

National Contact Point of Switzerland

Final Statement

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

Berne, 20 December 2021

Executive summary

On 22 June 2020, the Society for Threatened Peoples Switzerland (hereafter “STP” or “submitting party”) addressed a written request to the National Contact Point of Switzerland for the OECD Guidelines (hereafter “Swiss NCP”) to consider a specific instance under the OECD Guidelines for Multinational Enterprises (hereafter “OECD Guidelines”) regarding UBS Group AG (hereafter “UBS” or “responding party”). The submission concerned possible human rights violations in the context of an alleged business relationship of UBS with the Chinese company *Hangzhou Hikvision Digital Technology Co. Ltd* (hereafter “Hikvision”).

In its report of 20 January 2021 on the [Initial Assessment](#), the Swiss NCP partially accepted the submission and offered its good services to address the issues raised related to passive investment but not the issues regarding UBS’ role as a custodian of clients’ shares.

After the parties had accepted the NCP’s offer for good offices, three mediation meetings took place between May and August 2021. The issues for discussion included views regarding the interpretation of the OECD Guidelines with regard to index funds provided by UBS and its related human rights due diligence process. Furthermore, the parties’ possible role in national and international discussions and potentially further collaboration between the finance sector and civil society regarding the applicability of the OECD Guidelines in the context of passive investments were discussed.

The parties agreed to engage in the future, potentially via a structured and continuous process of regular meetings and exchanges, to discuss human rights issues and to define measures that can have a significant impact on the advancement of the industry regarding the inclusion of ESG criteria (related to human rights) into the management of passive investment funds. Furthermore, UBS confirmed to take a leading role in raising key issues related to ESG in the context of passive index funds within the industry by e.g. spearheading an initiative within a major industry association such as the PRI¹ and involving relevant actors. No agreement could be found regarding STP’s request of making UBS’ existing due diligence process on passive investment more robust by including exit clauses.

The Swiss NCP recommends both parties to implement the decisions and will ask the parties to report on progress within six months after the publication of this Final Statement and convene a meeting. At this meeting, parties will take stock of steps taken following the closure of the specific instance and decide on possible further steps.

¹ Principles for Responsible Investment

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 12 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.

On 22 June 2020, the Society for Threatened Peoples Switzerland submitted a written request to the Swiss NCP to consider a specific instance under the OECD Guidelines regarding UBS. The submission concerned alleged breaches of specific provisions of Chapter II (General Policies) and chapter IV (Human Rights) of the OECD Guidelines.

Following the acceptance of the specific instance (see report of 20 January 2021 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 22 June 2020 the NCP took the following steps:

22.6.2020	Confirmation sent to the submitting party to acknowledge receipt of the submission
	Submission was forwarded to the responding party
6.7.2020	Information of the Swiss Embassy in China
	Constitution of an ad hoc working group including representatives from the State Secretariat for Economic Affairs and the Federal Department of Foreign Affairs according to the Specific Instances Procedure of the Swiss NCP ²
7.7.2020	Meeting of the ad hoc working group with the responding party to inform them about the procedure of the specific instance. The submitting party renounced to take part in such a meeting with the NCP as it is aware of the procedure due to previous experiences with the Swiss NCP.
24.8.2020	Receipt of a written statement by the responding party
12.10.2020	Hearing with UBS and ad hoc working group
27.10.2020	Hearing with STP and ad hoc working group
16.11.2020	Draft report on the Initial Assessment was sent to the STP and UBS for comments on possible misrepresentations of factual information
30.11.2020	Receipt of written comments by the submitting party
7.12.2020	Receipt of written comments by the responding party
17.12.2020	Receipt of additional information by both parties
20.1.2021	Publication of the report on the Initial Assessment
January – November 2021	Mediation process consisting of: <ul style="list-style-type: none">• elaboration of Terms of Reference for Mediation (TOR)• three formal meetings (first two meetings by video conference and the third in person at the premises of the Swiss NCP (3 May, 21 June, 30 August 2021))• several premeditation and coordination meetings between the parties and the mediator and/or the NCP representative.

