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SPECIFIC INSTANCE

“Perenco in Tunisia”

Final Statement of the French National Contact Point

The NCP found that Perenco does not comply with several recommendations of the OECD Guidelines regarding its activities in Kébili.

The NCP notes however that Perenco has evolved in its corporate policy as a result of the dialogue established as part of its good offices in relation to the OECD Guidelines.

The NCP believes that Perenco must continue to modernize its corporate policy in order to put in place a more advanced strategy and due diligence tools, with dedicated Group-level governance, in order to, in accordance with the OECD Guidelines, identify, prevent and further mitigate social and environmental risks arising from the activities of its operational subsidiaries.

The NCP encourages Perenco to support the engagement of its subsidiaries with their stakeholders as their activities are likely to have a significant impact on local populations. The NCP also encourages Perenco to continue to enhance its publication of financial, non-financial and governance information.

The NCP note that the complainants took the unilateral decision to withdraw from the procedure before it could end.

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The French National Contact Point (NCP) for the implementation of the OECD Guidelines for Multinational Enterprises was referred on 16 July 2018 a specific instance by two non-governmental organisations, Avocats Sans Frontières, an international NGO based in Belgium and present in Tunisia via a permanent office, and I WATCH, a Tunisian non-governmental organisation concerning the multinational enterprise Perenco about exploration and exploitation of hydrocarbons and gas in Kébili by Perenco. The full referral was forwarded to the NCP on 14 August 2018.

The NCP acknowledged receipt of the referral on 27 August 2018. It accepted the referral on 2 October 2018 and offered its good offices to the parties. It had to extend the initial assessment phase following Perenco's questions about the French NCP's jurisdiction that the group was contesting. The NCP conducted its good offices between December 2019 and December 2020, including a mediation meeting in September 2020. Given the length of this procedure, at its meeting on 10 December 2020, the NCP decided to terminate its good offices and move to the conclusion phase of the procedure in order to prepare its final decision, while encouraging the parties to exchange in the most appropriate format. The present statement closes the proceedings. The NCP will follow up on its recommendations.

The French NCP is a tripartite body for non-jurisdictional settlement of disputes related to the implementation of the Guidelines for Multinational Enterprises. Its objective is to contribute to the resolution of the issues raised to it through its good offices, mediation and conciliation. It shall endeavour to examine the issues raised as soon as possible, if possible within 12 months of receipt of the specific instance. It publishes its decisions on its website.

1. Presentation of the Specific Instance

The referral is made by two non-governmental organizations: Avocats Sans Frontières or “ASF” (Lawyers Without Borders) and I WATCH. Avocats Sans Frontières is an international NGO. It is specialized in the defending human rights and justice and is active on business and human rights issues. ASF is active in Tunisia where it has an office. I WATCH is a Tunisian NGO founded in 2011. It is involved in the engagement of citizens in public decision-making by working mainly on two topics: Transparency and Fight against corruption. I WATCH is a member of Transparency International's network.

The referral concerns Perenco group which was created in 1975 by M. Hubert Perrodo. Perenco presents itself as a Franco-British and independent company in the oil and gas sector that operates in 14 countries. The Group is made up of companies carrying out extractive operations and operations in the energy sector in these countries, a company in France which provides services, and offices in the United Kingdom. Offices in the United Kingdom currently host the Group's executive office and exercise currently certain management activities (finance, operations, marketing, external relations). The Group also includes holdings that hold these companies and subsidiaries and whose unique shareholder is the Perrodo family through “Perenco International Ltd” and “Perenco SA” holdings. These holdings are often located in the Bahamas and the United Kingdom.

The referral relates to the gas extractive industry activities carried out by Perenco Tunisia Company Ltd for the Perenco Group in the Kébili region of Tunisia. Perenco Tunisia Company Ltd (“PTCL” below) is seated in the Cayman Islands and would be owned by “Perenco SA” holding established in the Bahamas. The referral also concerns Perenco France, a public limited company established in France, which “*Perenco France provides support services for the various operational companies of the Group and works to help implement its projects around the world*”¹.

¹ <https://www.perenco.com/fr/filiales/france>

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The [Initial Assessment Statement of 4 December 2019](#) sets out the referral:

3.2. The referral brought by ASF and I WATCH concerns several dimensions of the OECD Guidelines.

The referral questions the respect by Perenco group of the OECD Guidelines in relation with due diligence and in particular with the risk analysis of its activities on 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 Perenco group's type of 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 annex.

3.3. The referral sets out facts about exploration and exploitation of gas and hydrocarbons by Perenco group in Tunisia and about societal and environmental impacts of these activities.

