

SPECIFIC INSTANCE

“THE FINANCIAL SECTOR IN CAMEROON”

Statement from the French National Contact Point – 12 March 2019

Following its initial assessment, the NCP rejected the referral as it is not competent to handle it

On 23 August 2018, a Cameroonian national, hereinafter referred to as the “complainant”, who introduced himself as the “chairman” of a Cameroonian trade union, hereinafter referred to as the “trade union”, which was present in a Cameroonian enterprise, made a referral to the French National Contact Point (NCP) for implementation of the OECD Guidelines for Multinational Enterprises. The complainant stated that he was making the referral to the NCP on behalf of said trade union in respect of the activities of the Cameroonian subsidiary of a French group operating in the financial sector, hereinafter referred to as the “French bank” and, more specifically, in respect of the management of the trade union’s bank account since 2012. The referral was based on a large number of legal proceedings instituted by the complainant in Cameroon. It covered a number of elements of the OECD Guidelines regarding human rights, employment and industrial relations, consumer interests and combating bribery, bribe solicitation and extortion.

1. Procedure followed by the NCP according to its Bylaws (Articles 16 to 26)

The NCP referral procedure is confidential. The NCP should endeavour to conclude the initial assessment within three months of the acknowledgement of receipt of the specific instance, although additional time may be granted, if need be, in order to collect essential information necessary for an informed decision. Following the initial assessment, the NCP draws up a statement containing its decision as to the admissibility of the referral.

◆ Receipt of the referral and acknowledgment of receipt (August 2018)

The complainant contacted the NCP on 14 June 2018 by sending a two-page memorandum entitled “complaint against the French bank for corruption, aggravated breach of trust and influence peddling” with regard to its Cameroonian subsidiary. On 3 July 2018, the NCP decided that the memorandum did not represent a specific instance. On 5 July 2018, it suggested to the complainant that he should reformulate his referral within six weeks, i.e. prior to 25 August 2018, using the standard form for filing a specific instance. The NCP sent him the documents outlining the referral procedure which are available on its website.

On 23 and 24 August 2018, the NCP Secretariat received a referral file comprising a number of explanatory memoranda and 37 supporting documents by email. It forwarded all the documents to the NCP on the same day and acknowledged receipt of the referral on 24 August 2018 by informing the complainant of the specific conditions for handling referrals using an out-of-court dispute settlement method.

◆ Formal admissibility of the referral and information to the enterprise (September – October 2018)

Article 16 of the Bylaws provides that “A referral to the NCP must be precise” and “must stipulate the identity of the enterprise in question, the identity and contact details of the complainant, details of the facts of which the enterprise is accused and elements of the OECD Guidelines for Multinational Enterprises in respect of which the referral to the NCP is being made”.

On 4 September 2018, the NCP noted that a number of formal admissibility criteria had not been met. It considered that the facts of which the French bank and its subsidiary were being accused had been detailed but that it would be required, in its initial assessment, to ascertain whether it was competent to address these facts. The NCP asked the

complainant to provide further details on the other criteria: identity of the enterprises in question, identity of the complainant, and connection to the Guidelines. The aim was to clarify whether the complainant was referring the matter to the NCP on personal grounds or on behalf of the trade union. In the latter case, the NCP would ask to be provided with the mandate from said trade union. As the referral only made general reference to “combating corruption, bribe solicitation and other forms of extortion”, clarification was required concerning the elements of the Guidelines and as to whether the complainant was requesting the NCP’s good offices.

On 27 September 2018, the complainant sent the NCP a document called “Guideline’s violations analysis” together with seven supporting documents including a “Petition from the members of the trade union’s national executive bureau giving a mandate to its national chairman [the complainant] for the referral made to the French NCP/OECD”. On 2 October 2018, the NCP decided that the referral was formally admissible. It therefore had to duly inform the French bank and start the initial assessment. The NCP sent the referral and information on the procedure to the French bank on 12 October 2018 and invited it to provide a response from now on.

◆ Initial assessment (October 2018 – January 2019)

When a referral meets the formal admissibility criteria, the NCP conducts an initial assessment (Articles 18, 22, 23 and 25) to decide whether it is competent to handle it and whether it merits further examination.

