

**Minutes of the Second Stakeholders Meeting of the
Netherlands National Contact Point for the OECD Guidelines**
Tuesday morning, 3 June 2008 in The Hague (SER building)

Present:

Willem Lageweg – MVO Nederland (CSR Netherlands)
Peter Pennartz – SOMO (Centre for Research on Multinational Corporations)
Frouke Bruinsma – G-Star
Klaas de Jong - G-Star/IDH consultant
Joris Oldenziel – SOMO (Centre for Research on Multinational Corporations)
Winand Quaadvlieg – VNO (Confederation of Netherlands Industry and Employers)
Marleen van Ruyven - Amnesty NL
Liesbeth Sluys - Fairfood
Anthonie Fountain - Stop-the-Traffic

Present on behalf of the NCP:

Frans Evers (Chairman)
Joske Bunders
Herman Mulder
Lodewijk de Waal
Roel Nieuwenkamp, advisory member on behalf of the Ministry of Economic Affairs (EZ)
Jos Huber, consultant member on behalf of the Ministry of Social Affairs and Employment (SZW)
Lex van der Burg, representing the member on behalf of the Ministry of Foreign Affairs (BZ)
Hugo von Meijenfeldt, advisory member on behalf of the Ministry of Housing, Spatial Planning and the Environment (VROM), from item 1B onwards
Michiel van Yperen (communications)
Tabbe van Hoolwerff (secretariat)
Jan van Wijngaarden (secretariat)

After NCP Chairman Frans Evers had opened the meeting, everyone briefly introduced themselves and the proposed agenda was approved.

1 A. Presentation on awareness-raising activities

Michiel van Yperen gave a presentation on the NCP's awareness-raising activities in the first six months of 2008 (see appendix), which was followed by reactions and questions from those present.

Klaas de Jong commented that *MKB Nederland* (SME Netherlands) was more active in relation to CSR than Michiel van Yperen thought: MKB NL would be joining the management committee of the *Initiatief Duurzame Handel* (IDH) (Sustainable Trade Initiative). He also wondered whether the information provided explained the role of the NCP as an instrument to promote a company's CSR policy. The NCP confirmed that the information provided did explain this role, a good example being the NCP presentation by

Herman Mulder on 21 May before the Multinational Enterprises Committee (CMO) of the Confederation of Netherlands Industry and Employers (VNO NCW).

Joris Oldenziel stated that he had an update listing the most recent complaints filed with the NCP and he asked whether the information provided in the awareness-raising activities drew on best practices taken from how specific complaints were handled. Michiel van Yperen replied that it was the intention to include best practices, but that he had not yet had the time to do so. He was pleased to accept Joris' offer to look for suitable material in the database. **Action: Van Yperen.** The NCP would also convert the G-Star complaint into an example case, with lessons to learn for all stakeholders. **Action: Secretariat.**

Lex van der Burg asked whether the website would also be available in English. Michiel van Yperen replied that it would be translated into English within the foreseeable future. **Action: Van Yperen.**

Marleen van Ruyven said that Amnesty had human rights self-tests for companies and she asked whether they could also be put on the NCP website. Frans Evers replied that in itself this was a nice idea, but the NCP would be drawing up policy in relation to links on its website. **Action: Van Yperen/NCP.**

Klaas de Jong said that the NCP could take more of an advertising approach in its activities. After all, it had a positive message to convey. Herman Mulder agreed; the NCP's primary focus was raising awareness – handling/mediating in complaints, as a secondary task, helped to achieve that objective. Frans Evers stated that more complaints to handle would be welcome because a lot could be learned from them.

Winand Quaedvlieg said that the presentation gave him the impression of a broad-based but still quite abstract story regarding the Guidelines. Anthonie Fountain agreed to some extent. However, he was not only concerned with it being possible to apply the Guidelines, but also with the understanding that the Guidelines *must* be applied/carried out. It was important to explain not only the 'carrot' but also the 'stick' to the business sector.

