

The goal of the dialogue was to help the parties reach agreement on the points raised in the notification, making use of the NCP's recommendations in light of the Guidelines.

All the parties involved accepted the NCP's invitation to participate in a dialogue.

Dialogue meetings took place on 26 June and 31 August 2018, attended by both parties and the NCP.

During the second meeting on 31 August the parties reached agreement on a number of points, and indicated that the NCP dialogue had been useful in clarifying the points presented in the notification.

The NCP drew up a draft final statement and presented it to the parties, who were given 14 days to comment on it. After this response period the final statement was published on the NCP website (18 December 2018, in Dutch).

2.2 Information about the notifier

Stichting Hou Friesland Mooi is a foundation which has been working since 2012 to promote the interests of the local community as wind farms are established in Fryslân. The foundation maintains that it is not a conventional anti-wind power activist group but instead seeks to cooperate with the building of wind farms in the province provided the local community is involved in an appropriate manner. Its motto in this connection is 'A fair division of costs, benefits and influence'. The foundation arranges information meetings for the local community in the vicinity of the project, has a website and maintains an email mailing list of interested local residents.

2.3 Information about the enterprise

Nuon Energy N.V. is a Dutch enterprise with approximately 4,200 employees and is part of the Swedish energy company Vattenfall, which carries out activities in various countries. The notification concerns one of these activities, namely a wind farm development project in the Province of Fryslân in the Netherlands. The fact that the alleged violation took place in the Netherlands does not, in the NCP's view, negate the applicability of the Guidelines.

3. Summary of the notification

According to the notifier, Nuon has violated the guidelines that encourage enterprises to engage in dialogue with relevant stakeholders, to carry out human rights due diligence (right to health), to provide information on the potential environmental, health, and safety impacts of their activities, and to engage in

adequate and timely communication and consultation with the communities directly affected. As a private enterprise, Nuon bears a responsibility alongside that borne by the relevant public authorities.

The notification concerns plans to expand an existing wind farm ('Hiddum-Houw') to create a new, larger wind farm ('Nij Hiddum-Houw'). Two parties initiated the project: Nuon and a group of local enterprises. Together with these two parties, the Province of Fryslân established an environmental advisory committee (OAR).

Key points:

The notifier states that Nuon has violated the following provisions of the Guidelines:

1. General Policies (Chapter II, article 14)

Nuon did not comply with the requirement set out in article 14 that enterprises should 'engage with relevant stakeholders in order to provide meaningful opportunities for their views to be taken into account in relation to planning and decision-making for projects or other activities that may significantly impact local communities'. As far as the notifier is aware, Nuon took no independent action to comply with article 14 of the Guidelines and did not engage in direct contact with the local community.

2. Human rights (Chapter IV, articles 1, 2 and 5)

Nuon should respect human rights (article 1) and avoid and address adverse human rights impacts (article 2). Under article 5, Nuon should 'carry out human rights due diligence as appropriate to their size, the nature and context of operations and the severity of the risks of adverse human rights impacts'. The right to health is the primary human right at issue with respect to the Nij Hiddum-Houw project. Nuon should have carried out its own due diligence with regard to Nij Hiddum-Houw's impact on the human rights of local residents, particularly with regard to the right to health.

3. Environment (Chapter VI, articles 1, 2, 3 and 4)

The notifier states that Nuon did not comply with articles 1, 2, 3 and 4 of Chapter VI (Environment) of the Guidelines.

The notifier states that, as far as it knows, Nuon established no environmental management system for Nij Hiddum-Houw. Nuon further failed to comply with article 2 (a) of the Guidelines, which states that enterprises should provide the public with all necessary information 'on the potential environment, health and safety impacts of the activities of the enterprise'. The fact that an environmental impact assessment (MER) was drawn up does not constitute compliance with article 2 (a). Based on article 3, Nuon should have made its own assessment with regard to human health and safety issues, and should where necessary have taken measures or conducted its own research in accordance with article 4.

