



VU Climate Change & Sustainability Law Clinic et al. vs ONE Dyas B.V.

Date: 11 October 2024

Initial Assessment

The objective of the initial assessment process under the Implementation Procedures is to determine whether the issues raised in the specific instance warrant 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.

Contents

Executive summary	2
Substance of the submission (facts presented) and the enterprise's response	3
Proceedings of the NCP to date	4
Initial assessment by the NCP	4
Conclusion.....	6
Next steps.....	7

Executive summary

On 24 January 2024, the Dutch National Contact Point (NCP) for Responsible Business Conduct received a notification of a specific instance from VU Climate Change & Sustainability Law Clinic, North Sea Fossil Free, Scientists for Future NL, Scientist Rebellion NL and Deutsche Umwelthilfe (hereinafter the notifying party) with regard to an alleged violation of the OECD Guidelines for Multinational Enterprises on Responsible Business Conduct (hereinafter the Guidelines) by ONE-Dyas B.V. (hereinafter ONE-Dyas).

ONE-Dyas is a Dutch private limited liability company that is seeking to extract fossil gas from the N05-A gas field and surrounding fields in the North Sea. According to the notifiers, the life-cycle greenhouse gas emissions caused by the project will significantly harm human rights and the environment, and undermine the objectives of international and European climate policy. The notifying party states that ONE-Dyas has failed to identify these adverse effects in the project's environmental impact assessment, and that it has, to their knowledge, not assessed its human rights impacts. They also state that ONE-Dyas continually and consistently misrepresents the climate-related impacts of the N05-A project in its public communications.

The issues raised in the submission concern an alleged violation of the Guidelines by ONE-Dyas. The issues raised in this submission relate to the OECD Guidelines' Chapters II (general policies), Chapters III (disclosure), IV (human rights), VI (environment), and VIII (consumer interests).

Brief overview of the timeline

On 12 April 2024 the NCP had a first hybrid meeting with the notifying parties. On 4 June 2024, the NCP had a first in-person meeting with ONE-Dyas. On 15 July 2024, the NCP received the initial written response from ONE-Dyas. The NCP shared the draft initial assessment with the parties on 9 September 2024 for comments within two weeks. The Initial Assessment was published on the NCP website on 11 October 2024.

Conclusion

The Dutch NCP concludes that the notification concerning ONE-Dyas **warrants further examination** based on the following criteria:

- the identity of the party concerned and its interest in the matter;
- whether the issue is material, i.e. relevant to the implementation of the Guidelines; and substantiated, i.e. supported by sufficient and credible information;
- whether the enterprise is covered by the Guidelines;
- whether there seems to be a link between the enterprise's activities and the issue raised in the specific instance;
- the extent to which applicable law and/or parallel proceedings limit the NCP's ability to contribute to the resolution of the issue and/or the implementation of the Guidelines;
- whether the examination of the issue would contribute to the purposes and effectiveness of the Guidelines.

Below it is explained why, in the NCP's opinion, these criteria have been met.

This decision does not mean that the issues raised have been given final consideration and does not imply any finding as to whether or not the enterprise has acted in accordance with the Guidelines.

Substance of the submission (facts presented) and the enterprise's response

Summary of the submission

ONE-Dyas is seeking to extract fossil gas from the N05-A gas field and surrounding fields in the North Sea ("the N05-A project"). The notifying party argues that the life-cycle greenhouse gas emissions caused by the project will significantly harm human rights and the environment, and undermine the objectives of international and European climate policy. According to the notifiers, ONE-Dyas has failed to identify scope 3 emissions, which include emissions from transporting the gas and from its end use, in the project's Environmental Impact Assessment (EIA). Moreover, the notifiers argue that ONE-Dyas should have assessed the human rights impacts of these scope 3 emissions. According to the notifiers, the N05-A project will increase Green House Gas (GHG) emissions and hence, will have adverse human rights impacts, including the rights to food and to water.

Finally, the notifiers state that ONE-Dyas misrepresents the climate-related impacts of the N05-A project in its public communications. According to the notifiers, ONE-Dyas has consistently claimed publicly that the N05-A project would reduce GHG emissions, and that the production would be free of GHG emissions. The notifiers state that these claims are factually incorrect, and therefore misleading for consumers and the public.

