



Initial Assessment

Indigenous organizations and NGOs vs Louis Dreyfus Company B.V.

Date: 4 September 2023

Notification to the Netherlands National Contact Point for the OECD Guidelines for Multinational Enterprises from AIDSEEP, FECONAU, FPP, IDL, Kené, EIA and CCCA concerning an alleged violation of the OECD Guidelines for Multinational Enterprises by Louis Dreyfus Company B.V.

The objective of the initial assessment process under the Procedural Guidance is to determine whether the issues raised in the specific instance merit further examination. If so, the NCP will offer, or facilitate access to, consensual and non-adversarial procedures, such as dialogue, mediation or conciliation (e.g. “good offices”) to the relevant parties. As specific instances are not legal cases and NCPs are not judicial bodies, NCPs cannot impose sanctions, directly provide compensation nor compel parties to participate in a conciliation or mediation process.

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Executive summary

On 1 December 2022, the Dutch National Contact Point (NCP) for the OECD Guidelines for Multinational Enterprises received a notification of a specific instance from a diverse group of Peruvian indigenous organizations and international NGOs with regard to an alleged violation of the OECD Guidelines for Multinational Enterprises (hereinafter the Guidelines) by Louis Dreyfus Company B.V. (LDC).

The issues raised in the submission concern an alleged violation of the OECD Guidelines and related due diligence guidance by Louis Dreyfus Company B.V. through its decision to source, and the ongoing sourcing of, palm oil from Ocho Sur P SAC (OSP), Ocho Sur U SAC (OSU) and Servicios Agrarios de Pucallpa SAC (SAP), the extraction plant of the Ocho Sur Group. The three companies together form the “Ocho Sur Group”.

The notifying party raises the issue that, despite abundant public information concerning the grave environmental and human rights impacts of illegal deforestation by the Ocho Sur Group, since 2020 LDC entered into, and developed business relationships with, SAP and the Ocho Sur Group to source crude palm oil from the Peruvian extraction plant through its commercial office in Singapore. As such, LDC has, according to the notifying party, failed to conduct adequate due diligence in its business operations and across its supply chain to prevent and address those impacts, or to use its significant leverage to ensure responsible business conduct compliant with the OECD Guidelines in its business relationships.

The issues raised in this submission relate to the OECD Guidelines’ Chapters II (General Policies), III (Disclosure), IV (Human Rights), VI (Environment) and VIII (Consumer Interests).

Coordination

The specific instance has been filed with the Netherlands NCP on 1 December 2022. The Dutch NCP coordinated this notification with the NCP of Peru and held a coordination call on May 10, 2023. Both NCPs agreed that the Dutch NCP would take the lead in handling this specific instance. There will be an advisory and supporting role for the Peruvian NCP.

Brief overview of the timeline

On 2 March 2023, the NCP had a first online meeting with the notifying party. On 15 February 2023 and 29 March 2023, the NCP had online meetings with Louis Dreyfus Company B.V.

On 1 May 2023, the NCP received a first written response from Louis Dreyfus Company B.V.

The NCP shared the draft initial assessment with the parties on 9 June 2023 for comments within 14 days. The Initial Assessment was published on the NCP website on 4 September 2023.

Conclusion

The Dutch NCP concludes that the notification concerning LDC **merits further consideration** based on the following criteria:

- The Dutch NCP is the right entity to assess the alleged violation against LDC; there will be an advisory and supporting role for the Peruvian NCP;
- The notifying party is a concerned party (a diverse coalition of indigenous organisations and international NGO’s) with a legitimate interest in the issues raised in the notification;
- The alleged issues are material and prima facie substantiated, meaning that they are plausible and related to the application of the OECD Guidelines;
- There is a link between the activities of the enterprise and the issues raised in the specific instance;
- The consideration of this specific instance may contribute to the Guidelines’ objectives and enhance their effectiveness.

The decision to accept this specific instance for further examination is not based on substantive and conclusive research or fact-finding, nor does it represent a conclusion as to whether the enterprise observed the Guidelines or not.

