

Punto di Contatto Nazionale per le Linee Guida OCSE

Specific instance submitted to the Italian on the 18th July 2019 by Lady Lawyer Foundation (LLF) *versus* Intesa Sanpaolo S.p.A.

INITIAL ASSESSMENT¹

1. This document contains the Initial Assessment of the Italian National Contact Point (hereinafter, also "NCP") on the specific instance submitted on the 18 July 2019 by Lady Lawyer Foundation (LLF, hereinafter, also "Complainant") *versus* Intesa Sanpaolo S.p.A. (hereinafter, also "Enterprise").

The OECD Guidelines and the NCP's activities

2. A specific instance is a request to the NCP to offer its good offices to contribute to the shared resolution of issues relating to the implementation of the Guidelines of the Organisation for Economic Co-operation and Development ("OECD") for Multinational Enterprises (hereinafter the "Guidelines") in specific cases.
3. The Guidelines are recommendations of responsible business conduct addressed by adhering Governments to the multinational enterprises operating in or from their territories.
4. To disseminate the Guidelines, each adhering Government is bound to establish a National Contact Point that has the task to manage a non-judicial mechanism for settling disputes between a Company and a stakeholder arising from an alleged breach of the Guidelines.
5. Through the offer of good offices by the NCP, this mechanism is aimed at finding a concrete solution to the case, compliant with the Guidelines and agreed by the parties.
6. The Initial Assessment is the preliminary examination that the NCP carries out to determine whether the issue raised in a specific instance merits further examination. If the case merits further examination, the NCP offer its good offices, to help the interested parties to solve the issues, in accordance with the Guidelines and the applicable laws. If the case does not merit further examination, the NCP communicates it to the parties, publishes its conclusion and, therefore, concludes the procedure.
7. The effectiveness of the specific instance proceedings depends on the behaviour in good faith of all parties involved

¹ The official version of this Initial Assessment is in Italian.

Submission of the specific instance - Alleged violations of the Guidelines

8. The specific instance was submitted by the Lady Lawyer Foundation (LLF), an NGO established in 2014 with the aim of promoting and spreading the Human Rights standards recognised by national, regional and international regulations. It has submitted the complaint to the NCP alleging that the behaviour of Intesa Sanpaolo SpA, was contrary to the following provisions of the Guidelines:
 - Chapter II, General Principles; A; 1, 3, 6, 7;
 - Chapter III, Disclosure;
 - Chapter X, Competition; 1, 4.
9. Intesa Sanpaolo, indicated as a distraining creditor on the apartment used as the LLF's office by virtue of a rental contact, is accused of having started a search activity for possible purchasers of the property, even before the execution judge had ordered the sale of it and in spite of the promise to purchase the property made by LLF to the owners of the property.
10. The Complainant, therefore, asked the NCP to offer its good offices for the resolution of the issue, pursuant to the Guidelines.

Position of the Enterprise

11. Intesa Sanpaolo SpA, in its reply notes (see below) states that:
 - the procedure mentioned by the Complainant is a real estate enforcement procedure established by the condominium where the property in question is located, in which the Enterprise intervened to recover its own credit towards the owner;
 - Mrs. XXXXXXXXXX, signatory of the Complaint to the NCP as President of the LLF, is the daughter of the executor and, in her quality of guarantor, received several requests for payment;
 - there are no pre-emptive rights on the property that may be relied upon against third parties;
 - as at 30 October 2017 the property was occupied by the owner and in any case, not by LLF;
 - it did not find any documentation relating to the promise of sale deduced by the Complainant.
 - for all the above, there is no violation of the OECD Guidelines.

The Initial Assessment

12. As part of the specific instance procedure, the initial assessment is intended to ascertain whether the issue raised in the specific instance merits further examination. That is, the NCP must determine whether the issue is "bona fide" and relevant to the implementation of the Guidelines, based on the following criteria, established by the Guidelines²:
 - a) The identity of the party concerned and its interest in the matter;
 - b) Whether the issue is material and substantiated;
 - c) Whether there seems to be a link between the enterprise's activities and the issue
 - d) raised in the specific instance;

² Guidelines, Commentary on the Implementation, Procedures § 25.

- e) The relevance of applicable law and procedures, including court rulings;
 - f) How similar issues have been, or are being, treated in other domestic or international proceedings;
 - g) Whether the consideration of the specific issue would contribute to the purposes and effectiveness of the Guidelines.
13. By letter prot n. 0198266 dated 20 July 2019 the NCP informed Intesa Sanpaolo S.p.A. of the submission of the specific instance granting time to the Enterprise until the 30th September 2019 to illustrate its position on the merit, also by note of reply.
14. Intesa Sanpaolo S.p.A., by letter prot n. 0274630 dated 27 September 2019, submitted its note of reply to the NCP.
15. Grounded on the documentation so collected, the NCP held that it could accomplish the Initial Assessment of the case under examination; on the 22nd October 2019 it communicated the draft Initial Assessment conclusions to the Committee that expressed its favourable opinion on it.
16. On the 13th November 2019 the NCP transmitted the draft Initial Assessment to the Parties to collect their comments on it. Only the Complainant, on the 22nd November 2019, submitted its written comments to the NCP. The NCP, after examining those comments, considered as confirmed its conclusions reported in the draft Initial Assessment.
17. Therefore, the NCP publishes the Initial Assessment in this definitive version, signed by the Chair of the NCP.

The identity of the party concerned and its interest in the matter

18. The Complainant has a direct interest on the issue.

Whether the issue is material and substantiated

19. The presentation of the facts contained in the complaint and in the note of reply does not highlight any violation of the Guidelines by the Enterprise, nor any "negative impact in the matters dealt with by the Guidelines". The facts described seem rather to fall within the normal course of the legal relations provided for by the Italian legal system.
20. The promise to purchase the property mentioned by the Complainant is in no way proven (in such cases, anyhow, as far as is known, the *ad substantiam* written form is prescribed). In any case, it would have little relevance, given the limits of effectiveness in respect of the creditors of the executive procedure, all the more so if, as deduced by the instance, it had been formulated when the procedure was initiated already.
21. It is also believed that any attempt to resolve the matter made by the Enterprise, provided that it is formalised within the procedure, would fall within its faculties.

Whether there seems to be a link between the enterprise's activities and the issue raised in the specific instance

22. The issue raised has only a partial link with the business of the Enterprise, given that any "prejudice" suffered by the Complainant is a consequence of a procedure envisaged by the law, and established by parties other than the Enterprise itself (the condominium for credit recovery).

The relevance of applicable law and procedures, including court rulings -
How similar issues have been, or are being, treated in other domestic or international proceedings.

23. The issues relating to the procedure in question should be brought to the knowledge of the execution judge, who has jurisdiction over them. The NCP is not allowed to review the exercise of the jurisdictional and judicial functions; indeed the Guidelines (§26 of the Implementation Procedures) recommend not to compromise the authority of justice.

Whether the consideration of the specific issue would contribute to the purposes and effectiveness of the Guidelines

24. It seems that the consideration of the specific issue would not contribute to the purposes and effectiveness of the Guidelines

25. In this case, there are no violations of the Guidelines, nor negative impacts or risks of negative impact as set forth in the Guidelines.

Conclusions

26. In the light of the above considerations, the NCP, at the outcome of this preliminary assessment, considers that the issue raised does not merit further examination.

27. This decision concludes the procedure.

Place and date

Rome, 5/12/2019

The Director General
Chair of the OECD NCP
Avv. Mario Fiorentino