

National Contact Point of Switzerland

Final Statement

Specific Instance regarding BKW Group submitted by the Society for Threatened Peoples Switzerland

Berne, 26 August 2021

Overview of the NCP and its role

The [OECD Guidelines for Multinational Enterprises](#) (hereafter OECD Guidelines) represent a set of principles for responsible business conduct, addressed as recommendations by the governments of the 38 OECD member and 12 other adhering States to multinational enterprises operating in or from their territories. The [National Contact Point of Switzerland for the OECD Guidelines](#) (hereafter “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.

Executive summary

On 16 January 2020, the Society for Threatened Peoples Switzerland (hereafter “STP” or “submitting party”) submitted a written request to the Swiss NCP to consider a specific instance under the OECD Guidelines regarding BKW Group (hereafter “BKW” or “responding party”). The submitting party alleged breaches of specific provisions of Chapter II (General Policies) and IV (Human Rights) of the OECD Guidelines by BKW with regard to the Sami indigenous people on grounds that it had not implemented due diligence concerning its minority stake in the construction of a wind power plant in Norway. On 24 February 2020, BKW submitted a written statement to the Swiss NCP where it stated that it had carried out a comprehensive due diligence before its decision to invest in the project and that the planning and approval process took place with the participation of the Sami community whose interests were taken into account. Based on its report on the Initial Assessment from 12 May 2020, the Swiss NCP accepted the specific instance and offered its good offices to the parties. Following the agreement on *Terms of Reference for Dialogue* with the parties, the NCP organised four mediation meetings between 9 September 2020 and 28 June 2021.

The issues for discussion primarily focused on BKW’s implementation of the recommendations of the OECD Guidelines related to carrying out risk-based and human rights due diligence, encouraging business partners to act in accordance with the OECD Guidelines and preventing or mitigating adverse human rights impacts. The parties agreed that BKW will integrate the respect of human rights and the *Principle of Free, prior and informed consent* (FPIC) in its Code of Conduct as well as further develop its human rights due diligence and implement FPIC throughout the life-cycle of its projects. They also convened that BKW will demand its business partners to comply with its human rights policies and provide an adequate grievance mechanism and appropriate remediation of possible adverse impacts.

The Swiss NCP welcomes the resolution of the issues raised by the submitting party regarding human rights due diligence including the concept of FPIC based on the joint agreement that was reached during mediation. It recommends both parties to continue their dialogue. Furthermore, it recommends BKW to continue its efforts to implement the joint agreement and to anchor the results within the company’s internal processes. The Swiss NCP will follow up on the progress made in implementing the measures agreed by the parties in the joint outcome six months after the publication of the Final Statement.

Submission and Initial Assessment

On 16 January 2020, STP submitted a written request to the Swiss NCP to consider a specific instance under the OECD Guidelines regarding BKW, headquartered in Switzerland. The submitting party alleged that BKW has violated the human rights of the Sami indigenous people as it has not fulfilled its due diligence to prevent and mitigate possible impacts including consultations with the indigenous community based on the FPIC concerning its minority stake in the construction of a wind power plant in Norway. On 24 February 2020, BKW submitted a written statement to the Swiss NCP where it stated that it had carried out a comprehensive due diligence and risk assessment before deciding to invest in the project. According to BKW, the planning and approval process took place over a period of a decade with the participation of the Sami community whose interests were taken into account.

Following the acceptance of the specific instance by the Swiss NCP in its Initial Assessment (see [report on the Initial Assessment from 12 May 2020](#)), the parties took up the Swiss NCP's offer for a mediation. The issues for discussion, recalled in the *Terms of Reference for Dialogue* for the mediation went beyond a specific case and primarily focused on BKW's implementation of the recommendations of the OECD Guidelines specific provisions of Chapter II (General Policies) and Chapter IV (Human Rights) related to:

- Carry out risk-based and human rights due diligence (II.10 and IV.5)
- Encourage business partners to act in accordance with the Guidelines (II.13)
- Prevent or mitigate adverse human rights impacts (IV.3)

The Norwegian NCP supported the Swiss NCP by providing information on the local context.

