



# National Contact Point

## OECD Guidelines for Multinational Enterprises

### Initial Assessment

#### Specific instance, FIVAS, the Initiative to Keep Hasankeyf Alive and Hasankeyf Matters - Bresser

January 9<sup>th</sup> 2018

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

Notification to the Dutch National Contact Point of the Association for International Water Studies, Norway (FIVAS), the Initiative to Keep Hasankeyf Alive and Hasankeyf Matters concerning an alleged violation of the OECD Guidelines for Multinational Enterprises by Bresser and Bresser Eurasia (28 July 2017).

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#### Executive summary

On 28 July 2017, the Association for International Water Studies, Norway (FIVAS), the Initiative to Keep Hasankeyf Alive and Hasankeyf Matters notified the Dutch National Contact Point of a specific instance regarding an alleged violation of the OECD Guidelines for Multinational Enterprises (hereafter: the Guidelines) by Bresser and its subsidiary Bresser Eurasia, both based in the Netherlands.

As part of its initial assessment, the NCP held separate, confidential meetings with the notifying parties (on 14 September) and with the business concerned, Bresser (on 6 October), about the instance and related matters.

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

- the Dutch NCP is the right entity to assess the alleged violation of the Guidelines' due diligence obligations by the company concerned, as that company is based in the Netherlands;
- the notifying parties have a legitimate interest in the issues raised in the notification;
- Bresser is a multinational enterprise within the meaning of the Guidelines;
- the issues raised by the notifying parties are material and prima vista substantial;
- there is an apparent link between Bresser's activities and the issues raised in the specific instance;
- the consideration of part of this specific instance may contribute to achieving the Guidelines' objectives and enhancing their effectiveness.

**The decision to further examine part of this specific instance is not based on substantive research or fact-finding, nor does it represent any judgment as to whether or not Bresser has violated the Guidelines.**

In this initial assessment, the NCP deliberately makes no comment on the question as to whether Bresser failed to observe the OECD Guidelines. The facts of the case have not been examined thus far, and the evidence provided by the notifying parties has not been verified.

Rather, in this initial assessment, the NCP explains its decision to offer the parties its “good offices” in resolving the issue, in keeping with the Dutch NCP Specific Instance Procedure for handling notifications.<sup>1</sup>

In conformity with the Dutch NCP’s procedure, the draft initial assessment was sent to the parties, inviting them to respond to it in writing within two weeks. Following this period, the initial assessment was finalised, taking the parties’ comments into account. The finalised version was then published on the NCP’s website [www.oecdguidelines.nl](http://www.oecdguidelines.nl), in accordance with the Dutch NCP Specific Instance Procedure.

## Summary of the notification

On 28 July 2017, the Dutch NCP received a notification from FIVAS, the Initiative to Keep Hasankeyf Alive and Hasankeyf Matters against Bresser and Bresser Eurasia. In this initial assessment, the NCP does not express an opinion on the accuracy of the statements made by the notifying parties.

The notification of the specific instance with respect to Bresser and Bresser Eurasia can be summarised as follows:

Bresser Eurasia, a subsidiary of Bresser, in its capacity as contractor for Er-Bu İnşaat, supplied the technology and skills essential to the relocation of the Zeynel Bey Tomb, a late 15th-century historic building. Until 12 May 2017, this building stood on the left bank of Tigris river at Hasankeyf, in southeastern Turkey. Er-Bu İnşaat is, in turn, a contractor for Turkey’s State Hydraulic Works (DSI). The relocation of the tomb was a consequence of the planned inundation of the area, due to the filling of the Ilisu Dam Reservoir.

Bresser failed to consult the local population adequately before beginning the relocation of the tomb, or to meaningfully include the public in planning the tomb’s conservation or relocation in Hasankeyf. Accordingly, the removal of the tomb constitutes a violation of human rights, and in particular of the human right to culture, as enshrined in the Convention for the Protection of the Architectural Heritage of Europe (CETS 121) and the OECD Guidelines for Multinational Enterprises. Specifically, the complainants state, it is a violation of chapter II. General Policies, article 2 of the OECD Guidelines, which requires firms to ‘[r]espect the internationally recognised human rights of those affected by their activities’.

