

Statement by the Swedish National Contact Point (NCP) for the OECD Guidelines for Multinational Enterprises - with the full support of Norway's NCP - in connection with a complaint from the Argentine environmental organisation CEDHA against Nordea.

Introduction

On 12 July 2006, the Swedish National Contact Point for the OECD Guidelines for Multinational Enterprises (NCP) received a complaint from the Argentine environmental and human rights NGO CEDHA (Center for Human Rights and Environment), that was also signed by the Norwegian environmental organisation Bellona, concerning Nordea's part-financing of the Finnish company Botnia's pulp mill project in Uruguay. The same complaint was also sent to the Norwegian National Contact Point. The complaint has been dealt with via consultation between the Swedish and Norwegian Contact Points, but it has been agreed that the main responsibility should lie with the Swedish NCP as Nordea's head office is in Stockholm. The Norwegian NCP endorses the comments and conclusions expressed in the statement.

Conclusion

The Swedish National Contact Point has not found indications to support the complaints made about Nordea having violated the OECD Guidelines in its part-financing of Botnia's pulp mill in Uruguay.

This position is founded partly on meetings that have been held with the aim of contributing to a solution by means of discussion and dialogue, and partly on questions and answers that have been exchanged between the parties concerned, with the NCP acting as facilitator and intermediary. Moreover, the International Finance Corporation's (IFC) environmental study on the project and visits made to Uruguay by trade union organisations have strengthened this assessment. This statement has the full support of the Norwegian NCP.

In its handling of the matter, the Swedish National Contact Point has examined the application of the Guidelines to the financial sector and whether Nordea has independent liability as part-financer and supplier of financial services to the company Botnia. At the annual NCP meeting in Paris in June 2007, the topic for roundtable discussions was the OECD Guidelines and the financial sector. Sweden took on a leading role at the meeting, and it was established that the Guidelines could be applicable. The NCP states that the Guidelines can and should be applied to the financial sector as well as to other

multinational enterprises. The NCP considers the following rule in the Guidelines to be of particular interest in this respect:

Chapter 2, paragraph 10

‘Encourage, where practicable, business partners, including suppliers and subcontractors, to apply principles of corporate conduct compatible with the Guidelines’

The Swedish National Contact Point would like to take this opportunity to encourage Nordea and other actors in the financial sector to practise as much transparency and freedom of information as possible. In order to foster greater understanding among the general public for their activities, it is essential that companies be sensitive to the public’s increasing demands for information. The NCP would like to point in particular to Chapter 2, ‘General policies’, paragraph 7, and Chapter 3, ‘Disclosure’, paragraphs 4e)–f) and 5b)–c).¹

Nordea says that in the case in question it followed its regular processing routine for project and risk analysis where it – according to the information provided – applied procedures similar to those within the framework of the Equator Principles. In the course of proceedings, Nordea has adopted the Equator Principles (February 2007) and acceded to the UN Principles for Responsible Investments with effect from 1 November 2007.

The NCP considers that this process has illustrated how the Guidelines can contribute to both socially and environmentally responsible international entrepreneurship. It has played a significant role in promoting the Guidelines and has provided an example of how they can be applied even to the financial sector. This process has also shown how valuable good cooperation between National Contact Points can be. To conclude, the NCP would like to underline that it considers it very important that the OECD Guidelines are respected and followed by all actors.

Background to the matter

The NCP’s main task is to spread information about and promote the use of the OECD Guidelines for Multinational Enterprises. In specific instances, it is the NCP’s duty to assist in solving problems through discussion and dialogue with the parties concerned.

The NCP has – in collaboration with the Norwegian NCP – processed the complaint in accordance with the agreed guidance for handling specific instances in countries that are not members of the OECD.

CEDHA reported Nordea for not having followed the OECD Guidelines for Multinational Enterprises in its part-financing of the Finnish company Botnia's construction of a pulp mill in Uruguay. CEDHA had previously reported Botnia to the Finnish NCP. In its complaint against Botnia, the complainant claimed that the company had not followed the Guidelines and that, as a result, Botnia's partners – in this case Nordea – had not followed the Guidelines either.

In an additional complaint, it was stated that Nordea could have independent liability, with no direct link to Botnia. CEDHA claimed that Nordea had not followed paragraphs 1, 2, 5 and 7 (to contribute to economic, social and environmental progress, sustainable development, human rights etc.) of Chapter 2, 'General policies', paragraphs 1 and 2 (to ensure that relevant information is disclosed) of Chapter 3, 'Disclosure', and the introduction and commentary as well as paragraphs 1–6 of Chapter 5, 'Environment' (the Environment Chapter broadly reflects the contents of the Rio Declaration on Environment and Development, including Agenda 21, various conventions and the ISO Standards on Environmental Management Systems).