Proceedings of the Swiss NCP

Since the receipt of the submission on 16 January 2020, the Swiss NCP carried out the following actions:

16.1.2020	Written confirmation to the submitting party to acknowledge receipt of the submission and forwarding of submission to the responding party
29.1.2020	Constitution of an ad hoc working group , in accordance with the Specific Instances Procedure of the Swiss NCP , including representatives from the SECO and the Federal Department of Foreign Affairs
12.5.2020	Publication of the report on the Initial Assessment confirming acceptance of the specific instance, stating the position of the submitting party and the response of the responding party and offering its good offices to the parties
21.8.2020	Agreement on and signing of the Terms of Reference for Dialogue
9.9.2020 15.10.2020 22.2.2021 28.6.2021	Holding four mediation meetings , the first two in person, the other two by video-conference; participants to these meetings were: <ul style="list-style-type: none">• three representatives of STP, including the Co-manager of STP• four representatives of BKW, including the Sustainability Manager, the Head of Legal & Compliance and a representative from Asset Management Wind• one mediator• one representative from the Swiss NCP Secretariat
30.7.2021	Finalisation of the Joint Outcome of the Dialogue
3.8.2021	Consultation of the ad hoc working group on the draft Final Statement
26.8.2021	Publication of the Final Statement

Outcome of the mediation process and conclusions

The Parties engaged in open and constructive discussions with the aim to align BKW's documented policies and procedures with its obligations under the UN Global Compact (where BKW is a participant since February 2021) and the recommendations of the OECD Guidelines. In order to achieve this, BKW will implement the following:

1. BKW revises its *Code of Conduct* taking into account the OECD Guidelines for Multinational Enterprises and the Principles of the UN Global Compact, thereby specifically integrating its commitment to respect in its business operations human rights and the FPIC concerning vulnerable groups.
2. BKW will further develop its stakeholder analysis and human rights due diligence in its own projects as well as regarding projects acquired from third parties throughout the life-cycle of such projects. The human right due diligence will include identifying vulnerable groups through a structured stakeholder and right-holder management process, working with experts if necessary and implementing FPIC.
3. If indigenous communities might be affected by a power plant project developed by a BKW business partner, BKW will address its expectations about compliance with human rights (and FPIC specifically) based on its human rights policies and actively demand human rights compliance from its business partner. If no agreement on appropriate human rights performance can be reached or if non-compliance with BKW's human rights policies occurs during the project implementation phase, BKW shall either refrain from pursuing, or withdraw from, the project if no improvement can be reached. BKW will reflect its human rights standards in contracts with business partners, including the option to withdraw in the case of continued non-compliance.
4. BKW will extend and make its existing grievance mechanism accessible to all groups affected by its relevant projects and provide for or cooperate in the appropriate remediation of adverse impacts, which it has caused or contributed to. If business partners provide their own grievance mechanisms, BKW coordinates their approaches to support the provision of an adequate mechanism. In joint projects with business partners, BKW may use its leverage, to the extent practicable, to compel the business partner to participate in processes to provide for remedy.

The Parties agreed to follow up on the implementation of the above after six months after the publication of the Final Statement by the Swiss NCP.

Recommendations and Follow-up

The Swiss NCP welcomes:

- the constructive and very engaged participation of both parties throughout the entire mediation process including bilateral discussions of specific issues;
- the resolution of the issues raised by the submitting party regarding human rights due diligence including the concept of FPIC based on the joint agreement by the parties which follows the recommendations set out in the OECD Guidelines.

The Swiss NCP recommends:

- both parties to continue their dialogue and collaboration where useful based on the trust established during the mediation process;
- BKW to continue its efforts to work on the implementation of the agreement reached by the parties and to anchor the results within the company's internal processes.

The Swiss NCP will follow up on this specific instance with the following measure:

- receive from both parties written information on progress made in implementing the measures agreed by the parties in the joint outcome six months after the publication of the Final Statement;
- organize a follow-up meeting to discuss the written information received from the parties.

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