

Final Statement

SACYR CONCESIONES (SACYR) & USER'S RELATIVES (2020)

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

Sacyr Concesiones & User's Relatives

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I. Introduction

1. Chile's National Contact Point for the OECD Guidelines (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 for International Economic Affairs (SUBREI), hereby issues its Final Statement in the case "Sacyr Concesiones & User's Relatives".
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 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, 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. The submitters are relatives of a user who lost his life on the Valles del Desierto Highway, whose concessionaire is Sociedad Concesionaria Valles del Desierto S.A., a subsidiary of the company Sacyr Concesiones Chile SpA, which in turn is a subsidiary of Sacyr Concesiones S.L.

b) Identification of the company

5. Sacyr Concesiones is a Spanish multinational company, with presence in more than 20 countries, whose main activity is the development of infrastructures and the integral management of the life cycle of concessions ("Sacyr" or "the company").

III. Issues raised

a) Summary of the specific instance request

6. On 4 October 2020, relatives of a truck driver, a user of the Valles del Desierto highway, filed a specific instance request with the NCP, in which they identify alleged violations of the Guidelines by Sacyr, which would refer to alleged negligence with respect to the duty to maintain the safety of the highway, which would have created a set of circumstances that led to the event that ended the life of the user.
7. The submitter states that the accident occurred on 14 November 2019, on the Valles del Desierto Highway, at kilometre 882 of Route 5 North, in the commune of Caldera, Atacama Region. It states that the user was driving his truck and, at 06:15 hours, given the absence of lights, he did not notice and hit a containment barrier that had been placed across the width of the roadway during a demonstration hours earlier. This caused the vehicle to overturn and the driver died at the scene as a result of the accident.

8. He adds that on the section of the highway where the event occurred, there were also other barricades - such as stones, tyres and wood used for bonfires - which were mainly located on the berms of the carriageway. He also indicated that, despite the fact that the demonstrations were public knowledge, the concessionary company had not taken action to remove these elements from the highway in a timely manner, nor had it suspended the service or informed users of the dangers on the road.
9. The submitter identifies alleged breaches by the company of the following chapters of the Guidelines:
 1. Chapter IV. Human Rights.
 2. Chapter VIII. Consumer Interests.
10. The expected outcome by the submitter through the NCP procedure is as follows:

Open negotiations with Sacyr in order to compensate for the material and non-material damage caused to the submitter, as well as to establish measures of non-repetition of the case.

b) Summary of the company's response

11. On 11 December 2020, a response was received from Sacyr, informing the existence of parallel proceedings, derived from two legal actions that the submitter filed against the company, in relation to the same facts. The first, on compensation for damages for alleged tort liability, was filed before the 3rd Civil Court of Santiago, on 1 July 2020; and the second, a criminal complaint for negligent homicide, was filed before the Court of Letters and Guarantee of Caldera.
12. Sacyr indicates that the aforementioned civil lawsuit, upon being notified to the concessionaire, activated the civil liability insurance policy for damages to third parties, in accordance with the requirements of the Bidding Terms and Conditions. Consequently, the Chubb Insurance Company assumed the defense of the concessionaire and filed the defense of the claim on 20 October 2020.
13. Subsequently, in a memorandum received on 20 May 2021, the company adds that it cannot settle or conciliate in this case, given that the representation in court was assumed by the insurance company, in accordance with the terms of the respective policy.
14. It should be noted that, later, on 2 December 2021, the submitter withdrew its civil claim, which was accepted by the company, thus terminating the claim for damages.

IV. NCP evaluation of the specific instance

a) Preliminary issues

15. The preliminary question is whether the NCP is competent to hear the case.
16. To determine 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.

17. With regard to the first requirement, the requested company (Sacyr) 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.

18. As to the second requirement, the events occurred on Chilean territory. Thus, the second requirement is fulfilled and the NCP is competent to hear the case.

b) Initial assessment

19. 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:

1. The identity of the party concerned and its interest in the matter.
2. Whether the issue raised in the specific instance request is material and justified.
3. Whether the company's activities are linked to the issues raised in the specific instance.
4. The relevance of concurrent legislation and procedures to the case, including court decisions.
5. How similar or the same issues have been, or are being, addressed in other local or international processes.
6. Whether the review of the specific instance will contribute to the purpose and effectiveness of the Guidelines.

20. In communication to the NCP, the company indicated that it could not settle or conciliate in this case, as legal representation was assumed by an insurance company. Subsequently, the submitter withdrew its claim for damages, terminating the lawsuit.

21. Accordingly, it is considered that there is no merit in giving further consideration to the issue raised.

V. Conclusion

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

a) NCP Observations and Recommendations

23. Recommendations for the company:

- Ensure that the services provided meet all agreed or legally required standards for consumer health and safety, including those pertaining to health warnings and safety information (Paragraph 1, Chapter VIII, Guidelines 2023).
- Provide timely, easily accessible, sufficient and clear information on the safe use of the service (Paragraph 2, Chapter VIII, Guidelines 2023).

- Implement risk-based due diligence according to the OECD Guidelines and OECD 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; Paragraph 15, Commentary to Chapter II; Paragraph 5, Chapter IV, Guidelines 2023).
- Implement enhanced due diligence and heightened attention to certain negative impacts when contexts involve greater risk (Paragraph 45, Commentary to Chapter IV, Guidelines 2023).

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 throughout the duration of the proceedings. Information and opinions provided during the 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.

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Non-official English translation¹

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