The notifier requests that Nuon:

1. Now engage in a meaningful dialogue with the local community (the residents of the six villages) and listen to their concerns;
2. Itself conduct or commission research into potential health effects associated with the wind farm as currently envisaged;
3. Conclude and formalise clear agreements (e.g. on the position of residents and solutions and actions) covering any future situation in which local residents do in fact suffer damage to their health.

4. Summary of Nuon's initial response

Nuon is aware that Hou Friesland Mooi opposes the planned expansion of the current wind turbine farm – i.e. Nij Hiddum-Houw. That is its right, and Nuon views its complaint against the company in that light. HFM's notification essentially concerns the extent to which the competent authority and initiating parties, including Nuon, engaged with the local community during the planning process. The Province of Fryslân, in its role as competent authority, followed the statutory procedure. Various judgments by the Council of State (for example judgment nos. 201608423/1/R6 and 201703826/1/R6) show that the nation's highest court takes the view that this procedure already provides sufficient opportunity for stakeholders to exert their influence.

Since Nuon is always willing to go the extra mile, it has, in accordance with its general project management guidelines and the statutory frameworks, extensively and meaningfully engaged with the local community on the development of this project (as also referred to in General Policies, Chapter II of the OECD Guidelines under A, article 14):

- Hou Friesland Mooi participated in the environmental advisory committee (OAR), which for Nuon is a crucial instrument for engaging in dialogue with the local community. Nuon involves the local community in all its projects. In the case of Nij Hiddum-Houw, Nuon jointly funds (50/50 with the Province) the committee's chair, secretary and meeting room hire, as well as the support provided to the body by a representative of the Netherlands Association of People Living in the Direct Vicinity of Wind Turbines (Nederlandse Vereniging Omwonenden Windturbines; NLVOW). Hou Friesland Mooi was a member of the OAR.
- After nine months, Hou Friesland Mooi left the OAR of its own volition, a development about which Nuon expressed its regret. However, since a clear majority of local residents and direct stakeholders stayed in the OAR, Nuon continued its dialogue with the OAR with a view to concluding additional agreements (over and above its statutory obligations) in regard to this wind farm.
- The option of direct contact with Hou Friesland Mooi has always remained open, but this cannot result in the organisation having a veto in the participation process. This would undermine the OAR.

- Hou Friesland Mooi and its supporters can also continue to take part in the various public information meetings that are held at regular intervals, and can share their views concerning the project via regular channels as part of the spatial planning procedure. The organisation has in fact used these opportunities by attending every information meeting that has been arranged.

As with any project, in developing Nij Hiddum-Houw, Nuon has always taken account of public health in the local community:

- Nuon complies with all statutory frameworks and, as part of this process, uses independent research (due diligence as referred to in Chapter IV, article 5 of the OECD Guidelines) to draw up strict requirements and measures concerning and minimising possible impacts caused by the wind farm.
- Nuon knows of no health effects, nor has it received any reports to this effect, involving any of its existing wind farms, some of which have been in operation for more than 20 years.
- Via the OAR Nuon makes agreements with the local community which go beyond its statutory obligations and which, in addition to Nuon's utmost precautionary efforts to prevent any impact, can also result in new mitigating measures, including in the operational phase, should the local community encounter any negative effects (in Nuon's opinion this goes above and beyond even the provisions set out in Chapter VI of the OECD Guidelines).
- As part of these agreements Nuon will work, together with the competent authority, to ensure that the proper body or bodies (e.g. the Municipal Health Service (GGD) or local GPs) monitor the health of the local community and any health effects caused by the wind farm.

In summary, Nuon is of the opinion that it operates with the utmost care in accordance with the OECD Guidelines and that there are, therefore, no grounds whatsoever for declaring the complaint admissible.