Substance of the submission

This section provides an overview of the issues raised in the submission against Louis Dreyfus Company B.V., how the issues concerning Louis Dreyfus Company B.V. relate to the Guidelines, and the enterprises' initial response.

On 1 December 2022, the Dutch NCP received a notification of a specific instance from the Center for Climate Crime Analysis (CCCA), on behalf of several organizations and NGOs, with regard to an alleged violation of the OECD Guidelines by Louis Dreyfus Company B.V.

The complainants are a diverse coalition of indigenous organizations and international NGOs with extensive experience in addressing unlawful deforestation and climate change issues, the rights of indigenous peoples and corporate accountability.

These organizations and NGOs are:

- **Asociación Interétnica de Desarrollo de la Selva Peruana (AIDSESP)**, the spokesperson organization for the indigenous peoples of the Peruvian Amazon.
- **Federación de Comunidades Nativas de Ucayali y Afluentes (FECONAU)**, one of the oldest indigenous federations in the Peruvian Amazon.
- **Forest Peoples Programme (FPP)**, a human rights organization working with forest peoples across the globe to secure their rights and their livelihoods.
- **Instituto de Defensa Legal (IDL)**, a non-profit organization based in Lima, Peru.
- **Instituto de Estudios Forestales y Ambientales (Kené)**, a private non-profit organization registered in Peru.
- **Environmental Investigation Agency (EIA)**, an NGO exposing environmental crimes and making sustainable management of the world's natural resources possible.
- **Center for Climate Crime Analysis (CCCA)**, a non-profit organization founded by prosecutors and investigators, supporting and scaling up enforcement actions, litigation and advocacy against illegal activities that are relevant to climate justice and human rights.

The submission details an alleged violation of the OECD Guidelines' Chapters II (General Policies), III (Disclosure), IV (Human Rights), VI (Environment) and VIII (Consumer Interests) regarding the behavior of LDC, with specific regards to their alleged failure to meet the expectations enshrined in the OECD standards in relation to disclosure, communication and consultation with the interested stakeholders.

The notifying party raises the issue of breaches of the Chapters mentioned above by LDC and its upstream business partners and suppliers. According to the notifying party, the impact of these breaches is profound, both locally and globally. They assert that the significance of the palm oil industry as a source of deforestation, the contribution of Amazonian deforestation to the climate crisis and the impact of climate change on human rights are well known. The human rights concerns include the fundamental rights of indigenous peoples, and the full array of civil, political, social, economic and cultural rights linked to deforestation and its climate consequences. The notifying party indicates that the role of LDC and its alleged misleading claims as regards its environmental and human rights credentials further influences the significance of the complaint.

The notifying party requests that Louis Dreyfus Company B.V. ceases the conduct that is contributing to the adverse impacts as well as the misleading statements, and exercises appropriate leverage over the OCHO Sur Group to address, mitigate and remediate the serious adverse impacts at stake in this specific instance.

The notifying party argues that, as a result of the predominant role that LDC plays in the market of agricultural commodities around the world, an evaluation of the case by the Dutch NCP has the potential to promote effective compliance with the OECD Guidelines and with international and national sustainability standards.

The notifying party requests the Netherlands' NCP to offer its good offices to address the urgent, serious and irreparable impact of corporate harm underway in the Peruvian Amazon and the impunity that surrounds and enables it.

Provisions of the Guidelines referred to in the specific instance

The specific instance concerns the OECD Guidelines and international standards governing the protection of the environment, human rights and corruption (covered by Chapters IV, VI and VII of the OECD Guidelines). It also covers claims by LDC, on its website and in other official publications, related to palm oil sustainability, its green credentials and the compatibility of its operations with human rights and environmental protection (covered by Chapters III, IV, and VI of the OECD Guidelines).

The enterprises' initial response

Louis Dreyfus Company B.V. sent its initial response to the NCP on 1 May 2023.

