP remains leader of the referral. It will coordinate its action with the Tunisian NCP once it is fully operational. Both NCPs will then be able to review coordination arrangements.

## 3. Presentation of the referral

**3.1. The referral is brought by two non-governmental organisations.** Avocats Sans Frontières (“ASF”) is an international NGO based in Brussels<sup>12</sup> specialised in the defence of human rights and justice, and active on business and human rights issues. ASF is active in Tunisia where it has an office.<sup>13</sup> I WATCH<sup>14</sup> is a Tunisian NGO which was founded in 2011. It strives to foster citizens’ participation in public decisions by working mainly on two tracks: transparency and fighting corruption. I WATCH is a member of the Transparency International network.

<sup>6</sup> “*Due diligence of a company financing a mining company in Armenia*”, Danish NCP’s Statement of 19 June 2018, <http://mneguidelines.oecd.org/database/instances/dk0016.htm>

<sup>7</sup> See Chapter I.C Implementation in Specific Instances.

<sup>8</sup> <http://www.oecd.org/daf/inv/mne/2016-Annual-Report-MNE-Guidelines-EN.pdf>

<sup>9</sup> <http://mneguidelines.oecd.org/2017-Annual-Report-MNE-Guidelines-EN.pdf>

<sup>10</sup> See Chapter II Investment Committee, in particular paragraph 23 of the Commentary.

<sup>11</sup> Guide for National Contact Points on Coordination when handling specific instances, <http://mneguidelines.oecd.org/Guide-for-NCPs-on-Coordination-when-handling-Specific-Instances.pdf>

<sup>12</sup> <https://www.asf.be/fr/>

<sup>13</sup> <https://www.asf.be/fr/action/field-offices/asf-in-tunisia/>

<sup>14</sup> <https://www.iwatch.tn/ar/>

**3.2. The referral brought by ASF and I Watch concerns several dimensions of the OECD Guidelines.** The referral questions the Perenco Group's compliance with the OECD Guidelines in relation to due diligence and in particular the analysis of the risks generated by its activities for human rights and the environment, as well as with measures taken to prevent and mitigate these risks. The referral also questions the lack of publication of information on the Perenco Group's activities and organisation. The referral also raises issues related to taxation. A detailed list of recommendations referred to in the referral is set out in the Appendix.

**3.3. The referral sets out facts concerning exploration and development of gas and hydrocarbons by the Perenco Group in Tunisia and concerning the societal and environmental impact of these activities.** According to the referral, these activities are carried out by Perenco Tunisia Company Ltd in the Baguel-Tarfa and Franig concessions in the Kebili Governorate. The referral is based on allegations of gas and hydrocarbon flaring, use of hydraulic fracking in 2010, exploration and development of shale gas in these two concessions operated by PTCL. According to the referral, these activities could have a number of negative economic and social consequences for surrounding populations as well as negative incidences on the environment. Also according to the referral, these negative incidences and potential risks of future negative incidences relating to extractive activities have not been and are not subject to known and communicated appropriate due diligence measures from Perenco in Tunisia. Furthermore, still according to the referral, Perenco fails to comply with certain OECD recommendations on taxation, fundamental rights of workers and publication of information.

The referral indicates that the Baguel and Franig concessions are jointly owned by PTCL and by the Tunisian Enterprise for Oil Activities<sup>15</sup> (hereinafter "ETAP"). The NCP notes that, according to ETAP's website,<sup>16</sup> Perenco and ETAP respectively hold 49% and 51% of the Baguel concession and 50% each of the Franig concession. The referral refers to societal responsibility regarding projects which ETAP is thought to be implementing in fields where it is a partner in the Kebili Governorate.<sup>17</sup> The referral underlines the fact that ETAP is not covered by the referral because PTCL is entirely responsible for exploration and development of gas and hydrocarbons.

**3.4. The referral informs the NCP of the legal and regulatory framework** at sectoral level in Tunisia and about parliamentary debates which, between 2011 and 2016, surrounded the examination of applications for the extension of said concessions from 2020 to 2035 and their approval by the Assembly of the People's Representatives<sup>18</sup> in Tunisia.

