

# National Contact Point of Switzerland

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## Initial Assessment

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

Berne, December 15, 2020

#### **Executive summary**

The Swiss NCP received a written submission on 17 September 2020 to consider a specific instance under the OECD Guidelines regarding Syngenta AG, 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 (PAN) India, European Center for Constitutional and Human Rights and the Pesticides Action Network Asia Pacific. The submission is related to possible health and socio economic impacts for a group of 51 farmers and farm workers in India, end users of pesticides produced by Syngenta.

The Swiss NCP assesses that the issues raised in this submission merit further consideration and therefore accepts the specific instance and offers its good offices to the parties. This decision is not based on conclusive research or fact-finding, nor does it represent a conclusion as to whether Syngenta observed the OECD Guidelines or not.

#### **1 Submission and alleged violations of the OECD Guidelines**

The Swiss NCP (hereafter: "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, an agribusiness company headquartered in Basel, Switzerland, and Syngenta India Ltd. (hereafter "Syngenta" or "responding party"). This specific instance has been raised by the following five organizations (hereafter: "submitting parties"):

- Maharashtra Association of Pesticide Poisoned Persons (hereafter "MAPPP")
- Pesticide Action Network (PAN) India (hereafter "PAN India")
- Public Eye (hereafter "PE")
- European Center for Constitutional and Human Rights (hereafter "ECCHR")
- Pesticides Action Network Asia Pacific (hereafter "PANAP")

The submission is related to possible health and socio economic impacts for a group of 51 farmers and farm workers in Yavatmal in India, end users of pesticides produced by Syngenta. According to the submitting parties, the use of Syngenta's product Polo with the active ingredient Diafenthion has been recognized as having hazardous qualities for human health in cases of unprotected exposure. In view of the submitting parties, Syngenta has failed to conduct an appropriate due diligence to mitigate actual and potential adverse impacts and provide for remedies. The submitting parties further claims that the sales practices of Syngenta and its subsidiary in India Syngenta India Ltd are in violation with the national Indian laws, in

particular the Insecticides Act and the accompanying Insecticides Rules, as well as the International Code of Conduct on Pesticides Management developed by FAO and WHO (hereafter “ICoC”)<sup>1</sup>, which Syngenta has explicitly committed to uphold. According to the submitting parties, Syngenta has failed to ensure that the goods they provide meet all agreed or legally required standards for consumer health and safety, including those pertaining to health warnings and safety information and subsequently have failed to protect consumer interests.

In conclusion, the submitting parties claims the violation of the following recommendations of the OECD Guidelines’ chapters II (General Policies) and IV (Human Rights) and VIII (Consumer Interests)<sup>2</sup>:

1. Carry out risk-based due diligence (II.A.10 and IV.5).
2. Support and uphold good corporate governance principles and develop and apply good corporate governance practices (II. A. 6).
3. Avoid causing or contributing to adverse impact on matters covered by the OECD Guidelines, including human rights, through their own activities and address such impact when they occur (II A.11 and IV. 2).
4. Provide for or co-operate through legitimate processes in the remediation of adverse human rights impacts (IV.6).
5. To respect consumer interests including consumer health and safety, accurate, verifiable and clear information, access to fair, easy to use, timely and effective non-judicial dispute resolution and redress mechanism and cooperation with public authorities (VIII. 1.2.3.7).

## **2 Expectations of the submitting parties regarding the NCP proceedings**

The submitting parties expects from the responding party that:

- it participates in good faith in the mediation process and commits to long-term engagement for resolution of the issues raised;
- it provides remedy for the harm caused including accepting responsibility and providing financial compensation;
- it provides remedy for continuing violations including the stop of sale of its product Polo and other products, ensures that warning on the labels and leaflets are effective in informing end-users about health risks in full compliance with domestic legislation as well as the ICoC and fosters transparency (e.g. regarding scientific studies, poisoning incidents).

## **3 Statement of the responding party**

On 18 November 2020, Syngenta submitted a written statement to the NCP concerning the issues raised in this specific instance. According to this statement, there has been a large scale political campaign against Syngenta coordinated by Public Eye. Since fall 2018, this campaign has revolved around alleged “double standards” in the export of crop protection products that are not approved in Switzerland. Because Syngenta was continuously confronted with similar allegations by the Responsible Business Initiative Group, Syngenta asked the Group in December 2019 to submit the matter to the NCP and to discuss the controversial points in an orderly, confidential procedure.

