

# National Contact Point of Switzerland

---

## Final Statement

### **Specific Instance regarding Syngenta submitted by Maharashtra Association of Pesticide Poisoned Persons, Pesticide Action Network India, Public Eye, European Center for Constitutional and Human Rights, Pesticides Action Network Asia Pacific**

Berne, 16 June 2022

#### **Executive summary**

The Swiss NCP received a written submission on 17 September 2020 to consider a specific instance under the OECD *Guidelines for Multinational Enterprises* (hereafter “OECD Guidelines”) regarding Syngenta AG (hereafter “Syngenta”), an agribusiness company headquartered in Basel, Switzerland, and its subsidiary Syngenta India Ltd. The submission has been raised by five organizations namely Public Eye, Maharashtra Association of Pesticide Poisoned Persons, Pesticide Action Network India, European Center for Constitutional and Human Rights and the Pesticides Action Network Asia Pacific (hereafter “submitting Parties”). The submission is related to alleged health and socio economic impacts for a group of 51 farmers and farm workers in India, potential end users of a pesticide sold by Syngenta.

In its report of 15 December 2020 on the [Initial Assessment](#), the Swiss NCP accepted the submission and offered its good services to address the issues raised.

After the Parties had accepted the NCP’s offer for good offices, four mediation meetings took place between March and August 2021. This was followed by discussions with the NCP regarding an agreement between the Parties on a *Joint Outcome of the Dialogue* until April 2022. The issues discussed in the mediation included Syngenta’s and Syngenta India Ltd’s sales practices related to their pesticides in India in view of meeting agreed standards for consumers (incl. small farmers) health and safety. Furthermore, Parties exchanged among other things on Syngenta’s initiative of professionalization of spray services in India, the prevention of negative impacts of the use of pesticides including labelling of products, product information for various stakeholder and personal protective equipment as well as biological pesticides. Finally, they discussed the alignment of Syngenta’s customer complaint process with the recommendations set out in the OECD *Due Diligence Guidance for Responsible Business Conduct* with a focus on the criteria of accessibility, predictability and transparency.

In the view of the NCP, the extensive mediation has led partly to a better mutual understanding between the Parties. However, there were differing views on the impact of ongoing judicial proceedings at the Civil Court of Basel on the mediation process. Therefore no agreement could be found on the topic of potential remedy for the 51 allegedly affected farmers and farmworkers. For this main reason no *Joint Outcome of the Dialogue* was achieved and no further actions agreed with respect to topics where a better mutual understanding was reached.

The Swiss NCP recommends both Parties to pursue their dialogue at the global and local level. Moreover, it recommends to Syngenta to review its customer complaint process in India based on the OECD *Due Diligence Guidance for Responsible Business Conduct*. It also encourages the submitting Parties to comment on the training programs for farmers in India within the framework of its professionalization of spraying services upon request of Syngenta.

It will ask the Parties to report on progress within nine months after the publication of this Final Statement.

## 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 Swiss NCP 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.

The Swiss NCP received a written submission on 17 September 2020 to consider a specific instance under the OECD Guidelines regarding Syngenta, an agribusiness company headquartered in Basel, Switzerland, and its subsidiary Syngenta India Ltd. The submission has been raised by five organizations namely Public Eye, Maharashtra Association of Pesticide Poisoned Persons, Pesticide Action Network India, European Center for Constitutional and Human Rights and the Pesticides Action Network Asia Pacific. The submission is related to alleged health and socio economic impacts for a group of 51 farmers and farm workers in India, potential end users of a pesticide sold by Syngenta. The submission concerned alleged breaches of specific provisions of Chapter II (General Policies), IV (Human Rights) and VIII (Consumer Interests) of the OECD Guidelines.

Following the acceptance of the specific instance (cf. report of 15 December 2020 on the [Initial Assessment](#)), the Parties took up the Swiss NCP's offer of mediation.