According to the referral, these activities would be carried out by Perenco Tunisia Company Ltd in Baguel-Tarfa concession and in El Franig concession in the Kebili Governorate. The referral is based on allegations of gas and hydrocarbon flaring, use of hydraulic fracking in 2010, exploration and exploitation 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 impacts for surrounding populations as well as negative incidences on the environment. According to the referral, these negative incidences and potential risks of future negative incidences related to extractive activities would not have been and would not be subjected to known and communicated appropriate due diligence measures from Perenco in Tunisia. Furthermore, according to the referral, Perenco would not respect certain OECD recommendations on taxation, fundamental rights of workers and publication of information. The referral indicates that Baguel and El Franig concessions would be jointly owned by PTCL and by Tunisian Enterprise for Oil Activities² ('ETAP' here below). The NCP notes that, according to ETAP website³, "Perenco" and ETAP would hold respectively 49 % and 51 % of Baguel concession and 50 % each of El Franig concession. The referral refers to societal responsibility of projects which ETAP would develop in fields where it is a partner in the Kebili Governorate⁴. The referral underlines that ETAP is not covered by the referral because PTCL would be entirely responsible for exploration and exploitation 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 the extension's requests of the-said concessions from 2020 to 2035 and their validation by the Assembly of the Representatives of the People (ARP⁵) in Tunisia.

The [Initial Assessment Statement of 4 December 2019](#) contains the list of the Guidelines recommendations mentioned in the referral.

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

Rule 31 of the [French 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 (...)"

As a result of sanitary measures to prevent Covid-19, as of March 2020, meetings between the parties and with the NCP as well as internal NCP meetings were held via video-conferences and phone-conferences.

² « Entreprise Tunisienne des Activités Pétrolières, ETAP

³ Last consultation on 17th October 2018 - <http://www.etap.com.tn/index.php?id=1160>

⁴ See "Responsabilité sociale de l'ETAP", last consultation on 17th Octobre 2018, <http://www.etap.com.tn/index.php>

⁵ « Assemblée des Représentants du Peuple »

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◆ **1st step: Admissibility and Initial Assessment of the referral (August 2018 to December 2019)⁶**

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.

At its meeting on 24 June 2019, the NCP took note of the consultations' results. It informed the parties and the Tunisian NCP on 15/16 July 2019. On 3 September 2019, Perenco stated that it was maintaining its position.

On 2 December 2019, Perenco France and Perenco Tunisia (PTCL) 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 offices⁷. The initial evaluation phase has ended.

*For more details on the initial assessment decision of the French NCP:
→ [Initial Assessment Statement of 4 December 2019](#)*

◆ **2nd step: Good offices and mediation of the French NCP (January to December 2020)**

Good offices consisted of several meetings and exchanges of information. The [Intermediary Statement of 18 February 2021](#) outlines actions taken during the good offices period.

■ **French NCP Mediation and good offices**

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 organizations, ASF and I WATCH.

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 NCP⁸. 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.

During this mediation meeting, 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 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.

⁶ See French NCP's [Initial Assessment Statement of 4 December 2019](#) and [Intermediary Statement of 18 February 2021](#)

⁷ Webpage dedicated to the referral [here](#) & Initial Assessment Statement, 4 December 2019 [FR](#) and [EN](#)

⁸ NCP Chair, NCP 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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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.

■ Exchange of information between parties and the NCP

In addition to the oral exchange of information between the NCP and the parties, Perenco and the complainants transmitted documents to the NCP. In accordance with its practice, on a number of occasions, the NCP invited Perenco to share documents to the complainants as well as the NCP invited the complainants to fulfil a commitment to respect confidentiality and secrecy of discussions. They did not wish to do fulfil this commitment. The NCP notes that this is the first time since its creation in 2000 that a complainant refuses to sign this commitment to confidentiality which enables to share documents. The NCP notes and besides regrets that information transmitted by Perenco could not be shared with the complainants. The exchange of information and mutual trust are important elements for the success of mediation. This situation may have weakened the procedure.

During the good offices, the complainants sent letters to the NCP outlining their expectations out of the procedure: 24th March 2020, 1st June 2020, 6th October 2020, 13th November 2020, and 23rd December 2020. These letters, addressed to the NCP, were not sent to Perenco.

During the good offices, Perenco France provided the NCP with responses to the referral and to the NCP's questions in May 2020, June 2020 and December 2020. The company agreed to forward some of these documents to the complainants subject to their signature of the confidentiality agreement. 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. During the good offices phase, Perenco informed the NCP of progress made in formalizing Perenco France's CSR report ("DPEF"⁹) and the Group's "Sustainability Report". The draft DPEF was forwarded to the NCP in May 2020. The Sustainability Report was forwarded to the NCP in December 2020.

