



## SPECIFIC INSTANCE

### “Monegasque and Congolese companies in Buvaku in the Democratic Republic of the Congo”

15 May 2018

#### Statement by the French National Contact Point

### The French NCP does not have territorial jurisdiction to handle a referral concerning a Monegasque enterprise and a Congolese enterprise in the Democratic Republic of the Congo

On 5 March and 21 March 2018, a Congolese non-governmental organisation, the non-profit ADIMED, “*Action pour le développement et l'innovation médicale*”, referred a “complaint” to the French National Contact Point (NCP) for the implementation of the OECD Guidelines for Multinational Enterprises concerning a Monegasque enterprise and a Congolese enterprise with a branch in Belgium with relation to the conditions for employing nine workers in Bukavu between 2002 and 2008.

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

*A reminder of the referral procedure: The complainant refers the case to the NCP. The NCP acknowledges receipt of the referral and examines its formal admissibility. It then carries out its initial assessment if the referral is admissible. It strives to complete this assessment within three months of the acknowledgment of receipt. If the initial assessment is negative, it informs the parties of the reasons for its decision. If it is positive, it analyses the referral and offers its good offices to the parties. The French NCP issues a statement announcing its decision concerning the admissibility and initial assessment of the referral.*

On 5 March 2018, the complainant NGO submitted an online “complaint” to the French NCP and the Belgium NCP concerning a Monegasque enterprise and a Congolese enterprise having a branch in Belgium. The complainant mentioned that an appendix would be sent but this was not received by the French NCP. The two NCPs immediately discussed the case. On 7 March 2018, the French NCP’s Secretariat sent the complainant information on the procedure (bylaws, factsheet on the procedure, referral filing form) and advised it that, without the appendix, it was unable to acknowledge receipt of the referral. On 9 March 2018, the Belgian NCP informed the complainant that, as matters stood, the case could not be properly examined as a number of items were missing. It also provided a list of these items. The Belgian NCP subsequently sent the appendix to the French NCP. The French NCP duly acknowledged receipt of the referral at its meeting of 19 March 2018 and began to examine its admissibility. It noted that, on the face of it, it did not have territorial jurisdiction to handle the referral.

On 21 March 2018, the complainant sent a revised memorandum entitled “request for examination” just to the French NCP together with enclosures relating to nine personnel files. On 26 March 2018, the Secretariat acknowledged receipt of the revised file and forwarded it to the members of the French NCP and to the Belgian NCP.

The French NCP again examined the formal admissibility and this was finalised at its meeting of 12 April 2018. It noted that the referral was inadmissible. On 27 April 2018, the French NCP’s Secretariat informed the complainant and the Belgian NCP of its decision. After having consulted the Belgian NCP’s Secretariat, the French NCP adopted this statement on 15 May 2018. The statement was sent to the complainant for information before being published on the NCP’s website.



## 2. Contents of the specific instance

The referral concerns two foreign enterprises, a Monegasque company that provides services to the MONUSCO<sup>1</sup> in Bukavu and a Congolese company with a branch in Belgium. It would appear that these enterprises are business relationships. The referral sheds little light on the activities being criticised nor on their possible links, and provides scant evidence concerning the allegations made. The referral seems to concern the conditions for employing nine workers hired to provide services to the MONUSCO between 2002 and 2008. The referral raises allegations of violations of workers' rights (alleged absence of employment contracts, dismissals without redundancy pay, etc.), social security contribution fraud and suspected corruption. It refers to the Congolese Labour Code and the chapters of the 2000 Guidelines on concepts and principles, general policies, employment and industrial relations, and combating bribery. The complainant is requesting global financial compensation.

## 3. Examination of the admissibility of the referral and reasons for the NCP's decision

### *Admissibility criteria set out in the bylaws of the French NCP<sup>2</sup>*

**Art 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 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.*

**Art. 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.*

**Art. 20.** *Should it decide that the issue does not merit further examination, the NCP shall inform the parties of its reasons and issue a statement. 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.*

**Art. 21.** *A referral shall be declared admissible if it fulfils the formal conditions stated in paragraph 16.*

After receipt of the referral, the French NCP verified its territorial jurisdiction for a specific instance concerning a Monegasque enterprise and a Congolese enterprise. It worked in conjunction with the Belgian NCP as the Congolese enterprise has a branch in Belgium. As regards the Monegasque enterprise, it contacted the Ministry for Europe and Foreign Affairs which informed it that “*Although France and Monaco are bound by a Treaty of Friendship signed in 2002 which reaffirms Monaco’s sovereignty and which refers to a “common destiny”, Monaco retains full and entire sovereignty with respect to its enterprises and nationals*” and “*France’s adhesion to the OECD Declaration on International Investment and Multinational Enterprises has no legal repercussions for the Principality as it has not adhered thereto*”. The French NCP therefore noted that it does not have jurisdiction to handle this referral and duly informed the complainant and the Belgian NCP.

