

Final statement by the German National Contact Point for the OECD Guidelines for Multinational Enterprises on a complaint by Mr. Dominic Whiting against NORDEX SE

On 4 August 2014, Mr. Dominic Whiting, a resident in Turkey (hereinafter “the complainant”) submitted a complaint against NORDEX SE (hereinafter “the respondent”) to the German National Point for the OECD Guidelines for Multinational Enterprises (hereafter “NCP”).

The OECD Guidelines for Multinational Enterprises (hereafter “OECD Guidelines”), as part of the OECD Declaration on International Investment and Multinational Enterprises, are recommendations for responsible corporate conduct for enterprises acting internationally. The governments of the OECD Member Countries and other participating countries have committed themselves by way of their respective NCP, to promote the Guidelines and to consider complaints that multinational enterprises based or operating in the member country may have violated the Guidelines. In the course of the specific instance procedure the NCP engages to find adequate solutions of the issues raised in a confidential mediation with relevant partners.

I. The complaint

The complaint relates to the general risk based due diligence of the respondent in relation to supplies of wind turbines to wind park projects. The respondent is a manufacturer of wind turbines based in Germany.

The original complaint referred to the alleged participation of the respondent in a specific wind park energy project in Turkey, the ABK Çeşme RES Cesme WPP project in Izmir. That complaint primarily alleged that the respondent, as project partner in Turkey, had failed to carry out general due diligence for the specific project. In particular, it was alleged that the public was not consulted about the construction of the wind facility, that no Environmental Impact Assessment (hereafter “EIA”) was commissioned, and that the respondent had failed to respect the property rights of private individuals and those of the local authorities. Furthermore, due diligence had not been carried out as to how the turbines could be transported safely to the construction site. Following talks between the German and Turkish NCP, also attended by the Chair of the competent OECD working group it was decided that questions regarding the specific project in Izmir based on paragraph 2 of Chapter VI, Environment, of the OECD Guidelines (public participation, information on the impacts of the activities, communication process) were considered to fall into the competence of the Turkish NCP. The Turkish NCP considered these specific questions and informed the complainant by mail of 11 November 2014 that the complaint regarding the specific allegations regarding the project’s implementation in Turkey had not been accepted. The project was being carried out by a Turkish

project company which was not considered a multinational enterprise within the meaning of the OECD-Guidelines.

In the above mentioned talks regarding NCPs' competences it was also decided that the German NCP would be considered competent to deal with complaints regarding the respondent's alleged violation of its general risk-based due diligence as supplier of wind turbines. The complainant repeated these allegations and further explained them in his email of 15 December 2014.

II. The company's response

The respondent denied the allegations of the complainant, stating that the company's internal code of conduct referred to the OECD Guidelines and had sufficiently incorporated sustainability aspects into its risk-management systems. As a supplier, the respondent relied on the evidence provided by its local customers as it considered it to be its local client's obligation to ensure that the necessary licences had been granted based on the required documentation.

III. The initial assessment

In line with the Procedural Guidance for the OECD Guidelines, the NCP conducted an initial assessment, which also considered the statement by the respondent, to examine whether the issues raised merit further examination. This initial assessment was completed on 8 June 2015.

The German NCP considered itself competent to deal with the complaint as it regards the respondent's alleged violation of its general risk-based due diligence as supplier of wind turbines.

The NCP accepted the complaint with regard to the implementation of the risk-based due diligence to identify, prevent and mitigate actual and potential adverse impacts of the company's business activities (according to Chapter II Nr. 10, General Policies), in particular in respect of the foreseeable environmental, health, and safety-related impacts associated with the delivery of wind turbines over their full life cycle (according to Chapter VI, Nr. 3, Environment). The NCP considered that the respondent referred to the OECD Guidelines in paragraph 5 in its own Code of Conduct "The Five Core Principles Compliance of the NORDEX Group". It had also declared to have incorporated sustainability aspects into its risk management systems. While the respondent, as a supplier, relies on the evidence provided by its customers in specific projects, the NCP saw the opportunity for a mediation process to verify if these mechanisms meet the recommendations of the OECD Guidelines on due diligence.

The NCP rejected the complaint regarding the other issues raised, in particular the allegation that the respondent had been locally involved as a project partner of the wind park. The NCP did not consider the complainant to have sufficiently substantiated that the respondent was not only acting as a supplier, but also as a full-fledged project partner of the project. It further rejected all allegations related to the specific project in Izmir, as they had already been subject to a decision by the Turkish NCP.

IV. Conciliation procedure and measures agreed to by the respondent

Following the partial acceptance of the complaint regarding the respondent's due diligence as a supplier of wind turbines, the NCP prepared for the mediation in several bilateral contacts with both parties. A mediation meeting took place on 11 February 2016, with the complainant assisting via Skype. Both sides were given the opportunity to present their views on due diligence implementation.

Both parties agreed on the importance to implement risk-based due diligence, to identify, prevent and mitigate actual and potential adverse impacts of business operations (according to Chapter II, Nr. 10, General Policies), taking into account foreseeable environmental, health, and safety-related impacts associated with the processes, goods and services of the enterprise over their full life cycle (according to Chapter VI, Nr. 3, Environment).

Following further bilateral talks with both parties, the respondent agreed to improve its due-diligence process as supplier of wind turbines (Gate Process) as explained below. However, the complainant referred to important developments in the pending legal cases in Turkey regarding the ABK Çeşme RES Cesme WPP project in Izmir and therefore refrained from signing a Joint Final Statement with Nordex SE and the NCP.