## 2. Proceedings of the Swiss NCP

Since the receipt of the submission on 17 September 2020 the NCP took the following steps:

18.9.2020	Confirmation to <b>acknowledge receipt of the submission to the submitting Parties</b>
23.9.2020	Submission was forwarded to the responding Party
2.10.2020	Information of the Swiss Embassy in India
19.10.2020	<b>Constitution of an ad hoc Working Group</b> including representatives from the State Secretariat for Economic Affairs and the Federal Department of Foreign Affairs and the Federal Consumer Affairs Bureau according to the Specific Instances Procedure of the Swiss NCP <sup>1</sup>
15.12.2020	<b>Publication of the report on the Initial Assessment</b>
March – August 2021	<b>Mediation process</b> consisting of: <ul style="list-style-type: none"> <li>• elaboration of <i>Terms of Reference for Dialogue</i></li> <li>• four formal meetings respectively video conferences</li> <li>• several premeditation and coordination meetings with each Party and the mediator and another representative of the NCP</li> </ul>
August 21 – April 2022	Several virtual <b>meetings in view of an agreement on a Joint Outcome of the Dialogue</b> between the NCP and each Party
3.5.2022	Consultation of the ad hoc Working Group on the draft Final Statement
20.5.2022	Consultation of the Parties on the draft Final Statement

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

### 3. Outcome of the mediation process and conclusions

#### 3.1. Scope of the dialogue

In line with the *Terms of Reference for Dialogue* the Parties discussed:

- a) Syngenta's policies and practice to conduct a risk-based due diligence to identify and mitigate actual and potential adverse impacts caused or contributed to by its business operations, to report transparently including on human rights and provide for remedies based on the *OECD Guidelines for Multinational Enterprises*.
- b) Syngenta and Syngenta India Ltd's sales practices related to their pesticides in India in view of meeting agreed standards for consumers (incl. small farmers) health and safety. This includes accurate and transparent information thereon, based on the *OECD Guidelines for Multinational Enterprises* as well as the *International Code of Conduct on Pesticides Management* developed by FAO and WHO and in compliance with relevant national legislation (in particular the *Insecticides Act* and the accompanying *Insecticides Rules*). Furthermore, the possibilities for consumers to access non-judicial dispute and redress mechanisms will be discussed.
- c) Implementation plans of the agreed steps within the respective organizations.

#### 3.2. Limitation due to an ongoing court proceedings at the civil court of Basel-Stadt

At the beginning of the NCP proceedings, the Swiss NCP has been made aware of three conciliation requests before the Civil Court of Basel-Stadt, Switzerland, filed by an Indian farm worker and two widows of farm workers against Syngenta related to the alleged poisoning due to the product Polo from Syngenta in Yavatmal in 2017. The Swiss NCP stated in its Report on the Initial Assessment from 15 December 2020 that those pending court proceedings did not prevent the NCP from accepting the specific instance. However, when defining the subject of a possible mediation, the NCP had to ensure that the mediation is not interfering with ongoing court proceedings and assess in each individual case whether or not an offer to mediate would make a positive contribution to the resolution of the issues raised or if it would prejudice either of the Parties involved in other proceedings. Based on this, the *Terms of Reference for Dialogue* set out that issues related to Syngenta's due diligence and sales policies and practices will be discussed (cf. section 3.1).

During the mediation meetings, the submitting Parties emphasized that it was important for them that Syngenta provides remedies to the allegedly impacted 51 farmers and farm workers in Yavatmal in 2017. Syngenta repeatedly asserted that it cannot comment on issues dealt with in the proceedings before the court in the NCP proceeding, in particular the question if Polo has caused the poisonings alleged in the complaint. In contrast, the submitting Parties asserted that discussing remedies cannot lead to any negative impact on the responding Party since the mediation operates on a different legal standard, the *OECD Guidelines*, and does not include the same people as the judicial proceedings. Upon proposal of the NCP, in the second mediation meeting the Parties agreed to suspend the discussion on whether Polo has caused the poisonings at least until it is clear if a claim will be submitted. After the claim was submitted to the Civil Court of Basel in July 2021, the NCP held bilateral conversations with the lawyers of both Parties of the court proceedings in August 2021 to better understand its scope and timeframe and the possible interference with the NCP proceedings.

