



SPECIFIC INSTANCE RELATING TO UPM DOCELLES IN FRANCE

24 February 2015

Statement from the French National Contact Point

The NCP considers that the Finnish multinational UPM did not act in full compliance with the OECD Guidelines and notes its refusal of the offer of mediation to discuss the future of Papeterie de Docelles in France

On 30 April 2014, the French National Contact Point (NCP) for implementation of the OECD Guidelines for Multinational Enterprises received a referral relating to the decision by UPM Kymmene, a Finnish group, to close one of its establishments in France, the “Papeterie de Docelles” paper mill located in the Vosges region of eastern France. The referral was made by the mayor of Docelles, the non-profit association “Sauver La Papeterie de Docelles”, 56 former employees involved in a cooperative enterprise plan (SCOP¹) to take over the factory and the SCOPs’ Regional Union.

1. Facts and the complainants’ request

- **The closure of Papeterie de Docelles (January 2013 – January 2014)**

Created in 1478, the Docelles paper mill was sold to Kymmene, a Finnish group, in 1978. It became part of the UPM Group when Kymmene merged with UPM in 1995. On 17 January 2013, UPM announced its intention to divest certain assets, including the Docelles plant, scheduled for closure within six months as of 1 January 2013 if no buyer could be found.

In early 2014, UPM France SAS commissioned a firm of consultants to start a process to find a buyer. On 8 March 2013 the chairman of UPM’s Paper division stated that “the aim for UPM is to find a credible buyer for the Docelles plant”. As no buyer was forthcoming, negotiations for an employment preservation plan started on 17 July 2013. The local authorities then became closely involved in the search for a buyer. While stating its wish to avoid closure, in late 2013 UPM turned down takeover offers which it did not consider sufficiently credible in the long term. The employment preservation plan was implemented and production ceased on 24 January 2014. Negotiations continued nonetheless in January and February 2014, especially around a plan by ex-employees to form a cooperative enterprise (the SCOP plan), backed by French local and national authorities. In March 2014, UPM turned down a €3-million offer from the SCOP and set the sale price at €10 million. UPM also turned down a proposal from the French minister for industrial renewal in March 2014.

In early 2014, in response to UPM’s refusal to reopen negotiations on the sale price, the leaders of the SCOP plan initiated a number of court proceedings, in March 2014 before the Epinal Labour Court² and in June 2014 before Epinal Commercial Court³. Joined by the local authorities, in late April 2014 they sought the good offices of the French NCP, asking it to rule on compliance with the OECD Guidelines and arrange a mediation procedure.

- **The complainants’ request and the Guidelines concerned by the referral**

The complainants asked the NCP to rule whether the process to close the paper mill and the search for a buyer to avoid closure of the plant were in compliance with the recommendations of the OECD Guidelines relating to closures of an entity (cf. Chapter V, para. 6).

Chapter V, Employment and Industrial Relations, para. 6 “In considering changes in their operations which would have major employment effects, in particular in the case of the closure of an entity involving collective lay-offs or dismissals, [enterprises should] provide reasonable notice of such changes to representatives of the workers in their employment and their organisations, and, where appropriate, to the relevant governmental authorities, and co-operate with the worker representatives and appropriate

¹ Société Coopérative et Participative or SCOP

² Conseil des Prud’hommes

³ Tribunal de Commerce

governmental authorities so as to mitigate to the maximum extent practicable adverse effects. In light of the specific circumstances of each case, it would be appropriate if management were able to give such notice prior to the final decision being taken. Other means may also be employed to provide meaningful co-operation to mitigate the effects of such decisions.”

The complainants also raised the issue of UPM’s responsibility with regard to the OECD Guidelines concerning the risk of adverse impacts arising from the discontinuation of business on the site because UPM turned down offers for it.

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

Article A1: Contribute to economic, environmental and social progress with a view to achieving sustainable development.

Article A3: Encourage local capacity building through close co-operation with the local community [...].

Article A4: Encourage human capital formation, in particular by creating employment opportunities and facilitating training opportunities for employees.