During the good offices phase, the complainants wished to have access to environmental impact assessments carried out in order to obtain administrative authorizations for Perenco's extractive operations in Kébili. PTCL and Perenco France indicated that they were not in a position to share these impact assessment neither to the NCP nor to the complainants because they would be confidential and would be subjected to the Tunisian Environment Protection Agency under Tunisian law¹⁰. At the mediation meeting of 24th September 2020, the NCP proposed using the diplomatic channel to request access to environmental impact assessments from the Tunisian administration. The complainant organizations 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 organizations 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. 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

⁹ Non-Financial Performance Declaration ("DPEF" in French)

¹⁰ Decree No. 2005-1991 of 11 July 2005 on environment impact assessments and establishing the categories of units subjected to environmental impact assessments and the categories of units subjected to the specifications

ANPE website: [EIA, Environmental Impact Assessment Tunisia | ANPE](https://www.anpe.tn/en/Environmental-Impact-Assessment-Tunisia)

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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.*

At its meetings on 12th November and 10th December 2020, the NCP noted, on the one hand, persistent disagreements between the parties regarding the access to these impact assessments and, on the other hand, the intention of the complainants to use a judicial proceeding to obtain access to these studies. This issue crystallized the procedure while the hypothesis of opening this parallel procedure did not facilitate the continuation of the NCP's mediation.

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 .while encouraging 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.

◆ 3rd step: Conclusion of the Referral (December 2020 – September 2021)

The NCP decided to hear the parties separately to discuss the referral's conclusion. These two hearings took place on 11th February 2021 in the form of video-conferences between Perenco and the NCP and then between and ASF and the NCP; I WATCH was absent. Discussion with Perenco focused on the draft intermediary statement and on the Group's CSR policy. For its part, ASF expressed its reservations about the procedure.

By letter dated 25th February 2021, ASF and I WATCH informed the NCP of their withdrawal from the procedure, stating : *"Rather than embarking on a new indefinite duration to negotiate a statement or report concluding the procedure, we already prefer to act our withdrawal and thus regain our freedom of speech. We now hope that the final statement will offer a faithful account of the procedure and of the few observations that may have been formulated on the basis of the Guidelines, as well as our position and the real reasons behind it"*. The NCP is surprised by this attitude of complainant organizations, which thus deprive themselves to promote their understanding of the Guidelines in the case at hand during the preparation of the final decision of their referral. Moreover, this decision by the complainants weakens a posteriori efforts made by the NCP to convince the company to participate in a dialogue with the complainants, at the risk of raising doubts about the good faith of the referral.

Subsequently, in March 2021, ASF issued a press release, co-signed by I WATCH, announcing their withdrawal from the procedure and commenting on it. The French NCP regrets this situation at a time when the procedure has not been completed. The NCP *notes that rule 40 of its Bylaws that "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"*. The NCP recalls that respect for confidentiality and mutual trust are important elements for the success of good offices and mediation. The French NCP does not share the description of the procedure in the complainants' communication. ASF and I WATCH, signatories to the said press release, are solely responsible for the content of this public statement. The NCP members also deplore statements made by other organizations in this regard which they believe are defamatory.

The draft final statement was adopted by the NCP on 26th July 2021 by consensus with the exception of one organization of the union college. The NCP then consulted with the Group, the complainant organizations, the British NCP and the Tunisian NCP which is in the process of operationalization. In accordance with its practice and the principles of transparency, predictability, equitability and impartiality of the procedure, the NCP has

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been keen to inform the complainant organizations about the draft final statement and it invited them to address observations although they had announced their withdrawal from the procedure. The Group send observations. Supportive NCP's agreed with the draft. The NCP took into account the comments received and adopted the Final Statement by consensus with the exception of one organization of the trade unions college. Then the NCP send the Final Statement for information to the parties and supporting NCPs. After that, the Final Statement was issued on the NCP's website and the NCP Secretariat notified the Statement to the OECD in order to update the NCP database ([here](#)).

◆ Coordination with foreign National Contact Points

The referral concerns the Perenco Group and more specifically two entities of the Group: Perenco France seated in France and Perenco Tunisia Company Ltd active in Tunisia. In addition, Perenco offices, which house the Group's executive management and cross-cutting directorates (finance and operations in particular) are present in the United Kingdom. In accordance with the Procedural Guidance of the Guidelines, when a specific instance concerns several adhering countries to the Guidelines, the NCP who will be responsible for the procedure of the referral (lead NCP) and the supporting NCP(s) should be designated. The lead NCP must coordinate its action with the supporting NCPs.