The company stated the following concerning the grievances, alleged by the complainants, and grouped its response into three main categories:

1. Failure to conduct due diligence and address environmental, human rights and corruption risks through its supply chain

Contrary to the allegations of the complainants, LDC states that it has put in place internal policies and procedures to conduct environmental and social due diligence on its suppliers and provide training and support for suppliers to continuously improve their performances. The company has immediately undertaken investigations as a result of civil society allegations concerning Ocho Sur, brought to its attention back in June 2021, which have demonstrated that, according to information provided to LDC, the grievances are inaccurate. In particular, according to the information obtained during the investigations undertaken, Ocho Sur had not participated in a massive deforestation in Peru. On the contrary, reports (LUCA, SERFOR) were presented which brought evidence that the shrub vegetation and the complex forests had increased since 2016. Moreover, according to the information presented to LDC, several members of the Santa Clara de Uchunya Native Community have publicly denied these grievances and requested that NGOs stop encouraging non-existent conflicts with Ocho Sur.

The numerous references quoted in the Specific Instance are also, according to LDC, not related to Ocho Sur as the current owners and managers of the company but to the former owner and developer of the plantations. In any case, LDC cannot, in their view, be held responsible for acts committed by others.

Furthermore, in order to obtain the RSPO certification, Ocho Sur will be required to execute voluntary compensation for any deforestation occurred since 2005, and therefore it is expected to present a compensation plan for any clearance done for the development of the plantations by the past owners since this cut-off date. LDC is following up their certification plans and advancement to ensure remediation of any past events in accordance with the RSPO requirements.

2. Lack of disclosure, communication and consultation with stakeholders

LDC states that it, as recommended by the Guidelines, conducts consultations with stakeholders (including NGOs), giving them the opportunity to express their views on the group's activities, especially for the development of LDC Palm Sustainability Policy. To ensure that its suppliers are compliant with the company's palm sustainability policies, LDC collects data of them, maintaining full traceability to mill level for all palm oil supplied. LDC is also working on plantation-level traceability, with over 70% traceability to plantation. Reports are drawn up and audits are carried out both internally and externally by third-party service providers. According to LDC, it also produces regular public reports on palm oil sustainability performance and progress, which are available on its website. LDC also operates a public grievance mechanism, available for all stakeholders including suppliers, communities and NGOs, to report and resolve any possible non-compliances with LDC's sustainability policies, with option to stay anonymous if preferred. A public grievance log is kept up to date on its website to report on the grievance resolution status and conclusions.

3. Failure to exercise leverage in its business relationship

According to LDC, the company exercises a real leverage in its business relationships by influencing its suppliers to eliminate or mitigate any negative environmental and social impacts identified. LDC states that the mere fact that an indirect supplier of LDC may have had a negative impact on the environment or human rights is not sufficient to conclude, *de facto*, that LDC is not compliant with the Guidelines. This is, according to LDC, clear from the comments in the Guidelines (OECD Guidelines, p. 24, para 18-20), which require the company concerned to take an active approach to stopping or mitigating any negative impacts. As soon as LDC learnt that potential breaches would have been identified with Ocho Sur, LDC immediately conducted investigations and directly engaged with Ocho Sur at its CEO level. Only the grievance on working conditions was identified as partially substantiated, which led LDC to using its influence to make Ocho Sur improve its practices and follow through a procedure to obtain RSPO (*Roundtable on Sustainable Palm Oil*) certification.

LDC states that it also has policies that encourage business partners to have responsible business conduct compatible with the Guidelines by requiring its suppliers to comply with them in their operations. When a supplier is identified as not fully compliant with LDC's sustainability policies, LDC seeks, in the first instance, to engage and accompany the supplier on a path of continuous improvement so that it meets these standards. Only if LDC identifies a supplier which is encountering significant environmental, human rights and social grievances, and no remediation plan is possible, or if the supplier has not made the necessary efforts to propose a sustainable and effective remediation plan, is the supplier placed on the "No-Trade" or "Consult-Before-Trade" list and suspended from LDC's supply chain. Suspended suppliers must meet LDC's Supplier Re-entry Criteria, which requires full remediation and compensation for previous negative environmental and social impact, in order to resume commercial relations with LDC.