As for the respondent's due-diligence process as supplier of wind turbines (Gate Process), the respondent agreed to improve the implementation of the OECD's recommendations on due diligence as follows:

Prior to signing any wind turbine supply agreement the respondent will review the documents provided by the respective client or other participants in the project for the following aspects:

1. Relevant permits and agreements on land-rights

The respondent will review if, according to the documents provided, permits (such as construction permit, operation permit, environmental permit, etc.) as well as agreements regarding land rights (e.g. land lease agreements, freehold property titles and land usage permissions) have been granted, respectively entered into, for all

wind turbine generators at the project site, for the access and the substation and for all other relevant aspects of the project and that the permits cover the duration of the operating permit of the wind energy project.

2. Assessment of Environmental and Social Impacts

The respondent will review the relevant environmental and social impacts of the project. This review might be based on the following documents, but not limited to these:

- Environmental and Social Impact Assessment (ESIA), Environmental Impact Assessment (EIA), Social Impact Assessment (SIA)
- Resettlement Action Plan
- Noise Study
- Shadow Flicker Study
- Biodiversity Studies
- Permits (which contain detailed assessments of relevant aspects)
- Publicly available information, e.g. on biodiversity, protected areas, land right issues etc.

The respondent will review whether the content of the documents provided by the client or other participants in the project is plausible. For this purpose he will review if the studies

- a) refer to the correct project
- b) are project-specific
- c) contain the correct certificate in view of the project size
- d) have been prepared by competent professionals
- e) deal with the following aspects of the wind energy facility:
 - i. landscape and visual impacts (e.g. shadow flicker)
Possible landscape and visual impacts should be assessed by using zone visual influence maps, wire-frame images and photomontages from the key viewpoints (to evaluate impacts on the surrounding landscape) and by using available software to model potential risks of visual impacts (e.g. shadow flicker), taking into account the proximity of wind turbines to settlements, residential areas and other visual receptors.
 - ii. noise impacts
Noise impacts on potential sensitive receptors (human, livestock, or wildlife) within 2,000 meters of any of the wind turbines in a wind energy facility should be assessed. Such assessment should include preliminary modelling to determine whether a more detailed investigation on noise is

warranted, if necessary with regard to cumulative noise from other energy facilities in the vicinity.

iii. security risks (e.g. ice throw)

Security risks, in particular that of ice throws from the rotor blades or blade failure should be assessed. An acceptable distance from adjacent sensitive receptors (“setback”) should be determined.

iv. biodiversity in the vicinity (e.g. risks bird and bat collision)

Evidence should be provided that the site and layout of the facility have been carefully selected to avoid and minimize potential adverse impacts on biodiversity. This should include prior consultation of the relevant national and/or international conservation organizations and take into account international guidelines detailing the scope and extent of biodiversity surveys on site-, species- and season-specific issues. Surveys of potential adverse impacts on biodiversity should especially consider the proximity of the proposed wind energy facility to sites of high biodiversity value in the region (including those located across national boundaries). In case of multiple wind farms in the vicinity of areas of high biodiversity cumulative impact assessments should to be carried out.

v. land rights

Any project-related land acquisitions or leases that may have lead or may lead to people moving homes or losing access to land as their source of income or any restriction on land use should be identified. In particular, the respondent will review whether

- a. expropriation and involuntary displacement are avoided or, if unavoidable, are minimized by exploring alternative locations or project designs,
- b. forced eviction is avoided,
- c. adverse impacts from land acquisition or restrictions on land use are avoided, and where avoidance is not possible, minimized by (1) providing compensation for loss of assets at replacement cost and (2) ensuring that resettlement activities are implemented with appropriate disclosure of information, consultation and that displaced persons are provided with adequate housing with security of tenure in compliance with international standards,
- d. land and related assets are only acquired with adequate compensation.

vi. participation of affected communities and other stakeholders

Communities and other stakeholders affected by the wind park facility have been consulted in accordance with international standards by the respective client. In particular, this includes:

- a. identification of affected communities and relevant stakeholders,
- b. disclosure of relevant project information to the affected communities and relevant stakeholders to help them understand the risks, impacts and opportunities of the project, e.g. information on
 - purpose, nature and scale of the project,
 - duration of proposed project activities,
 - risks and impacts on stakeholders and relevant mitigation measures,
- c. consultation of affected communities and stakeholders in early project stage to help identify the environmental and social risks and impacts of the project.

3. Cases of doubts

In case the documentation submitted by the client or other participants in the project does not provide sufficient evidence that the wind energy facility has been planned and will be implemented according to the studies which take into account the criteria listed above, the respondent will ask the client or other participants he has been in contact with, to provide additional information and, if necessary, ask third party advisors to examine the plausibility of the documentation.

If the client's responses do not satisfy the respondent he will ask the client to implement outstanding examinations without delay. The respondent will try to convince the client to implement outstanding issues in order to avoid negative effects on the environment.

In case the client does not respond to the respondent's request in a satisfactory way in an adequate time, the respondent will consider refraining from supplying the wind turbine to the respective project. This decision will be based on the probability of occurrence and the seriousness of consequences of the associated risk.

V. Conclusion of the NCP

The NCP welcomes that the respondent agreed to improve the implementation of the OECD's recommendations on due diligence as a supplier of wind turbines (Gate Process). The NCP regrets that the complainant refrained from signing a corresponding Joint Final Statement. Nonetheless, in view of the NCP, the issues raised by the complaint that had been accepted for further evaluation, have been resolved with this Final Statement.

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For the National Contact Point
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