In accordance with the [OECD Guide on NCPs Coordination](#) and after consultation with the OECD Secretariat, it was agreed that the French NCP would lead the referral (see [Initial Assessment Statement of 4 December 2019](#)). At the time of acknowledgement of the referral in August 2018, according to the OECD Annual Reports on Responsible Business Conduct of 2016 and 2017, Tunisia no longer has a NCP. In December 2019, when the initial evaluation was finalized, the Tunisian NCP was identified but was not yet operational. In June 2021, at the time of the conclusion of the referral, the Tunisian NCP is still in the process of operationalization.

During the procedure, the French NCP Secretariat regularly informed its Tunisian and British counterparts of the progress of the procedure and consulted them on the draft initial assessment and final statements. They thanked the French NCP for its cooperative, collaboration and open approach. The French NCP thanks them for their support.

3. Substantive analysis of issues raised about the OECD Guidelines effectiveness

ASF and I WATCH's referral raises issues about the effectiveness of the Guidelines in relation with Perenco's extractive activities in Tunisia. When it started its good offices in December 2019, the NCP hoped that *"it could contribute to the resolution of issues raised by the specific instance on the effectiveness of the Guidelines"*. At the end of the procedure, the NCP notes the persistence of disagreements between the parties on the substance of the matter and it notes the difficulties in establishing a regular dialogue between them. In accordance with its Bylaws, the NCP analyzed issues raised by the referral and developed recommendations to the company in order to contribute towards the proper implementation of the Guidelines.

Perenco Group is a multinational enterprise composed of autonomous companies. It has subsidiaries in France, the United Kingdom, Tunisia and in other countries adhering and non-adhering to the OECD Guidelines. Cross-cutting consulting services and executive management are provided from entities located in France and the United Kingdom, respectively. Perenco should therefore conduct its operations around the world by ensuring compliance with the OECD Guidelines, including towards its business relations, within the Group and beyond.

The action of the French NCP has led Perenco Group to evolve in its understanding of the OECD's expectations about due diligence, responsible business conduct and transparency. The dialogue with the NCP and with the complainants led him to modernize its "Social and Environmental Responsibility" policy through the

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development of Perenco France's first "Rapport RSE" (CSR Report) and the Group's first "Sustainability Report". The NCP notes, however, that the conduct of the Group's operations in Kébili is not in line with several recommendations of the Guidelines. Actions still need to be taken for Perenco Group to have a more thorough due diligence policy adapted to risks posed by its activities, to develop appropriate tools for identifying, preventing and managing social, societal and environmental risks (e.g.: regular and more frequent water and air quality audits, regular information to surrounding populations of the results of these audits, , etc.). Its governance needs to be adapted to guide this policy to ensure its effective implementation by all its operational subsidiaries. Additional efforts are also expected to facilitate engagement with stakeholders when Perenco's activities or projects are likely to have a significant impact on local populations (e.g. through the identification of stakeholders for each Perenco's production site and the establishment of formal and regular dialogue frameworks in operating countries). As such, Perenco could draw upon the OECD due diligence guidance on meaningful stakeholder engagement in extractive industries¹¹. Finally, further efforts are expected to improve the publication of information¹² about the Group's governance, its activities and the management of its environmental and social impacts, as well as on financial and extra-financial dimension of its activities, in order to better take into account legal requirements on the one hand and the expectations of the Guidelines.

The NCP assesses the following with regard to issues raised by the referral:

◆ About Perenco's due diligence vis-à-vis its activities in Kébili

The complainant organizations believe that Perenco would not exercise due diligence with regard to extractive activities conducted in Kébili and would not implement measures to identify, prevent and mitigate risks posed by its activities on the environment and on human rights. Remedial measures would not be taken to address negative incidences. Finally, according to the complainants, Perenco would not consult with stakeholders, particularly people potentially affected by its activities, and would not communicate on its due diligence measures.

During the good offices and at the mediation meeting, Perenco acknowledged that it did not have a due diligence policy nor at Group level. Perenco France pointed out that Perenco's subsidiaries are independent and that the Group's executive management, based in England, is responsible for environmental and social responsibility ("RSE" or CSR). Perenco has thematic policies that constitute the Group's "philosophy" and are adapted locally by the subsidiaries.

