



National
Contactpoint
Belgium

*Belgian
National Contact Point
for the OECD Guidelines for Multinational Enterprises.*

**Statement
by the Belgian National Contact Point
for the OECD Guidelines for Multinational Enterprises.**

The OECD Guidelines for Multinational Enterprises are recommendations from Governments to their enterprises, wherever they operate.

These recommendations focus on several areas such as the disclosure of information, human rights, employment and professional relations, environment, the fight against corruption, consumer interests, science and technology, competition and taxation. Moreover, the concepts of the responsibility of the supply chain and due diligence have been introduced.

The implementation of the Guidelines relies upon the National Contact Points responsible for the follow up.

In Belgium, the National Contact Point (NCP) is chaired by a representative of the Federal Public Service Economy and has a tri-pillar structure encompassing social partners and representatives of different Federal Public Services as well as Regional Governments.

The role of the NCP is to contribute to the resolution of the issues raised in specific instances. The NCP will facilitate access to consensus-oriented, non-conflictuous means such as conciliation or mediation.

1. INTRODUCTION

The Belgian National Contact Point received a specific instance from Greenpeace concerning a possible non-compliance of some of the OECD Guidelines for Multinational Enterprises by the company Jan De Nul NV in connection with the Sabetta harbour project in the Russian Arctic area on 10 September 2013. Greenpeace asked the NCP explicitly to restore and facilitate the dialogue with the company.

The report, as submitted by Greenpeace, refers to the fact that the company has not acted according to certain provisions of Chapter VI of the Guiding Principles concerning the environment, which indicates that “enterprises should [...] take due account of the need to protect the environment, public health and safety, and generally to conduct their activities in a manner contributing to the wider goal of sustainable development. In particular, enterprises should:

§1 : Establish and maintain a system of environmental management appropriate to the enterprise, including:

- a) collection and evaluation of adequate and timely information regarding the environmental, health, and safety impacts of their activities;
- b) establishment of measurable objectives and, where appropriate, targets for improved environmental performance and resource utilisation, including periodically reviewing the continuing relevance of these objectives; where appropriate, targets should be consistent with relevant national policies and international environmental commitments;

§2 : Taking into account concerns about cost, business confidentiality, and the protection of intellectual property rights:

- a) provide the public and workers with adequate, measurable and verifiable (where applicable) and timely information on the potential environment, health and safety impacts of the activities of the enterprise, which could include reporting on progress in improving environmental performance;

§4 : Consistent with the scientific and technical understanding of the risks, where there are threats of serious damage to the environment, taking also into account human health and safety, not use the lack of full scientific certainty as a reason for postponing cost-effective measures to prevent or minimise such damage.

§5: Maintain contingency plans for preventing, mitigating, and controlling serious environmental and health damage from their operations, including accidents and emergencies; and mechanisms for immediate reporting to the competent authorities.

§ 6 : Continually seek to improve corporate environmental performance, at the level of the enterprise and, where appropriate, of its supply chain, by encouraging such activities as:

- b) development and provision of products or services that have no undue environmental impacts;
- d) exploring and assessing ways of improving the environmental performance of the enterprise over the longer term, for instance by developing strategies for emission reduction, efficient resource utilisation and recycling, substitution or reduction of use of toxic substances, or strategies on biodiversity.

§ 8 : Contribute to the development of environmentally meaningful and economically efficient public policy, for example, by means of partnerships or initiatives that will enhance environmental awareness and protection.

2. PROCEDURE

2.1 General

In October 2013, both parties were received separately by the Chairman and the Secretariat of the NCP in order, on the one hand, to inform the company of the issue, and secondly, to provide explanations on the OECD Guidelines and the NCP and its composition, its method of working and the procedures of the NCP etc.

Jan De Nul NV provided the Chairman information concerning the project and its contacts with Greenpeace.

Greenpeace for its part has informed the Chairman of the international campaign to attract the attention of the general public to the problems and risks of the exploitation of oil and gas in the Arctic. Greenpeace also informs the NCP that it previously had contacts with Jan De Nul NV in February 2013, and that they remained unaddressed. Greenpeace wishes that Jan De Nul NV makes the information of the impact of the project on the environment accessible.

2.2 Eligibility

After a thorough assessment of the issue in the NCP Initial Assessment Committee, which met on 14 November 2013, the latter recommended the NCP to declare the issue eligible, to continue its examination and to facilitate the dialogue. The NCP has followed this recommendation and during its meeting on 14 November 2013, the NCP agreed the continuation of the handling of this case. This was confirmed by email to both parties.

2.3 Handling

It was decided to entrust the dialogue with the parties involved to a limited number of persons: the President and the Secretariat.

Greenpeace was received on 14 November 2013, and it was stressed that the dialogue would be limited to the concerned chapter of the OECD Guidelines, namely the chapter on the environment. In addition, emphasis was placed on the confidentiality of the discussions. It was also explicitly instructed not to mention the name of the company in the media, as this would undermine the confidence of the mediation.

On 12 December 2013, the procedures were explained once again to the company Jan De Nul NV and also why it had been decided that the file was eligible.

On 6 January 2014, Greenpeace sent its questions to the NCP.