The specific instance was based on a large number of legal proceedings which had been instituted in Cameroon. It was set against the backdrop of internal unrest in a Cameroonian trade union which culminated in a split-off in January 2012. The NCP decided that it needed to interview the parties separately in order to clarify the circumstances surrounding the referral. The complainant and the French bank immediately agreed to start this dialogue with the NCP. The NCP interviewed the complainant by conference call from the premises of Business France in Douala on 6 November 2018 and he sent additional information to the NCP the next day. The French bank forwarded the initial components of its response to the NCP Secretariat on 2 November 2018 followed by a detailed response file supplementing the initial information on 5 and 7 December 2018 (hard copies were provided to the NCP at its meeting on 11 December 2018). The French bank and its Cameroonian subsidiary were interviewed at the same time by the NCP on 11 December 2018 by conference call again from the premises of Business France in Douala. As the good offices were not ongoing, the written information sent by the bank was kept confidential and was not provided to the complainant.

The NCP completed the initial assessment on 10 January 2019. It considered that it was not competent to handle the referral and decided to reject it. It asked the Secretariat to inform the parties and to draw up a statement explaining the reasons for rejecting the referral. The parties were informed of these decisions on 16 January 2019. The NCP adopted the statement by consensus on 5 February 2019 and decided that it should be made anonymous on account of the ongoing legal proceedings in Cameroon. The NCP then wrote to the parties on 19 February 2019 to send them the statement for their information prior to its publication. Following comments received from the complainant, the NCP made factual amendments to the statement on 12 March 2019 and then published it on its website. The NCP Secretariat informed the OECD in order for the referral to be added to the database of specific instances.

2. Presentation of the referral

The complainant, a Cameroonian national, stated that he was making the referral to the French NCP on behalf of a Cameroonian trade union that had been founded in November 2005 and registered on 26 January 2006. The complainant claimed to have been “appointed chairman” during the constitutive assembly of said trade union with his term of office being renewed at the “first extraordinary congress” of 8 and 9 April 2011. On 17 January 2012, an “extraordinary congress” was arranged by a number of members of the trade union at which a new chairman and new bureau were elected. This split-off was the subject of an article in the local press. Following this congress, the Cameroonian subsidiary of the French bank amended the list of authorised signatories for the trade union’s bank account and withdrew the complainant’s access. On 4 August 2012, the complainant convened an “extraordinary congress” which elected him as the “national chairman of said trade union” and also elected a new bureau. The

Cameroonian subsidiary of the French bank stood by its decision to remove the complainant from the list of authorised signatories for said trade union's bank account.

The complainant claimed to be the "legitimate chairman" of the trade union. He took a large number of steps and instituted several legal proceedings against the bank in order to restore his access to the trade union's bank account. This dispute and the concurrent legal proceedings were central to the referral made to the NCP in June 2018 which was completed the following month. The complainant also criticised the bank's prior management of the bank account.

The NCP identified five types of litigation. In May 2012, the new chairman of said trade union, who had been elected in January 2012, filed a complaint for usurpation of the title of "chairman of said trade union" against the complainant (case no. 1). In August 2012, he filed another complaint against the complainant in both summary and substantive proceedings in order to suspend the resolutions of the congress of 4 August 2012 (case no. 2). On 27 June 2013, a Cameroonian trade union confederation filed a complaint against the chairman of said trade union who had been elected in January 2012 for usurpation of the title of "chairman of said trade union" and for other grievances (case no. 3). The referral mentioned the litigation surrounding the management of the bank account (placing in escrow accounts, etc., case no. 4). The French bank informed the NCP that the complainant had filed a number of criminal complaints against its Cameroonian subsidiary and its managers in March 2015 and in December 2017 (case no. 5). The referral also mentioned that two complaints had been filed with the ILO in respect of said trade union's circumstances (see section 3).

The initial assessment garnered information on cases nos. 1, 2 and 3 which originated from the split-off of the trade union and which supported the complainant's stance. Concerning case no. 1: the complainant was cleared of the charge of usurpation of the title of "chairman of said trade union" at first instance (18 April 2013) then on appeal (19 March 2014). He has stated that the chairman elected in January 2012 has appealed against this ruling and that the proceedings are still ongoing. The Cameroonian subsidiary of the French bank was not party to these proceedings. Concerning case no. 2: the summary proceedings were set aside (order of lack of jurisdiction) and a decision was handed down on the merits. The French bank informed the NCP that the extraordinary congress of 4 August 2012 and its resolutions had been found to be null and void at first instance under a Court decision of 31 December 2013. The complainant explained to the NCP that he had filed an appeal against this decision on 14 March 2014; according to the complainant, the appeal proceedings were still ongoing. Concerning case no. 3, the chairman elected in January 2012 was found guilty of usurpation of the title of "chairman of said trade union" at first instance (decision of 19 June 2014). Again according to the complainant, the latter had not appealed against this decision and it should have become enforceable; he considers that the bank should have taken this into account. The bank stated that the complainant and its Cameroonian subsidiary were not parties to these proceedings.