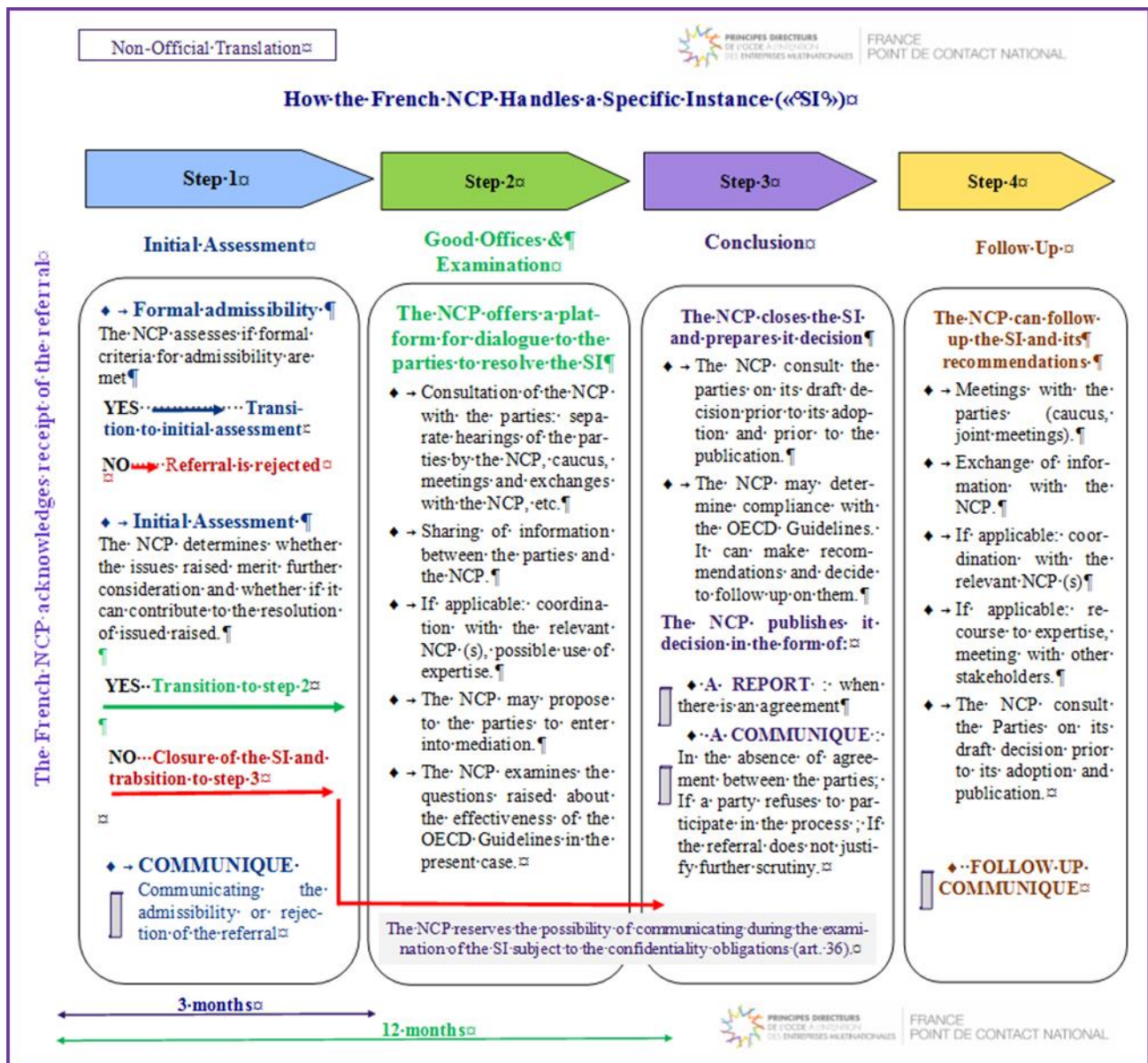
## 3. Conclusion

**The referral is inadmissible.** It cannot be handled by the French NCP as it does not have territorial jurisdiction. The Belgian NCP is now responsible for making a decision on the admissibility of the referral as one of the enterprises has a branch in Belgium. The French NCP has sent it its comments on the criteria for the case’s admissibility. In addition, the French NCP has contacted the French Ministry for Europe and Foreign Affairs with an eye to having the French Embassy in Monaco inform the Monegasque authorities of the referral and bring the OECD Guidelines to their attention.

In accordance with Article 20 of its bylaws, the NCP is issuing a statement explaining its decision that does not disclose the identity of the enterprises in question.

<sup>1</sup> United Nations Organization Stabilization Mission in the DR Congo

<sup>2</sup> Accessible on the NCP’s website: <https://www.tresor.economie.gouv.fr/Ressources/File/404282>



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