**3.5. On 28 September 2018, the complainants confirmed to the NCP that they were seeking the NCP's good offices in order to establish a dialogue with Perenco** *"in order to promote transparency concerning the company's activities, in particular in relation to the due diligence measures it may have taken in order to identify and prevent negative incidences on the environment and on the rights of the populations"*.

#### 4. Summary of the initial assessment of the "Perenco in Tunisia" specific instance

Having analysed admissibility criteria for a specific instance, the NCP considers that this referral falls within its jurisdiction and that the issues it raises merit further consideration. Its action could help promote the effectiveness of the OECD Guidelines.

**4.1. The complainants have an interest in referring the matter to the French NCP (art. 23). The referral is in good faith (art. 22). It is accurate and documented.** Supporting documents are in French; documents in Arabic have been translated into French. **The file allows the French NCP to start examining issues raised (art. 26 and 23) and to offer a platform for dialogue to the parties in order to contribute to resolving them (Article 25).**

<sup>15</sup> "Entreprise Tunisienne des Activités Pétrolières", ETAP

<sup>16</sup> Last consultation on 17 October 2018, <http://www.etap.com.tn/index.php?id=1160>

<sup>17</sup> See "Responsabilité sociale de l'ETAP", last consultation on 17 October 2018, <http://www.etap.com.tn/index.php>

<sup>18</sup> "Assemblée des Représentants du Peuple"



**4.2. The referral relates to the OECD Guidelines (art. 22 and 23):** The referral refers to alleged violations and breaches of the OECD Guidelines concerning: contribution to sustainable development, corporate due diligence, disclosure of information, working conditions and local employment, human rights, respect for the environment and taxation. The NCP's action will be intended to clarify the practical implications of responsible business conduct and, where appropriate, to enhance the OECD Guidelines' effectiveness.

*See Appendix: List of recommendations of the OECD Guidelines of May 2011 referred to in the referral.*

**4.3. There is a link between the activities of the companies concerned by the referral and issues raised by the referral (art. 23).**

The referral raises issues related to corporate due diligence. According to the OECD Guidelines, undertakings should “*carry out risk-based due diligence, for example by incorporating it into their enterprise risk management systems, to identify, prevent, and mitigate actual and potential adverse impacts as described in paragraphs 11 and 12, and account for how these impacts are addressed*” (II A10), and “*avoid causing or contributing to adverse impacts on matters covered by the Guidelines, through their own activities, and address such impacts when they occur*” (II A11), and “*seek to prevent or mitigate an adverse effects where they have not contributed to that impact, when the impact is nevertheless directly linked to their operations, products or services by a business relationship*” (II A12).

According to the OECD Guidelines, business relationships are considered to be diverse. They are not limited to equity relationships or commercial contracts between undertakings. The OECD Due Diligence Guidance for Responsible Business Conduct states that they notably include “*all types of business relationships of the enterprise — suppliers, franchisees, licensees, joint ventures, investors, clients, contractors, consumers, consultants, financial, legal and other advisers, and any other non-State or State entities linked to its business operations, products or services*”.<sup>19</sup> Furthermore, “*the Principles extend to enterprise groups, although boards of subsidiary enterprises might have obligations under the law of their jurisdiction of incorporation*”.<sup>20</sup>

The OECD Guidelines' Concepts and Principles state that “*a precise definition of multinational enterprises is not required for the purposes of the Guidelines (...). They usually comprise companies or other entities established in more than one country and so linked that they may coordinate their operations in various ways. While one or more of these entities may be able to exercise a significant influence over the activities of others, their degree of autonomy within the enterprise may vary widely from one multinational enterprise to another. Ownership may be private, State or mixed. The Guidelines are addressed to all entities within the multinational enterprise (parent companies and/or local entities). According to actual distribution of responsibilities among them, the different entities are expected to co-operate and assist one another to facilitate observance of the Guidelines*”.<sup>21</sup>

**The referral refers to a several companies: Perenco Group, Perenco France and the activities of PTCL. Their business relationships should also be identified.**

► **According to its [www.perenco.com](http://www.perenco.com) website, the Perenco Group** was set up in 1975 by Mr Hubert Perrodo.<sup>22</sup> The website presents an independent company active in the exploration and development of gas and hydrocarbons through subsidiaries in 14 different countries: “*Thanks to 6,000 collaborators distributed over 14 subsidiaries, Perenco operates more than 3,000 wells for a gross production of 465,000 boepd. In 2018, the company successfully carried out ambitious projects, such as the FLNG in Cameroon and La Noumbi FPSO in Congo and the production of EOY in Gabon. At the same time, Perenco continues to assert its acquisition*

<sup>19</sup> OECD Due Diligence Guidance for Responsible Business Conduct, Table 1 page 10.

