



OECD GUIDELINES
FOR MULTINATIONAL
ENTERPRISES

NATIONAL CONTACT POINT
FOR RESPONSIBLE BUSINESS
CONDUCT THE NETHERLANDS

Initial Assessment

FNV, ITF, PSI, IndustriALL Global Union vs Chevron Netherlands B.V. et al.

Date: 22 June 2021

Notification to the Dutch National Contact Point for the OECD Guidelines for Multinational Organisations (NCP) from FNV, ITF, PSI, IndustriALL Global Union and supported by Friends of the Earth (Milieudefensie) concerning an alleged violation of the OECD Guidelines for Multinational Enterprises by Chevron Netherlands BV and 13 other affiliated entities.

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1. Executive summary

On 8 October 2018, the FNV, ITF, PSI and IndustriALL Global Union, supported by Friends of the Earth, notified the Dutch National Contact Point of a specific instance regarding an alleged violation of the OECD Guidelines for Multinational Enterprises (hereinafter: the Guidelines) by 'Chevron Netherlands BV and 13 other affiliated entities, all based in the Netherlands (hereinafter: Chevron et al.). The notification concerns alleged breaches of the chapters Disclosure and Taxation.

The NCP has informed both parties that for reasons of upholding our standards of quality and due diligence, it is not able to meet the OECD standard indicative period of publishing an initial assessment after three months of receiving a specific instance. As part of its initial assessment, the NCP held separate, confidential meetings with the notifying parties (on 28 January 2019) and with

the representatives of the 14 Dutch entities of Chevron concerned (on 3 April 2019). On May 14 2019 and 22 February 2021, the NCP received written submissions from Chevron et al.

The Dutch NCP coordinated this notification with the NCP of the United States, which agreed to act in a supportive capacity with the Dutch NCP taking the lead.

The Dutch NCP concludes that this notification merits further consideration, based on the following considerations:

- the Dutch NCP is the right entity to assess the alleged violation by the companies concerned;
- the notifying parties have a legitimate interest in the issues raised in the notification;
- Chevron et al. are multinational enterprises within the meaning of the Guidelines;
- the issues raised by the notifying parties are material and *prima vista* substantiated;
- there is a link between Chevron et al.'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 is based on an initial assessment of the information submitted and does not represent a conclusion as to whether Chevron et al. observed the Guidelines, nor as to whether the statements made by the notifying parties are accurate.

In this initial assessment, the NCP explains its decision to offer parties its good offices to address the concerns raised by the notifying parties and come to a solution through dialogue, with reference to the [Dutch NCP Specific Instance Procedure for handling notifications](#).

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

2. Summary of the notification

On 8 October 2018, the Dutch NCP received a notification from FNV, ITF, PSI, IndustriALL Global Union, supported by Friends of the Earth concerning alleged breaches of the OECD Guidelines by Chevron et al. In this initial assessment, the NCP does not express an opinion on the accuracy of the statements made by the notifying parties.

The notifying parties state that tax avoidance is a serious problem worldwide. They claim that it is related to inequality and poverty as it directly leads to reduced state revenues which limits the state's ability to fund public services such as health care, education and infrastructure. They also state that this has been recognized by governments and international organizations, resulting in national and international level tax reforms processes seeking greater transparency (disclosure) and accountability from corporations. According to the notifying parties, Chevron et al. conceal tax-related information and the industrial utilization of its Dutch subsidiaries in tax avoidance schemes. Allegedly, it also conceals the amount of tax revenue it manages to avoid paying to governments around the world.

According to the notifying parties, Chevron has at least 34 subsidiaries in the Netherlands, out of which 14 subsidiaries are addressed in the underlying complaint. Allegedly, these 14 subsidiaries are typically finance or holding companies with no employees, no physical presence and no business other than transactions with related parties. The notifying parties claim that most of these 14

subsidiaries are connected to CITCO, a Netherlands based trust company. According to the notifying parties, Chevron et al. have breached the chapters on Disclosure, paragraphs 1, 2 and 3, and on Taxation paragraphs 1 and 2.

