

Final Statement

FOREIGN ENERGY COMPANY & FORMER WORKER (2023)

Non-official English translation

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CHILE'S NATIONAL CONTACT POINT FOR RESPONSIBLE BUSINESS CONDUCT | RESPONSIBLE BUSINESS
CONDUCT DEPARTMENT | UNDERSECRETARIAT OF INTERNATIONAL ECONOMIC AFFAIRS

FINAL STATEMENT

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I. Introduction

1. Chile's National Contact Point for Responsible Business Conduct (NCP), implementing body of the OECD Guidelines for Multinational Enterprises on Responsible Business Conduct (Guidelines), located in the Head of the Responsible Business Conduct Department of the Undersecretariat of International Economic Affairs (SUBREI), hereby issues its Final Statement, in the specific instance "Foreign Energy Company & Former Worker (2023)".
2. The Final Statement describes the process and the results of the analysis of the specific instance to which it refers. It is based on information received from the parties and the steps taken by the NCP. If there was confidential information submitted to the NCP in the course of the procedure, it has not been disclosed in this statement. According to the NCP's rules of procedure (RdP), the NCP will always issue a Final Statement, which is public, whether or not it has been preceded by an Initial Statement or good offices.
3. As this is a specific case concerning events that took place prior to the entry into force of the 2023 version of the Guidelines, on 8 June 2023, this case has been assessed in accordance with the 2011 version of the said instrument. However, since that date, the NCP always refers to the 2023 version of the Guidelines when issuing recommendations in its Final Statements.
4. If the NCP offers its good offices or, in its Final Statement, makes recommendations to the company, this must not be interpreted under any circumstances as a statement that the multinational enterprise in question has breached the Guidelines.
5. In accordance with the principle of transparency governing the functions of the NCP, final statements are published on the NCP's website, translated into English, reported, and sent to the OECD Working Party on Responsible Business Conduct.
6. Before the Final Statement is issued, the parties are given the opportunity to comment on its draft, bearing in mind that the wording of the statement is always the responsibility of the NCP, which will determine the final version of the document.
7. The Final Statement marks the closure of the NCP procedure, without prejudice to the possibility of a follow-up stage.

II. Parties

a) Identification of the submitter

8. Former worker of a foreign-owned energy company operating in Chile ("the submitter" or "the worker").

b) Identification of the company

9. Foreign-owned energy company operating in Chile (the company).

III. Issues raised

a) Summary of the specific instance request

10. On 8 June 2023, the worker submitted a specific instance request to the NCP, identifying alleged breaches of the Guidelines by the company, due to her dismissal, which she

considers to be unjustified and a retaliation for a workplace harassment complaint filed against her supervisor on 10 March 2023, with the company's country manager.

11. According to the submitter, despite indications of harmful conduct against her, the company chose to terminate her employment rather than take immediate measures to stop the harmful behaviour.
12. In addition to the workplace harassment complaint mentioned in paragraph 11, the worker attached to her request the investigation report carried out by the company following her complaint. In that report, the country manager states that the perception of the witnesses regarding the events that led to the complaint aligns with that of the accused; therefore, it is concluded that no workplace harassment occurred.
13. The submitter identifies alleged breaches by the company of the following chapters of the Guidelines:
 - a. Chapter IV: Human Rights, paragraphs 4, 5 and 6.
 - b. Chapter V: Employment and Industrial Relations, paragraphs 1 (letter e) and 4 (letter c) and 54.
14. The expected outcome by the submitter through the NCP procures is as follows:

That the company commits to adopting real and effective measures in the future in response to workplace harassment complaints, strengthening and ensuring positive leadership from its management, without taking retaliatory actions when workers report violations of their fundamental rights, and guaranteeing due process.

b) Summary of the company's response

15. On 6 July 2023, a response was received from the company, stating that the submitter had filed two complaints against it with the Labour Directorate (DT), which led to two administrative conciliation proceedings based on the same facts, with hearing dates scheduled for 6 and 14 July 2023, respectively.
16. It adds that, considering the matter raised in the specific instance request to the NCP is also under review by the relevant administrative authority in accordance with labour regulations, the process offered by the NCP would involve initiating a third procedure with identical facts, parties, and requests, which the company considers counterproductive to reaching an agreement between the parties.
17. Consequently, the company respectfully declines the NCP's invitation, in order to avoid multiple conciliation procedures and to focus its efforts on the proceedings before the DT.
18. The NCP notes that a conciliation hearing was held before the DT on 6 July 2023, during which the parties reached an agreement. As for the other complaint filed by the worker against the company, it currently appears as "Deleted".