<sup>20</sup> OECD Guidelines for Multinational Enterprises, Chapter II on General Policies: Commentary No. 9.

<sup>21</sup> OECD Guidelines for Multinational Enterprises, Chapter I on Concepts and Principles, article 4. See also: articles 5, 10, 11, 12 and 14 as well as paragraphs 9 and 14 on Chapter II on General Policies.

<sup>22</sup> “Founded by Hubert Perrodo (1944-2006), the Perenco Group began operations in the oil and gas industry in 1975, as a marine services company based in Singapore”.

*strategy, with new acquisitions in Mexico and Tunisia*".<sup>23</sup> The website also features the Group's activities (business development, drilling, projects, operations, marketing, etc.) and social responsibility approaches and HSE. According to the testimony of employees posted on the website,<sup>24</sup> the Group's departments are based in Paris and London and interact with the subsidiaries. Also according to the website, the Group has more than 6,000 employees worldwide. The NCP considers that it is a multinational enterprise within the meaning of the OECD Guidelines.

A number of factors are such as to establish a link between the Perenco Group and France. Several managers of the Perenco Group have been appointed or are currently French Foreign Trade Advisers (hereinafter "CCEFs").<sup>25</sup> CCEFs "*shall be chosen from among the leaders, business executives and independent professions discharging responsibilities and contributing to the international influence of France*".<sup>26</sup> The Perenco Group took part in the Franco-Tunisian economic forum of 15 February 2019 organised by Business France at the French Senate, which focused on the topic "*Tunisia, land of subsidiaries and launch pad to Europe and Africa*". The Perenco Group's Commercial Development Director intervened in a panel discussion on the challenges of the energy transition.<sup>27</sup>

► **Perenco France** is established in France in the form of a public limited company with its registered office in Paris. Its purpose is "*both in France and abroad, the development of hydrocarbons at sea and on land, and the acquisition or rental, operation and sale or rental of equipment, the supply of all services and studies and all related activities relating to operations at sea and on land (...)*". The NCP is of the opinion that it is a multinational enterprise within the meaning of the OECD Guidelines and a French company. Accordingly, it falls within the scope of the OECD Guidelines that it should comply with in France and in the world including by exercising its due diligence in respect of the products, services and activities of its business relationships.

A set of consistent evidence supports, within the meaning of the OECD Guidelines, the existence of a business relationship between Perenco France and the Perenco Group's activities in Tunisia. Perenco France and PTCL are part of the same group of companies. The extractive activity of PTCL in Tunisia corresponds to the purpose of the company established in France. Perenco France seems to have a special place within the Group. In light, in particular, of Perenco Group employee testimonies and job descriptions for positions based in Paris,<sup>28</sup> it seems that the French company and/or departments present in Paris have advice or even decision making responsibilities toward the Group's operating subsidiaries (for project management in particular). The Perenco Group took part in the recent Franco-Tunisian economic forum organised by Business France at the French Senate. A Director General of PTCL was appointed as a CCEF when he was posted there.

► **PTCL's extractive activities referred to in the referral** are carried on, according to the information brought to the attention of the NCP, by a company governed by the law of the Cayman Islands, Perenco Tunisia Company Limited (PTCL). According to the complainants, this company is considered locally as a subsidiary of a company based in France. PTCL benefits from a number of concessions granted by the Tunisian State to explore and develop gas and hydrocarbons in Tunisia in the framework of joint-ventures with ETAP for the wells referred to by the specific instance. The [www.perenco.com](http://www.perenco.com) website states inter alia that "*Perenco acquired its Tunisian assets back in July 2002. The company operates the concessions of El Franig and Baguel, located in central Tunisia. Perenco has steadily expanded in Tunisia, first by acquiring a 50% stake in the Ashtart concession in July 2017 and more recently in 2018, by acquiring a 45% share of Petrofac Tunisia and the Chergui field operation.*" and that "*In 2016, extensions to the El Franig and Baguel concessions were granted, opening the door to new opportunities for more potential development in the country*".<sup>29</sup>

<sup>23</sup> <https://www.perenco.com/about-us/overview>, last consultation on 2 July 2019 .

