



National Contact Point

*OECD Guidelines for
Multinational Enterprises*

Initial assessment

Friends of the Earth Europe, Friends of the Earth Netherlands/
Milieudefensie - Rabobank

16 December 2014

Argentina Australia Austria Belgium Brazil Canada Chile Colombia Czech Republic Denmark Egypt Estonia Finland France Germany Greece Hungary Iceland Ireland Israel Italy Japan Korea L

Initial Assessment

Notification and request for mediation to the Netherlands National Contact Point of Friends of the Earth Europe and Friends of the Earth Netherlands/Milieudefensie concerning an alleged violation of the OECD Guidelines for Multinational Enterprises by Rabobank (27 June 2014).

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Executive summary

On 27 June 2014 Friends of the Earth Europe and Friends of the Earth Netherlands/Milieudefensie notified a specific instance with the Netherlands National Contact Point with regard to an alleged violation of the OECD Guidelines for Multinational Enterprises (hereafter: the Guidelines) by Rabobank.

The Netherlands NCP concludes that part of the notification merits further consideration based on the following criteria:

- the notifying parties are concerned parties with a legitimate interest in the issues raised in the notification;
- Rabobank is a multinational enterprise in the sense of the Guidelines;
- the issues raised by Friends of the Earth Europe and Friends of the Earth Netherlands/Milieudefensie are material and prima vista substantiated;
- there is a link between Rabobank's activities and the issues raised in the specific instance;
- the consideration of this specific instance may contribute to the Guidelines' objectives and effectiveness.

The decision to further examine part of this specific instance does not entail substantive research or fact finding, nor does it entail a judgment on whether or not Rabobank has violated the Guidelines.

In this initial assessment, the NCP explains its decision to offer parties 'its good offices' to come to a solution through dialogue. With reference to the Netherlands NCP Specific Instance Procedure for handling notifications¹ in the appendix.

In conformity with the Netherlands NCP's procedure, the draft initial assessment has been sent to the parties involved, inviting them to respond to the assessment in writing within a two weeks notice, after which the initial assessment has been finalized, taking into account the parties' comments. This initial assessment was subsequently published on the NCP's website: www.oecdguidelines.nl.

Summary of the Notification

On 27 June 2014 the Netherlands NCP received a notification of Friends of the Earth Europe and Friends of the Earth Netherlands/Milieudefensie against Rabobank. In this notification Friends of the Earth Europe and Friends of the Earth Netherlands/Milieudefensie stated that "Rabobank had not taken the appropriate steps to prevent or mitigate alleged negative impacts related to their activity through their business relationship with Bumitama Agri Group (BGA), which was partially funded by Rabobank". The notification specifically concerned the alleged non-observance of OECD Guidelines,

paragraphs 10 and 12 under the section on General Policies (Chapter II) and the commentary (45) on Human Rights (Chapter IV).

In their notification of the specific instance under the OECD Guidelines for Multinational Enterprises, Friends of the Earth Europe and Friends of the Earth Netherlands/Milieudefensie stated the following:

"Rabobank has breached paragraphs 10 and 12 under the section on General Policies (II) which require enterprises to:

"Carry out risk-based due diligence, for example by incorporating it into their enterprise, risk management systems, to identify prevent and mitigate actual and potential adverse impacts as described in paragraphs 11 and 12, and account for how these impacts are addressed. The nature and extent of due diligence depend on the circumstances of a particular situation" (10).

"Seek to prevent or mitigate an adverse impact where they have not contributed to that impact, when the impact is nevertheless directly linked to their operations, products or services by a business relationship. This is not intended to shift responsibility from the entity causing an adverse impact to the enterprise with which it has a business relationship" (12).

Rabobank has also breached the Guidelines as outlined in commentary 45 under the section on Human Rights (IV): "Paragraph 5 recommends that enterprises carry out human rights due diligence. The process entails assessing actual and potential human rights impacts, integrating and acting upon the findings, tracking responses as well as communicating how impacts are addressed" (Chapter IV, commentary 45)."