² www.seco.admin.ch/nkp

19.11.2021	Finalization of the Joint Outcome of the Dialogue
22.11.2021	Consultation of the ad hoc working group on the draft Final Statement
29.11.2021	Consultation of the parties on the draft Final Statement

3. Outcome of the mediation process and conclusions

3.1. Initial requests of the submitting party

In its submission dated 22 June 2020, STP asked that the following requests to UBS should be addressed in the NCP proceedings:

1. To withdraw from all financial transactions, products and services that include or relate to Hikvision.
2. To adapt its internal policies to:
 - ensure that its entire equity business is covered by the bank's human rights due diligence process in order to pre-empt the bank's involvement in adverse human rights impacts in the future.
 - incorporate clear exit clauses in its contractual agreements so as to allow the bank to withdraw from business relationships at any point should these directly link UBS to adverse human rights impacts in the future.
3. Especially with regard to passive investments, to adjust its due diligence mechanisms, both prior and ongoing, by:
 - improving the prioritisation of cases for risk assessment, given the bank's large number of stocks.
 - establishing procedures to verify that due diligence processes have been implemented
4. To increase transparency by accounting for how the adverse human rights impacts, both potential and actual, to which UBS is linked are addressed by the bank, at the relevant level of detail (e.g., reporting on engagement activities).

3.2. Limitation of the scope of mediation due to decisions of the Swiss NCP

In its report on the Initial Assessment, the Swiss NCP partially accepted the submission and offered its good services to address the issues raised in the context of passive investment but not the aspects regarding the role of UBS as a custodian of clients' shares. Therefore, the requests regarding UBS' equity business were excluded from the scope of the mediation.

Additionally, the NCP took note of the fact that the shares of Hikvision were excluded from UBS' passive investment fund in question (UBS ETF MSCI China ESG) on 5 January 2021.³ Consequently, the demands of the submission regarding the withdrawal from UBS' financial transactions, products and services that include or relate to Hikvision were not included in the scope of the mediation.

3.3. Scope of the Dialogue

As a result of the agreed exclusions and according to prior discussions with the parties, the following items were defined in the *Terms of Reference for Dialogue* as main content for the

³ Due to the U.S. Executive Order 1359, securities of Chinese companies including Hikvision were deleted by MSCI from its global investable market indices by 5 January 2021.

mediation process:

The discussions were to focus on the services of UBS in the context of providing **passively managed index funds** to clients, such as the abovementioned UBS ETF MSCI China ESG fund, and the dialogue was to cover in particular the following topics:

- a. Exchange of views regarding the interpretation of the OECD Guidelines with regard to index funds issued by UBS (UBS Index Funds). In particular, the dialogue was to cover the topic of a possible existence of a business relationship between UBS and the enterprises included in a UBS Index Fund, and a feasible, practical and effective risk-based approach to human rights due diligence – in the context of UBS’s overall policies and practices of human rights due diligence – based on the OECD Guidelines with regard to the constituents of the index. Additionally, the implications and consequences of the application of the due diligence approach on companies operating in high-risk areas (including China) was to be discussed.
- b. The parties’ possible role in national and international discussions and potentially further collaboration between the finance sector and civil society regarding the applicability of the OECD Guidelines in the context of passive investments.

3.4. Mediation process

The mediation process consisted of three formal meetings of the parties in addition to several pre-mediation and coordination meetings between the parties and the mediator and/or the NCP representative.

During the first mediation meeting, after clarifying the objectives and rules of the process, the parties exchanged their expectations regarding the issues mentioned in the scope of dialogue. The submitting party summarized the facts and process that led to the filing of the submission and the responding party explained its ESG related Due Diligence and engagement/stewardship process in the context of passive index investments as well as its collaboration approach with index providers and other stakeholders. The parties then agreed on a list of priorities to be deepened and further discussed in the second meeting.