<sup>24</sup> <https://www.perenco.com/fr/perencostories>, last consultation on 2 July 2019 in French.

<sup>25</sup> "Conseiller du commerce extérieur français" (CCEF)

<sup>26</sup> Decree No 2010-663 of 17 June 2010 on the status of CCEFs.

<sup>27</sup> Panel discussion 3 — challenges of the energy transition, <http://www.senat.fr/ga/ga153/ga1533.html>

<sup>28</sup> <https://www.perenco.com/fr/perencostories>, <https://www.perenco-careers.com/>, last consultation on 2 July 2019 in French

<sup>29</sup> <https://www.perenco.com/subsidiaries/tunisia> last consultation on 2 July 2019.

► **The Perenco Group has an entity in the United Kingdom** where the Group carries out several operations and where several entities of the group are based according to the UK registry.<sup>30</sup> According to several testimonies of employees posted on the Group's website,<sup>31</sup> it seems that several Group departments are based in London (Operations Directorate, Finance Directorate, Trade Directorate, and External Relations Directorate) and that they hold advisory or even decision-making responsibilities over the other Group subsidiaries. The French NCP therefore informed the British NCP about the case.

→ The NCP notes that there seems to be a link between the activities of companies concerned by the referral and the issues it raises concerning the effectiveness of the OECD Guidelines. It is competent to deal with the referral, and in particular to examine the scope of Perenco France's due diligence. The nature of the possible link between Perenco France and alleged negative incidences of the Perenco Group's activities in Tunisia merit examination. The features of Perenco France's influence and the means used to exercise its due diligence in respect of PTCL's activities in Tunisia are still to be determined in the framework of the examination of the specific instance.

**4.4. The NCP will take into account national and international regulatory frameworks concerning the referral (art. 23).** It has been informed of relevant French and Tunisian laws and regulations concerning disclosure of information by companies: New Economic Regulations (NRE) Act of 15 May 2001, as amended by the French order of 19 July 2017, Tunisian Constitutional Bylaw No. 2016-22 of 24 March 2016 on the right of access to information. It has also been informed that this type of industrial project is subject to specific regulations in Tunisia which have changed in recent years. However, NCPs are not competent to review the decisions of local public authorities.

## 5. Conclusion of the initial assessment

On 8 November 2018, Perenco France indicated to the French NCP that it was rejecting its territorial jurisdiction. The company stated that it had no direct or indirect equity relationship with PTCL and no legal or operational control over PTCL's activities. The company further indicated that the lack of an operational NCP in Tunisia did not justify the French NCP's jurisdiction. The company confirmed its position on 30 January 2019. The NCP then decided to consult the OECD Secretariat and the Legal Affairs Directorate of the Ministry for the Economy and Finance. It notes that their analyses are consistent.

On 24 June 2019, it took following decisions:

- The French NCP is competent to handle this specific instance. It will act in coordination with the Tunisian NCP as soon as it is operational. Their coordination arrangements may then evolve in order to provide the parties with a framework for dialogue which is the most appropriate in order to help resolve the issues raised by the referral.
- The NCP finds that several departments advising or steering operations by subsidiaries are thought to be based in Paris as well as in London (Operations Directorate, Finance Directorate, Trade Directorate, and External Relations Directorate) and that many companies in the group may have their registered offices in the United Kingdom. Therefore, in accordance with the OECD Guide for NCPs on Coordination when handling specific instances, the NCP will inform the UK NCP of the referral and coordinate with it as soon as this becomes necessary.
- The NCP notes that according to the information available from the Paris Commercial Court Registry, Perenco France<sup>32</sup> appears to be subject to financial and non-financial requirements on transparency under the NRE Act of 2001. The NCP reiterates that according to the OECD Guidelines "*obeying domestic law is*

<sup>30</sup> <https://beta.companieshouse.gov.uk/>

<sup>31</sup> <https://www.perenco.com/fr/perencostories>, last accessed on 2 July 2019.