Jos Huber felt that the dissemination of the Guidelines to NGOs was lacking: where were all the complaints that you would otherwise expect? The NCP Secretariat stated that the Minister for Foreign Trade had made this point already during the Lower House committee meeting on CSR at the end of March.

Peter Pennartz said that there was a great deal of focus at OECD-Watch on the NCP as an instrument and on the Guidelines – take their investigation and the 'model NCP', for example. At the international level, NGOs were critical of the NCP as an instrument. The annual report by this NCP did not include any explanation of why the NCP structure had changed. As regards the website, it was important to make other information accessible as well: business could learn a great deal from civil society. Frans Evers responded that many governments were hesitant in respect of the NCP instrument. The Dutch NCP would provide information to other OECD member states about the new structure, but it was not yet a source of pride because the NCP first needed to gather more experience with the structure in practice.

Marleen van Ruyven advocated encouraging Professor Ruggie's line about the home states of multinational enterprises (MNEs). The control function was still in its infancy. The government should embed the OECD Guidelines more soundly in export credit insurance. Herman Mulder stated that businesses self-tested as regards the Global Reporting Initiative (GRI) and Global Compact (GC), although the testing was only marginal. Businesses could also include the OECD Guidelines in their tests. Together with the Ministry of Foreign Affairs, this NCP intends to organise a meeting with Professor Ruggie about his report and the Guidelines at the end of this year. **Action: NCP.**

1 B. Complaints

G-Star

Lodewijk de Waal and Joske Bunders outlined the main points of the **G-Star complaint** and the lessons learnt by the NCP from how the case proceeded. The ban on speaking in public imposed on certain parties had made it difficult to investigate locally; the investigators had only secondary (anonymous) sources whose information was contested by the parties. SKK (Dutch Clean Clothes Campaign) and LIW (India Committee of the Netherlands) had criticised the NCP's 'inaction', to which the NCP had responded that a temporary lack of new developments to report did not necessarily mean that no action was taking place. It is often advisable not to react immediately or to immediately form an opinion about a submission by one of the parties to the NCP. Talks had also been held with SKK and LIW afterwards regarding how they had envisaged the process; the NCP believed that they made it clear that a process as envisaged by the parties would probably have produced worse results. The NCP had also indicated that it was important for the Lubbers mediation efforts to succeed, so it was inadvisable at that time for a second mediation attempt to take place in parallel based on the same material and involving the same parties.

The **lesson** was that the NCP should communicate more clearly with the parties regarding the status of and the approach used in handling the complaint.

Comments

Marleen van Ruyven asked what the NCP was doing in respect of the Indians who were still the subject of ongoing legal proceedings. Lodewijk de Waal replied that the NCP could not do anything because the complaint had been withdrawn.

Klaas de Jong wondered whether it would not have been better if the complaint had been filed earlier; G-Star itself could have approached the NCP when the talks with SKK and LIW reached an impasse. Lodewijk de Waal replied that fact finding and mediation are more difficult if there is a long preliminary process. The NCP would look at how to simplify the complaint filing process.

Jos Huber felt that this specific complaint showed the importance of the obligation to furnish facts.

Joris Oldenziel said that SOMO (Centre for Research on Multinational Corporations) had advised SKK to contact the NCP earlier. However, SKK only went to the NCP when the talks with G-Star had reached an impasse. Given the OECD mandate, the NCP's dual role left it with a dilemma: on the one hand the NCP identified local abuses – i.e. it reached judgments – whilst on the other hand it also acted as mediator. The NCP had shown little leadership; the organisation should have spoken to FFI (Fibres & Fabrics International).

Peter Pennartz asked about the independence of the NCP with regard to the role of the Ministry of Economic Affairs (EZ) in mediation with FFI. Frans Evers replied that the NCP was entirely separate from EZ. The NCP would bring up the matter of its investigation options in a complaints procedure at the meeting in Paris. As regards G-Star, there had been an extensive discussion with EZ about the NCP's possibilities in mediation between G-Star, SKK and FFI. The NCP needed to convince the business community that the NCP instrument was an opportunity, which meant that the NCP was not an action instrument.

