



Evaluation of the Final Statement regarding the specific instance FIVAS, the Initiative to Keep Hasankeyf Alive and Hasankeyf Matters vs Bresser

Date: 29 June 2021

Evaluation of the Final Statement regarding the specific instance FIVAS, the Initiative to Keep Hasankeyf Alive and Hasankeyf Matters vs Bresser by the Dutch National Contact Point ('NCP') for the OECD Guidelines for Multinational Enterprises ('the Guidelines') dated 20 August 2018 on the dialogue facilitated by the NCP.

Table of Contents

1. Recommendations in the Final Statement dated 20 August 2018	1
2. Evaluation	2
3. Conclusion.....	3

1. Recommendations in the Final Statement dated 20 August 2018

The NCP observed that Bresser, an SME, has not fully met the expectations and has not fulfilled the due diligence criteria of the OECD Guidelines in practice. The Guidelines' Chapter I (Concepts and Principles) under 6, say it is acknowledged that small and medium-sized enterprises may not have the same capacities as larger enterprises, but SMEs should be encouraged by governments to observe the Guidelines' recommendations to the fullest extent possible. This includes carrying out risk-based due diligence (Ch.II, under 10). The nature and extent of due diligence depend on the circumstances of a particular situation and on the other hand on the severity of the risks. This means that the size of the enterprise does not affect its responsibility to conduct due diligence, but may affect its manner of carrying out due diligence.

The NCP concluded also that, in view of the size of the company and its position as a /- subcontractor, Bresser made some effort to carry out some due diligence in order to understand the circumstances of the inhabitants of Hasankeyf.

In the Final Statement, the NCP made the following recommendations:

- That Bresser adopt a *more structured approach when consulting the local community before engaging in a project*. In its contacts with the main contractor and/or DSI, Bresser should have used the leverage it had to find out if meaningful stakeholder consultation had indeed taken place with all relevant stakeholders, including the local community. It should have ensured more thoroughly with the main contractor and/or DSI, that procedures are in place providing sufficient opportunities for stakeholders to participate in project development and implementation.
- That Bresser *include risks external to the company more explicitly in its risk-management system*.
- That Bresser publish information on its *website on the key features of its risk management system*, including risks within the meaning of the OECD Guidelines. This information should be available to Bresser's international clients.

2. Evaluation

After the publication of the Final statement, the project of relocating several structures continued. During the project's second phase between August 2018 and December 2019, Bresser, a company specialized in the relocating of buildings and other large constructions, transported five structures to the architectural display area (or "cultural heritage park"), which is located between the new settlement area and the Hasankeyf Museum. In December 2019, the participation of Bresser in the project ended. Both parties state that since the publication of the Final statement there has been no contact between them.

Complainants indicate that they have seen no apparent effort of Bresser to improve its due diligence process during the second phase of the project. Complainants expect a higher level of due diligence and stakeholder consultation of Bresser. They encourage Bresser to consider with greater rigor the due diligence mechanisms practically required to produce an accurate assessment of external risks. They suggest that in future projects, Bresser might begin to study the relationship between structures and their social context by asking, for example, how the structure serves individual and group needs in its present location and how it will be used in the proposed setting. Complainants state it is also crucial to ask local people and diverse stakeholders if they have had the opportunity to share with the authorities their opinions and preferences regarding the proposed removal. Complainants recognize that this level of due diligence and stakeholder consultation requires time and resources. They are of the opinion that it should be budgeted as a cost of doing business in the field of cultural heritage conservation.

Complainants stress that, in order to fully understand and address the possible risks of a project properly, Bresser will have to define in advance a repeatable process for inquiry into and discovery of circumstances that lie beyond contractual relationships with supply chain partners and may increase the potential of a given project to cause adverse impacts on people, society, and the environment.

Bresser indicates that personnel and management of the company lived in Batman during the second phase, close to the area where the work was carried out, and had contacts among the population while living and working there. Bresser has been very approachable during the execution of the last phase of the project. Bresser also states to have given, in a later stage, an explanation to stakeholders about their activities. highlights their presence and invitation to give a presentation on a three-day conference organized by the authorities concerning the building of the dam. Bresser

indicates that several stakeholders and experts presented scientific studies on the impact on the surroundings and on vegetal and animal life. Bresser did not know whether representatives of the local community or representatives of complainants were invited, since Bresser was not the organizer of the event. As part of the conference, there was an excursion to Hasankeyf and the local population reacted positively on their visit, according to Bresser. Bresser states that the historic buildings were relocated without damage.