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<sup>1</sup> [www.fao.org/agriculture/crops/thematic-sitemap/theme/pests/code/en/](http://www.fao.org/agriculture/crops/thematic-sitemap/theme/pests/code/en/)

<sup>2</sup> See full text of provisions in the [OECD Guidelines for Multinational Enterprises](#), 2011

Syngenta also informed in its statement that on 17 September 2020, three conciliation requests<sup>3</sup> by Indian farmers resp. their relatives were filed to the civil court of Basel related to alleged poisoning cases, attributed to the use of Syngenta's Polo product, in India during fall 2017.

In its statement, Syngenta rejects the claim made by the submitting parties of any infringement of the OECD Guidelines. Particularly, according to Syngenta, it complies with all relevant laws, ordinances and other applicable regulations – including those in India. Furthermore, the responding party clearly rejects the alleged claims that a Syngenta product (“Polo”) was responsible for a number of alleged cases of poisoning in India in fall 2017 referring first and foremost to the clear results of the relevant investigation report by the Indian authorities<sup>4</sup>. According to the responding party, Syngenta was praised explicitly by the Indian authorities for the rapid, voluntary assistance (including mobile medical clinics, protective clothing, etc.) it had provided around the alleged cases in India in fall 2017.

Furthermore, Syngenta states to have been striving for years to ensure a safe use of all its products by taking a variety of measures, such as trainings in the safe use of crop protection products and the use of individual protective equipment (PPE) as well as trainings for doctors. According to Syngenta, between 2013 and 2019 more than 42 million people have been trained, the vast majority of whom are small-scale farmers in Asia, Africa and South America as part of the Good Growth Plan<sup>5</sup>. The responding party refers explicitly to its activities in India such as public awareness campaigns (e.g. audio and video messages, brochures, murals, posters), training programs for farmers (such as face-to-face and online stewardship training, PPE distribution, application technology training etc.), medical stewardship through awareness campaigns for doctors, and I-SAFE (Inculcating Safety Awareness for Farmer Empowerment), a project to promote agricultural practices that ensure farmers' health.

According to the responding party, its product “Polo” is exclusively sold by Syngenta authorized distributors and retailers around the world who are fully trained in the safe use and handling of the product. In India, “Polo” is registered by the Indian Central Insecticide Board & Registration Committee and complies with all mandatory registration and labeling guidelines.<sup>6</sup>

As part of an open forward looking NCP moderated dialogue, Syngenta is open to discuss potential ways of contributing to even more targeted and effective further improvement of the situation. Also the search for possible industry standards could be a starting point in a NCP proceedings according to Syngenta. However, Syngenta states that it cannot comment on the pending proceedings before the civil court of Basel in the NCP proceeding.

#### 4 The proceedings of the NCP up to date

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

18.9.2020	Confirmation to acknowledge receipt of the submission to the submitting parties.
23.9.2020	Submission was forwarded to the responding party.
2.10.2020	Information of the Swiss Embassy in India
19.10.2020	According to the Specific Instances Procedure of the Swiss NCP <sup>7</sup> , constitution of an ad hoc working group including representatives from the State Secretariat

<sup>3</sup> According the Swiss Civil Procedures Code, a conciliation request is a prerequisite for filing a lawsuit.

<sup>4</sup> See Syngenta's position regarding the allegation related to the Business Responsible Initiative: [www.syngenta.ch/fr/article/syngenta/syngenta-rejette-fermelement-les-accusations-des-initiants-de-linitiative-pour-les](http://www.syngenta.ch/fr/article/syngenta/syngenta-rejette-fermelement-les-accusations-des-initiants-de-linitiative-pour-les) p.1 and 2 (French)

<sup>5</sup> [www.syngenta.com/en/sustainability/good-growth-plan](http://www.syngenta.com/en/sustainability/good-growth-plan)

<sup>6</sup> [www.syngenta.ch/fr/article/syngenta/syngenta-rejette-fermelement-les-accusations-des-initiants-de-linitiative-pour-les](http://www.syngenta.ch/fr/article/syngenta/syngenta-rejette-fermelement-les-accusations-des-initiants-de-linitiative-pour-les)