According to the notifying party, ONE-Dyas through these actions and omissions violates requirements of responsible business conduct laid down in the Guidelines relating to human rights, the environment, consumers and disclosure. They state that ONE-Dyas violates in particular the following elements:

- Chapters II (general policies), IV (human rights) and VI (environment) of the OECD Guidelines, in that these chapters hold that enterprises should identify actual and potential adverse impacts of their activities on human rights and the environment.
- Chapters IV (human rights) and VI (environment), in that these chapters hold that enterprises should avoid causing or contributing to adverse human rights and environmental impacts.
- Chapters III (disclosure), VI (environment) and VIII (consumer interests), in that these chapters require enterprises to adequately inform stakeholders and the public about the climate impacts of their activities.

Therefore, the notifying party asks ONE-Dyas to take the following steps:

- to conduct a comprehensive assessment of the adverse impact of the N05-A project on human rights and the environment;
- based on this assessment, to terminate the N05-A project;
- to correctly inform stakeholders and the public about the adverse impacts of fossil gas extraction from the North Sea on human rights and the environment.

Enterprise's response

ONE-Dyas considers that it is not required under the OECD Guidelines to discontinue the N05-A project.

ONE-Dyas is of the opinion that the production of gas from the N05-A field strikes a balance between the demands of the energy transition, human rights and the environment. In other words: in a world in which there still is a large demand for natural gas - as the least harmful fossil fuel - for many years to come, the impact of production from the Dutch small fields on the climate and related human rights is significantly smaller than all conceivable fossil fuel alternatives.

Moreover, according to ONE-Dyas the project aligns with the Dutch government's policy to support

the role of natural gas in the energy transition and the acceleration of gas production from the small fields (such as the N05-A field), as well as the objectives of international and European climate policy. This policy is outlined in the approvals for the development of the N05-A gas fields and are based on an extensive EIA.

ONE-Dyas states that it has included and assessed the so-called scope 1 and 2 emissions of the project in the EIA, and that Scope 3 emissions do not need to be assessed in an EIA, in order to avoid a double counting of emissions. Based on the EIA, ONE-Dyas consistently argues - towards stakeholders as well as to the public at large - that the N05-A project causes less CO2 emissions than any other alternative fossil energy that can meet the (Dutch) demand for natural gas.

According to ONE-Dyas, it is highly unlikely that any member of the public will reasonably (have) interpret(ed) ONE-Dyas's communications in such a way that the enterprise claims that the project will lead to (virtually) zero CO2 emissions in scope 3. ONE-Dyas asserts that this is not something it has claimed in any of its communications, since this is not something over which the enterprise has control and would moreover be a practical impossibility.

Proceedings of the NCP to date

Since the receipt of the submission on 24 January 2024, the following steps were taken:

- On 1 February 2024, 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 12th April 2024, the NCP held its first meeting with the notifying party.
- On 4th of June 2024, the NCP held its first meeting with the company.
- On 15th of July 2024, the NCP received the initial written response to the notification from ONE-Dyas.
- On 9th of September 2024, the NCP sent the draft initial assessment to both parties for comments within 2 weeks.
- On 11th of October, the NCP published the initial assessment.

Initial assessment by the NCP

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 warrant further examination. To achieve this, the NCP took into account the following six criteria:

The identity of the party concerned and its interest in the matter

The specific instance is submitted by the following organisations:

- The VU Climate Change and Sustainability Law Clinic, which is an academic association of law students, lecturers and researchers at the Vrije Universiteit (VU) Amsterdam. The Climate Law Clinic has repeatedly raised concerns about the climate impact of the N05-A project on young people.
- North Sea Fossil Free, which is an association of individuals and community groups from Groningen, Friesland and the Wadden islands. North Sea Fossil Free has repeatedly organized public protests against the N05-A project.
- Scientists for Future NL (S4F), which is an association of scientists from all academic disciplines concerned about the unfolding climate crisis. S4F has long voiced concerns about the climate impacts of gas drilling in the North Sea.

- Scientist Rebellion NL, which is an association of scientists engaging in direct action to prevent climate breakdown. Scientist Rebellion has repetitively engaged in actions in regard to the N05-A project.
- Deutsche Umwelthilfe (DUH), a German environmental NGO. DUH has opposed the extraction permit for the N05-A project by the Dutch government in court.