Bresser indicates that it is in a learning curve about due diligence in the meaning of the Guidelines and putting it in writing, so that it is accessible. Bresser states that as part of its risk-management system it now makes a more extensive assessment of possible external risks and more information is recorded internally. The company states that before engaging in new projects, and with the experiences of the project in Hasankeyf, it is more alert on any possible political issues and/or opposition concerning a new project. Bresser expects their clients to give good documented information on the context and the local situation when it participates in a tender. Insufficient documentation on the context from the client or a human rights related unfair proposal for the stabilization of a building in a sensitive area have been a reason for Bresser to withdraw from tenders recently.

Complainants observe that Bresser has published on its website a statement about corporate governance. They indicate that this statement provides general information about Bresser's approach to meeting "specifications and contractual obligations" in the areas of "quality, health, safety, security and environment," but does not address any of the NCP recommendations, particularly those regarding external risk and systematic stakeholder consultation.

Meanwhile **Bresser**, a company of 25 staff members, indicates that in most cases they are involved as a subcontractor by the principal main constructor in large infrastructure projects where the relocation of a building or construction is just one component of the project. In those cases they are normally asked to present information at a meeting with the inhabitants of the area about how the replacement is going to be executed. Bresser indicates that this is for them, as a small company, an appropriate way of carrying out due diligence.

3. Conclusion

Concluding, the NCP acknowledges that it is not always easy, but necessary, for a small company to meet the demands of stakeholders and the requirements on due diligence in the OECD Guidelines.

The specific instance shows that for the company this is a process of learning and experiencing, in order to reach a higher level of awareness of possible external risks. The NCP has the impression, after having talked to the company, and though no written evidence has been provided, that the company has reached a higher level of awareness of possible risks. However, there is always room for improvement.

The general public, stakeholders as well as more and more governments, ask of companies operating internationally, whether they are small or large, to be accountable for what they do, to be transparent as much as possible ("show me, don't tell me"), as part of their due diligence process. The NCP underlines that being accountable also means that enterprises provide publicly available general (written) information on external risks (as defined in the Guidelines) they look at when identifying and addressing possible external risks as part of their risk-management system. For SME's like Bresser, this information can be tailor-made.

The NCP sees the Corporate Government statement on the website as a part of the first step of due diligence, the development of a Responsible Business Conduct policy, that fits the company's size. Therefore, the NCP recommends that Bresser, in its statement, refer explicitly to external risks in the meaning of the OECD Guidelines that is, the likelihood of adverse impacts on people, the natural environment and society, as the Guidelines ask of enterprises.

As noted above, the Guidelines acknowledge that small and medium sized enterprises may not have the same capacity to conduct due diligence as larger enterprises. The primary lesson to be learned from this case is that SMEs have to take into account that governments adhering to the Guidelines are expected to encourage enterprises of all sizes to observe the Guidelines' recommendations to the fullest extent possible. This includes carrying out risk-based due diligence. The nature and extent of due diligence depend on the circumstances of a particular situation and on the other hand on the severity of the risks. This means that the size of the enterprise does not affect its responsibility to conduct due diligence, but may affect its manner of carrying out due diligence.

Due diligence is informed by stakeholder engagement (see: OECD Due diligence guidance for RBC, p. 18). The NCP stresses that meaningful stakeholder engagement is characterized by two-way communication. It is an interactive process of engagement with relevant stakeholders, such as local communities, and it is on-going (p. 49 Due diligence guidance). The enterprise has the obligation to ensure that local communities have the opportunity to participate in a meaningful way in the design, planning and implementation of a project. The NCP is of the opinion that Bresser, should pay attention to the characteristics of meaningful stakeholder engagement, whenever engaging in a project. The structured approach, as recommended by the NCP, remains a point of attention too.

Concluding, SME's have a best effort obligation to conduct tailor-made due diligence and have to check with the main contractor if it fulfilled its duties and performance to inform and consult the surrounding community and stakeholders with respect to the project at stake. Clear best efforts appointments about rights and duties have to be made between the sub-and main contractors. Nevertheless, this does not mean that the main contractor can transfer his responsibility for compliance with the OECD Guidelines to the sub-contractor.

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](#)

Published by:

© National Contact Point OECD Guidelines
for Multinational Enterprises

Ministry of Foreign Affairs

P.O. Box 20061

2500 EB The Hague

The Netherlands

[NCP Website](#)