



## "ETIENNE LACROIX" SPECIFIC INSTANCE

16 November 2015

### Statement by the French National Contact Point

#### Following its initial assessment, the NCP proposes its good offices to the Etienne Lacroix Group and the NGO ADHRB

On 19 August 2015, the French National Contact Point (NCP) for the implementation of OECD Guidelines for Multinational Enterprises received a specific instance from Americans for Democracy & Human Rights in Bahrain, an American non-governmental organisation, concerning the export of security products by an enterprise in the Etienne Lacroix Group to a Persian Gulf country.

#### 1. Procedure followed by the NCP according to its bylaws

The NCP strives to carry out the initial assessment of a referral within an indicative time-frame of three months following acknowledgment of receipt, after which it issues a statement announcing the referral's admissibility (Article 19). If the initial assessment is positive, the NCP analyses the referral and offers its good offices to the parties in order to help them resolve their dispute.

On 7 September 2015, the NCP acknowledged receipt of the referral and noted that it fulfilled the formal conditions for admissibility. At a meeting on 24 September 2015, the NCP finalised the initial assessment of the referral and agreed to accept it. Its offer of good offices was accepted by both parties. On 5 November, it adopted a statement – which was discussed with both parties prior to release – announcing the admissibility of the referral.

The NCP will now undertake to examine the specific instance. It will strive to complete its examination within twelve months of receipt of the instance (cf. Article 31).

#### 2. Summary of the initial assessment of the Etienne Lacroix specific instance

The referral was submitted by Americans for Democracy & Human Rights in Bahrain, an American NGO that defends democracy and human rights in a number of countries in the Persian Gulf, Bahrain in particular, in international fora in both the US and the Persian Gulf.

The referral details events that took place between February 2011 and the ensuing months, and then those from a more recent date. The revised OECD Guidelines of 25 May 2011 significantly strengthened the OECD's recommendations concerning human rights, which now has its own chapter<sup>1</sup>, and introduced the concept of due diligence for enterprises concerning their activities and the activities of their business relationships. The NCP will consider the Guidelines from both 2000 and May 2011.

The referral is accurate, well-documented and detailed. It questions whether the enterprise respected human rights and performed due diligence with respect to its sale of security products to a Persian Gulf country whose subsequent use of those products led to human rights violations in 2011 and thereafter. The products in question are subject to specific export regulations in France. The NCP notes that the United Nations Guiding Principles on Business and Human Rights distinguish between corporate responsibility and State duty. This distinction should be taken into account when examining the referral inasmuch as, in the present case, the enterprise's

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<sup>1</sup> Recommendation 2 of the General Policies in the 2000 Guidelines stipulates that enterprises should "*respect the human rights of those affected by their activities consistent with the host government's international obligations and commitments.*"

business relationship – which is responsible for the proper use of the products sold with respect to the Guidelines – is a foreign State, to which the French government has granted export authorisations.

These issues deserve thoroughgoing analysis by the NCP, which will take into account the relevance of the applicable treaties, laws and regulations, and will take into consideration how other NCPs have acted when faced with similar specific instances (sector, region, issues).

**Recommendations of the 2011 Guidelines targeted by the referral:**

**Chapter II on 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, enterprises should:*

*7. Develop and apply effective self-regulatory practices and management systems that foster a relationship of confidence and mutual trust between enterprises and the societies in which they operate.*

*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.*

**Chapter IV on 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.*

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

In application of Article 18 of its bylaws, the NCP finds that the issues raised by the referral merit further examination. This does not determine whether or not the enterprise acted in compliance with the Guidelines. Additional information is required to clearly determine compliance with the Guidelines. The NCP shall consult with the parties and may seek advice from competent authorities with regard to certain issues raised by the referral.

The NCP offered its good offices, to the parties which accepted them, and hopes that it can thereby make a positive contribution to the resolution of the issues raised by this specific instance (cf. Article 25).

In accordance with its bylaws and the Procedural Guidance defined by the OECD, to facilitate resolution of the issues raised and comply with applicable laws, the NCP shall take appropriate measures to protect sensitive business and other information and the interests of other stakeholders involved in the specific instance. Some elements brought to the NCP's attention may be kept confidential.

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### **Extracts from the bylaws of the French NCP**

#### **IV – REFERRALS TO THE NCP – INITIAL ASSESSMENT**

- *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 should endeavour to conclude the initial assessment within three months of the acknowledgment 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.*
- *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.*

#### **V – EXAMINATION OF SPECIFIC INSTANCES**

- *Article 27. Where the issues raised merit further examination, the NCP shall offer its good offices to help the parties involved to resolve them. For this purpose, the NCP shall consult with these parties and, where appropriate: seek advice from competent authorities, and/or representatives of the business community, worker organisations, other non-governmental organisations, and experts; consult the NCP(s) in the other country or countries concerned; seek the opinion of the OECD Investment Committee if it has doubts about the interpretation of the Guidelines in the particular circumstances; propose, and with the agreement of the parties involved, facilitate access to consensual and non-adversarial means, such as conciliation or mediation, to assist the parties in resolving the problems.*
- *Article 28. The examination of a specific instance shall take the form of a series of consultations between the enterprise involved, the party or parties having made the referral to the NCP and all NCP members. These consultations shall enable the referring party or parties to set forth the grounds for the referral in detail and allow the enterprise concerned to respond thereto.*

*Confidentiality*
- *Article 38. NCP members are bound to respect the confidentiality of a referral while its examination is not closed.*
- *Article 39. In order to facilitate resolution of the issues raised, the NCP shall take appropriate measures to protect sensitive business and other information and the interests of other stakeholders involved in the specific instance.*
- *Article 40. 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 opinion provided during the procedures by another party involved shall remain confidential, unless that other party agrees to their disclosure or this would be contrary to the provisions of national law.*

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