In the second mediation meeting, the STP started by summarizing the efforts of their organization in the context of potential human rights violations of the Uighur population in Xinjiang. This was followed by a discussion regarding the possible provision of relevant information by STP, e.g. for UBS Group AG to consider a feed into its ESG risk dashboard in case of sufficiently concrete information as well as other methods of collaboration between the two organisations in particular and civil society and the finance sector in general. Furthermore, the parties discussed the role of index providers, in particular MSCI (Morgan Stanley Capital International) in ensuring human rights protection as well as UBS’s possible influence and leverage on MSCI. The discussion focused on index providers, *inter alia*, due to UBS investment decisions being constrained in the case of index funds. The parties further discussed the introduction and/or enforcement of so-called exit clauses in case of alleged/proven complicity in human rights violations of entities included in the fund and the related challenges.

As the main outcome of the meeting, the parties agreed to focus on concrete measures of collaboration and opportunities for the advancement of ESG methodologies that are relevant for the whole finance industry, including the roles of the parties, as the centre of the discussions of the third mediation meeting.

In the third mediation meeting, the parties summarized their perceptions of the process so far as well as their opinions regarding progress on issues defined as the scope of the mediation. STP elaborated in which aspects UBS's existing ESG Due Diligence mechanism for passive funds was not sufficiently strong in comparison to the expectations formulated by the STP. One of the contentious issues from STP’s point of view was the “lack of exit clauses” in UBS's

Due Diligence process regarding its product offerings. UBS referred again to the comprehensiveness of its Due Diligence and engagement/stewardship process in the context of passive index investments and its close collaboration with index providers. While STP insisted on the need for more concrete measures by the bank, UBS is of the opinion that an industry approach is the most relevant and meaningful way to further advance the inclusion of Human Rights in the context of passive investment funds. STP expressed that they regarded this approach as a shifting of responsibilities from individual actors, in this case UBS, to other stakeholders, while UBS expressed that issues relating to passive funds can only be sustainably addressed by working collaboratively with index providers.

No agreement could be found on the issues of what more robust measures on the side of UBS would constitute as well on the introduction of specific exit clauses. As agreed in the second mediation meeting, UBS presented suggestions on possible concrete next steps of advancing ESG issues for passive investment funds across the finance industry. STP appreciated the suggestions but decided to end the mediation process in view of the still existing divergence of opinions.

3.5. Decisions

The parties agreed on the following actions:

- The parties will engage in the future, potentially via a structured and continuous process of regular meetings and exchanges. The purpose of this engagement will be to discuss human rights issues and to define measures that can have a significant impact on the advancement of the industry regarding the further inclusion of ESG criteria (related to human rights) into the management of passive investment funds.
- UBS will take a leading role in raising key issues related to ESG in the context of passive index funds within the industry. This includes e.g. the spearheading of an initiative within a major industry association such as the PRI⁴, involving relevant actors. This initiative's goal will be to use dialogue procedures with index-providers and other members of the industry to contribute to improving the methodologies and the quality, availability and exchange of information used to establish ESG benchmarks.
- Both parties will undertake efforts to strengthen the collaboration between their organisations and other stakeholders to advance the cause of human rights in the finance sector.

3.6. Follow-up agreed by the parties

Regarding following up on the implementation of the above-mentioned actions, the parties agreed to:

- Inform the NCP in writing six months after the publication of the Final Statement on the progress made in implementing the actions.
- Reflect together on the implementation of the actions in a follow-up meeting organized by the NCP after receipt of the written information by the parties.
- Agree on a short follow-up statement after the completion of the follow-up phase and allow the NCP to publish it.

⁴ Principles for Responsible Investment

4. Recommendations and Follow-up

The Swiss NCP welcomes the participation of both parties in the mediation with well-prepared teams and the exchange of comprehensive information by both parties.

The Swiss NCP recommends the parties to implement the agreed actions, notably:

- to engage in the future, potentially via a structured and continuous process of regular meetings and exchanges;
- for UBS to take a leading role in raising key issues related to ESG in the context of passive index funds within the industry.

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

- the Swiss NCP will ask the parties to inform within six months after the publication of the Final Statement on progress regarding the implementation of the decisions agreed by the parties. The Swiss NCP expects each party to submit a written report, to be shared with the other party;
- following receipt of the mentioned reports, the Swiss NCP will convene a meeting. At this meeting, parties will take stock of steps taken following the closure of the specific instance and decide on possible further steps.

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