The referral set out the steps taken by the complainant against the Cameroonian subsidiary of the bank and its head office between 2012 and the end of 2017. On 27 September 2018, he stated that he was requesting the NCP's intervention to reach an out-of-court settlement to the dispute prior to instituting proceedings against the managers of the Cameroonian subsidiary of the French bank.

According to the complainant, the French bank allegedly failed to uphold the interests of the said trade union in its capacity as consumer of the services of the bank's Cameroonian subsidiary and, moreover, he had been a victim of extortion. Again according to the complainant, the bank's Cameroonian subsidiary failed to comply with Cameroonian legislation on the "protection from attachment of the operating resources of workers' trade unions". He considered that the bank indirectly contributed to restricting the trade union's activity within a Cameroonian enterprise and to human rights violations. The complainant also accused the bank's Cameroonian subsidiary of corruption and claimed that the bank infringed its code of ethics.

List of recommendations of the May 2011 Guidelines targeted by the referral:

"Human rights/compliance with Cameroonian legislation"

"Employment and industrial relations/freedom of association and the right to collective bargaining"

"Combating bribery, bribe solicitation and extortion"

"Consumer interests"

3. Summary of the initial assessment of the specific instance

The initial assessment covered a number of considerations: Was the referral raised in good faith and in accordance with the Guidelines (Article 22)? Was the referral admissible with regard to the criteria set out in Article 23? Could the NCP contribute to resolving the dispute (Article 25)?

♦ Article 22: Was the referral raised in good faith and in accordance with the Guidelines?

At the end of the initial assessment, the NCP had strong doubts as to the good faith of the referral on the basis of a number of factors:

- The complainant stated that he was making the referral to the NCP on behalf of a Cameroonian trade union of which he claimed to be the “chairman” and “legitimate representative”. He used the trade union’s letterhead in his correspondence with the NCP. He produced a petition from the members of said trade union’s bureau authorising him to act vis-à-vis the NCP → *The NCP notes that, in April 2018, the complainant was not a member of the managing bodies of this Cameroonian trade union as registered since 20 June 2015 by the Cameroonian trade unions’ registry department. The NCP further notes that this trade union had held several congresses since 2012. The NCP also notes that this trade union had elected a new management team in August 2018 which did not include the complainant. It concludes that the complainant should not be authorised to represent the Cameroonian trade union today and that he allegedly made the referral to the NCP on personal grounds with an eye to having his title recognised.*
- The complainant claimed that he was elected “chairman” of said trade union at the extraordinary congress of 4 August 2012. → *The NCP notes that this congress and its resolutions were cancelled by the Douala Court of First Instance on 31 December 2013 and that the complainant has appealed against this decision. It has no information on the current status of these appeal proceedings nor as to whether they have a suspensive effect.*
- The NCP noted that the complainant had not instituted proceedings against the congress of 17 January 2012, in spite of the fact that he had challenged its legality before the NCP. → *The NCP is not the competent body to ascertain the legality of said congress.*
- The complainant stated that “the trade union which I represent, up to now, favours an out-of-court settlement to the dispute and this is why the referral is being made to the OCED’s French NCP to obtain its good offices” and that “it is only if our referral is found to be inadmissible or the good offices fail that we will institute either civil or criminal legal proceedings as the banks’ managers have already largely admitted to their violations (...)”. The bank informed the NCP that the complainant had already instituted a number of criminal proceedings against its Cameroonian subsidiary, in particular in December 2017. → *The NCP notes that this situation would appear to conflict with the reasons for requesting good offices. It also notes that these proceedings are still ongoing in Cameroon.*

At the end of the initial assessment, the NCP considered that there was no genuine connection between the case and the Guidelines:

- The referral concerned a personal dispute between the complainant and the bank against the backdrop of internal unrest in a Cameroonian trade union which involved the complainant. The majority of issues raised by the referral relate to both the trade union’s internal affairs and the legal proceedings instituted by the complainant in Cameroon. The NCP is not the competent body to respond to the numerous points of Cameroonian law highlighted by this referral.
- The complainant alleged that the surveillance measures introduced by the bank violated the trade union’s consumer interests and that he (the complainant) had been a victim of extortion for reasons attributable to the bank. He concluded that the bank violated human rights. The referral set out the concurrent proceedings instituted in Cameroon. Nevertheless, the complainant failed to adduce detailed evidence to substantiate the

allegations of the human rights violations that the bank is claimed to have committed vis-à-vis said trade union or the complainant. The latter also failed to present evidence that the Cameroonian subsidiary's management of the bank account had an impact on the trade union's activities within the above-mentioned enterprise. Lastly, the complainant did not provide any evidence to support his allegations of corruption and other forms of extortion.

