

National Contact Point of Switzerland

Final Statement

Specific Instance regarding Credit Suisse submitted by the Society for Threatened Peoples Switzerland

Berne, 16 October 2019

1. Context

The OECD Guidelines for Multinational Enterprises (OECD Guidelines) represent a set of principles and standards for responsible business conduct, addressed as recommendations by the governments of the 36 OECD member and 12 other adhering states to multinational enterprises operating in or from their territories. The National Contact Point of Switzerland (henceforth referred to as “Swiss NCP”) for the OECD Guidelines has the mandate to raise awareness and promote observance of the OECD Guidelines. The Swiss NCP also contributes to the resolution of issues that arise relating to the implementation of the OECD Guidelines in specific instances by offering a forum for mediation, assisting parties concerned to deal with these issues and providing recommendations regarding the implementation of the OECD Guidelines.

On 28 April 2017, the Society for Threatened Peoples, Switzerland (henceforth referred to as “STP” or “submitting party”), submitted a written request to the Swiss NCP to consider a specific instance under the OECD Guidelines regarding Credit Suisse (henceforth referred to as “CS” or “responding party”), which has its headquarters in Switzerland. The submission concerns CS’s business relation with companies involved in the construction of the Dakota Access Pipeline in the United States and related alleged human rights violations.

2. Proceedings of the Swiss NCP

Since the receipt of the submission on 28 April 2017, the Swiss NCP took the following steps:

- Written confirmation to the submitting party to acknowledge receipt of the submission on 28 April 2017.
- Preliminary discussion by phone with the responding party in order to inform it about the submission and explain the Swiss NCP’s proceedings on 3 May 2017. The submission was forwarded to the responding party on 4 May 2017.
- On 11 May 2017, according to the Specific Instances Procedure of the Swiss NCP¹ an ad hoc working group was constituted, including representatives from the State Secretariat for Economic Affairs, the Federal Department of Foreign Affairs and the Federal Office of Environment. This working group was involved in all steps of the procedure of the specific instance.
- On 15 May 2017, the US NCP was informed by the Swiss NCP regarding the submission.

¹www.seco.admin.ch/seco/en/home/Aussenwirtschaftspolitik_Wirtschaftliche_Zusammenarbeit/Wirtschaftsbeziehungen/NKP/organisation-und-kontaktaufnahme.html

- On 16 May 2017, the ad hoc working group of the Swiss NCP held separate meetings with the responding party and the submitting party respectively to inform them about the procedure of the specific instance.
- On 29 June 2017, the Swiss NCP received a written statement by the responding party in response to the submission. The statement was forwarded to the submitting party on 30 June 2017.
- On 22 August 2017, the NCP sent its draft report on the initial assessment to both Parties for comments on possible misrepresentations of factual information.
- On 28 August 2017, the NCP received written comments by the submitting party. The responding party asked the NCP for an extension of the deadline and submitted its written comments on 2 October 2017.
- On 19 October 2017, the Swiss NCP concluded in its published [Initial Assessment](#)² that the issues raised in the submission merited further consideration. It therefore accepted the specific instance and offered its good offices to the Parties.
- Both Parties accepted the offer of the Swiss NCP for mediation.
- The Swiss NCP suggested to both Parties to have a mediation facilitated by a professional external mediator contracted by the Swiss NCP. The Parties agreed to the appointment of an independent mediator.
- Both Parties agreed on 15 April 2018 on the Terms of References for the dialogue.
- Between July 2018 and May 2019, five mediation meetings took place at the premises of the Swiss NCP in Berne with representatives from STP (three people, with one replacement during this period), Credit Suisse (three people), a representative of the Swiss NCP and the independent mediator.
- The Parties reached an agreement on several substantial points and on the disclosure of the results on their discussions on 13 September 2019.

3. Joint Outcome of the mediation process

The Parties agreed to disclose the following elements as a result of their discussions:

3.1. Scope of the Dialogue

It is the Parties' understanding that according to the Terms of Reference (ToR) the focus of the discussion is not on the specific case of the Dakota Access Pipeline (DAPL) or any other concrete case. The Parties agreed that the concept of Free, Prior and Informed Consent (FPIC) is essential in the context of this specific instance. Accordingly, the dialogue focussed on the concept of FPIC and its operationalisation.

3.2. Credit Suisse Internal Policies

- (1) The Parties acknowledge that CS will include FPIC in its internal sector specific policies for Oil & Gas, Mining and Forestry & Agribusiness as follows:

“When there is credible evidence that the proceeds of a project-related transaction are used for activities which may negatively impact an area used or traditionally claimed by an indigenous community, Credit Suisse expects its clients, with respect to this transaction, through active engagement with the respective authorities, regulatory bodies and affected communities, to demonstrate alignment with specific key objectives and requirements of the International Finance Corporation (IFC) *Performance Standard 7 – Indigenous Peoples*, which incorporate the principles of the United Nations Declaration on the Rights of Indigenous Peoples and the concept of Free, Prior and Informed Consent (FPIC)”

² www.seco.admin.ch/ncp

- (2) CS commits to implement this policy and to include the key elements such as the alignment with the concept of FPIC and the respective expectations towards clients in its public summaries of the policies. CS will notify STP and the NCP of the policy's entry into force. Six months after the entry into force of the policy, CS will inform the NCP on the measures taken to implement the policy.
- (3) The Parties acknowledge that operationalising the inclusion of FPIC in CS sector specific policies as mentioned in para. (1) above will benefit from the review of FPIC-related impacts by a team with specific expertise within CS.

3.3. Follow-up

The Parties agree that CS will inform the STP and the Swiss NCP about the entry into force of the policy mentioned above.

4. Conclusions and follow-up

Both Parties engaged throughout the entire mediation process in a constructive manner. They demonstrated a firm willingness throughout the process to find a mutually satisfying resolution of the issues raised in the submission.

The Swiss NCP welcomes:

- the resolution of the issues raised by the submitting party regarding the concept of FPIC and its operationalisation;
- the commitment of CS to include FPIC in its internal sector specific policies on Oil & Gas, Mining and Forestry & Agribusiness and to inform the STP and the Swiss NCP of the entry into force of this policy;
- the agreement of the Parties on a follow-up by the Swiss NCP.

The Swiss NCP will follow up closely the implementation of the agreed Joint Outcome of the mediation process.

With this Final Statement, the Swiss NCP closes the specific instance.