5. The dialogue phase and outcome of the dialogue

When the NCP received the notification the wind farm project was in the first phase of development, i.e. the preparation and permitting phase. The notification concerned the situation and the relationship between the notifier and Nuon during this project phase. In consultation with the parties, the second dialogue meeting – originally scheduled for 9 July 2018 – was postponed pending the Provincial Council's decision on the provincial land-use plan (PIP).

After an initial delay, the Provincial Council decided in favour of the Nij Hiddum-Houw wind farm project on 18 July 2018, by which decision the integrated environmental permits and exemptions were granted. With this decision the project entered a new phase: the construction phase.

The second dialogue meeting between the parties took place on 31 August.

The parties agreed that in this new phase consultation with the local community would begin anew. Both parties also agreed to seek a satisfactory form for their consultation with each other, which they agreed should be aimed at restoring confidence between HFM and Nuon.

A new beginning means the parties will not reopen debate on matters previously agreed, but take them as their starting point.

In this phase it is important for the parties and all local stakeholders that the process is designed in such a way as to ensure the agreements made are properly recorded, elaborated, implemented and monitored. Nuon indicates that all stakeholders in the vicinity of the wind farm need to be properly represented during the implementation stage and HFM has offered to share its ideas about who these dialogue partners should be. In short: implementation of the agreements is contingent on effective organisation.

The parties agree that at the time the notification was submitted to the NCP, during the preparation and permitting phase, there could have been some confusion among those not directly involved regarding Nuon's independent role in light of Chapter II, article 14 of the OECD Guidelines. Based on experiences during preparation and permitting, the parties agree that in this new phase Nuon's independent role must be elaborated with due care and in consultation with all local stakeholders.

HFM stands by its view that in the first process phase, that of preparation and permitting, Nuon took insufficient action of its own accord to comply with its obligations under the OECD Guidelines with regard to consultation with the local community and itself conducting or commissioning research into the possible health impacts of the wind farm.

Nuon stands by its view that stakeholders were adequately informed, in partnership with the Province of Fryslân, about the Nij Hiddum-Houw wind farm project and their input was demonstrably taken into account during planning.

6. The NCP's recommendations

The OECD Guidelines clarify what the government of the Netherlands expects from enterprises in respect of responsible international business conduct. They offer practical advice for companies on how to deal with the issues raised in this notification: engaging in dialogue with relevant stakeholders, which creates meaningful opportunities for considering their insights; human rights, including the right to health; the

environment; and the provision of information. The OECD Guidelines are therefore the starting point for Dutch policy on international responsible business conduct.

The NCP is conscious of the complexity of the project to which the notification refers, given the interwoven nature of the roles and responsibilities of the public authorities and private enterprises involved in projects such as this.

The NCP concludes that there was a lack of clarity in the project planning phase (i.e. the preparation and permitting phase) about Nuon's role in relation to the provincial authority's role. The NCP concludes that Nuon is obliged to comply with the provisions of the OECD Guidelines of its own accord.

The NCP recommends that, in future, Nuon act more expressly in the planning phase to fulfil the obligations arising from its independent role as a company in the framework of the OECD Guidelines. The NCP also recommends that Nuon communicate more clearly what its role is in relation to that of the provincial authority, so that its position and how it has fulfilled its responsibility vis-à-vis the local community in light of the OECD Guidelines, are clear to the outside world.

7. Monitoring

The NCP recommends that the parties continue their dialogue. The parties and the NCP have agreed to inform the NCP in December 2019, one year after publication of this final statement, about the state of play regarding implementation of the points of agreement and the NCP's recommendations. The NCP will invite parties to a meeting if desired. The NCP will write an abridged evaluation of the implementation of the agreements made, which will be published on its website.

The role of National Contact Points (NCPs) is to promote the application of the OECD Guidelines. The Dutch government has established an independent NCP which is responsible for its own procedures and decisions in accordance with the Procedural Guidance section of the Guidelines. The Dutch NCP consists of four independent members, supported by four advisory 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 bears political responsibility for the functioning of the Dutch NCP. More information on the OECD Guidelines and the NCP can be found on www.oecdguidelines.nl.

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