The complainants state that the relocation of the tomb has significantly reduced its value as cultural heritage. Bresser’s key role in the attempted relocation makes the company responsible for this adverse impact. The impairment of the tomb’s cultural value should be recognised as an infringement of the human right to culture, and Bresser failed to consider the impact of the tomb’s relocation on this human right.

Bresser did not conduct sufficient due diligence regarding the human rights impact of the relocation, or undertake action to prevent or mitigate adverse impacts stemming from the human rights violations that the project entailed. Nor did it raise these adverse impacts with its contracting partner.

The notification specifically concerns Bresser’s alleged non-observance of articles 2, 10, 11, 13 and 14 of chapter II of the Guidelines (General Policies) and of chapter IV (Human Rights).

### FIVAS et al. request from Bresser (and Bresser Eurasia):

- To refrain, as a responsible company, from any activity causing violations of human rights, and to respect the OECD Guidelines.
- To carry out human rights due diligence to the standard set by the Guidelines for companies involved with projects, to try to avoid or at least mitigate adverse impacts, and to refrain from carrying out current or new projects if due diligence or other processes reveal probable human rights violations and it is unable to mitigate the projects’ effects.
- To recognise the adverse impacts of projects and its responsibility for the impact of its operations, even when the company is acting under a contract, and to consider disengaging from projects where the above-mentioned concerns exist, as a means of both exercising leverage and ending its contribution to adverse impacts.
- To issue a statement on its assessment of risks associated with the project.
- To cease all work at Hasankeyf until there are proper consultations with the local population recognising the population’s human right to culture, and plans in accordance with international agreements are made publicly available.
- To cease all work in Hasankeyf until the human rights violations have been assessed that have occurred as a direct result of its actions and inaction, and determination of measures to be implemented to ensure that these violations are rectified and do not recur. This assessment and these decisions should be based on substantive, documented and independently verified consultations with a cross-section of stakeholders, including professional experts and members of the general public who are representative of the local population of Hasankeyf and the southeastern region of Turkey.
- To make a policy on human rights publicly available, explaining how Bresser will fulfil its responsibility for human rights in its operations, as specified in the UN Guiding Principles on Business and Human Rights.

**In this initial assessment, the NCP makes no comment on the accuracy of the complainants’ claims.**

## Summary of Bresser’s initial response

On 12 October 2017 the NCP received an initial response from Bresser to the notification. **In this initial assessment, the NCP does not express any opinion as to the accuracy of Bresser’s response.**

<sup>1</sup> <http://www.oecdguidelines.nl/notifications/documents/publication/2015/3/5/specific-instance-procedure-ncp-v-15-3>.

## About Bresser

For more than 40 years, Bresser has been providing complete, innovative solutions for the relocation, jacking and reinforcement of foundations. From its corporate headquarters in the Netherlands, Bresser operates in several countries in Europe and Asia. Bresser's expertise and experience are deployed not only to solve foundation and infrastructure problems, but also to preserve cultural heritage for future generations.

## About Bresser Eurasia

The legal entity Bresser Eurasia was dissolved on 21 July 2016, and has since that date no longer been registered with the Dutch Chamber of Commerce. The information on its dissolution and deregistration is publicly available. There has never been a contract between Er-Bu İnşaat and Bresser Eurasia.

## About the notification

Bresser states that it is a reputable, internationally operating company and that all of its projects in the Netherlands and abroad have been carried out honourably and in good faith, in accordance with the OECD Guidelines. It illustrates this with the following three points.

- Bresser gathered information on the spot: in response to the very first request concerning the relocation of the tomb, a team from Bresser visited Hasankeyf and its immediate surroundings. During this visit, the team performed technical inspections of the tomb and talked to direct stakeholders and local residents without direct involvement in the project.
- Bresser's attitude towards cultural heritage is one of care and commitment: before and after the contract was signed, and before approval could be given to relocating the tomb, a process took place in which Bresser's plans had to be submitted and presented to several scientific committees and committees responsible for the conservation of historic buildings. In Bresser's eyes, this was a careful process, and the committees and their members showed great seriousness and expertise in considering the relocation and conservation of the tomb. Bresser chose a technical method for the relocation of the tomb that it has been using for several decades, which has never entailed any risk of endangering cultural heritage.
- Bresser ensures good working conditions for its local employees: most of the preparation and execution of the work was done by local, adult staff with a Turkish-Kurdish background. These people live near the project and came to work and returned home every day. Breakfast and lunch were provided by the main contractor (Er-Bu) and eaten together with the local staff. Compliance with the regulations for good working conditions was constantly monitored while the work was in progress, by Bresser among other parties. At no time was there any question of oppression or exploitation of local employees.