This approach is, according to LDC, in line with the Guidelines which state that an "*appropriate response*" may be "*continuation of the relationship*", "*temporary suspension of the relationship*" or, ultimately, "*disengagement with the supplier*".

As there is, according to LDC, no evidence that LDC does not comply with the Guidelines, LDC is of the view that the issues raised in the complaint, even if arguably related to the Guidelines, are not "material, substantiated and plausible" and therefore do not merit further consideration.

The proceedings of the NCP to date

Since the receipt of the submission, the NCP has carried out the following actions:

On 18 January 2023, the NCP sent a confirmation of receipt to the notifying party and informed the enterprise of the notification. Both parties also received a description of the NCP procedure.

On 28 February 2023, the notification was sent for information to the NCP of Peru.

Following introductory calls on the NCP procedure between the NCP secretariat and representatives of Louis Dreyfus Company B.V. (on 15 February 2023), the NCP had its first online meetings.

On 2 March 2023, the first online meeting with the notifying party took place.

On 29 March 2023, the first online meeting with representatives of the enterprise took place.

On 1 May 2023, the NCP received a first written response from LDC.

On 10 May 2023, a coordination call took place between the NCPs of Peru and the Netherlands.

On 9 June 2023, the draft initial assessment was sent to both parties for comments within 14 days.

On 4 September 2023, the initial assessment was published.

All documents provided in the submission were shared with LDC. Documents provided by LDC were shared with the submitters.

Initial assessment by the NCP

The NCP has decided to accept the submission. This decision has been taken following an elaboration of the criteria below, as outlined in the commentary to the Procedural Guidance, para 25.

Is the Dutch NCP the right entity to assess the alleged violations against LDC?

The submission concerns Louis Dreyfus Company B.V., a Dutch company owned by Dutch holding companies. LDC is specialized in agricultural commodities. The LDC-group is one of the leading agricultural commodities traders in the world and has a varied portfolio.

The OECD [Guide for National Contact Points on Coordination when handling Specific Instances \(oecd.org\)](https://www.oecd.org/guidance/) explains that the Guidelines state that "[g]enerally, issues will be dealt with by the NCP of the country in which the issues have arisen". However, it also states that "if the issues in question relate to actions or decisions made at headquarters level of a company, the NCP based in the country of company's headquarters may be best positioned to apply leverage and in reaching a resolution between the parties."

Louis Dreyfus Company B.V. is headquartered in the Netherlands and the issues raised allegedly relate to actions and decisions made at headquarters level of the company. Therefore the Dutch NCP can act as the lead NCP in assessing the alleged violations against Louis Dreyfus Company B.V.

In accordance with the OECD Procedural Guidance on coordination between NCPs (Part II, Commentary on the Implementation Procedures of the [OECD Guidelines for Multinational Enterprises](#), para 23, 24), the Dutch NCP has consulted the NCP of Peru regarding this specific instance and has proposed that in this case the Dutch NCP would take the lead. The Peruvian NCP has agreed that in this case it is appropriate that the Dutch NCP takes the lead and stated that it is willing to fulfill an advisory and supporting role in the process.

The draft Initial Assessment has been shared with the Peruvian NCP. The Dutch NCP will keep the Peruvian NCP informed about further developments and progress made and will share future documents before publication.

Based on the above, the Dutch NCP is the right entity to assess the alleged non-observance of the Guidelines. The NCP notes that both parties agree with this.

What is the identity of the submitter(s) and what is the nature of their interest in the submission?

The submitting organisations and NGOs are a diverse coalition of civil society organizations, who claim to have a direct interest in the outcome of the specific instance. Some NGOs are integrated in indigenous communities and/or work closely with the affected peoples regarding deforestation and rights violations. Others have as a primary focus on ensuring corporate accountability, including in relation to climate change and environmental protection.

It is standing practice that NCPs will accept a submission filed by trade unions, NGOs or other organisations that address causes they defend ([Guide for National Contact Points on Coordination when handling Specific Instances \(oecd.org\)](#), p. 6.).