In light of the foregoing, the Article 22 criteria have not been met.

◆ Was the referral admissible with regard to the criteria set out in Article 23?

a. In assessing admissibility, the NCP shall consider the identity of the party concerned and its interest in the case. ➔ *The referral cannot be considered as having originated from said trade union; the NCP is unable to decide on the complainant's legitimacy to represent it. The complainant appears to have a personal interest in the case which would involve getting the NCP to note that he has been the "legitimate chairman" of said trade union since 2012 and that he has been a victim of usurpation of said title. The NCP is not the competent body for handling this type of dispute which is the subject of a number of ongoing proceedings in Cameroon and is the jurisdiction of the Cameroonian authorities.*

b. In assessing admissibility, the NCP shall consider the significance of the issue and the supporting items provided. ➔ *The referral is principally based on interpretation of Cameroonian legislation. It does not raise significant issues concerning application of the Guidelines.*

c. In assessing admissibility, the NCP shall consider the relevance of the applicable laws and procedures. ➔ *As stated above, most of the issues raised by the complainant are subject to proceedings that he himself has instituted. The NCP is not the competent body for addressing these issues which are the jurisdiction of the Cameroonian authorities.*

d. In assessing admissibility, the NCP shall consider how similar issues are being (or have been) examined at national or international level. ➔ *Issues related to the referral are the subject of two complaints filed with the ILO's Committee on Freedom of Association. The NCP is not the competent body for addressing these issues.*

In light of the foregoing, the Article 23 criteria have not been met.

◆ Article 25: Could the NCP contribute to resolving the dispute?

The French NCP pays particular attention to the goal of its main mission, as set by the OECD, which is to contribute to the resolution of disputes by offering its good offices. In the case at hand, the complainant stated that he favoured an out-of-court settlement prior to instituting civil and criminal proceedings against the bank. During the initial assessment, the complainant maintained all of his accusations. The NCP noted that he had instituted criminal proceedings against a number of managers of the Cameroonian subsidiary of the bank in December 2017 before making the referral to the NCP in June and August 2018.

Due to the many ongoing legal proceedings in Cameroon, the NCP considers that its potential intervention could create serious prejudice for either of the parties involved in these proceedings or could cause a contempt-of-court situation (see Article 25 of the Bylaws). As a result and in accordance with its Bylaws, the NCP cannot contribute to resolution of this dispute.

4. Conclusion of the initial assessment (Articles 18, 19 and 20)

During the initial assessment, the French bank and its Cameroonian subsidiary actively participated in the procedure. They provided the NCP with information on the work conducted to regularly verify the powers of the authorised signatories of said trade union's bank account, on the legal proceedings instituted by the complainant and on the measures introduced to respond to the referral. The NCP considers that the Group has answered its questions on corporate due diligence.

At the end of the initial assessment of this referral, the NCP still had doubts as to its good faith. It notes that the complainant has failed to adduce evidence to explain and detail the alleged violations of the Guidelines. It also notes that the issues raised do not relate to the effectiveness of the Guidelines but rather concern, on one hand, the competent Cameroonian authorities and, on the other, internal affairs of said trade union. The NCP considers that the complainant has a personal interest in the case with an eye to obtaining recognition of the title of “chairman” of said trade union and the restoration of his access to its bank account. It notes that it is not competent to address the issues raised by the complainant and that they are the subject to ongoing legal proceedings in Cameroon.

The NCP notes that the bank has conducted, and continues to conduct, special surveillance of the authorised signatories of said trade union’s bank account in accordance with its obligations and customer relations requirements. The French bank has provided the NCP with documented clarification of the due diligence carried out.

In light of the foregoing, the NCP’s intervention could create serious prejudice for either of the parties involved in these proceedings or could cause a contempt-of-court situation. To conclude, the NCP considers that the issues raised do not merit further examination and therefore rejects the referral.