Based on these confidential consultations, the Swiss NCP concluded that discussions on the question of whether Polo caused the intoxication of the farmers would create serious prejudice for Syngenta with regard to the court proceeding. Therefore, it cannot be discussed in the NCP proceedings until the conclusion of the judicial proceeding. As this might take several years, the NCP decided to conclude the NCP proceedings without discussing any question related to

whether the product Polo was the cause of the poisoning of farmers in India, in particular for the 51 allegedly affected persons. The NCP is aware that the issue of providing remedies to the 51 farmers and farmworkers in the context of the NCP proceedings was a key concern of the submitting Parties.

### **3.3 Mediation process**

In the first mediation meeting, the Parties agreed to discuss Syngenta's and Syngenta India Ltd's sales practices related to their pesticides in India in view of meeting agreed standards for consumers (incl. small farmers) health and safety. Discussions included interventions of stakeholders of both Parties from India.

At the second mediation meeting, the Parties agreed on a list of priority topics to be discussed focusing on (i) Syngenta's initiative of professionalization of spray services in India, (ii) the prevention of negative impacts of the use of pesticides including labelling of products, product information for various stakeholder, personal protective equipment, (iii) grievance and remediation mechanism in case of future incidents (incl. medical treatment) and possibly (v) biological pesticides.

At the third mediation meeting, the Parties identified a review of Syngenta's customer complaint process and Syngenta's training program within the framework of its scheme of professionalization of services as issues for potential agreements as a result of the NCP proceedings. Furthermore, the Parties continued the discussion on labelling, personal protective equipment and the scheme on the disposal of waste.

After an in-depth discussion on Syngenta's customer complaint process at the fourth mediation meeting, the Parties further explored options in view of its alignment with the recommendations in the OECD *Due Diligence Guidance for Responsible Business Conduct* with a focus on, but not limited to the criteria of accessibility, predictability and transparency.

### **3.4 Outcome of the mediation and conclusions**

In the view of the NCP, the extensive mediation has led partly to a better mutual understanding between the Parties with regard to the issues mentioned in section 3.3. However, there were differing views on the impact of the ongoing judicial proceedings at the Civil Court of Basel-Stadt on the mediation process (cf. section 3.2). Furthermore, the Swiss NCP stated that the question of whether Polo caused the intoxication of the farmers cannot be discussed until the conclusion of the judicial proceedings (cf. section 3.2). Consequently, no agreement could be found on the inclusion of the topic of potential remedy for the 51 allegedly affected farmers and farmworkers in the mediation process. For this main reason no *Joint Outcome of the Dialogue* was reached. The NCP regrets that despite a comprehensive mediation there was no agreement on a *Joint Outcome of the Dialogue*, not even on topics where a better mutual understanding was reached.

## **4. Recommendations and Follow-up**

The Swiss NCP acknowledges the participation of both Parties in the mediation with well-prepared teams including local representatives. It also notes the exchange of comprehensive information and views by both Parties about the situation of the farmers in India as well as policies and procedures with regard to responsible business conduct during mediation. Furthermore, the NCP acknowledges the time-intensive engagement of both Parties in the proceedings.

The Swiss NCP recommends:

- the Parties to continue, based on the mediation, their dialogue at international level as well as at national level in India in order to foster mutual understanding.
- Syngenta to review its customer complaint process in India considering the recommendations set out in the OECD *Due Diligence Guidance for Responsible*

*Business Conduct* for company-level grievance mechanisms. As suggested by Syngenta during the mediation, the review could be conducted by an audit company / external law firm. Such review should focus on the criteria of accessibility, predictability and transparency. Moreover, it should take into consideration local conditions and include a consultation of relevant stakeholders on the ground (incl. distributors, retailers, farmers).

- The submitting Parties to comment based on their expertise on the training programs for farmers in India within the framework of its professionalization of spraying services upon request of Syngenta.

The Swiss NCP will follow up on this specific instance by asking the Parties to submit a written report within nine months following the closure of the specific instance. These reports should provide information on the progress made with regard to the implementation of the recommendations of the NCP and be shared among the Parties.

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