<sup>32</sup> Infogreffe, <https://www.infogreffe.fr/entreprise-societe/330416074-perenco-750184B088070000.html?typeProduitOnglet=EXTRAIT&afficherretour=false>

*the first obligation of enterprises*”. The NCP has no knowledge at this stage of the content of the information relating to Perenco France in this respect.

To conclude, the NCP is of the opinion that the issues raised by the referral merit further consideration as they question the OECD Guidelines’ effectiveness concerning the contribution to sustainable development, corporate due diligence as regards the impact of their activities and their business relationships, disclosure of information, social, economic and environmental impacts of extractive activities, employment conditions in the sector as well as taxation. It reiterates that acceptance of the referral does not determine whether or not the enterprise acted in accordance with the OECD Guidelines or not.

The NCP therefore offered its good offices to the parties. The complainants accepted them as of October 2018 as they wished to enter into dialogue with the company under the NCP procedure. On 3 September 2019, Perenco France indicated that it still refused the French NCP’s jurisdiction. The NCP notes that on 2 December 2019, Perenco France and PTCL agreed to join the dialogue platform it had been offering for several months, which it welcomed.

According to its Bylaws, the NCP is now entering the good offices phase and the specific instance analysis stage. It will start by consulting each party separately. It will coordinate with its Tunisian and British counterparts when necessary.

The French NCP hopes to contribute to solving the issues raised by the specific instance on the effectiveness of the Guidelines. In accordance with its Bylaws, it will publish a report or a statement at the end of the procedure, which will report on its action and on the dialogue undertaken with the parties.

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.

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- In the Appendix:**
- ▶ Recommendations of the 2011 Guidelines referred to in the referral.
  - ▶ Outline of the procedure for dealing with a specific instance of the French NCP and extracts from the Bylaws of the French NCP of 5 February 2019.

*Website:* <http://www.pcn-france.fr> & # NCP France @ Trésor-Info  
*E-mail:* [pointdecontactnational-France@dgtresor.gouv.fr](mailto:pointdecontactnational-France@dgtresor.gouv.fr)



**Recommendations of the Guidelines of May 2011 referred to in the referral:**

<http://www.oecd.org/daf/inv/mne/48004323.pdf>

**Chapter II on General Policies: A. 1.; 10; 11; 12; 14**

**Chapter III on Disclosure : 1; 2 a b c d e f g h; 3; a b c d e; 4.**

**Chapter IV on Human Rights : 5.**

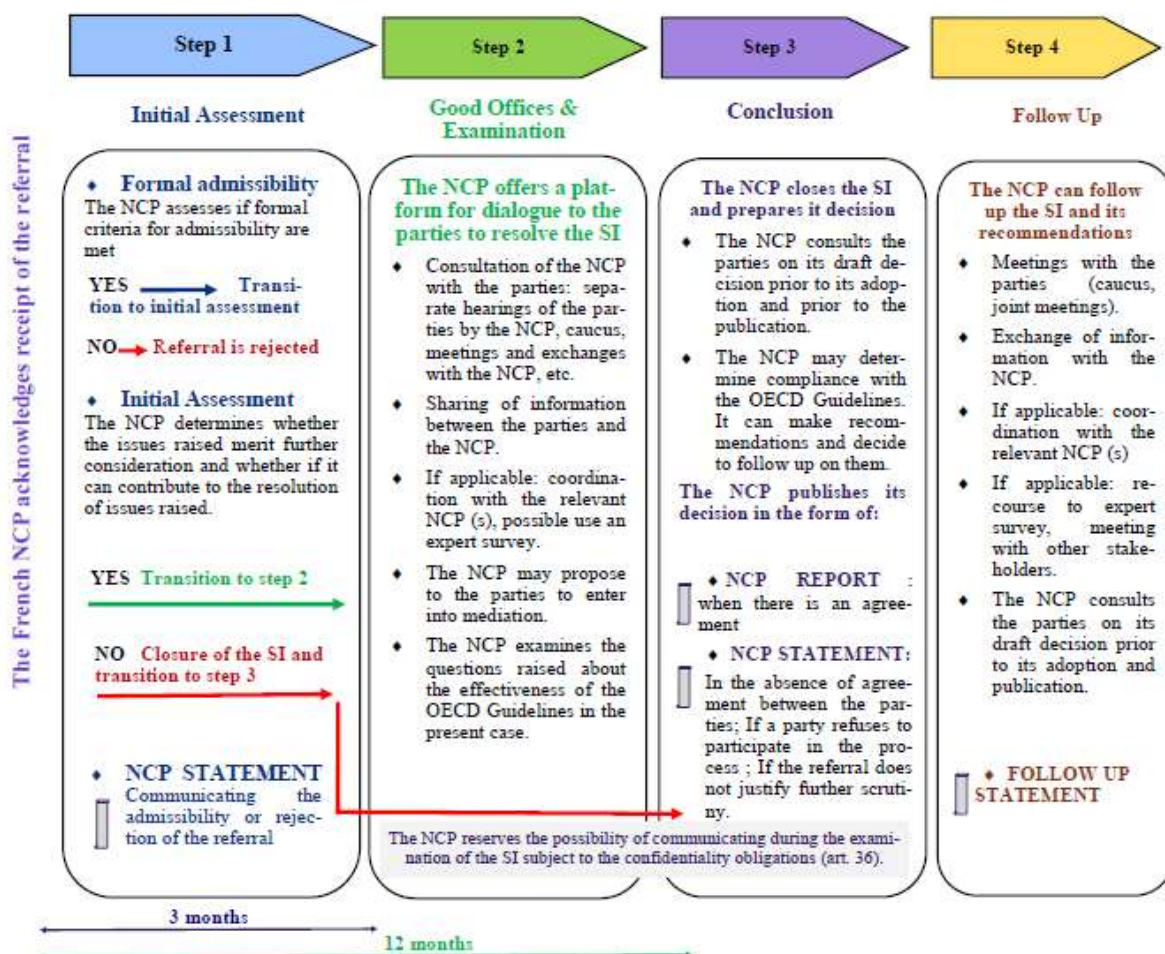
**Chapter V on Employment and Industrial Relations : 2c; 3; 4 a b; 5.**