Article A6: Support and uphold good corporate governance principles and develop and apply good corporate governance practices, including throughout enterprise groups.

Article A10: Carry out risk-based due diligence [...] to identify, prevent and mitigate actual and potential adverse impacts [...] and account for how these impacts are addressed [...].

Article A11: Avoid causing or contributing to adverse impacts on matters covered by the Guidelines, through their own activities, and address such impacts when they occur.

The complainants asked the NCP to offer a forum for mediation to reopen negotiations with UPM on the conditions for sale of the plant and avoid the likely adverse impacts that would arise from a disused plant if the takeover failed.

2. Coordination with the Finnish NCP

The referral concerns the UPM Group, based in Finland, and UPM France SAS. The NCP informed its Finnish counterpart of the existence of the referral in June 2014. In accordance with the OECD’s procedural guidance for NCPs, the French NCP was designated to deal with the referral.

Procedural Guidance, para. 23: “Generally, issues will be dealt with by the NCP of the country in which the issues have arisen. Among adhering countries, such issues will first be discussed on the national level and, where appropriate, pursued at the bilateral level. The NCP of the host country should consult with the NCP of the home country in its efforts to assist the parties in resolving the issues. The NCP of the home country should strive to provide appropriate assistance in a timely manner when requested by the NCP of the host country.”

The Finnish NCP was regularly updated on the progress of the referral and ensured that UPM Finland, which conducted the negotiations concerning Docelles in 2013-14, was kept informed of the French NCP’s work.

3. Procedure followed by the NCP in dealing with the referral

The specific instance received on 30 April 2014 did not fulfil certain formal criteria of admissibility stipulated at Article 16 of the NCP’s bylaw. The complainants were asked to complete the referral and disclose the identity of some of them. The NCP acknowledged receipt of the revised referral on 10 June 2014 and found it to be formally admissible. At the hearing before Epinal Commercial Court on 8 July 2014, the prosecutor invited the parties to continue negotiations until the judgment, set for 30 September 2014.

• Admissibility and initial evaluation of the referral (June to September 2013)

In June 2014, in order to rule on the admissibility of the matter, the NCP asked the complainants to specify two key points: the court proceedings initiated against UPM France SAS and the content of the negotiations with UPM. After receiving the relevant information, in July 2014 the NCP informed UPM France SAS and UPM’s head office in Finland of the existence of the referral. UPM rapidly agreed to cooperate with the NCP.

The NCP completed its initial evaluation on 5 September 2014⁴. It decided to review whether the closure of Papeterie de Docelles complied with the OECD Guidelines, especially Chapter V, para. 6 on the closure of entities, and to offer the parties a forum for dialogue in order to negotiate, while giving consideration to the

⁴ Under its bylaw, the NCP must endeavour to conclude the initial evaluation of the referral within three months of acknowledging its receipt (Article 26), and must then prepare a statement on the admissibility of the issue (Article 19).

proceedings pending before the French courts and coordinating its action with the stakeholders, the French authorities involved in the issue and the Finnish NCP. The NCP hoped to make a positive contribution to resolving the issues raised.

The statement on the admissibility of the referral was published on 10 September 2014 after the parties and the Finnish NCP had been informed (cf. http://www.tresor.economie.gouv.fr/5731_Les-communiqués-du-PCN).

- **Good offices and closure of the referral (September 2014 – February 2015)**

The NCP offered the parties its good offices from September 2014. The NCP Secretariat ensured that all documents in the file (referral, additional information provided by the complainants, the company's response, court judgments) were promptly circulated between the parties and the NCP members. Hearings of the complainants, UPM France SAS and the French local authorities involved in the search for a buyer for Papeterie de Docelles were held from September 2014. The NCP also consulted experts in industrial recovery and employment preservation plans.

The NCP quickly invited the parties to meet in order to consider the feasibility of mediation. UPM France SAS declined the invitation on account of the pending court proceedings. On 8 October 2014, the NCP noted that the dispute between UPM and the complainants was ongoing. It started its examination of the substance of the referral. On 14 November 2014, UPM also declined the NCP's offer of mediation.