Subsequently, and at the request of the NCP, Greenpeace sent a summary of its most important issues. These were transmitted on 13 January 2014 to the company Jan De Nul NV. Hereafter is the full text::

«1) Greenpeace deems that the available environmental impact study is incomplete. The data do not allow us, as well as other stakeholders, to make a complete and correct analysis of the effects of the dredging works on the environment and the population whose daily life is determined by the availability of food (e.g. fishing), water, income (e.g. sale of fish), and others, in this environment. Greenpeace requests to make the required data available, and in particular those concerning:

- the physical and biological data,
- the data with regard to the way of life of the local population, and fishing in particular,
- the environmental and social effects of the dredging work on the above mentioned subjects,

-the procedures and plans that Jan De Nul NV implements and will implement to avoid and/or mitigate the defined effects

2) Greenpeace is particularly concerned about the huge impact of work on the environment, 1 / in particular on the whales and 2 / with regard to the release of heavy metals in the water column. We strive to receive further information on the approach that Jan De Nul NV uses and will continue to use. Our memoranda addressed to the National Contact Point and to the Office national du Ducroire (Belgian ECA) clearly reflect our concerns.

3) Finally we would like to receive the procedures that Jan De Nul NV uses and will use in the event of pollutions due to oil leaks.»

On 27 February 2014, a joint meeting was organized with Greenpeace and Jan De Nul NV.

The procedure was described once again, namely that mediation should happen in absolute confidentiality and that discussions should take place in a serene, calm manner.

Greenpeace explains that access to information concerning the environment is essential in relation to this project. The organization wishes only to receive information relating to the environment, and no commercial information.

The company Jan De Nul NV indicates that this type of discussion has already taken place, and that the communication has been interrupted because the content of the discussion was later leaked to the press.

The environmental study was made public, but some issues were left unanswered for Greenpeace. In addition, only a small portion of the study had been translated, the rest of the study was only made available in Russian. Various questions were raised, to which the company responded in a general manner, thus establishing a beginning of dialogue.

The President concludes the meeting stating that he wishes to provide enough time for this mediation, so that he could adequately consult stakeholders and experts in order to clarify some issues.

On the evening of 3 March 2014, Greenpeace sent an email to the Chairman informing him that a Belgian magazine would publish an article on the project, among other things, the next day (4 March 2014).

After having read the article, the Chairman decided to end the mediation mission, because of the breach of the confidentiality condition and of the basic condition for a mediation, namely that the parties do not attack each other during the mediation period. But this did not mean that the issue would not be handled.

On 27 March 2014 Greenpeace was seen by the Chairman, and the same message was given, namely that the NCP will continue to receive the two parties in order to gather information. During the meeting, he referred to environmental information, and what information was considered essential.

On 8 May 2014, a meeting with the company Jan De Nul NV took place, in the presence of its environmental expert. The company's environmental policy was explained. The fact that the fleet of

ships of the company Jan De Nul NV is very recent reduces the risk of incidents. Ships have been certified, among others, by Bureau Veritas for, amongst others : oil pollution prevention, sewage pollution prevention, prevention of pollution by garbage, energy efficiency, etc. The company has a certificate issued by Lloyd's on its quality, environmental and safety management that meets management system standards (ISO 9001, ISO 14001, OHSAS 18001). The company applies the Marpol guidelines, and is itself active in this organization that looks at new developments and the directives.

From the company's point of view, the risks regarding the spreading of heavy metals in the sludge from the dredging operations are not existing due to the fact that sediments are moved under water, and that they are not brought up to the surface.

Regarding the whales, the company Jan De Nul NV uses the technique known as 'big eye' (permanent, there is a person on board monitoring the presence of whales). But during the short period of dredging, no whale was sighted. Following information from the IUCN (International Union for Conservation of Nature), it also appears that whales are not present in this area.

A specialized company conducted an assessment of the environmental study, at the request of the Belgian ECA, the Ducroire, and additional measures have been proposed. This information has not been made public, and a legal procedure regarding this matter was opened by Greenpeace.

At the request of the NCP, the Belgian ECA informed us that it considers that the company Jan De Nul NV has complied with all additional conditions concerning the protection of the environment.

The NCP was informed that the subsequent phases of the Sabetta project were awarded to another Belgian company.

3- CONCLUSION

The NCP considers that environmental information does not, by definition, is part of the confidential company data.

In accordance with the OECD Guidelines, it recommends to the Belgian companies that, in the future, their communication to the public about the potential hazards to the environment is made public in a transparent manner (confidence building), taking however into account the confidentiality of certain commercial information and intellectual property rights.

The NCP also recommends that the companies concerned develop the necessary contacts with the IUCN to make use of the most appropriate methods (e.g. for detection) to prevent and minimize the effects (turbulence, noise, danger of collision, etc.) on whales, wherever they occur.

In the wake of this case, the NCP will contact the Belgian companies involved in the continuation of the Sabetta project implementation.

It is recommended to the applicants that, upon filing of a specific instance to the NCP, they comply with the rules of procedure of the Guidelines, and among others, to what has been agreed upon regarding the confidentiality and the principle that one does not publicly accuse the opposing party during the mediation.

Otherwise, the NCP may not fully fulfil its mediator role, which has been the case in this matter.