IV. NCP evaluation of the specific instance

a) Preliminary issues

19. The preliminary issue is whether the NCP has jurisdiction to hear the case.
20. For this, two requirements must be verified: (1) the requested company must be a multinational enterprise, and (2) that the alleged breaches occurred in Chilean territory

or, if they occurred in a foreign country without an NCP, the multinational enterprise must be Chilean.

21. Regarding the first requirement, the requested company is multinational in nature because it has entities in different countries and can coordinate its activities in all of them. Therefore, the first requirement is met. As to the second requirement, the events occurred in Chilean territory. Therefore, both requirements are met.

22. Thus, the NCP is competent to hear the case.

b) Initial assessment

23. In accordance with the Guidelines and RdP, in determining whether the issue raised merits further consideration, the NCP must establish whether the issue is bona fide (i.e., whether it is genuine or authentic) and whether it relates to the Guidelines (i.e., falls within their scope). In this context, the NCP takes into account the following criteria:

- a. The identity of the party concerned and its interest in the matter.

In this regard, there is sufficient available information to be certain of the identity and interest of the submitter in the case.

- b. Whether the issue raised in the specific instance request is material and justified.

The NCP considers that the issue raised in the specific instance request is sufficiently significant and well-founded for the purposes of an initial assessment. The issue is supported by sufficient and credible information.

- c. Whether the company's activities are linked to the issues raised in the specific instance.

The NCP considers it clear that there is a link between the company's activities and the issue raised in the specific instance.

- d. The relevance of concurrent legislation and procedures to the case, including court decisions.

When conducting an initial assessment, the NCP is not expected to determine whether domestic law was complied with, as its decision must be made in light of the Guidelines and its RdP, and solely to decide whether the issue merits further consideration.

However, domestic law and internal procedures, including court rulings, may provide useful guidance to the NCP regarding existing expectations based on the applicable legal framework and how issues relevant to a specific instance have been assessed by other bodies.

In this regard, the NCP has taken note of the proceedings initiated before the DT and of the agreement reached by the parties during the conciliation hearing before that body.

- e. How similar or the same issues have been, or are being, addressed in other local or international processes.

In this regard, the NCP has taken note of the agreement reached by the parties during the conciliation hearing before the DT.

- f. Whether the review of the specific instance will contribute to the purpose and effectiveness of the Guidelines.

Regarding the “purpose” of the Guidelines, their Preface states that they “aim to promote positive contributions by enterprises to economic, environmental and social progress worldwide.” It then states that the Adhering Governments seek “to encourage the positive contribution which multinational enterprises can make to economic, social and environmental progress, and minimise and resolve difficulties which may arise from their operations.” (Guidelines 2011, page 7).

On the other hand, regarding “effectiveness”, the Guidelines state that “Adhering countries shall set up National Contact Points to further the effectiveness of the Guidelines [...] contributing to the resolution of issues that arise relating to the implementation of the Guidelines in specific instances.” (Decision of the Council on the OECD Guidelines, paragraph I.1). In this regard, it should be noted that participation in the process before the NCP is voluntary, and the company communicated its decision not to participate. Furthermore, the issue raised has already been resolved, as evidenced by the agreement reached by the parties before the DT.

24. Therefore, after analysing the available information, the NCP concluded that there are no grounds to give further consideration to the issue raised.

V. Conclusion

25. In light of the above, the NCP issues this Final Statement, concluding the specific instance.

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Non-official English translation¹

¹ In case of discrepancy, the Spanish version of this Final Statement shall prevail.