Concerning the Disclosure chapter, the notifying parties state that Guidelines are breached in respect of Chevron's operations with Nigerian, Argentinian, and Venezuelan business. *"The Dutch companies Nigeria Chevron Cooperatief UA and Nigeria Chevron Usan 1 Cooperatief UA do not file any annual reports or verifiable public-access information at all regarding their functions, operations or tax situation. "Further, their ownership structure and the function these companies perform in Nigeria is unknown, as no public information is available. The Dutch holding company Chevron Argentina Holdings BV's latest filing locatable (in 2017) does not disclose any verifiable public-access information on its functions, operations or tax situation, only containing a balance sheet without further explanations. Finally, at least five Dutch affiliates of Chevron (Chevron Orinoco BV, Chevron Orinoco Holdings BV, Chevron Boscan Finance BV, Chevron Boscan BV and Chevron Lago Maracaibo BV) are directly involved in a number of Chevron's joint venture operations in Venezuela. The Dutch annual accounts of these companies show that they each have no employees at all, and that they, like other of the Dutch subsidiaries, share CITCO's office address." "The filings are not audited and do not contain an income statement or any information regarding operations undertaken and tax liabilities. The non-existent or incomplete disclosure by these Dutch companies breaches the OECD Guidelines, and also complicates investigation into the tax practices of the Chevron corporation."*

Concerning the chapter Taxation, the notifying parties claim that *"Chevron's Dutch subsidiaries, through frequent intra-group operations whose main purpose is the avoidance of taxes in multiple jurisdictions, breach the spirit of Dutch law, most specifically the law on Corporation Tax of 1969 (wet op de vennootschapsbelasting 1969) and the law on Dividend Tax of 1965 (wet op de dividendbelasting 1965), which constitutes a breach of the Guidelines themselves. Dutch laws are designed and intended to support entrepreneurship and success of real Dutch companies; their purpose is not to facilitate empty letterbox entities of global multinationals to avoid taxation in other parts of the world. The same can be said regarding the Dutch tax treaty network, which is intended to benefit international operations of entities of both contracting partners, including Dutch holding and financing companies. By manipulating Dutch laws and benefits solely for the potential to enable tax avoidance, Chevron's Dutch subsidiaries have violated the spirit of Dutch law."*

FNV et al. request from Chevron et al.:

- Disclosure by each subsidiary of its purpose and function within Chevron's corporate hierarchy;
- Ongoing written commitment to ensure regular, timely, and complete disclosure;
- Increased transparency of financial transactions entered into by Chevron et al., particularly in the case of intra-group transactions (transactions entered into between two subsidiaries of Chevron), as well as a clarification regarding the economic purpose of such transactions and the specific contractual terms governing the intra-group relations;
- Termination by Chevron et al.'s practices primarily designed for the facilitation of tax avoidance by Chevron;
- Adoption by the named Dutch subsidiaries of disclosure, taxation, and tax risk management systems and policies that prioritize fair payment of taxes in the countries where profits are due, and enable greater transparency into their operations including financial operations.

As mentioned before in this initial assessment, the NCP makes no comment on the accuracy of the notifying parties' claims.

3. Summary of Chevron et al.'s initial response

On 14 May 2019 the NCP received an initial response from Chevron et al. to the notification, to which the NCP responded on 30 November 2020. The company provided its final statement on 22 February 2021, which is included below. In this initial assessment, the NCP does not express any opinion as to the accuracy of the companies' response to the issues raised in the notification.

"We have worked with the Dutch National Contact Point (NCP) for more than two years to address the Notification. The organizations that requested NCP assistance in this matter have acknowledged Chevron has not violated applicable law. We have communicated to the NCP our concerns about their involvement, including conflicts of interest among some involved NCP representatives, and violations of the NCP's own rules on confidentiality. The NCP has failed to take any meaningful action to address these concerns. We will opt out of any future participation in this voluntary process.

Chevron contributes to the public finances of host countries by paying what we owe, in full and on time.

We agree that it is important that enterprises contribute to the public finances of host countries by making timely payment of their tax liabilities. Chevron works hard to abide by all tax laws in the jurisdictions where we operate.

