

# National Contact Point of Switzerland

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## Final Statement

### **Specific Instance regarding Glencore International AG submitted by CNV Internationaal, Solifonds, Swiss Trade Union Confederation SGB and Andaychagua Mining and Metal Workers Union of Volcan Compañía Minera and of specialised, outsourcing and mediation services providers to Volcan Compañía Minera – Andaychagua**

Berne, 28 August 2024

#### **Executive summary**

The Swiss National Contact Point for Responsible Business Conduct (hereafter “NCP”) received on 26 May 2023 a written submission by the trade unions CNV Internationaal, Swiss Trade Union Confederation SGB and Andaychagua Mining and Metal Workers Union of Volcan Compañía Minera and of specialised, outsourcing and mediation services providers to Volcan Compañía Minera – Andaychagua and the Swiss NGO Solifonds under the OECD Guidelines for Multinational Enterprises on Responsible Business Conduct (hereafter “OECD Guidelines”). It concerns Glencore plc and Glencore International AG headquartered in Switzerland (hereafter “Glencore”).

The submission is related to alleged violations of the OECD Guidelines by alleging Glencore did not properly conduct due diligence related to its participation in the Peruvian company Compañía Minera Volcan S.A.A. (hereafter “Volcan”), which they allege committed violations of labour rights. According to the submitting Parties, Volcan is violating the right of employees to collectively negotiate their terms and conditions of employment and, in an indirect and potential manner, to form and join trade unions of their choice.

In its response Glencore states that the submission to the NCP fails to identify any specific action or omission by Glencore which is in breach of the OECD Guidelines. According to Glencore, the submission relates to a dispute between trade unions over the application of Peruvian law and the question of which organisation has the right to lead collective bargaining negotiations, which can only be decided by a final and definitive ruling by a competent high court in Peru.

In its report of 20 February 2024 on the [Initial Assessment](#), the NCP accepted the submission and offered its good services to address the issues raised to both Parties.

Following acceptance of the specific instance, the NCP was informed about Glencore having divested Volcan on 6 May 2024. As the submitting Parties intended to negotiate meaningful, forward-looking solutions to the issues raised in this submission, the NCP is of the opinion that a basis for a mediation with Glencore no longer exists. The NCP however recommends to Glencore to inform the new owner of Volcan's shares about the recommendations in the OECD Guidelines on collective bargaining as well as the proceedings pending at the Peruvian NCP.

The NCP welcomes the constructive engagement by both Parties in this specific instance procedure. This report concludes the procedure.

## 1. Submission and Initial Assessment

The OECD Guidelines represent a set of principles and standards for responsible business conduct, addressed as recommendations by the governments of the 38 OECD member and 13 other adhering States to multinational enterprises operating in or from their territories. The NCP has the mandate to raise awareness and promote observance of the OECD Guidelines. The 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.

The NCP received a written submission on 26 May 2023 to consider a specific instance under the OECD Guidelines regarding Glencore headquartered in Switzerland. The specific instance was raised by the trade unions CNV Internationaal, Swiss Trade Union Confederation SGB and Andaychagua Mining and Metal Workers Union of Volcan Compañía Minera and of specialised, outsourcing and mediation services providers to Volcan Compañía Minera – Andaychagua (hereafter “the Union”) and the Swiss NGO Solifonds (hereafter “submitting Parties”).

The submitting Parties claim that Glencore has not carried out its human rights due diligence with regard to its participation in Volcan and disregarded its responsibility to prevent and address the adverse effects of the alleged violations of labour rights by Volcan. Volcan is a Peruvian-based and publicly listed company producing zinc, copper and silver.<sup>1</sup> According to the submitting Parties, Volcan refuses to enter into collective bargaining with the Union which represents white and blue-collar workers, whether directly or indirectly (outsourced) employed, of the Andaychagua mining unit. They point out that the Union, as it includes workers of the Andaychagua mining unit, operates at a different level (i.e. plant level) than the unions that represent either all blue-collar workers or all white-collar workers of various Volcan mining units with which Volcan has negotiated collective agreements at a company level. According to the submitting Parties, this makes the Union the largest organisation of its kind which is why the Peruvian law entitles it with the right for collective bargaining at plant level. The submitting Parties state that it is not a conflict between unions but between Volcan and the Union because the company does not want to respect the Union’s right to collective bargaining.