"Friends of the Earth requests that Rabobank brings its activities and conduct into line with the OECD Guidelines by:

1. *Publicly disclosing the concrete due diligence procedures and steps it has taken to identify, prevent and mitigate the adverse impacts caused by its business relationship with Bumitama. This should include Rabobank's assessment of what the impact of its due diligence on preventing and mitigating adverse impacts has been. This should also include specific information about the number of meetings Rabobank has had with BGA and who was present at those meetings, as well as details on how Rabobank has intervened through the RSPO to address the problems with BGA.*
2. *Exercising its leverage to prevent future adverse impacts from its business relationship with BGA by publicly committing to withhold financial services from BGA and by committing to divest from the company until BGA has resolved problems concerning the legality and sustainability of its operations.*
3. *Implementing its own Environmental, Social and Governance (ESG) policy in a transparent and effective way in the Bumitama case and in future cases.*

¹ http://www.oesorichtlijnen.nl/sites/www.oesorichtlijnen.nl/files/specific_instance_procedure_ncp_en.pdf

Friends of the Earth requests that the Dutch NCP offers its good offices to find a mutually acceptable solution in this matter. If a dialogue-based, mutually acceptable solution is not possible, Friends of the Earth requests that the NCP employs the other problem solving tools at its disposal with the aim of achieving effective implementation of the OECD Guidelines. This should include conducting an examination of the allegations and facts in this specific instance, making a determination as to whether or not Rabobank has acted in accordance with the OECD Guidelines, and issuing recommendations to improve implementation of the Guidelines.”

Initial Assessment

In accordance with the OECD Guidelines and the Netherlands NCP Specific Instance Procedure, the Netherlands NCP concludes that, in light of the following considerations, part of the notification merits further examination:

Is the Netherlands NCP the right entity to assess the alleged violation?

The Netherlands NCP is the right entity to assess the alleged violation by Rabobank Nederland.

What is the identity of the reporting party and its interest in the case?

Friends of the Earth Europe is an environmental network in Europe, uniting more than 30 national organizations in Europe with thousands of local groups. Friends of the Earth International has a total of 2 million members. Friends of the Earth Europe works closely together with Friends of the Earth Indonesia/WALHI and represents this organization in this case. Their interest in the case is that they campaign on environmental and social issues.²

Is Rabobank a multinational enterprise according to the Guidelines?

Rabobank is a multinational enterprise according to the Guidelines. Rabobank is one of the largest cooperatives in the Netherlands with nearly two million members (a not shareholder-driven business). Measured by Tier 1 capital, the Rabobank Group is one of the world’s largest financial institutions.³

Are the issues raised by Friends of the Earth Europe and Friends of the Earth Netherlands/Milieudefensie material and substantiated?

The issues raised are prima vista substantiated by documents and the notification refers to relevant provisions of the Guidelines. The notification concerns the alleged non-observance of OECD Guidelines Chapter II, commentary 10, 11 and 12 and Chapter IV, commentary 45.

Does there seem to be a link between Rabobank’s activities and the issues raised in the specific instance?

Parties do not dispute the provision of financial services by Rabobank to Bumitama Agri Group. The notification concerns Rabobank’s responsibility to prevent or mitigate alleged negative impacts as a result of the activities of Bumitama Agri Group.

What is the relevance of applicable legislation and procedures, including court rulings?

There are no relevant parallel procedures identified at this stage. Both Indonesian law and Singapore law are relevant.

Would the consideration of this specific problem contribute to Guideline objectives and effectiveness?

The Netherlands NCP believes that dealing with this notification will contribute to the purpose and effectiveness of the Guidelines in the sense that it will help clarify the due diligence recommendations for the financial sector regarding loans.

Further consideration:

During the preliminary discussions on the initial assessment, parties mentioned that as of 31 July 2014 Bumitama Agri Group has terminated the Golden Youth Cooperation Agreement regarding the management and operation of the Golden Youth plantation. Therefore, part of the problems in the complaint have been addressed. In light of this development, the procedure will focus on the implementation of the Palm Oil Supply Chain Policy -which Rabobank has drawn up to contribute to the realization of a sustainable palm oil supply chain- and other relevant ESG factors with regard to this policy and how such implementation relates to the Guidelines.

Conclusion

The NCP is of the opinion that part of this specific instance merits further consideration and will therefore, in accordance with the Netherlands NCP specific instance procedure, offer its good offices to facilitate a dialogue between the parties. The objective is to bring parties to an agreement on the recommendations of the NCP, regarding the implementation of the Palm Oil Supply Chain Policy. The NCP is of the opinion that this may help clarify the OECD due diligence recommendations for the financial sector regarding loans.

² <http://www.foeeurope.org/about>

³ <https://www.rabobank.com/en/about-rabobank/profile/who-we-are/index.html>

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The role of National Contact Points (NCPs) is to further the effectiveness of the OECD Guidelines. The Dutch government has chosen to establish an independent NCP which is responsible for its own procedures and decision making, in accordance with the Procedural Guidelines section of the Guidelines. In line with this, the Netherlands NCP consists of four independent members, supported by four advisory government officials from the most relevant ministries. The NCP Secretariat is hosted by the Ministry of Foreign Affairs. The Minister for Foreign Trade and Development Cooperation is politically responsible for the functioning of the Dutch NCP. More information on the OECD Guidelines and the NCP can be found on www.oecdguidelines.nl

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