



# Final Statement

---

ENAP & ENAP-PETROX UNION (2023)

Non-official English translation

18 March 2024

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

## FINAL STATEMENT

### ENAP & ENAP-PETROX Union

#### Content

<b>I. Introduction .....</b>	<b>3</b>
<b>II. Parties.....</b>	<b>3</b>
a) Identification of the submitter .....	3
b) Identification of the company .....	3
<b>III. Issues raised.....</b>	<b>3</b>
a) Summary of the specific instance request .....	3
b) Summary of the company's response .....	4
c) Submitter's reply .....	4
<b>IV. NCP evaluation of the specific instance .....</b>	<b>5</b>
a) Preliminary issues.....	5
b) Initial assessment .....	5
<b>V. Conclusion.....</b>	<b>6</b>
a) NCP Observations and Recommendations.....	6

## **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 present specific instance "ENAP & ENAP-Petrox Union".
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 actions undertaken 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, 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. 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**

4. ENAP-PETROX Workers' Union, an entity that represents more than 600 workers of the Bío Bío Petroleum Refinery, located in the commune of Hualpén, Biobío Region (hereinafter, the Union).

### **b) Identification of the company**

5. ENAP Refinerías S.A. (Bío Bío Refinery) is a closely-held corporation - a subsidiary of ENAP - which carries out activities related to the acquisition and refining of crude oil for the production of fuels and other petroleum derivatives; it also manages the logistics infrastructure for the transport and storage of these and their subsequent sale to distribution companies in the domestic market. ENAP is a Chilean state-owned multinational company focused on the exploration, extraction, refining and commercialisation of hydrocarbons and their derivatives (hereinafter, the company).

## **III. Issues raised**

### **a) Summary of the specific instance request**

6. On 18 April 2023, the Union filed a specific instance request to the NCP for alleged breaches of the Guidelines by the company. In the request, the submitter indicates that on 24 March 2023, the company dismiss seven workers from the Bío Bío Refinery, three of whom are Union members.
7. Specifically, the Union points out that:
  - a) The dismissals were allegedly carried out through an administrative measure, without due process of investigation, and in disregard of the procedure described in the company's internal regulations.

- b) The dismissals, based on the grounds of "business needs" (article 161 of the Labour Code), do not comply with the requirements of the law. Moreover, there was no communication addressed to the worker expressly stating the facts on which the dismissal was based.
  - c) The company has failed to establish a receptive dialogue that would allow for a technical and fact-based analysis of each case.
- 8. The submitter identifies alleged breaches by the company of the following chapters of the Guidelines (2011 edition):
  - a) Chapter IV. Human Rights, paragraphs 1 and 2.
  - b) Chapter V. Employment and Industrial Relations, paragraphs 1, 2 and 4.
- 9. The expected outcome by the submitter through the NCP procedure is as follows:

The reinstatement of the three Union members dismissed on 24 March 2023.

## **b) Summary of the company's response**

- 10. In its reply of 23 August 2023, the company indicates that on 24 March 2023, it did indeed dismiss seven workers, three of whom were members of the Union, on the grounds of business needs and eviction, because it was required to implement a restructuring for reasons of efficiency. The company adds that the grounds invoked for the dismissals were communicated in accordance with the law, were well-founded and did not require prior investigation.
- 11. It also points out that all the severance payments were allegedly issued and paid to the seven dismissed workers, regardless of whether they had signed or reserved their rights.
- 12. It also mentions that, because of the dismissals - in May 2023 - two members of the Union leadership went on hunger strike, in response to which the company requested the mediation of the Biobío Labour Directorate, which failed to reach an agreement. In addition, a dialogue table was set up, which concluded with the decision of the two leaders to end the hunger strike.
- 13. It also states that, of the seven workers, six have reportedly filed labour claims, including the three Union members. As of the date of the company's response, one of these cases had been concluded by conciliation, while the other two are pending.

## **c) Submitter's reply**

- 14. In her comments to the draft Final Statement on 13 March 2024, the submitter stated the following:
  - a. To be dissatisfied with the company's response time following notification of the specific instance request.

- b. That the dialogue, in the city of Concepción, had been requested by the Union and the company had made its participation conditional on the end of the hunger strike.
- c. That this strike did not end due to the company's efforts.
- d. As of 13 March 2024, two severance payments remained unpaid.
- e. That the company was reportedly unwilling to discuss the dismissals of Union members, either in the NCP procedure or elsewhere.
- f. That it reiterates its interest in developing an effective dialogue with the company regarding these dismissals and other matters.