During the good offices and at the mediation meeting, about its activities in Kébili, Perenco informed the NCP that it had completed environmental impact assessments required to obtain the necessary administrative authorizations to conduct its operations. It informed the NCP of waste management and treatment measures taken following the closure of a well after a small-scale hydraulic fracturing exploration and of environment tests realized in October 2015. It also informed the NCP of the results of water quality analyses performed in September and October 2019 in the close to PTCL facilities in Kébili. These results didn't revealed any kind of pollution of the environment in accordance with Tunisian standards in force. This information could not be shared with the complainants due to their lack to commit to respect confidentiality. The NCP did not get details on the frequency of impact assessments and water analyses. It also appears that no human rights impact assessment study would have been conducted with regard to the surrounding populations in Kébili. The mediation meeting between the parties did not allow for the establishment of a framework for local dialogue

¹¹ OCDE Due diligence guidance on Meaningful Stakeholder Engagement in the Extractive Sector: [EN](#) & More: [HERE](#)

¹² Extracts from recommendations 2 and 3 of Chapter III on disclosure: Financial and operating results; enterprise objectives; major share ownership and voting rights including the structure of the group of enterprises and intra-group relations, as well as control enhancing mechanisms; the remuneration policy for members of the board and key executives (...); issues regarding workers and stakeholders; governance structures and policies (...); value statements or statement of business conduct for public disclosure (...); policies and other codes of conduct (...); its performance in relation to these statements and codes; information on internal auditing, risk management and legal compliance systems; information on relationships with workers and stakeholders.

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between the parties; the request for the transmission of environmental impact assessments studies appeared to be a priority for complainants.

Perenco explained that the Group's companies are independent and have broad autonomy but report to the Group's executive management. Perenco France is a service provider for the Group's operational subsidiaries and deploys staff there. Like the Group's other entities, Perenco France reports to Perenco's executive management located in London. Through its consulting and human resources services, Perenco France maintains business relationships with the other Group's entities, including Tunisia (see Initial Evaluation Statement). The Group states it has an audit department. The NCP questioned nonetheless Perenco's highly decentralized organization that is characterized by the responsibilities of the operational companies / subsidiaries, particularly in the management of risks related with social issues, the environment and RBC.

Perenco presented its CSR policy to the NCP, which was subject of discussions with the NCP. The NCP notes that it corresponds more to the support of local projects, although necessary, identified by each subsidiary rather than to risks mitigation measures and to measures to remediate negative incidences within the meaning of the Guidelines. Essentially philanthropic, the NCP notes that the Group's corporate policy is dated. It notes that Perenco has embarked on a process of improvement and modernization that will need to be continued.

RECOMMENDATION 1: In accordance with recommendations [II.A.10](#) and [II.A.11](#) on due diligence, Perenco should strengthen its environmental and societal risks analysis tools of PTCL in order to put in place a system for risk management and risk analysis of actual and potential impacts of its activities as provided for in the Guidelines. These measures should be adapted and transposed at Group level to develop a due diligence strategy as foreseen by the OECD.

RECOMMENDATION 2: In accordance with recommendations [II.A.10](#) and [II.A.14](#) on due diligence, the NCP recommends that PTCL review its communication to its stakeholders "to account for how these impacts are addressed" and to "engage with relevant stakeholders in order to provide meaningful opportunities for their views to be taken into account in relation to planning and decision making for projects or other activities that may significantly impact local populations". These measures should be adapted and transposed at Group level to develop a due diligence strategy as foreseen by the OECD.

RECOMMENDATION 3: The NCP recommends that Perenco France continue to modernize its corporate policy in order to make it a tool of due diligence for the responsible conduct of the Group. The NCP recommends that Perenco put in place a governance to ensure that its due diligence and sustainability policies are properly implemented, and that allows at the same time Perenco to support the subsidiaries and to ensure that they follow the group's guidelines. The NCP invites it to examine the feasibility of establishing a "CSR" Committee at the Group level and at the country level that would be open to the various relevant stakeholders. In this regard, the NCP invites Perenco France to raise awareness and train the Group's subsidiaries about the OECD Guidance on due diligence for the responsible business conduct ([here](#)) and the OECD due diligence guidance on meaningful stakeholders engagement in the extractive sector ([here](#)).

RECOMMENDATION 4: In accordance with recommendations [A.10](#), [11](#), [12](#) and [13](#) of chapter II on due diligence and [1](#) to [6](#) of chapter IV on human rights, the NCP recommends that Perenco France integrate the OECD Guidelines and their various guides into the "operations, products and services" that it provides to its business relationships within the Group – operational subsidiaries – and to "encourage, where practicable, business partners to apply principles of responsible business conduct compatible with the Guidelines". These services could notably include the establishment of processes for identification, monitoring and management of environmental risks (impacts on water, soil, air, health and safety) and on human rights, as well as ways of sharing information on their results with stakeholders (e.g. local and health authorities, surrounding populations). In addition, it is important to ensure that these services include the monitoring of corrective measures or remedial measures in the event of negative impacts on the environment, workers and human rights, as well as communication actions on the due diligence measures taken. Perenco France could, for example, establish a standard benchmark of the group for environmental and societal impact assessments, as well as a group policy on facilitating engagement with local stakeholders

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in order to support subsidiaries so that they take the OECD Guidelines into account. These tools should be endorsed by the Group's executive management.