We believe businesses should comply with the tax laws and regulations in all countries in which they operate. This includes providing to the relevant authorities the information necessary for the correct determination of taxes to be assessed in connection with our operations and compliance with the comprehensive standards of the OECD on tax disclosure, including Country-by-Country reporting, as adopted by the countries in which we operate.

Our approach to tax matches our efforts globally to conduct our business legally, responsibly and with integrity."

4. Initial Assessment

The NCP has decided to accept the submission. This decision has been taken following an assessment by the NCP as to whether the issues raised are i) "bona fide", i.e. real or authentic and ii) relevant to the implementation of the Guidelines, i.e. within the scope of the Guidelines. To achieve this, the NCP took into account the following criteria:

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

Although Chevron's headquarters are based in the U.S. and the impact of the alleged violations takes place in Argentina, Nigeria and Venezuela, the specific instance addresses issues concerning disclosure and taxation activities implemented by the Netherlands' based subsidiaries of Chevron.

Based on the above the Dutch NCP is the right entity to assess the alleged non-observance of the Guidelines.

In accordance with the OECD Procedural Guidance on coordination between NCPs (<http://mneguidelines.oecd.org/mneguidelines/>, Part II, Commentary on the Implementation Procedures of the OECD Guidelines for Multinational Enterprises, paragraphs 23, 24) the Netherlands NCP has consulted the NCPs of the United States and Argentina (there is no NCP in Nigeria nor in Venezuela) regarding this specific instance, and has proposed, that the Netherlands NCP in this case would take the lead. The two relevant NCPs as mentioned have agreed that in this

case it is appropriate that the Dutch NCP takes the lead, based on the judgement that, the issues that have arisen are the alleged breaches of disclosure and taxation by Chevron et al. in the Netherlands, making the Netherlands the *locus* of the alleged violation of the Guidelines.

Furthermore, the draft Initial Assessment has been shared with the two NCPs. The Dutch NCP will keep the two NCPs informed on the progress and share future documents before publication.

What is the identity of the notifying parties, and what is the nature of their interest in the case?

The notifying parties are internationally operating global union federations, trade unions and NGOs. They represent workers and citizens worldwide, including in Nigeria, Argentina and Venezuela. The notifying parties claim that Chevron et al.'s alleged conduct results in less financials means for public services and therefore have an impact on the conditions of employment of the workers, and on citizens' benefit of health care, education, infrastructure, water etc.

Based on the above, the Dutch NCP is of the opinion that they have a legitimate interest in the issues raised in the notification.

Are the issues raised by the notifying parties material and substantiated?

The NCP interprets 'material and substantiated' to mean that, based on the information submitted, the issues raised are plausible and related to the application of the OECD Guidelines. They concern the alleged non-observance of Disclosure (Chapter III, paragraphs 1, 2 and 3) and Taxation (Chapter XI, paragraphs 1 and 2).

Is there a link between the activities of Chevron et al. and the issues raised in the specific instance?

The notification concerns issues of non-disclosure and tax avoidance in the Netherlands conducted under the responsibility of Chevron et al. Therefore, the Dutch NCP believes there to be a link between Chevron et al.'s activities and the issues raised in the specific instance.

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

The Dutch law on Corporation Tax of 1969 (wet op vennootschapsbelasting 1969) and the Dutch network of bilateral tax treaties are relevant as the notifying parties acknowledge that Chevron et al. has not acted in violation of the letter of the applicable law but allege that Chevron et al. did not comply with the spirit of the Dutch tax law (chapter XI, paragraph 1).

The NCP notes that it will not assess whether domestic law requirements were met by the company. The Guidelines expect companies to act in line with domestic law. Although the Guidelines are non-binding for companies, they reflect governments' expectations that companies follow these at all times. Therefore, being in compliance with domestic law is not necessarily equivalent to observing the Guidelines, as the Guidelines "extend beyond the law in many cases" (OECD Guidelines (2011), Chapter I par. 2). Expectations from companies can exceed domestic obligations with respect to the questions at issue, which is often the case concerning due diligence expectations. Also, companies are expected to, as a minimum, make reference to international human rights and labour standards (Id. Commentary Chapter IV par. 39).

How have similar issues been, or are being, treated in other domestic or international proceedings?

The NCP is not aware of any parallel proceedings.