As the notifying party is representing a group of associations and NGOs defending causes that relate, albeit to varying degrees, to the issues raised, the NCP is of the opinion that the notifying party has a legitimate interest in the issues raised in the submission. The fact that members of the Santa Clara de Uchunya Native Community have publicly denied these grievances and state that FECONAU does not have any authority to speak on behalf of their community does not change the NCP's opinion.

Are the issues raised by the submitter(s) 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.

The submission is material in the sense that it refers to the alleged non-observance of provisions of Chapters II (General Policies), III (Disclosure), IV (Human Rights), VI (Environment) and VIII (Consumer Interests) of the OECD Guidelines.

The notification provided by the notifying party contains extensive information relating to the issues raised and refers to a wide variety of reports by international organizations and NGOs concerning negative impacts on human rights and the environment related to the palm oil industry in Peru and the role of LDC as a major commodities trader sourcing palm oil. The Dutch NCP finds that the notification refers to relevant provisions in the OECD Guidelines' text and commentary and is substantiated with documentation.

Is there a link between the activities of the enterprise and the issues raised?

The notification concerns the business relationship between LDC as a major commodities trader sourcing palm oil from companies that are part of the Ocho Sur Group in Peru that are allegedly engaged in violations of the OECD Guidelines.

Therefore, the Dutch NCP considers there is a link between the activities of Louis Dreyfus Company B.V. and the issues raised in this specific instance.

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

Existing domestic legislation and past and ongoing procedures, including court rulings, may provide useful orientation for the NCP in reviewing the submission. According to the Guidelines, companies are expected to meet the requirements of domestic legislation. However, even if the company is compliant in terms of domestic law, this is not equivalent to observing the Guidelines, as the Guidelines “extend beyond the law in many cases” (OECD Guidelines 2011, Chapter 1, para 2).

The NCP notes that the submission makes reference to several administrative, judicial and non-judicial findings by the Peruvian national authorities concerning issues related to the production and sale of palm oil. The NCP further notes that some of these findings are still provisional and not definitive.

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

As noted in the Commentary to the Procedural Guidance for NCPs, paragraph 26, already concluded or ongoing domestic or international parallel proceedings do not necessarily prevent the NCP from handling the specific instance by offering its good offices to the parties. However, in each individual case the NCP assesses whether or not the offer of good offices would make a positive contribution to the resolution of the issues raised, or if it would prejudice either of the parties involved in other proceedings.

The Dutch NCP is not aware of any past or ongoing parallel proceedings that would prevent the NCP from handling the specific instance.

Would considering this submission contribute to achieving the Guidelines’ objectives and enhancing their effectiveness?

The Dutch NCP believes that dealing with this notification may contribute to achieving the Guidelines’ objectives and enhancing their effectiveness in the sense that it could help clarify the responsibilities under the OECD Guidelines of a commodities trader sourcing palm oil in Peru for alleged negative impacts on human rights and the environment in their supply chain indirect suppliers. By facilitating a dialogue between the parties, the NCP could contribute to a resolution between the parties and clarify the expected conduct from multinational enterprises regarding their responsibility for the issues raised.

Conclusion

The NCP is of the opinion that this submission **merits further consideration** on the basis of the criteria laid out in the commentary to the Procedural Guidance, para 25.

The conclusions reached by the NCP in this initial assessment 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, nor on their possible impact on the issues raised in the specific instance.

Next steps

In accordance with the Dutch NCP Specific instance Procedure, the NCP accepts this case for further examination and offers its good offices to the parties. The NCP will ask both parties whether they are willing to engage in a mediation/conciliation process, with the aim of agreeing how the issues to be taken into consideration can be successfully addressed.

The notifying party and the enterprise, Louis Dreyfus Company B.V., **have accepted** the NCP's good offices.

In accordance with the NCP procedure, further activities relating to the specific instance procedure will be confidential. The NCP will, together with the parties, take the necessary steps to guarantee a careful and confidential process. Information exchanged during the good offices phase that is not yet in the public domain remains confidential unless the Parties decide otherwise.

If the parties cannot reach agreement as a result of the good offices, the NCP will examine the issues and provide recommendations concerning the observance of the Guidelines. In any case, 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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