◆ **About PTCL's contribution to employment, local development and taxation in Tunisia**

The complainant organizations believe that Perenco would not really contribute to Kébili local development. They refer to insufficient recruitment of staff coming from Kébili that would result from the use of subcontracting and a recruitment policy centralized in Tunis. They refer to “repeated social movements” and differentiated working conditions in terms of safety between incumbent and subcontractor's workers. They refer to “opaque taxation” and allegations of non-compliance with the payment of taxes due in Tunisia.

PTCL provided the NCP with information on the employment in its facilities in Kébili. It indicated that 60 % of workers were from Kébili and that when profiles sought are not present in the region, then recruitment would be extended to other regions. PTCL clarifies that the use of subcontracting responds to specific needs such as catering, security or transport, and that it helps to support local development through the use of local small and medium-sized enterprises. PTCL denied allegations of recent strikes and social movements in Kébili. PTCL states that its employees and those of its subcontractors benefit the same HSE standards (health, safety, environment) and that its subcontracting contracts would include an HSE clause. Regarding social dialogue, Perenco said that PTCL would have a works council, organize elections for workers' representatives and that the UGTT trade union would be present at its various sites. Finally, Perenco transmitted confidential information to the NCP Management attesting PTCL's regularity vis-à-vis its tax obligations following the three-year tax audits carried out by Tunisian tax authorities over the period 2002-2015. Control over the period 2015-2017 was scheduled to begin in 2019. The Group indicated that PTCL's results would be in the form of dividends shared between ETAP (co-operator of PTCL) and its holding company.

***RECOMMENDATION 5:** In accordance with recommendation 5 of chapter V, the NCP recommends that Perenco “to the greatest extent practicable, employ local workers and provide training to improving skill levels, in co-operation with worker representatives and, where appropriate, relevant governmental authorities” for its activities in Kébili. In addition, the NCP encourages Perenco to provide information to its stakeholders in Tunisia on the direct and indirect impact of its activities on employment and the economy in Kébili by distinguishing the role of subcontracting.*

***RECOMMENDATION 6:** In accordance with recommendations 2a, 2d, 2e, 2h and 3a of chapter III, the NCP recommends that PTCL provide information on its financial and operating results and taxation, as discussed in the Guidelines in Chapter XI. This could involve a commitment to take into account OECD recommendations on international taxation, for example, in the form of a code of good conduct. These measures should be transposed at Group level to allow transparency as foreseen by the OECD.*

◆ **About the communication of information by Perenco concerning its activities in Kébili**

Complainant organizations consider that Kébili's local populations, ASF and I WATCH are not informed about actual activities and risks posed by Perenco as provided for in the Guidelines (III.3 and VI.2). They believe that Perenco does not provide information on the use of hydraulic fracking for the exploration or exploitation of shale gas. They believe that Perenco does not provide information on the risks of pollution, on health, on the use of water resources and on the impact on local agriculture related to its extractive activities, the gas flaring and its waste treatment.

Perenco provided explanations to the NCP on hydraulic fracking in Kébili and on water consumption associated with this practice. It informed it about the realization of environmental impact assessment studies required by Tunisian law and of water analyses, which were submitted to competent Tunisian authorities by PTCL (see above). It informed it about waste treatment measures controlled by a third-party verifier. This information could not be transmitted to the complainants, due to their lack to commit to respect confidentiality. Perenco indicated that PTCL maintains regular relations with its public co-contractor ETAP as well as with the national and local authorities involved in its activities. The NCP emphasizes that the information of Perenco's

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stakeholders, in particular populations surrounding its facilities in Kébili and organizations representing them, is important given real and potential risks associated with extractive activities.

RECOMMENDATION 7: *In accordance with recommendation 2 of chapter VI of the Guidelines, the NCP recommends that Perenco Taking into account concerns about cost, business confidentiality, and the protection of intellectual property rights: a) Provide the public and workers with adequate, measureable and verifiable (where applicable) and timely information on the potential environment, health and safety impacts of the activities of the enterprise, which could include reporting on progress in improving environmental performance; and b) Engage in adequate and timely communication and consultation with the communities directly affected by the environmental, health and safety policies of the enterprise and by their implementation”.*

◆ About the publication of information by Perenco

The complainant organizations believe that Perenco would not publish adequate information on its activities around the world, on risks of real and potential impacts or on its governance, whose opacity they denounce.