In its response, Glencore sets out that even while it had a controlling interest in Volcan, Glencore was not involved in directing the actions of Volcan as they relate to this complaint. Matters of this nature are the responsibility of the board of directors and management of Volcan. Glencore states that as a shareholder in a publicly listed company it did not have the right or ability to direct the management of Volcan, but engaged proactively with Volcan since the beginning to understand the issues in dispute and Volcan's perspective on the relevant issues. Glencore notes that the Union has submitted a materially identical complaint to the Peruvian NCP. According to Glencore, the submission to the Swiss NCP fails to identify any specific action or omission of Glencore which is in breach of the OECD Guidelines. According to Glencore, the submission relates to a dispute between trade unions over the application of Peruvian law and the question of which organisation has the right to lead collective bargaining negotiations, which can only be decided by a final and definitive ruling by a competent high court in Peru. According to Glencore, any mediated settlement that granted the Andaychagua union the right to negotiate with Volcan on behalf of its members would violate the right of the majority union (the Yauli Federation) to lead negotiations with Volcan, and would therefore be in breach of the applicable Peruvian law. Finally, Glencore argued that since none of the parties to the local labour dispute (the two unions) is a party to this specific instance, and therefore to any mediation, no meaningful or sustainable resolution of the underlying dispute could be achieved.

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<sup>1</sup> <https://www.volcan.com.pe/nosotros/>

The NCP accepted the specific instance for further consideration (see report of 20 February 2024 on the [Initial Assessment](#)) and offered its good services to address the issues raised to both Parties.

## 2. Proceedings of the Swiss NCP

Since the receipt of the submission on 26 May 2023 the NCP took the following steps:

31.5.2023	Acknowledgement of receipt letter to the submitting Parties, forwarding of the submission to the responding Party and information of the Swiss Embassy in Peru
1.6.2024 + 22.6.2023	Constitution and meeting of the ad hoc Working group including representatives from the State Secretariat for Economic Affairs, the Federal Department of Foreign Affairs according to the Specific Instances Procedure of the Swiss NCP <sup>1</sup>
23.6.2023	Exchange with NCP Peru regarding similar submission by the submitting Parties related to Volcan
27.6.2023	Virtual exchange of the ad hoc Working group with the submitting Parties to exchange on the procedure of the specific instance
30.6.2023	Receipt of a written statement of the responding Party, which was forwarded to the submitting Parties
3.8.2023	Exchange with the NCP Peru to clarify specific questions
8+10.8.2023	Virtual meeting with submitting Parties resp. Glencore to clarify specific questions
27.9.2023	Receipt of additional information by submitting Parties as a response to the statement of Glencore
9.10.2023	Receipt of additional information by Glencore as a response to the information provided by the submitting Parties
21.12.2023	Draft Report on Initial Assessment was sent to the Parties for comments on possible misrepresentations of factual information
15.1.2024+ 24.1.2024	Receipt of written comments by the submitting Parties resp. Glencore
20.2.2024	Publication of the Initial Assessment
29.2.2024	Receipt of the confirmation that the submitting Parties accept the offer for mediation
28.3.2024	Meeting with Glencore to discuss the offer for mediation in Berne
17.4.2024	Receipt of the confirmation that Glencore accepts the offer for a mediation subject to certain conditions
6.5.2024	Glencore informs the NCP on its completed divestment from Volcan
7.5.2024	Virtual meeting with the submitting Parties and e-mail to the NCP Peru to inform them about Glencore's divestment from Volcan
26.6.2024	Virtual meeting to inform the submitting Parties about the NCP's assessment on the implications of Glencore's divestment from Volcan on the NCP proceedings
9.7.2024	Virtual meeting to inform Glencore about the NCP's assessment on the implications of Glencore's divestment from Volcan on the NCP proceedings
24.7.2024	Draft Report on Final Statement was sent to the Parties for comments on possible misrepresentations of factual information.
7.8./8.8.2024	Receipt of written comments by the submitting Parties resp. Glencore.