Moreover, Bresser informed the main contractor, Er-Bu, several times of the correspondence it received from the complainants. Er-Bu responded that DSI as the commissioning authority was

responsible for all communications and accordingly for all consultations and discussions with organisations defending local interests. Bresser accepts the concept of chain responsibility, but is of the opinion that it would not be appropriate for a subcontractor like Bresser to intervene in local social and political discussions.

Finally, in April 2017 Bresser conducted a check through an internal control system, which showed that it was in compliance with the OECD Guidelines.

Bresser has concerns about the value of a dialogue between itself and the complainants, which are working for the conservation of the village of Hasankeyf and want to halt the operation of the Ilisu Dam. On the basis of its earlier experiences and contacts with the complainants, Bresser also has concerns about their adherence to the care and confidentiality required during and following such a procedure.

Bresser states that the complainants' exclusive focus in this case on Bresser, in isolation from the other parties involved in the project, serves a particular goal. The complainants presuppose (when it suits them) that if Bresser does not cooperate in the relocation of objects, no objects will be relocated, and the Turkish government will not pursue the operation of the Ilisu Dam. Bresser does not believe that this is realistic, because other relocation specialists could do the job as well. If objects of cultural value are not moved, they will simply disappear under water. They will then be lost and unavailable to future generations.

On the basis of the above considerations, Bresser considers the complaint unfounded.

## Initial assessment

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

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

The NCP observes that the Dutch company's activities in question have an impact in Turkey, rather than in the Netherlands, and that Turkey has an NCP. The NCP also observes that the specific instance is against a small Dutch enterprise, a subcontractor of a Turkish contractor, operating in Turkey and abroad, in a project initiated as a consequence of the planned inundation of land by the Ilisu Dam megaproject.

The NCP notes that one of the notifying parties identifies itself as a coalition of local and regional activists, local authorities, professional organisations and NGOs struggling against the Ilisu Dam project and promoting social, cultural and ecological development in Hasankeyf and the Upper Tigris Valley. It notes that another notifying party states that it focuses on the destructive social and environmental consequences of large hydropower projects.

However, this complaint has been filed with the Dutch NCP, against a company based in the Netherlands. In deciding on the acceptance of a case, the NCP can and should only take into account the formal criteria set out in the Guidelines.

For this reason, the NCP will accept the case **in part**. It will limit its handling of the case to considering Bresser's due diligence obligations under the Guidelines in this specific case. The NCP will in no way express an opinion over the Ilisu dam.

The Dutch NCP will share the notification with the Turkish NCP, will inform the Turkish NCP on the progress and share the outcomes before publication.

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

The Initiative to Keep Hasankeyf Alive is working on behalf of its members, who are residents of Hasankeyf and the surrounding towns and cities. It was founded in 2006 and is a coalition of local and regional activists, local authorities, professional organisations and NGOs struggling against the Ilisu Dam project and promoting social, cultural and ecological development in Hasankeyf and the Upper Tigris Valley.

Hasankeyf Matters was formed in Istanbul in 2012 with the goal of assembling information about Hasankeyf, its history and its potential for economic development.

The Association for International Water Studies, Norway (FIVAS) was established in 1988 in response to the Norwegian company Kværner's involvement with a hydropower project in Malaysia. In the three ensuing decades, the organisation has focused on the destructive social and environmental consequences of large hydropower projects. It emphasises corporate social responsibility, strong international guidelines and the involvement of affected communities.

### **Are the issues raised by the complainants material and substantiated?**

There is a prima facie case that the issues raised by the notifying parties are material and substantiated by documents. In light of the Commentary on the Guidelines, the UN Guiding Principles and the Commentary to those Principles, and widely recognised international instruments such as the UNESCO Declaration concerning the Intentional Destruction of Cultural Heritage (2003), the notification refers to relevant provisions of the Guidelines.

