



## Initial Assessment

### 7 Local suppliers of Pharmakina vs ING Groep N.V. and ING Belgium S.A.

Date: 26 April 2023

#### Summary of the notification

On 7 November 2022, a group of seven local growers and suppliers of cinchona bark to Pharmakina S.A. in the Democratic Republic of Congo submitted 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 ING Groep N.V. based in the Netherlands and its subsidiary ING Belgium S.A. based in Belgium.

The notifying party is a group of seven local suppliers: Mr. Chishali Matabaro, Mr. Mungu Akonkwa Chishibanji, Mr. Mutayongwa Kashosi, Mr. Chishesa Mushizi, Mr. Basirike Chigaruka Byamungu, Mr. Muguma Arhahama Zihahirwa and Mr. Mugula Cleophas, from a local community where Pharmakina operates. They state to have provided bark on credit to Pharmakina S.A. as the main raw material from which the company produces quinine. They state that Pharmakina does not respect the rights of suppliers from the local community, as since 2019 Pharmakina refuses to pay for the barks taken from the local suppliers. They state that this plunges the community in great poverty. They also state that ING Belgium S.A., a subsidiary of ING Groep N.V., offers payment services (a bank account) to their client Pharmakina for the international transactions related to the sale of quinine. According to the notifying party, ING Groep N.V., in the context of its business relationship with Pharmakina through its subsidiary ING Belgium S.A., failed to carry out risk-based due diligence on human rights and its supply chain to identify and address the serious violations by Pharmakina of the rights of the suppliers. These violations include: the inability for the local suppliers to operate with an up-to-date and therefore legal business registration, the possibility of tax evasion, fraudulent legal conditions under which the quinine sold by Pharmakina is produced, as well as the refusal to pay the suppliers for the barks provided since 2019.

The notifying party also states that by failing to identify and deal with the impacts identified above while continuing for decades to support Pharmakina in the sale and payment of its quinine through the bank ING Belgium S.A., ING Groep N.V. itself is contributing to these impacts. They furthermore state that ING Groep N.V. has failed to take measures to remedy these impacts as foreseen in the Guidelines.

The notifying party requests the assistance of the NCP in facilitating a dialogue with ING Groep N.V., in order to draw its attention to its responsibilities under the Guidelines to address impacts to which it contributes through its business relationship with Pharmakina. More specifically, they ask the support of the NCP in ensuring that ING Groep N.V.: i) uses its influence over Pharmakina so that Pharmakina pays its local suppliers for the bark sold since 2019 and offers security to these suppliers following threats made by the CEO of Pharmakina, adopts environmentally friendly production practices (including waste management), updates its corporate license, and pays fair and legal taxes; ii) remedies the damage caused to the suppliers to which ING Groep N.V. has

contributed; iii) will in the future establish due diligence processes in line with the expectations of the OECD Guidelines.

### **Initial Assessment**

In accordance with the OECD Guidelines, the OECD Guide for NCPs on the Initial Assessment of Specific Instances, and the Dutch NCP's Specific Instance Procedure, the NCP concludes that in light of the following considerations the notification does not merit further examination. The notifying party is a group of local suppliers of bark who have a commercial relationship with Pharmakina, which uses the bark for the production of quinine. As the NCP understands from the submission, a dispute has arisen in this commercial relationship between the suppliers and Pharmakina on the payment for bark delivered by the local suppliers. This means that the main underlying issue is a commercial dispute between parties having a commercial relationship.

The allegations in the submission are directed against multinational enterprise ING Groep N.V. and its subsidiary ING Belgium S.A., the latter providing payment services (a bank account) to its client Pharmakina. According to the notifying party, ING should use its leverage to solve the commercial dispute between notifiers and Pharmakina regarding the payment of debts and in relation to a number of other issues the notifiers raise with respect to the finances of Pharmakina and its compliance with local regulatory standards.

The NCP, during the Initial Assessment phase, should assess whether consideration of this Specific Instance (SI) would contribute to (1) the purposes and (2) the effectiveness of the Guidelines.

#### **(1) Purposes of the Guidelines**

The OECD Guide for NCPs on the Initial Assessment of Specific Instances stipulates regarding the purposes of the Guidelines that "consideration of the specific instance should contribute to 1) sustainable development or economic, environmental and social progress (i.e. the chapters of the GL) 2) by multinational enterprises" (p.10). It also states that "... issues which do not concern the chapters of the Guidelines, such as commercial disputes between companies, would fall outside the scope [of the Guidelines]" (p.11). As this case essentially pertains to a commercial dispute between a (local) company and a number of individuals acting in a commercial capacity, the NCP considers that in principle it falls outside the scope of the Guidelines unless there are wider aspects or implications that are relevant to the Guidelines. The NCP does not consider any such wider aspects or implications to be present in this case.

For this reason the NCP is of the opinion that the main issue raised in the submission is not covered by the Guidelines and that, by extension, the responsibilities of ING relating to this main issue are also not covered by the Guidelines. To the extent that the submission refers to the due diligence and the use of leverage by ING on its client Pharmakina regarding other issues mentioned in the submission, not being commercial issues between commercial parties, the NCP finds these are not substantiated.

#### **(2) Effectiveness of the Guidelines**

As regards the effectiveness of the Guidelines, the OECD Guide for NCPs on the Initial Assessment of Specific Instances indicates that a relevant factor to consider during an initial assessment is whether there is an opportunity for the NCP to positively contribute to the resolution of the issues raised (p.12). As is clear from the above, the NCP considers the issues raised in the notification to fall outside of the scope of the Guidelines. Furthermore, it has found no other arguments or

circumstances that would lead to the conclusion that the handling by the NCP of this Specific Instance could positively contribute to the resolution of the issues raised.

In this respect, the NCP also takes note in this respect of the fact that the outcomes that the notifying party seeks to achieve through the NCP procedure almost exclusively relate to commercial issues that fall outside the scope of the Guidelines.

### **Conclusion**

The NCP recognizes that the issues raised in this Specific Instance may lead to impacts that are detrimental for the local suppliers who have submitted the notification. However, these issues and resulting adverse impacts do not fall within the scope of the Guidelines as they pertain to a commercial dispute between parties having a commercial relationship.

For that reason alone, the NCP finds that the handling of this Specific Instance does not contribute to the purposes of the Guidelines and should therefore in principle lead to non-acceptance by the NCP. The NCP has not found any other wider aspects or implications of this Specific Instance that are relevant to the Guidelines which would justify the handling of the instance by the NCP.

Considering that the subject matter of the notification is not sufficiently related to (the purposes of) the Guidelines, the NCP decided not to handle this case according to the regular specific instance procedure, which would include holding meetings with parties involved and publishing a full initial assessment. The NCP informed the notifying party as well as the companies involved of its decision. The draft Initial Assessment was sent to the parties for their comments within 14 days.

In accordance with the OECD Guidelines, the OECD guidance for NCPs on the Initial Assessment of Specific Instances and the Dutch NCP Specific Instance Procedure, the NCP concludes that, in light of the above considerations, the notification does not merit further consideration. This means that the NCP will not offer its good offices and that herewith the procedure has ended.

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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