Would considering this specific problem contribute to achieving the Guidelines' objectives and enhancing their effectiveness?

The NCP believes that dealing with this notification will contribute to the objectives and effectiveness of the Guidelines in the sense that it will help clarify the expected conduct from multinational enterprises regarding the chapters Disclosure and Taxation, also in relation to OECD tax policy and developments concerning current practices.

At OECD level several projects are being implemented related to reforming OECD's tax policy, one of them is the Base Erosion and Profit Shifting (BEPS) project. Over 130 countries collaborate "on the implementation of measures to tackle tax avoidance, improve the coherence of international tax rules and ensure a more transparent tax environment". Country-by-country reporting of multinational enterprises to tax authorities forms one of these measures and the legal framework is already in place in the Netherlands, Argentina, Nigeria and United States ([Base erosion and profit shifting - OECD BEPS](#)).

Furthermore the issue raised in the specific instance are part of a broader debate concerning tax avoidance and tax transparency, the latter not only towards tax authorities but also towards the public. For example, a proposal to develop legislation about public disclosure of income tax information via country-by-country reporting is being debated at EU level (<https://www.europarl.europa.eu/legislative-train>).

Additional remarks of the NCP, regarding remarks about alleged conflicts of interest and violations of confidentiality obligations raised by Chevron on the handling by the NCP of the case

Chevron expressed concern that the NCP, by publishing its final IA on its website, triggers "confidentiality obligations on the parties, as well as the Dutch NCP." The NCP has clarified to the company that, in principle, the NCP indeed places its final IA on its website, which is what many NCP's do. With regard to this case, the NCP has drawn attention to the fact that it does not have any access to confidential tax information on Chevron or any other multinational corporation in the Netherlands which could or would be involved in the text to be published. Also, the text referred to in the IA is a text from the notifying party and it is, as the NCP understands, based on public sources. The NCP is therefore of the opinion that by publishing the IA no confidentiality obligations are violated.

Chevron expressed concern regarding the NCP's involvement in the case, including alleged (potential) conflicts of interest among some involved NCP representatives with regard to the case. The NCP has clarified to the company that the independent members of the Dutch NCP are appointed by the Minister for Foreign Trade and Development Cooperation. In the Decree to establish the NCP (Instellingsbesluit) of July 1, 2014, Art 3.4, it is stated: "*After consultation with the other Ministers concerned and with representatives of enterprises and civil society organizations, the members are appointed on the basis of their expertise in the area of the OECD Guidelines for Multinational Enterprises, their mediation skills and their societal knowledge and experience*". Furthermore, according to Art. 3.5: "*The members bring in their knowledge and experience in their personal capacity and do not act as a representative of any specific interest group*". Because of the diversity of their background, the members provide together for the necessary balance in decision making. Besides, decision making by the NCP is based on consensus between all members.

According to the NCP, the NCP's mandate and composition are constructed in such a way that there was no risk of a real or potential conflict of interest in this case on which the NCP should have taken any action.

5. Conclusion

The NCP concludes that this specific instance merits further consideration. The conclusions reached by the NCP in this initial assessment rest on the criteria laid out in the commentary to the Procedural Guidance, para 25 and are based on the information received from both parties. The NCP does not express an opinion on the correctness of the statements of the parties or the validity of the documentation provided by them.

6. Next Steps

In accordance with the Dutch NCP Specific Instance Procedure, the NCP has offered its good offices to the parties. The NCP has asked both parties whether they are willing to engage in a mediation process, with the aim of agreeing how the issues raised can be successfully addressed. Based on the separate conversations the NCP had with each party, the NCP believes both parties have something to bring to the table for mutual consideration. Both parties could benefit from a dialogue.

The notifying parties have accepted NCP's good offices, the enterprise has not. In accordance with the NCP procedure, the NCP will examine the issues raised and may provide recommendations concerning the observance of the Guidelines. The NCP will identify the steps to proceed with the examination on which both parties will be informed. It will complete the procedure by issuing a final statement, which it will publish on its website.

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 decisions, in accordance with the Procedural Guidance section of the Guidelines. In line with this, the Dutch 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 the [NCP Website](#)

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