

Statement from the French National Contact Point for the OECD

Guidelines for Multinational Enterprises

7 October 2013

On 9 July 2012, five claimants (four Indian and French Non-governmental organisations and associations and a French trade union) referred a specific instance to the National Contact Point (NCP) concerning Michelin's construction of a tyre plant in the State of Tamil Nadu in India. At the end of the NCP's work, the claimants decided to withdraw their referral and made public statement, in particular through a document issued by the three French claimants entitled "dysfunctioning of the OECD National Contact Point in France". For details on the substance of the case, the NCP refers the reader to its final statement issued on 27 September 2013 - <http://www.tresor.economie.gouv.fr/File/397224>

1. The French NCP is an independent and collegial body

Formed in accordance with the OECD Guidelines, the French NCP is a collegial, tripartite and independent body. It is made up of members from various government departments (economy and finance, labour and employment, foreign affairs and ecology), six French trade unions (CGT, CFDT, FO, CFE-CGC, CFTC and UNSA), and MEDEF, representing enterprises. The NCP's tripartite structure is unique amongst NCPs worldwide (the majority of which only have members from government departments) and ensures impartial decisions.

The NCP does not receive instructions from any other body. Although the Directorate General of the Treasury provides its operating resources, appoints its chair and hosts its website, it is not involved in the NCP's assessment and decision-making process. Discussions within the NCP are free and confidential. Decisions are taken by consensus following these discussions. When in exceptional circumstances there is no consensus, the decision is taken by the chair; and this will be set out in the statement or report issued at the end of the procedure.

Reaching consensus doesn't mean compromising with the Guidelines, which the NCP is bound to respect. It, involves assessing circumstances and facts -that cannot always be checked - in light of the Guidelines which as principles are obviously open to interpretation. Reaching a consensus also means attempting to contribute to help find solutions, as detailed below.

The bylaw of the French NCP were revised in July 2012 to reflect the May 2011 OECD Guidelines Update and to improve its institutional arrangement, particularly by strengthening transparency and visibility of its work and the scope and effectiveness of its decisions (<http://www.tresor.economie.gouv.fr/File/374625>).

2. The NCP reiterates that the spirit and goals of the OECD's NCPs are to contribute to resolve issues relating to the corporate social responsibility of multinational enterprises

The May 2011 update of the Guidelines made conciliation and mediation central to the work of NCPs by the “resolution of issues that arise relating to the implementation of the Guidelines”. In contrast, establishing potential violation is merely optional.

The NCP's bylaws state that “the NCP should evaluate whether an offer of good offices could make a positive contribution to the resolution of the issues raised (...) It may then decide to accept or abandon the specific instance procedure” (Art. 25).

The NCP has entire discretion to assess the feasibility of a mediation procedure but may not, under any circumstances, force the parties to take part. When one of the parties refuses its good offices, rejects mediation under the aegis of the NCP or imposes conditions unacceptable to the other party, mediation becomes more difficult or even impossible.

The French NCP always strives to offer the stakeholders a mediation option. In the “Michelin” case, the NCP attempted to start a mediation procedure based on the measures requested by the claimants but noted that the disagreements between the parties made this impossible.

With the mission to contribute to conflict resolution pursuant to the OECD Guidelines, the NCP reiterates that all stakeholders have specific responsibilities as regards specific instance, especially concerning confidentiality.

3. The NCP conducts its procedures according to the guiding principles and core criteria set forth in the procedural guidance of the OECD Guidelines and fully assumes its responsibilities

When handling the “Michelin” specific instance, as well as with the other cases referred to the NCP¹, the procedure was conducted in compliance with the guiding principles of impartiality, predictability, equitability and compatibility with the Guidelines as well as with the core criteria of visibility, accessibility, transparency and accountability as set forth in the bylaw (Art. 2) and in the procedural guidance of the Guidelines.

When examining the specific instances referred to it, the NCP didn't give priority to a particular case. On the contrary, in 2012 and 2013, the NCP worked on a very sustained tempo, was much higher than in previous years, in order to meet the target it had set as timeframes for handling specific instances. The NCP takes the time needed to move each case forward taking into account its particular features.

The NCP and its secretariat are systematically and always available to answer all enquiries from claimants in the form of work meetings, telephone conversations, e-mails or NCP meetings.

It should be mentioned that the admissibility of a referral is established on the basis of the core formal criteria set forth in the Guidelines (p. 89). Under no circumstances does admissibility mean a “prejudgment” on the merits.

At their request, all the French and Indian claimants were interviewed within a short delay, before the enterprise was. The NCP understands that it may be difficult for Indian claimants to appear before a French body which they themselves referred to. However, in respect of arranging interviews, translations and interpreting, the NCP handles all the specific instances referred to it equitably and uses the same methodology

¹ The NCP has handed down seven decisions in the last eighteen months.

The parties sent several thousand pages of documentation to the NCP. In compliance with the core principal of transparency, the documentation was sent to both parties and to the NCP members. The claimants exercised their right of response on several occasions in compliance with the core principals of accessibility and of fair and equitable treatments. The NCP verified that one of the French claimants was relaying information back to its Indian co-claimants. The fact that there was no mediation did not prevent the NCP from carrying out its examination which led to issuing a public statement on 27 September containing a certain number of reasoned assessments of the specific instance. There is no doubt that the NCP fully assumed its responsibilities.

The NCP attaches great importance to changing enterprises' practices by underscoring the key concepts of the Guidelines such as "business relationship" and "due diligence process". This is borne out by its work over the previous months; which also shows that it is able to fully assume its responsibilities. Out of the seven decisions handed down in recent months, two noted that the parties had concluded an agreement ("**Sodexo**" and "**Roquette Frères**") and two established a violation of the Guidelines ("**Molex**" and "**Accor**"). Another decision caused a company to commit not to resume purchasing cotton from Uzbekistan as child labour was being used ("**Devcot**"). In this case, in which four NCPs were involved, one of the claimant NGOs, the European Centre for Constitutional and Human Rights (ECCHR)², acknowledged that only the French NCP clearly held that child labour and forced labour constitute a flagrant violation of the Guidelines.

Special mention should be given to the "**Socapalm-Cameroun**" case in which the Bolloré Group, amongst others, was involved. The NCP's action led to the Bolloré Group acknowledging its responsibility vis-à-vis this company in which it is not a majority shareholder. During mediation under the aegis of the NCP, the parties established a joint action plan to improve corporate social responsibility in the Socapalm palm oil plantations. The plan was approved by the Bolloré Group and the SHERPA association. Moreover, Bolloré Group's partners are considering duplicating this approach it in other plantations worldwide.

Lastly, we should stress that the NCP is currently working intensively to handle out the referral from the French Minister for Foreign Trade in the wake of the Rana Plaza disaster. The NCP has to define the scope of the notion of "business relationship" in the textile industry supply chain and to pinpoint the due diligence measures recommended by the Guidelines in such a case (<http://www.tresor.economie.gouv.fr/File/400758/File/400759>).

Overall, the French NCP wishes to reassert its independence and its determination to make change the behaviour of multinational enterprises in compliance with the OECD Guidelines. It doesn't ignore that there is still room for improvement in its working methods and it will be dedicated to addressing this in the near future.

A consensus was reached on this statement within the NCP, with the exception of one member of the trade union group.

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² http://www.ecchr.de/index.php/home_en.html