The OECD Guidelines do not explicitly define what human rights are. However, the OECD Guidelines' chapter on Human Rights (commentary 36) does refer to and is in line with the UN Framework for Business and Human Rights and with the UN Guiding Principles. The Guiding Principles (commentary on article 12) state, 'An authoritative list of the core internationally recognized human rights is contained in the International Bill of Human Rights (consisting of the Universal Declaration of Human Rights and the

main instruments through which it has been codified: ... the International Covenant on Economic, Social and Cultural Rights (ICESCR) ...' (see also commentary 39 on the Guidelines).

ICESCR, article 15 (1) and (2) states: 'The States Parties to the present Covenant recognize the right of everyone ... To take part in cultural life.... The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for the conservation, the development and the diffusion of science and culture.'

Also relevant is the UNESCO Declaration concerning the Intentional Destruction of Cultural Heritage (2003), which states, referring to historic buildings, that 'cultural heritage is an important component of the cultural identity of communities, groups and individuals, and of social cohesion, so that its intentional destruction may have adverse consequences on human dignity and human rights'.

Until now, cultural rights as human rights have never been the subject of an NCP procedure. Nevertheless, the NCP concludes from the above that the right to culture and/or the right to cultural heritage and its conservation should be considered a human right under the OECD Guidelines.

The notification concerns Bresser's alleged non-observance of OECD Guidelines Chapter II, General Policies and Chapter IV, Human Rights.

### **Is there a link between the activities of Bresser and its subsidiary and the issues raised in the specific instance?**

Yes, Bresser's technical expertise was used and needed for the relocation of the Zeynel Bey Tomb.

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

The issues raised in the specific instance relate to the relocation of the Zeynel Bey Tomb, which was initiated as a consequence of, and is therefore closely connected to, the planned inundation of the area by the Ilisu Dam project.

The amended Environmental Impact Assessment Report (EIAR) for the Ilisu Dam is the subject of a case before the European Court of Human Rights (ECHR) submitted in March 2006 under article 8 of the European Convention on Human Rights against Turkey, Austria and Germany. In June 2016, the Court ruled that the complaints against Turkey under article 8 (respect for private life) and 10 (freedom of expression) would be communicated to the defendant. The complaints against Austria and Germany were declared inadmissible.<sup>2</sup>

The amended EIAR for the Ilisu Dam has a subsection on the conservation of cultural heritage, and mentions the Zeynel Bey Tomb.

<sup>2</sup> [www.echr.coe.int/Documents/CLIN\\_2016\\_07\\_198\\_ENG.pdf](http://www.echr.coe.int/Documents/CLIN_2016_07_198_ENG.pdf).

The case before the ECHR challenges the validity of the plan for the conservation of cultural heritage in the Ilisu basin. The case does not specifically address the relocation of the Zeynel Bey Tomb or consider the responsibility of any parties other than the Turkish state. The NCP is therefore of the opinion that considering the Dutch company's responsibility under the OECD Guidelines could still make a positive contribution to the resolution of this specific instance.

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

The Dutch NCP believes that handling this notification will contribute to achieving the Guidelines' objectives and enhancing their effectiveness, in the sense that it may help clarify the due diligence obligations under the Guidelines of a small subcontractor like Bresser.

## Conclusion

The Dutch NCP is of the opinion that this specific instance merits, in part, further consideration based on the criteria for further examination under the OECD Guidelines for Multinational Enterprises.

The NCP will therefore, in accordance with its specific instance procedure, offer its good offices to the parties. Its objective is to bring the parties to an agreement on what is to be expected of a small subcontractor like Bresser, operating in Turkey, under the OECD Guidelines' due diligence recommendations.

The NCP is of the opinion that handling this specific instance may help clarify the OECD due diligence recommendations for multinational enterprises regarding the human right to culture and/or the right to cultural heritage and its conservation.

The complainants and Bresser have both accepted the NCP's good offices. In accordance with the NCP procedure, further examination or mediation will be confidential while they are in progress. The NCP will take the necessary steps to guarantee a careful process, taking the company's concerns into account. The NCP will complete the procedure by issuing a public statement on the results of the procedure. If the parties have reached an agreement, the NCP will refer to this agreement in its final statement. If the parties failed to reach an agreement, the NCP will qualify the proceedings in its final statement, and make recommendations concerning the implementation of the Guidelines.

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](http://www.oecdguidelines.nl)