<sup>1</sup> [www.seco.admin.ch/ncp](http://www.seco.admin.ch/ncp)

### 3. Outcome

Following the acceptance of the specific instance, the NCP received the written confirmation of the submitting Parties on 29 February 2024 that they accept the offer for a confidential mediation. The NCP then met Glencore in Berne on 28 March 2024 to discuss its participation in a mediation to address the issues raised by the submitting Parties. Glencore accepted to engage in mediation under the condition that the substance of the conversation be strictly limited to how Glencore has engaged with Volcan in its capacity as a shareholder in relation to the topic raised in the submission to the Swiss NCP. Furthermore, Glencore emphasized that the discussion should exclude any issues that relate to or are impacted by Peruvian law including those that are the subject of ongoing legal proceedings in Peru, i.e. the question of whether and under what conditions a company can negotiate with a minority union. Glencore further pointed out that the developments with regard to the separate submission by the Union regarding Volcan addressed at the Peruvian NCP should be taken into account in order to avoid duplication and to ensure complementarity. The Swiss and Peruvian NCPs have decided to handle the submissions separately (i.e. both NCPs conduct an initial assessment and possibly offer mediation).

On 6 May 2024, Glencore informed the NCP of the definitive agreement to sell its controlling stake in Volcan Compañía Minera S.A.A. Accordingly, Glencore sold its shares of Volcan<sup>2</sup> to Transition Metals SA, a subsidiary of Integra Capital which is based in Buenos Aires, Argentina.<sup>3</sup> Founded in 1995, Integra Capital is a private equity and merchant banking firm which seeks to invest in various sectors including in mining. The NCP informed the submitting Parties of Glencore's sale of its shares of Volcan. The submitting Parties are of the opinion that it should not be possible from a due diligence point of view to use a divestment as an exit strategy for a company. They finally enquired whether the issues raised in the submission which relate to the time when Glencore still was the owner of Volcan and its responsibilities prior to the divestment could still be discussed in a mediation offered by the Swiss NCP.

For this reason, the NCP had to assess the situation with regard to the impact of the divestment on the procedure of the NCP and inform the Parties on its outcome. Based on the findings of the NCP, the OECD Guidelines make specific recommendations on disengagement, but not on divestment.<sup>4</sup> The present case relates to a divestment. As a result of Glencore's divestment, Volcan became a subsidiary of Transition Metals SA, being itself a subsidiary of Integra Capital. According to the information available to the NCP, the new owner of Volcan will continue the activities after the change of ownership. With the sale of the shares, the rights and obligations of Glencore in relation to the shares which have been sold were transferred to the new owner. This implies that the new owner should implement the recommendations in the OECD Guidelines which are relevant for the business activity that it has acquired.

In their submission the submitting Parties asked Glencore to take the necessary actions so that Volcan enters in a good-faith collective bargaining process with the Union. They specifically asked for a dialogue among representatives from Glencore, Volcan and the Union. Furthermore, they proposed a written commitment by Volcan for the respect of the Union's fundamental rights and for not hampering any negotiations with the Union in the future. The submitting Parties therefore intend to discuss forward-looking solutions within the framework of mediation. As Glencore has in the meantime sold its shares in Volcan, the NCP is of the opinion that this is no longer suitable in the context of the present submission, which is addressed to Glencore.

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<sup>2</sup> In 2021, Glencore indirectly owned approximately 55% of Volcan's class A common shares, which represented approximately 63% of voting shares (Glencore's total economic interest was approximately 23%).

<sup>3</sup> [www.glencore.com/media-and-insights/news/glencore-sells-its-controlling-stake-in-volcan-compania-minera](https://www.glencore.com/media-and-insights/news/glencore-sells-its-controlling-stake-in-volcan-compania-minera)

<sup>4</sup> OECD Guidelines (2023), Commentary on Chapter II: General Policies, Para. 25; "When deciding to disengage, enterprises should do so responsibly including by seeking meaningful consultation with relevant stakeholders in a timely manner and where possible, by taking reasonable and appropriate measures to prevent or mitigate adverse impacts related to their disengagement."

#### **4. Conclusion and recommendation**

The NCP welcomes the constructive engagement and the willingness of both Parties to accept the NCP's offer for a mediation in order to find a solution for the issues raised by the submitting Parties. However, due to the new ownership in Volcan, the NCP is of the opinion that it is no longer in a position to offer its good offices in order to facilitate a practically effective agreement between the Parties regarding forward looking issues. The NCP however recommends to Glencore to inform the new owner of Volcan's shares about the recommendations in the OECD Guidelines on collective bargaining as well as the proceedings pending at the Peruvian NCP. With this Final Statement, the NCP concludes this specific instance procedure.