



## **SPECIFIC INSTANCE RELATING TO UPM DOCELLES IN FRANCE**

**10 September 2014**

### **Statement from the French National Contact Point**

**On conclusion of its initial assessment, the NCP offers its good offices to UPM and the complainants**

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, 56 former employees involved in a cooperative enterprise plan (SCOP<sup>1</sup>) to take over the factory, the SCOPs’ Regional Union and the non-profit association “Sauver La Papeterie de Docelles”.

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. UPM France initiated a process to find a potential buyer. An employment preservation plan was introduced on 17 July 2013; no buyer having been found, the plant was finally closed on 24 January 2014. Negotiations to find a buyer continued nonetheless, especially with certain employees of the Docelles plant. In April 2014, UPM having refused to sell the plant to the SCOP, the complainants initiated proceedings with the Epinal Labour Court<sup>2</sup> and Epinal Commercial Court<sup>3</sup> and with the French NCP.

The complainants asked the NCP to rule on whether the paper mill’s closure and handover processes carried out by UPM complied with the Guidelines, on the possible consequences of non-sale of the plant and on UPM’s responsibilities with regard to the Guidelines in such a case. They also asked the NCP to offer the parties a forum for mediation to rapidly bring the takeover of the Docelles plant to a conclusion or implement any solution whereby the likely adverse impacts of a disused plant can be avoided.

### **1. Procedure followed by the NCP according to its bylaw**

The specific instance was referred to the NCP on 30 April 2014. At its meeting on 10 June 2014, the NCP acknowledged receipt, found that the specific instance was formally admissible under Article 16 and started its initial evaluation.

In July, the NCP informed UPM France SAS and UPM’s head office in Finland of the referral and its admissibility. UPM quickly agreed to cooperate with the NCP. In accordance with the OECD rules of procedure, the Finnish NCP was informed of the referral<sup>4</sup>.

Under its bylaw, the NCP shall endeavour to conclude the initial evaluation within three months of acknowledging receipt of the referral (Article 26), then issue a statement (Article 19). The NCP completed its initial evaluation on 5 September 2014 and issued a statement announcing that the specific instance involving

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<sup>1</sup> Société Coopérative et Participative or SCOP

<sup>2</sup> Conseil des Prud’hommes

<sup>3</sup> Tribunal de Commerce

<sup>4</sup> Paras. 23 and 24 of the Commentary on Procedural Guidance relating to coordination between NCPs in specific instances. The NCP of the host country (where the issues described in the referral have arisen) should consult with the NCP of the home country of the enterprise concerned.

UPM was admissible. This was provided to the parties for information and to the Finnish NCP before being posted on the NCP website. The NCP is now beginning its examination of the specific instance.

## **2. Summary of the initial evaluation of the specific instance relating to UPM Docelles**

As the referral received by the NCP was incomplete with regard to the formal criteria of admissibility set forth at Article 16, the complainants were asked to complete it. The completed referral duly stated the identity of the enterprise and all the complainants. It was detailed and concerned the compliance of UPM's action with the OECD Guidelines.

In July, the NCP learnt of the existence of several court proceedings initiated by former employees of the paper mill in parallel to the NCP referral in April 2014. As these proceedings were not mentioned in the specific instance, the NCP asked to be informed of them. This was done.

In September 2014, on completing its analysis, the NCP found that the other criteria of admissibility set forth at Articles 22, 23 and 25 of its bylaw were met. The referral related to the Guidelines, especially paragraph 6 of Chapter V on Employment and Industrial Relations, and was in good faith. All the parties had an interest in the referral, which concerned the future of Papeterie de Docelles. The issues raised and the evidence provided in support were significant. They enabled the NCP to offer its good offices to the parties. The NCP had been informed of the parallel court proceedings initiated by certain complainants and of the negotiations that had taken place. UPM accepted the NCP's good offices. The referral contained a mediation request. It was consistent with the NCP's mediation brief.

## **3. Conclusion of the initial evaluation**

The referral is admissible. The NCP will examine whether the closure of Papeterie de Docelles complies with the OECD Guidelines, especially paragraph 6 of Chapter V dealing with closures of enterprises (see below), and will offer the parties a forum for dialogue in order to negotiate the future of the plant while taking account of the proceedings pending before the French courts.

The NCP offers the parties its good offices. It will rapidly meet the complainants, UPM, the French local authorities responsible for monitoring restructurings and business recovery experts. It may consult any other expert it deems relevant and local stakeholders. It will take care to coordinate its action with the stakeholders and the French authorities already involved. It will coordinate its action with the Finnish NCP. It will endeavour to examine the specific instance within 12 months following receipt of the referral, i.e. by June 2015 (Article 31).

In proposing its good offices, the NCP hopes that it will be able to make a positive contribution to resolving the issues raised by this specific instance (Article 25).

### ***Paragraph 6 of Chapter V on 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:*

*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, 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 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.*

### **Excerpts from the French NCP's bylaw**

- **Article 18.** *In examining the admissibility of a referral, the NCP shall begin by assessing the importance of the issues raised to ascertain whether they merit further examination.*
- **Article 19.** *Following its initial evaluation, 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 evaluation. With due regard to the confidentiality incumbent on the NCP, the plaintiff may inform its principal(s) of the decision taken by the NCP with regard to admissibility.*
- **Article 26.** *The NCP shall endeavour to conclude an initial evaluation 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.*
- **Article 31.** *The NCP shall strive to examine the issues raised within the best timeframe, if possible within 12 months of receipt of a specific instance, it being understood that this timeframe may be extended if circumstances so warrant, e.g. if the issue raised involves a country that has not adhered to the Guidelines, or in the event of parallel procedures.*

### **Admissibility criteria**

- **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 plaintiff; details of the fact 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.*
- **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, especially jurisdictional proceedings;*
  - *How similar issues are being (or have been) examined at national or international level.*
- **Article 25.** *The NCP shall strive to ascertain whether, in making an offer of good offices, it could make a positive contribution to the resolution of the issues raised and if this would not create serious prejudice for either of the parties involved in other proceedings, or cause a contempt-of-court situation. It may then decide either to pursue or to renounce its consideration of the specific instance.*

See <http://www.tresor.economie.gouv.fr/File/404282>

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