## **IV. NCP evaluation of the specific instance**

### **a) Preliminary issues**

- 14. The preliminary issue is whether the NCP has jurisdiction to hear the case.
- 15. For this, two requirements must be verified: (1) the requested company must be a multinational enterprise, and (2) the events must have occurred in Chilean territory or, if they occurred in a foreign country without an NCP, the multinational enterprise must be Chilean.
- 16. Regarding the first requirement, the requested company is multinational in nature, as it has entities in different countries and can coordinate its activities in all of them. Therefore, the first requirement is fulfilled.
- 17. As to the second requirement, the events occurred on Chilean territory. Thus, the Chilean NCP is competent to hear the case.

### **b) Initial assessment**

- 18. In determining whether the issue raised merits further consideration, the NCP must establish whether the issue is bona fide and whether it relates to the Guidelines. In this context, the NCP takes into account the following criteria:
  - a. The identity of the party concerned and its interest in the matter.
  - b. Whether the issue raised in the specific instance request is material and justified.
  - c. Whether the company's activities are linked to the issues raised in the specific instance.
  - d. The relevance of concurrent legislation and procedures to the case, including court decisions.
  - e. How similar or the same issues have been, or are being, addressed in other local or international processes.
  - f. Whether the review of the specific instance will contribute to the purpose and effectiveness of the Guidelines.
- 19. After analysing the background information at its disposal and after holding bilateral meetings and communications with the parties - in order to obtain more information on

the issue raised and greater clarity on the expected outcomes - the NCP concluded that the issue is bona fide and in relation to the Guidelines and that the offer of good offices can contribute positively to the resolution of the issues brought to its attention.

20. Accordingly, the NCP offered its good offices to the parties on 7 December 2023, making available to them a space for dialogue, which would allow them to reach an agreement regarding the facts that gave rise to the request for a specific instance.
21. The proposed good offices were accepted by the submitter on 11 December 2023, while they were rejected by the company on 14 December 2023. The company argued that it had made consistent progress on the various issues raised by the Union, keeping open channels for social dialogue and freedom of association; additionally, there were also parallel proceedings, specifically judicial claims before the courts, and the company stated that it must adhere to the decisions rendered by these bodies.

## V. Conclusion

22. In light of the above, the NCP issues this Final Statement, concluding the specific instance and making recommendations to the parties, based on the circumstances and available information.

### a) NCP Observations and Recommendations

#### 23. Recommendations for the parties:

The parties are encouraged to maintain and engage in constructive, open and good faith mechanisms for mutual dialogue, prioritising the search for mutually agreed solutions, in line with the recommendations contained in the Guidelines.

#### 24. Recommendations for the company:

Implement risk-based due diligence according to the OECD Guidelines and Due Diligence Guidance for Responsible Business Conduct. These processes are ongoing and consist of identifying, preventing and mitigating negative impacts - actual or potential - of the company's activity and business relationships, and reporting on how they are addressed (Paragraphs 11, 12 and 13, Chapter II, OECD Guidelines 2023, pages 14 and 15).

\*\*\*

If the NCP offers its good offices or, in its Final Statement, makes recommendations to the company, this should in no way be interpreted as an assertion that the requested multinational has failed to comply with the Guidelines.

The Guidelines state that confidentiality shall be maintained during the course of the proceedings. Information and opinions provided in the course of proceedings shall be kept confidential, unless the party concerned consents to the disclosure of such information or opinions or where non-disclosure would be contrary to the provisions of national law.

In accordance with the principle of transparency that governs the functions of the NCP, the final statements are published on the NCP's website and are translated into English and sent to the OECD Working Party on Responsible Business Conduct.

Before the Final Statement is issued, the parties are given the opportunity to comment on the draft statement, bearing in mind that the drafting of the statement is always the responsibility of the NCP, which will define the final version of the document.

**Felipe Henríquez Palma**  
Chile's National Contact Point for Responsible Business Conduct  
Head, Responsible Business Conduct Department (SUBREI)

Non-official English translation<sup>1</sup>

---

<sup>1</sup> In case of discrepancy, the Spanish version of this Final Statement shall prevail.