Nordea's role can be described as that of 'arranging bank', responsible for ensuring that the construction be financed by other banks too. According to CEDHA, the complainant, Nordea is responsible for part-financing to the tune of USD 300 million. This figure has not been confirmed by Nordea. The World Bank body IFC (International Finance Corporation) has approved a loan of USD 170 million to Botnia, and MIGA (the Multinational Investment Guarantee Agency) has approved a guarantee of up to USD 350 million.

The Swedish and Norwegian NCPs processed the Nordea complaint in joint consultation and decided on 15 November 2006 to take up the complaint on a formal basis. This assessment was based on the procedural guidance prescribed by the OECD Guidelines, and on the view that these could also apply to financial institutions with reference to Chapter 2:10.

Contact and information-gathering

Throughout the process, contact has been maintained with and information gathered from the relevant ministries at the Government Offices, Swedish embassies and other concerned parties. A copy of the complaint has also been sent to Argentina's NCP for its information.

There has been the following contacts between the parties:

The Swedish and Norwegian NCP chairs took part in a meeting in Helsinki where CEDHA met Botnia and the Finnish NCP on 30 August 2006.

- The Swedish and Norwegian NCPs jointly met representatives of Nordea's management, including officers responsible for CSR, in Stockholm on 11 October 2006. At this meeting, Nordea was able to air its views on CEDHA's complaint.
- The Swedish NCP invited Nordea and CEDHA to a dialogue meeting in Stockholm on 23 March 2007. The Norwegian NCP also took part in the meeting. The parties agreed that dialogue was important for the further handling of the matter and that CEDHA should put in writing the questions it wanted Nordea to answer. The NCP would then discuss the issues with Nordea prior to Nordea formulating its response. A written summary of the dialogue meeting has been published in accordance with the parties' wishes.
- Following the dialogue between the NCP and CEDHA, five questions were submitted by CEDHA in June 2007 for Nordea to answer. A meeting between Nordea and the Swedish and Norwegian NCP chairs took place in Oslo on 12 October 2007. Nordea's answers were forwarded to the complainant, CEDHA, on 31 October 2007, together with an invitation to react to Nordea's answers by 15 November 2007 at the latest.
- A preliminary and informal response from CEDHA was received by the Swedish NCP on 15 November 2007 (but was not forwarded to Nordea at CEDHA's request). CEDHA has not yet submitted an official reaction.

CEDHA's complaint to the Finnish NCP

The complaint against Botnia was concluded by the Finnish NCP which made a statement on 20 December 2006 in accordance with the OECD statutes. The same chapters and paragraphs that were given as grounds for the complaint against Botnia to the Finnish NCP were given for the complaint against Nordea to the Swedish NCP.

It is stated in the statement that Botnia did not violate the OECD Guidelines, and the statement is based, among other things, on the thorough examination of the matter carried out by the World Bank body IFC (International Finance Corporation). The IFC has since

approved a loan of USD 170 million to Botnia, and MIGA (the Multinational Investment Guarantee Agency) approved a guarantee of up to USD 350 million for the construction of the pulp mill.

International Court of Justice in The Hague

CEDHA also referred to Argentina's complaint against Uruguay to the International Court of Justice in The Hague, in which Argentina – according to CEDHA – claimed that Uruguay had unilaterally granted permission for the construction of two pulp mills, despite repeated attempts by Argentina to initiate consultations in accordance with the Rio Uruguay Treaty. In July 2006, the International Court of Justice in The Hague gave its first decision (by a vote of 14–1) which stated that the Court considered that Argentina had not been able to present sufficient evidence to show that the pulp mill would represent an immediate or irreversible threat to the environment. A final decision can be expected in two to three years' time.

The Swedish National Contact Point is made up of representatives from:

- *The Government Offices (chair is Margareta Kristianson, Ministry for Foreign Affairs, International Trade Policy Department, Swedish Partnership for Global Responsibility)*
- *The Swedish Trade Federation, the Confederation of Swedish Enterprise, IF Metall, the Swedish Trade Union Confederation, the Swedish Confederation of Professional Associations (Saco), the Confederation of Professional Employees, trade union Unionen*

1 Chapter 2, 'General policies'

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."

Chapter 3, 'Disclosure'

4. "Enterprises should also disclose material information on:

e. Material foreseeable risk factors,

f. Material issues regarding employees and other stakeholders"

5. "Enterprises are encouraged to communicate additional information that

could include:

b) Information on systems for managing risks and complying with laws, and on statements of codes of business conduct,

c) Information on relationships with employees and other stakeholders."