The NCP notes that chapter III of the Guidelines contains numerous recommendations on the publication of information on corporate governance, as well as on financial and non-financial dimensions. The publication of information by companies is often regulated by national laws and regulations. The Guidelines also stipulate that “*Obeying domestic laws is the first obligation of enterprises*” (I.1).

The NCP notes that following the dialogue it initiated with Perenco, Perenco France has decided to carry out its Non-Financial Performance Declaration in order to comply with French obligations arising from the EU Directive 2014/95/EU on non-financial reporting¹³. The NCP welcomes this progress. It notes, however, that DPEF should be further developed in order to better align with reporting obligations. It stressed that these European obligations are being revised (“[Corporate Sustainability Reporting](#)”).

The NCP notes that as a result of the dialogue it initiated with Perenco, the Group has decided to establish a “*Sustainability Report*”. Invited by the NCP to publish it on its website, Perenco indicated that, at this stage, the report would be made available to interested parties upon request and would be enriched before considering its publication. The NCP welcomes this progress. It noted that this “*Sustainability Report*” updates the group’s CSR policy and refers to the OECD Guidance on extractive industries, to “risk analysis” and “impacts mitigation”; those concepts were absent from the previous CSR approach. Nevertheless, the NCP believes that there remains a significant room for improvement. Besides, the Group’s governance is not explained in this report, which remains rather general and could be expanded to better reflect the OECD Guidelines.

RECOMMENDATION 8: *The NCP recommends that Perenco incorporate detailed elements of the Group’s governance into its information disclosure. It invites Perenco to continue its work on its non-financial reporting and on sustainability. For example, the NCP recommends that Perenco follow recommendations 1 to 4 of chapter III of the Guidelines about the disclosure of financial, non-financial and governance information to deepen and enrich Perenco France’s DPEF and the Group’s sustainability report. This report could, for example, refer to sectoral standards (e.g.: Security, human rights, environment), include objectives and indicators, and present Perenco’s due diligence mechanism. The NCP recommends that the Group publish both reports on its website.*

¹³ New Economic Regulations of 15 May 2001 as amended by the Ordinance of 19 July 2017.

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4. Conclusion

The NCP thanks the parties for their participation in the proceedings.

The NCP recalls that the concepts and principles of the Guidelines provide that “*2. Obeying domestic laws is the first obligation of enterprises. The Guidelines are not a substitute for nor should they be considered to override domestic law and regulation. While the Guidelines extend beyond the law in many cases, they should not and are not intended to place an enterprise in situations where it faces conflicting requirements. However, in countries where domestic laws and regulations conflict with the principles and standards of the Guidelines, enterprises should seek ways to honour such principles and standards to the fullest extent which does not place them in violation of domestic law*”. The NCP states that compliance with local law does not, as a matter of principle, exclude additional improvement measures to comply with the OECD Guidelines.

The NCP will follow up on its recommendations in twelve months.

The NCP closes this specific instance.

In the Annex:

- Recommendations of the OECD and of the OECD Guidelines referred in the Final Statement.
- Diagram of the procedure for handling a specific instance by the French NCP.

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Annexes

ANNEXE I.

OECD's Recommendations and OECD Guidelines referred in the Final Statement

- ◆ **OCDE Due Diligence for Responsible Business Conduct ([here](#))**
- ◆ **OECD Due Diligence Guidance for Meaningful Stakeholder Engagement in the Extractive Sector ([here](#))**
- ◆ **Recommendations of the OECD Guidelines for Multinational Enterprises:**

Chapter 1 - Concepts and Principles

1. The Guidelines are recommendations jointly addressed by governments to multinational enterprises. They provide principles and standards of good practice consistent with applicable laws and internationally recognised standards. Observance of the Guidelines by enterprises is voluntary and not legally enforceable. Nevertheless, some matters covered by the Guidelines may also be regulated by national law or international commitments.

2. Obeying domestic laws is the first obligation of enterprises. The Guidelines are not a substitute for nor should they be considered to override domestic law and regulation. While the Guidelines extend beyond the law in many cases, they should not and are not intended to place an enterprise in situations where it faces conflicting requirements. However, in countries where domestic laws and regulations conflict with the principles and standards of the Guidelines, enterprises should seek ways to honour such principles and standards to the fullest extent which does not place them in violation of domestic law.

Chapier 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:

A. Enterprises should:

10. 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. The nature and extent of due diligence depend on the circumstances of a particular situation.

