

Final Statement

AGROSUPER & NATURAL PERSONS (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

Agrosuper & Natural persons (2023)

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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 "Agrosuper & Natural persons (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. Group of individuals who are family members of a worker from a contractor company of Agrosuper, who passed away while performing his duties.

b) Identification of the company

9. Agrícola Super Limitada (hereinafter Agrosuper or the company), a firm engaged in the production and marketing of chicken, pork, turkey, and processed food products, is part of Agrosuper S.A., a food company holding with a presence in Chile and abroad.

III. Issues raised

a) Summary of the specific instance request

10. On 3 January 2023, the submitter submitted a specific instance request to the NCP, identifying alleged breaches of the Guidelines by Agrosuper, due to the death of a worker in a workplace accident on 12 August 2022.

11. According to the submitter, these breaches relate to alleged safety deficiencies and failures in the duty to supervise the safety obligations of the contractor company, by Agrosuper, which allegedly caused or contributed to the incident in which the worker, while unloading raw materials within Agrosuper's premises, was directly buried under tonnes of grain, resulting in death by suffocation.

12. The submitter alleges that:

- a. The deceased worker is said to have been working outside of his scheduled hours, at the request of one of Agrosuper's supervisors, and the company allegedly failed to monitor this.
- b. The worker is reported to have been performing tasks outside of his employment contract and usual work duties, as he was only supposed to carry out maintenance and cleaning tasks.
- c. He is said to have carried out the assigned tasks at night and without supervision.
- d. No safe zone was reportedly marked at the location of the incident, which would have allowed the worker to position himself without risk to his life or physical integrity. It is mentioned that the Labour Directorate, in its report, concluded that this omission was a critical factor in the worker's death.
- e. Agrosuper allegedly did not have safety protocols in place to protect the life and physical integrity of workers performing tasks such as unloading tonnes of grain. Furthermore, it is stated that there was no efficient and effective risk matrix to ensure worker safety.
- f. Medical attention following the accident is said to have been inadequate, as there was no personnel accompanying the deceased worker at the time of the incident, which reportedly resulted in a delayed response; furthermore, there was no appropriate medical staff present at the worksite, requiring assistance from the sector's Emergency Medical Attention Service (SAMU). Lastly, there was allegedly no effective and efficient protocol in place to coordinate rescue efforts for any worker who might suffer an accident while performing grain unloading tasks.

13. The submitter includes an Inspection Report from the Labour Directorate of Rancagua, which states the following:

- a. There was no visible and permanent signage in hazardous areas indicating the agent and/or risk condition associated with entering the premises.

This would constitute a breach of general workplace safety conditions and implies a failure to take the necessary measures to protect the life, health, and overall physical integrity of workers

- b. The main company did not maintain the sanitary and environmental conditions necessary to protect the life and health of all workers, as it failed to supervise unauthorised access to the site.

14. The submitter identifies alleged breaches by the company of the following chapters of the Guidelines:

- a. Chapter II: General Policies, paragraph 13.
- b. Chapter IV: Human Rights, paragraphs 2, 3, and 5.
- c. Chapter V: Employment and Industrial Relations, paragraphs 4 (letter c) and 5.

15. The expected outcome by the submitter through the NCP procures is as follows:

To open a channel of dialogue with the company in order to agree on comprehensive reparation for the material and non-material damages caused to the submitter.

b) Summary of the company's response

16. On 14 April 2023, a response was received from the company, stating:

- a. That there are three ongoing legal proceedings – in civil, labour, and criminal courts – initiated by the same party and concerning the same facts. Furthermore, in the civil and labour cases, the same request is said to have been made.
- b. That the events did not occur as described by the submitter, according to the analysis carried out by the administering body in its report on the incident.
- c. That the accident was caused by negligent and reckless behaviour in relation to the risk on the part of the deceased worker, as evidenced by documentation issued by the company's Joint Health and Safety Committee. This would be particularly relevant, considering that this is the body responsible for determining whether a worker was involved in an accident, in accordance with Article 70 of Law No. 16.744.

17. In the same letter, the company communicates its decision not to participate in the process before the NCP, on the grounds that it is not the direct employer of the deceased worker in the specific instance, and considering the existence of parallel judicial proceedings that should provide a short-term resolution to the dispute.

18. Regarding the legal proceedings, it should be noted that, after the company's response, they were terminated due to the submitters' withdrawal, as the parties reached a settlement agreement.

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 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.

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.

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. However, in this case, there is no court ruling that addresses the substance of the claims submitted by the submitter.

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.

- 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 withdrawal of the claims filed by the submitters before the courts of justice, concerning the company, as the parties reached a settlement agreement.

- 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 fact that the parties reached a settlement agreement.

24. Therefore, after analysing the available information and holding bilateral meetings and communications with the parties – in order to obtain more details about the issue raised and greater clarity on the expected outcomes – 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 and making recommendations to the company, based on the circumstances and available information.

a) NCP Observations and Recommendations

26. Recommendations for the company:

- a. Always provide a safe and healthy working environment in accordance with the ILO Declaration on Fundamental Principles and Rights at Work (paragraph 1 f, Chapter V, Guidelines 2023 edition). This includes the prevention of accidents and injury to health arising out of, linked with, or occurring in, the course of employment, by minimising, as far as reasonably possible, the causes of inherent risks in the working environment (paragraph 60, Commentary to Chapter V, Guidelines 2023 edition).
- b. Always maintain the highest standards of safety and health at work (paragraph 4 c, Chapter V, Guidelines 2023 edition), aiming to improve the level of outcomes in safety and health at work across all sectors of its operations (paragraph 63, Commentary to Chapter V, Guidelines 2023 edition).
- c. Implement risk-based due diligence processes in accordance with the Guidelines, particularly Chapter V, and the OECD Due Diligence Guidance for Responsible Business Conduct. These processes are ongoing and consist of identifying, preventing, or mitigating the actual or potential negative impacts of the company’s activities and its business relationships, and reporting on how such negative impacts are addressed (Paragraphs 11, 12, and 13, Chapter II, 2023 edition of the Guidelines).
- d. Encourage, as far as possible, business partners, including contractors, to apply standards of responsible business conduct and implement risk-based due diligence processes, in accordance with the Guidelines, particularly with respect to Chapter V (paragraph 13, Chapter II, Guidelines).

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