<sup>7</sup> [www.seco.admin.ch/seco/en/home/Aussenwirtschaftspolitik\\_Wirtschaftliche\\_Zusammenarbeit/Wirtschaftsbeziehungen/NKP/organisation-und-kontaktaufnahme.html](http://www.seco.admin.ch/seco/en/home/Aussenwirtschaftspolitik_Wirtschaftliche_Zusammenarbeit/Wirtschaftsbeziehungen/NKP/organisation-und-kontaktaufnahme.html)

	for Economic Affairs, the Federal Department of Foreign Affairs and the Federal Consumer Affairs Bureau.
19.11.2020	Receipt of a written statement by the responding party
25.11.2020	Report of draft initial assessment was sent to the submitting and responding parties for comments on possible misrepresentations of factual information.
3.12.2020	Receipt of written comments by the submitting party
9.12.2020	Receipt of written comments by the responding party

## 5 Considerations and decision of the NCP

Based on the Procedural Guidance for the OECD Guidelines and the Specific Instances Procedures of the NCP, the NCP considers the following points in its initial assessment:

### a) Identity of the party concerned and its interest in the matter

The NCP comes to the conclusion that the submitting parties have provided sufficient information regarding its interest in the issues raised. MAPPP is a collective of Maharashtra's pesticide poisoned victims, PAN and PANAP are organisations dedicated to eliminating the human and environmental hazards caused by pesticides, Public Eye is Swiss based non-governmental organisation engaging in campaigns and advocating vis-à-vis companies and political decision-makers in the field in issues including human rights, corruptions, environmental protection and related business practices and ECCHR is dedicated to enforcing civil and human rights worldwide. The submitting parties have demonstrated its interest in the issues raised in their submission by investigating and publishing reports on the situation in India since 2017.

### b) Responsibility of the NCP

According to the Procedural Guidance for the OECD Guidelines, a specific instance must be raised in the country in which the alleged breach occurred. If this country is not a signatory of the Guidelines and therefore has no NCP, the issue should be raised in the country where the multinational company has its headquarters.<sup>8</sup> The NCP is responsible for this specific instance regarding the issues in India because this country is not a signatory state of the OECD Guidelines and Syngenta has its headquarters in Basel, Switzerland<sup>9</sup>.

### c) Scope of application of the OECD Guidelines and materiality of the specific instance

Syngenta is a Swiss agricultural company with a global focus, which researches, produces and has its headquarters in Switzerland. More than 28'000 employees worldwide support both large and small farmers in more than 90 countries in their task of producing high-quality food in a sustainable manner, while making use of arable land and natural resources.<sup>10</sup> Syngenta India Ltd. is fully owned subsidiary of Syngenta AG.

The pesticide "Polo" is registered in India and sold by Syngenta's authorized distributors and retailers. Therefore, Syngenta has business activities in India which might have an impact for end users of pesticides and fall under the scope of the OECD Guidelines.

However, it is controversial between the parties whether the poisonings of the 51 farmers are due to the product Polo:

<sup>8</sup> OECD Guidelines, Commentary on the Implementation Procedures of the OECD Guidelines for Multinational Enterprises, Paragraph 24

<sup>9</sup> Entry in the register of commerce: [www.zefix.ch/en/search/entity/list/firm/471356?name=syngenta%20ag&searchType=exact](http://www.zefix.ch/en/search/entity/list/firm/471356?name=syngenta%20ag&searchType=exact)

<sup>10</sup> [www.syngenta.ch/fr/entreprise](http://www.syngenta.ch/fr/entreprise) (French)

- The submitting parties claim that the poisoning of the 51 farmers and farm workers in the Yavatmal region of India in September 2017 occurred in relation with the use of Syngenta's product "Polo". According to the submitting parties, the allegations are based on a comprehensive investigation on the ground. The methodology, including 195 anonymous interviews, is explained in detail in the submission.<sup>11</sup>
- Syngenta refers to an investigation report of the Special Investigation Team appointed by the Government of the State of Maharashtra and rejects the allegations. According to Syngenta its product "Polo" containing the active ingredient diafenthiuron did not cause the illnesses and deaths in the Yavatmal region of India in September 2017. According to the responding party, the investigation report clearly establishes the causes and proves that they are not related to Syngenta. The pesticide monocrotophos, or mixtures with monocrotophos, not produced by Syngenta, were identified as the cause of the poisoning incidents.<sup>12</sup>

Since the objective of the initial assessment process is only to determine whether the issues raised merit further examination, it is not necessary to undertake an assessment of these controversial issues. The NCP considers, that by offering a platform for dialogue, the controversial issues could be addressed by the parties. Furthermore, such a dialogue could contribute to a general discussion regarding the safe use of pesticides in India, independently of the situation of the 51 farmers and farm workers in Yavatmal.