11. Avoid causing or contributing to adverse impacts on matters covered by the Guidelines, through their own activities, and address such impacts when they occur.

12. Seek to prevent or mitigate an adverse impact 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. This is not intended to shift responsibility from the entity causing an adverse impact to the enterprise with which it has a business relationship.

13. In addition to addressing adverse impacts in relation to matters covered by the Guidelines, encourage, where practicable, business partners, including suppliers and sub-contractors, to apply principles of responsible business conduct compatible with the Guidelines.

14. Engage with relevant stakeholders in order to provide meaningful opportunities for their views to be taken into account in relation to planning and decision making for projects or other activities that may significantly impact local communities.

Chapter III – Disclosure

1. Enterprises should ensure that timely and accurate information is disclosed on all material matters regarding their activities, structure, financial situation, performance, ownership and governance. This information should be disclosed for the enterprise as a whole, and, where appropriate, along business lines or geographic areas. Disclosure policies of enterprises should be tailored to the nature, size and location of the enterprise, with due regard taken of costs, business confidentiality and other competitive concerns.

2. Disclosure policies of enterprises should include, but not be limited to, material information on:

2a) the financial and operating results of the enterprise;

2b) enterprise objectives;

2c) major share ownership and voting rights, including the structure of a group of enterprises and intra-group relations, as well as control enhancing mechanisms;

2d) remuneration policy for members of the board and key executives, and information about board members, including qualifications, the selection process, other enterprise directorships and whether each board member is regarded as independent by the board;

2e) related party transactions;

2f) foreseeable risk factors;

2g) issues regarding workers and other stakeholders;

2h) governance structures and policies, in particular, the content of any corporate governance code or policy and its implementation process.

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3. Enterprises are encouraged to communicate additional information that could include:

- 3a)** value statements or statements of business conduct intended for public disclosure including, depending on its relevance for the enterprise's activities, information on the enterprise's policies relating to matters covered by the Guidelines;
- 3b)** policies and other codes of conduct to which the enterprise subscribes, their date of adoption and the countries and entities to which such statements apply;
- 3c)** its performance in relation to these statements and codes;
- 3d)** information on internal audit, risk management and legal compliance systems;
- 3e)** information on relationships with workers and other stakeholders.

4. Enterprises should apply high quality standards for accounting, and financial as well as non-financial disclosure, including environmental and social reporting where they exist. The standards or policies under which information is compiled and published should be reported. An annual audit should be conducted by an independent, competent and qualified auditor in order to provide an external and objective assurance to the board and shareholders that the financial statements fairly represent the financial position and performance of the enterprise in all material respects.

Chapter IV - Human Rights

States have the duty to protect human rights. Enterprises should, within the framework of internationally recognised human rights, the international human rights obligations of the countries in which they operate as well as relevant domestic laws and regulations:

- 1.** Respect human rights, which means they should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved.
- 2.** Within the context of their own activities, avoid causing or contributing to adverse human rights impacts and address such impacts when they occur.
- 3.** Seek ways to prevent or mitigate adverse human rights impacts that are directly linked to their business operations, products or services by a business relationship, even if they do not contribute to those impacts.
- 4.** Have a policy commitment to respect human rights.
- 5.** Carry out human rights due diligence as appropriate to their size, the nature and context of operations and the severity of the risks of adverse human rights impacts.
- 6.** Provide for or co-operate through legitimate processes in the remediation of adverse human rights impacts where they identify that they have caused or contributed to these impacts.

Chapter V - Employment and Industrial Relations

Enterprises should, within the framework of applicable law, regulations and prevailing labour relations and employment practices and applicable international labour standards:

- 5.** In their operations, to the greatest extent practicable, employ local workers and provide training with a view to improving skill levels, in co-operation with worker representatives and, where appropriate, relevant governmental authorities

Chapter VI - Environment

Enterprises should, within the framework of laws, regulations and administrative practices in the countries in which they operate, and in consideration of relevant international agreements, principles, objectives, and standards, take due account of the need to protect the environment, public health and safety, and generally to conduct their activities in a manner contributing to the wider goal of sustainable development. In particular, enterprises should:

- 2.** Taking into account concerns about cost, business confidentiality, and the protection of intellectual property rights:
 - a)** provide the public and workers with adequate, measureable and verifiable (where applicable) and timely information on the potential environment, health and safety impacts of the activities of the enterprise, which could include reporting on progress in improving environmental performance; and
 - b)** engage in adequate and timely communication and consultation with the communities directly affected by the environmental, health and safety policies of the enterprise and by their implementation.



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ANNEXE II.

Diagram of the procedure for handling a specific instance by the French NCP