The NCP continued its examination at its meetings in November and December 2014, taking into account the court judgments handed down. On 30 September 2014, Epinal Commercial Court referred the complainants to the Labour Court, to which the same matter had also been referred. On 24 November 2014, the Labour Court postponed the hearing of the former employees of UPM Docelles to 16 February 2015. Hearing an application submitted on 4 December 2014 for interim measures under emergency interim proceedings in order to forestall imminent damage that might arise from the physical deterioration of plant and equipment or UPM's dismantling of the factory, on 8 January 2015 the Labour Court ordered UPM France SAS to keep the factory intact, protect the plant and equipment from freezing and provide sufficient maintenance to keep it in working order from 15 January 2015 to 15 April 2015.

On 22 December 2014, the NCP confidentially informed the complainants and UPM France SAS of its preliminary analysis, which it then transmitted to UPM and the Finnish NCP on 22 January 2015. Noting the persistence of the dispute and UPM's refusal to enter into mediation with the initiators of the SCOP plan under the auspices of the NCP, it closed the referral on 5 February 2015. The draft statement was adopted on 5 February 2015 then submitted to the parties for consultation before publication.

4. NCPs decision and recommendation

The NCP's analysis mainly concerned whether UPM's closure process and search for a buyer for Papeterie de Docelles complied with the OECD Guidelines relating to closures of entities set forth at paragraph 6 of Chapter V on Employment and Industrial Relations. In light of the issues raised by the referral, the NCP distinguished four elements:

- UPM informed worker representatives and the national authorities of its decision to close Papeterie de Docelles in compliance with statutory requirements and in the framework of normal participation in the dialogue initiated by the public authorities.
- UPM gave a voluntary undertaking to try and find a buyer but did not cooperate sufficiently to hope to "*mitigate to the maximum extent practicable adverse effects*" of its decision as recommended by the OECD. The NCP considers that cooperation with workers representatives and the public authorities was limited to the provision of a minimum amount of information, often deemed incomplete by the recipients. Efforts to find a buyer were initially carried out over a limited period and resulted in the identification of a single opportunity, stakeholders did not clearly understand the criteria for assessing the viability of offers, and UPM seems not to have given serious consideration to the SCOP plan as a possible alternative to closing the plant.
- Once the closure decision had been taken, UPM mobilised significant resources to mitigate the adverse impacts of closure in compliance with its statutory obligations in France by committing to an employment preservation plan and a revitalisation agreement considered to be of high quality and financially generous.

- The NCP noted that UPM France SAS and its parent company, the Finnish multinational UPM, did not restart negotiations despite the proposal of the prosecutor of Epinal Commercial Court on 8 July 2014, and that they declined the NCP's offer of mediation to discuss the future of Papeterie de Docelles in France.

Having regard to these four elements, the NCP considers that in the search for a buyer for Papeterie de Docelles, UPM did not act in full compliance with the OECD Guidelines as set forth at paragraph 6 of Chapter V on Employment and Industrial Relations.

Furthermore, as long as UPM remains owner of the plant, it must “*avoid causing or contributing to adverse impacts on matters covered by the Guidelines, through [its] own activities, and address such impacts when they occur*” (Article A.11 of the General Policies). In this respect, UPM is expected to take appropriate due diligence measures as recommended by the OECD.

The NCP takes note of the judgment of the Epinal Labour Court of 8 January 2015 ordering the company to keep the factory intact from 15 January 2015 until 15 April 2015 and therefore recommends that UPM France SAS and UPM use their best efforts to implement the revitalisation agreement concluded with the public authorities, especially the first part thereof which earmarks €1 million for re-industrialisation of the plant, priority being given to the accomplishment of an industrial project, preferable with a papermaker-related activity.

At a time when UPM has announced its continuing withdrawal from France, the NCP reminds the Group of its responsibilities as a multinational enterprise with regard to the OECD Guidelines for as long as it continues to own the Docelles plant. The NCP recommends that it demonstrate constructive cooperation in the steering committee of the revitalisation agreement for Papeterie de Docelles.

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