The NCP therefore concludes, that the submission is material in the sense that it refers to alleged breaches of specific provisions of Chapters II (General Policies), IV (Human Rights) and VIII (Consumer Interests)<sup>13</sup> of the OECD Guidelines. The submitting parties have substantiated their submission by providing the necessary information for the NCP to consider the issues raised.

#### **d) Legal context and parallel proceedings**

The NCP will take into consideration ongoing parallel proceedings, including court proceedings and rulings. According to the Specific Instances Procedures of the NCP, already concluded or ongoing parallel proceedings will not necessarily prevent the NCP from pursuing a specific instance. However, in each individual case the NCP assesses 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. The NCP is aware of three conciliation requests before the civil court of Basel, Switzerland filed by Indian farm workers resp. their relatives. These pending court proceedings do not prevent the NCP from accepting this specific instance and offering its good offices to the parties. However, when defining the subject of a possible mediation, the NCP together with the parties will have to ensure that the mediation will not interfere with ongoing court proceedings.

#### **e) Contribution to the purpose and effectiveness of the OECD Guidelines**

The role of the NCP is to offer a forum for discussion and to assist the parties concerned to address the issues raised. The submitting parties has already been in contact with Syngenta prior to the submission, inter alia related to the publication of investigation reports on the issues raised in the submission. But in the view of the NCP no proper engagement or dialogue could be established between the parties but rather an exchange of statements. The NCP believes that by accepting this specific instance for further consideration and offering a confidential mediation, it could foster a dialogue between the responding and the submitting parties and contribute to a better mutual understanding and possible acceptable

<sup>11</sup> Submission of the responding parties from 17 September 2020, p. 25-31.

<sup>12</sup> [www.syngenta.ch/fr/article/syngenta/syngenta-rejette-fermement-les-accusations-des-initiants-de-linitiative-pour-les](http://www.syngenta.ch/fr/article/syngenta/syngenta-rejette-fermement-les-accusations-des-initiants-de-linitiative-pour-les) (French)

<sup>13</sup> See full text of provisions in the <https://mneguidelines.oecd.org/mneguidelines>

outcome concerning the issues raised. The NCP will make no conclusions on whether the responding party has indeed breached the OECD Guidelines.

#### **f) Conclusion**

The NCP assesses that the issues raised in this submission merit further consideration and therefore accepts the specific instance and offers its good offices to the parties. This decision is not based on conclusive research or fact-finding, nor does it represent a conclusion as to whether Syngenta observed the OECD Guidelines or not.

### **6 Next steps**

The NCP will offer its good offices to the parties and ask them for confirmation whether they are willing to accept this offer with the aim of reaching a mutually acceptable outcome. If the parties reach an agreement and find a solution for the raised questions, the NCP will make publicly available a final statement with the results of the proceedings. Information regarding the contents of the discussions and the agreement will only be published with the express consent of the parties involved. If no agreement is reached or one of the parties is not willing to take part in the proceedings, the NCP will also make this information publicly available in a final statement. The latter will include a summary of the reasons why no agreement was reached.

The NCP may draw up recommendations for implementation of the OECD Guidelines, which will also be included in the final statement. In addition, the NCP can envisage specific follow-up activities, for which the NCP will provide support following completion of the specific instance procedure. Final statements are published on the NCP website and are referenced in the OECD Database on Specific Instances for the OECD Guidelines. Before the statement is issued, the NCP gives the parties the opportunity to comment on a draft statement. If there is no agreement between the NCP and the parties about the wording of the statement, the NCP makes the final decision.

The NCP requests that the parties agree to maintain confidentiality during the further proceedings. In order to establish an atmosphere of trust, the OECD Guidelines foresee that no information regarding the content of the proceedings may be shared with third parties or supporters of the submission. If sensitive business information is provided or discussed during the meetings of the NCP, special requirements concerning the treatment of confidential information can be agreed upon by the parties involved in this specific instance. The NCP informs the parties that it reserves the right to stop the proceedings if one or the other of the parties does not respect this confidentiality. Even after the proceedings have been concluded, parties concerned remain committed to treat information received during the proceedings in a confidential way unless the other party agrees to their disclosure.

The NCP will publish its report on the initial assessment on the NCP website.