**Chapter VI on the Environment : 1 a b c; 2 a b; 3.**

**Chapter XI on Taxation: 1; 2 .**

*The referral also refers to Commentary no. 100 of Chapter XI on Taxation.*

**How the French NCP Handles a Specific Instance (« SI »)**



## Extracts from the Bylaws of the French NCP (version of 5 February 2019)

### IV — REFERRALS TO THE NCP — INITIAL ASSESSMENT

For more information, see the procedure for dealing with a specific instance, the explanatory note on the admissibility of a referral and the explanatory note on the referral procedure.

**Article 18.** In examining the admissibility of a referral, the NCP shall begin by analysing the formal admissibility provided for by Article 16 and then carry out the initial assessment in order to assess the importance of the issues raised to ascertain whether they merit further examination as provided for in Articles 22, 23 and 25. The NCP shall contact the parties and may ask them for further information so as to finalise its initial assessment

**Article 19.** Following its initial assessment, the NCP conveys its response to the parties involved. The NCP shall issue a statement announcing the admissibility of the specific instance, which shall stipulate the identity of the parties, the country or countries concerned by the referral and a summary of its initial assessment. With due regard to the confidentiality incumbent on the NCP, the complainant may inform its principal(s) of the decision taken by the NCP with regard to admissibility.

#### Admissibility criteria

**Article 21.1.** A referral shall be declared admissible if it fulfils the formal conditions stated in Article 16.

**Article 21.2** When the NCP notes that the formal criteria for admissibility provided for by Article 16 have not been met, it shall ask the complainant to reformulate the referral within a certain timeframe which shall be set by the NCP

**Article 21.3.** When the NCP duly notes the formal admissibility of the referral, it shall begin the initial assessment provided for in Articles 18, 22, 23 and 25. The NCP shall inform the complainant of the formal admissibility of the referral and the start of the initial assessment. The NCP shall inform the enterprise of the existence of the specific instance, send it a copy of the file and ask it to respond to the referral as from the initial assessment stage. The NCP publishes an initial assessment statement in which it sets out the issues raised by the specific instance and provides the reasons for its decision. The parties and, where applicable, the supporting NCP, are consulted concerning the statement

**Article 22.** The NCP shall also ascertain whether the issue in question has been raised in good faith and in accordance with the Guidelines. **Article 23.** In assessing the admissibility of a referral to it, the NCP shall consider: The identity of the party concerned and its interest in the case; The significance of the issue and the supporting items provided; The apparent connection between the enterprise's activities and the issue raised in the specific instance; The relevance of the applicable laws and procedures, notably jurisdictional proceedings; How similar issues are being (or have been) examined at national or international level.