Joris Oldenziel felt that the dividing line between judging and mediating remained unclear.

Lodewijk de Waal stated that the NCP first gathered the facts and then proceeded to mediate, so that if the process broke down, the facts would still remain as the basis for a statement.

Willem Lageweg commented that a lot of people in the field were curious about specific lessons to be learnt from the complaint.

Joris Oldenziel said that this case raised the question of what precisely was 'supply chain responsibility'; how far did it extend under the Guidelines? That would be the most relevant

information to learn for other companies.

Frans Evers said that he would look into this question; the lessons would be made available as part of the awareness-raising activities. Frouke Bruinsma stated that G-Star would like to help with this issue. See the previously mentioned **Action: Secretariat**.

Shell Pandacan

Herman Mulder explained the complaint regarding **Shell Pandacan**:

The ruling by the Philippines Supreme Court had taken the sting out of the case, but nevertheless there were still issues left for mediation. There were three elements:

- Parallel proceedings: each company had the right to use any legal option open to it. In the event of any crossover with the NCP proceedings, the NCP could put its proceedings on hold.
- Community Engagement versus Political Interference: where is the dividing line?
- Even though the mediation took place in The Hague, any possible solution would be at local level. The NCP had therefore hired an independent local expert.

Drawing up a fixed timetable had proven to be difficult: the NCP's remit was to handle the case promptly, but the possibility of doing so currently depended on the parties and on local developments.

Comments

Anthonie Fountain asked when there were parallel proceedings and what this meant for the parties. Herman Mulder replied that the NCP proceedings should not be an obstacle to other proceedings. There was no single answer to this question; a judgment should be made on a case-by-case basis as to whether NCP mediation was advisable where there were legal proceedings pending. Frans Evers added that parallel mediation was very common in the US, for example. This therefore meant that a parallel NCP process might be launched. Lodewijk de Waal, looking back on the G-Star complaint, said that parties should decide for themselves whether to take parallel action, but in taking that decision they should consider the possible consequences.

Shell CAPSA

Tabé van Hoolwerff referred to a **new complaint** concerning Shell CAPSA in Buenos Aires. There were two well-known parties involved: a local subsidiary of Shell, and Friends of the Earth in cooperation with a local NGO. The complaint was filed with this NCP and the Argentinean NCP and was similar in many ways to the Pandacan complaint.

The complaint related to non-compliance with environmental legislation, which was therefore a breach of the OECD Guidelines. The complainants' requests to Shell concerned mainly communication with stakeholders as referred to in chapters 3 and 5 of the Guidelines.

The procedure now was as follows: this NCP would confirm receipt of the complaint to the parties involved and contact the Argentinean NCP which would have to decide whether or not the complaint was admissible. Hugo von Meijenfeldt added that this case had been around for some time: there had been direct contact between the Dutch Ministry of Housing, Spatial Planning and the Environment (VROM) and the Argentinean Ministry of the Environment in September 2007.

2. Messages for the 2008 Annual Meeting of NCPs

Those present were asked for any specific submissions or thoughts for the upcoming NCP Annual Meeting in Paris. A number of points were raised:

Marleen van Ruyven: felt that it would be useful to discuss the investigation possibilities in the complaint process.

Joris Oldenziel: asked for information to be provided about new possibilities based on the NCP performance report and for the Guidelines to be updated as regards both substance and procedure. He based his request partly on the suggestions put forward by UN Special Representative on Business and Human Rights, Professor Ruggie, regarding updating of the OECD Guidelines. Roel Nieuwenkamp said that there would be risks involved in starting a debate about revision; we might well end up worse off if other countries seize the opportunity to limit the scope of the Guidelines and the NCP procedure. Peter Pennartz pointed out that this NCP should explain its new structure to the other NCPs.

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