In the appendix:

- Extract from the Bylaws of the French NCP on the initial assessment of a referral (Title IV, Articles 16 to 26)
- Diagram of the French NCP’s procedure for handling specific instances

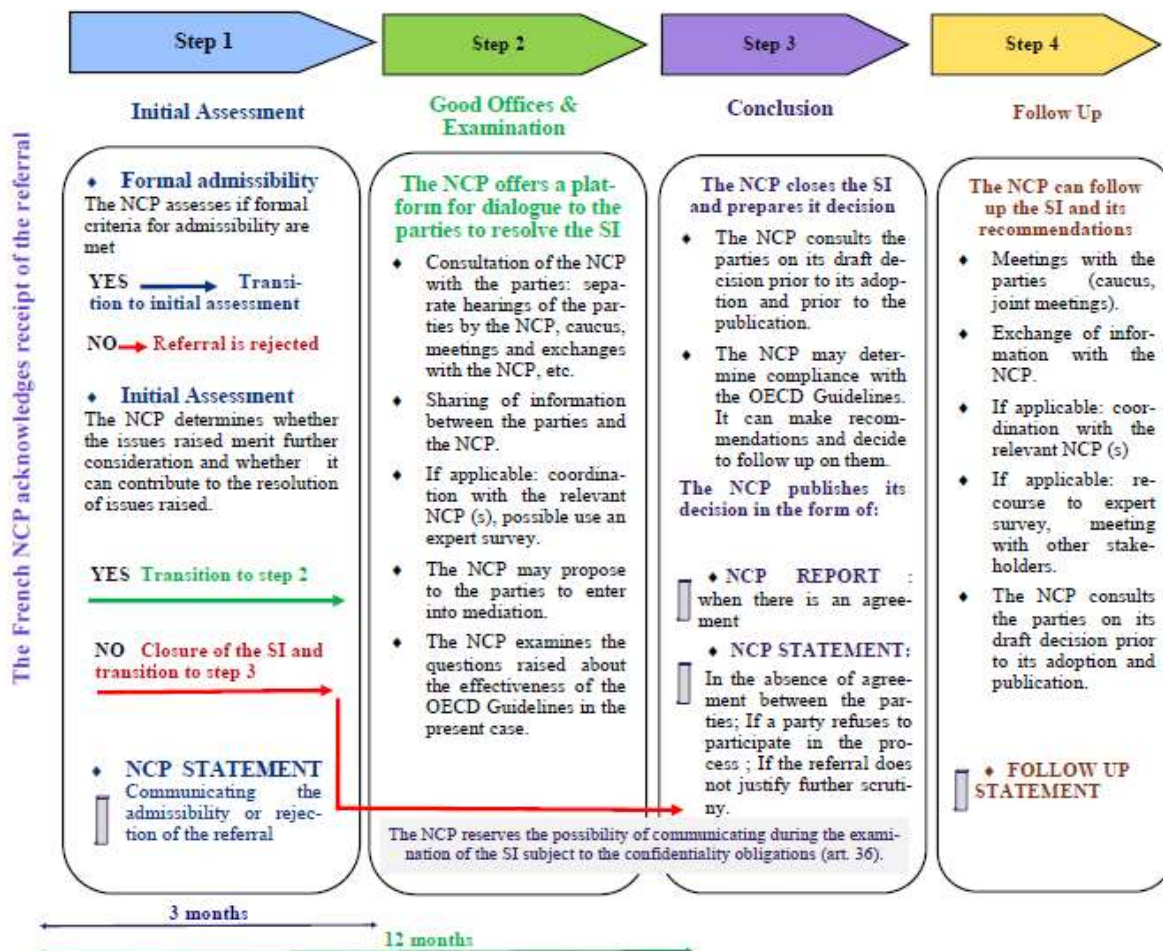
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How the French NCP Handles a Specific Instance (« SI »)



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

IV– REFERRALS TO THE NCP – INITIAL ASSESSMENT

Form of referrals

- ♦ **Article 16.** A referral to the NCP must be precise. In this regard, it must stipulate: the identity of the enterprise in question; the identity and contact details of the complainant; details of the facts of which the enterprise is accused; elements of the OECD Guidelines for Multinational Enterprises in respect of which the referral to the NCP is being made.

Processing referrals: evaluation of admissibility

- ♦ **Article 17.** Upon receiving a referral, the NCP Secretariat shall send the referring party an acknowledgement of receipt, through the post or electronically, and shall forward copies of any items submitted in support of the referral to NCP members.
- ♦ **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.
- **Article 20.** When the NCP notes that a specific instance does not meet the formal criteria for admissibility set out in Article 16 and/or it notes that it is not competent to handle it, it shall declare the referral to be inadmissible. It informs the complainant of its decision and sends the referral to the enterprise. It then publishes a statement of inadmissibility after having informed the complainant and the enterprise. In this statement, the NCP shall outline the issues raised and set forth the reasons for its decision. The statement shall not disclose the identity of the enterprise in question

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 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.

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