**Article 24.** A referral submitted by any NCP member shall be presumed admissible if it meets the above conditions

**Article 25.** The NCP shall strive to ascertain whether, in making an offer of good offices, it could make a positive contribution to the resolution of the issues raised and if this would not create serious prejudice for either of the parties involved in other proceedings, or cause a contempt-of-court situation. It may then decide either to pursue or to renounce its consideration of the specific instance.

**Article 26.** The NCP shall endeavour to conclude an initial assessment within three months of acknowledging receipt of the referral, although additional time may be granted, if need be, in order to collect essential information necessary for an informed decision.

### V — EXAMINATION OF SPECIFIC INSTANCES

For further information, refer to the diagram and to the factsheet on the specific instance processing procedure, the factsheet on the admissibility of a specific instance

**Article 27.** 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 instance, the NCP shall consult with these parties and, where appropriate, according to the cases examined, the NCP shall: Seek advice from competent authorities, and/or representatives of the business community, worker organisations, other non-governmental organisations, and experts; Consult the NCP(s) in the other country or countries concerned, including in respect of draft statements if the foreign NCP is mentioned; Seek the opinion of the OECD Investment Committee if it has doubts about the interpretation of the Guidelines in the particular circumstances; Propose, and with the agreement of the parties involved, facilitate access to consensual and non-adversarial means, such as conciliation or mediation, to assist the parties in resolving the problems.

**Article 28.** The examination of a specific instance shall take the form of a series of consultations between the enterprise involved, the party or parties having made the referral to the NCP and all NCP members. These consultations shall enable the referring party or parties to set forth the grounds for the referral in detail and allow the enterprise concerned to respond thereto. The NCP's good offices may represent regular exchanges between the

NCP and the parties (meetings, interviews, telephone conversations, videoconferencing, letters/emails). Subject to respecting the confidentiality which applies to the procedure, the NCP Secretariat manages the exchange of information between the complainant and the enterprise, on one hand, and the parties and the NCP, on the other. As from the start of its good offices, the NCP may suggest to the parties that they meet and this proposal may be reiterated during the procedure. It may also offer them mediation or conciliation which it can manage directly. The NCP shall keep the parties regularly informed of the progress of its discussions and may ask them questions.

**Article 31.** 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.

**Article 35.** At the conclusion of the consultation procedure, the NCP shall issue: A report, when the parties have reached agreement on the issues raised. The report should at a minimum describe the issues raised, the procedures the NCP initiated in assisting the parties and when an agreement was reached. Information on the content of the agreement will only be included insofar as the parties involved agree thereto; A statement, when no agreement is reached or when a party is unwilling to participate in the procedures. This statement should at a minimum describe the issues raised, the reasons why the NCP decided that the issues raised merited further examination and the procedures the NCP initiated in assisting the parties. The NCP shall make relevant recommendations on the implementation of the Guidelines, which should be included in the statement. Where appropriate, the statement could also include the reasons why an agreement could not be reached.

#### **Confidentiality**

**Article 38.** In compliance with the provisions of Article 40, NCP members' involvement in examining a specific instance carries with it their commitment to respect the confidentiality of the discussions, interviews and documents exchanged. NCP members are bound to respect the confidentiality of a referral while its examination is not closed. When required for the handling of a specific instance, certain documents may be provided at meetings to NCP members who shall formally acknowledge receipt thereof.

**Article 39.** In order to facilitate resolution of the issues raised, the NCP shall take appropriate measures to protect sensitive business and other information and the interests of other stakeholders involved in the specific instance

**Article 40.** When closing the procedures, if the parties involved have not agreed on the resolution of the issues raised, they shall be free to communicate about and discuss these issues. However, information and opinions provided during the procedures by another party involved shall remain confidential, for the parties and for the NCP members, unless that other party agrees to their disclosure or this would be contrary to the provisions of national law.

<https://www.tresor.economie.gouv.fr/tresor-international/pcn-france/comment-saisir-le-pcn-francais>