It is standing practice that NCPs will accept submissions filed by trade unions, NGOs or other organisations that seek to address causes they defend. As the notifying party consists of five organisations defending causes that relate to the issues raised, the NCP is of the opinion that the notifying party has a legitimate interest in the issues raised in this submission.

Whether the issues raised are material and substantiated

In line with the Commentary to the Procedural Guidance for NCPs, paragraph 33, the NCP interprets 'material and substantiated' to mean that, based on the information submitted, the issues raised are relevant to the implementation of the Guidelines and supported by sufficient and credible information.

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 Guidelines.

The issues raised by the notifying party are sufficiently substantiated by extensive background information that is largely based on legal sources and scientific research.

Whether the enterprise is covered by the Guidelines

ONE-Dyas is a private limited liability company. ONE-Dyas has its headquarters in the Netherlands, which is an OECD Member State, the company has a commercial purpose and international operations in the North Sea. The N05-A project concerns both Germany and the Netherlands. This means that ONE-Dyas is a multinational enterprise in the sense of the Guidelines and thus covered by the Guidelines.

Whether there seems to be a link between the enterprise's activities and the issues raised in the specific instance

ONE-Dyas plans to set up and operate the N05-A project. According to the notifiers, this means that the company will be causally responsible for the project's life cycle greenhouse gas emissions (including scope 1, 2 and 3 emissions), which will contribute to climate change. This apparently creates the requisite nexus between the enterprise's actions and the possible adverse impacts of the resulting greenhouse gas emissions on human rights and the environment that form the basis of the notification.

The extent to which applicable law and/or parallel proceedings limit the NCP's ability to contribute to the resolution of the issue and/or the implementation of the Guidelines

As noted in the Commentary to the Procedural Guidance for NCPs, paragraph 35, already concluded or ongoing domestic or international parallel proceedings do not necessarily prevent an NCP from handling the specific instance by offering its good offices to the parties. NCPs are expected to assess in each individual case whether or not the offer of good offices would make a positive contribution to the resolution of the issues raised, or would prejudice either of the parties involved in other proceedings.

There are relevant regulatory norms and legal precedents that may provide useful orientation for the NCP in reviewing the submission, including EU and national legislation (e.g. Environmental Impact Assessment Directive, CSRD), international standards (e.g. IFRS and GRI standards, GHG Protocol, various GHG-related ISO standards) and court rulings (e.g. 2024 UKSC20 Horse Hill case).

Moreover, the NCP notes that the extraction permit for the N05-A project is currently under appeal before a Dutch District Court and the Dutch Council of State. Both proceedings challenge the Dutch public authorities' decision to grant the extraction permit for the N05-A project. The N05-A project permit is also under appeal in a German administrative court.

The issues raised in this specific instance are different from the pending court procedures, as they concern the responsibilities of the multinational enterprise involved in setting up and eventually operating the project, rather than those of the state in granting permission for the project.

The abovementioned standards and proceedings do not limit the NCP's ability to contribute to the resolution of the issue and/or the implementation of the Guidelines in this specific instance.

Whether the examination of the issue would contribute to the purposes and effectiveness of the Guidelines

The NCP believes that in dealing with this notification it will contribute to the Guidelines' purposes and effectiveness in the sense that examination of the issue may help clarify the responsibilities of oil and gas extraction companies in the context of climate change within the framework of the updated 2023 Guidelines. According to the updated Guidelines, enterprises have an important role in contributing towards net-zero greenhouse gas emissions and a climate-resilient economy. The examination of the issue raised by the notifying party may provide clarification of what is expected of enterprises in this context under the Guidelines, including the responsibility to adopt, implement, monitor and report on mitigation targets, taking into account scope 1, 2 and, to the extent possible based on best available information, scope 3 greenhouse gas emissions (Commentary on Chapter VI, paragraph 77).

Conclusion

The NCP is of the opinion that this submission **warrants further examination** on the basis of the criteria laid out in the commentary to the Procedural Guidance, paragraph 33. The conclusion reached by the NCP in this initial assessment is 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 alleged 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 raised can be successfully addressed.

Both the notifying party and the enterprise have accepted the NCP's good offices. In accordance with the NCP procedure, further activities relating to the specific instance procedure will be confidential while good offices are ongoing. The NCP will, together with the parties, take the necessary steps to guarantee a careful and confidential process.

If the parties cannot reach an agreement as a result of the good offices, the NCP will, in principle, 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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