

## NATIONAL CONTACT POINT FOR OECD GUIDELINES

**Specific instance submitted to the Italian NCP on the 17<sup>th</sup> October 2016 by an individual against one Italian bank, one insurance company, one President of Tribunal one judge of Tribunal, several clerks of Tribunal and, one bailiff.**

### INITIAL ASSESSMENT<sup>1</sup>

#### Summary

On the 17th October 2016 one individual (hereinafter, Complainant) notified a specific instance to the Italian National Points of Contact, (hereinafter NCP) complaining about an alleged violation of the OECD Guidelines for Multinational Enterprises (hereinafter, Guidelines) by an individual against one Italian bank (hereinafter Bank), one insurance company, one President of Tribunal one judge of Tribunal, several clerks of Tribunal and, one bailiff.

The Complainant claims to have suffered serious existential and financial damages, because of a payment request of a credit by the Bank (credit whose existence is challenged by the Complainant). In particular, he denounces privacy violations, threats against himself and his family and the initiation of the enforcement proceedings promoted by the Bank on his only dwelling house.

The Complainant attributes the suffered damages not only to the Bank, (in the person of its officials and professionals) but also to several individuals engaged in a variety of legal and judicial roles.

These behaviors , allegedly, implied the violation of the European Convention on Human Rights (ECHR), of the Universal Declaration of Human Rights (UDHR), of the La Hague Convention, of the Maastricht and Lisbon Treatises, and of several internal regulations including laws n. 881/77, n. 848/55 and n 364/89.

After a careful assessment of both the specific instance and the attached documents, the Italian NCP concludes that the issue raised does not merit further examination because of the following reasons:

- The intervention required to the NCP is not consistent with the nature and the function of the NCP, which has the task of mediating eventual disputes between a company and its stakeholders through a non judicial procedure. It is not in the NCP powers "to bring out the evidence, from the bank and the proceeding courts that there was not an aggravated and continued fraud"; to have an expert assessment control on the file relating to the enforcement actions; to require the submission of documents; to require a court-appointed technical consultant; let alone to condemn anyone to perform specific acts.
- The issue raised, including the alleged expropriation of the Complainant's house, has been and is still pending in judicial proceedings of various kinds; this makes very difficult to imagine, on the one hand, an intervention of the NCP that does not constitute an interference with the exercise of the judicial offices and with their impartiality, independence and autonomy; on the other hand, any room of maneuver for an agreed solution and / or recommendations to the parties.
- With regards to the people other than the Bank, the instance is inadmissible because they are not covered by the application of the Guidelines (they are not enterprises).

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<sup>1</sup> This is a courtesy translation in English: the official text of the Initial Assessment is the one in Italian

- From the documentation attached to the specific instance it has not been possible to find support elements which could show the truthfulness, relevance and pertinence of the alleged facts.

What mentioned above suggests that further examination of the issue raised would not contribute in any way to the purposes and effectiveness of the Guidelines.

On the 22<sup>nd</sup> November 2016 the NCP has communicated to the Complainant and to the Bank the outcomes of the initial assessment, giving them 20 days to submit comments. Neither the Complainant nor the counterparty has submitted any observation.

Given the non-materiality of the issue, the NCP decided not to publish the names of the Complainant and of the other parties.

### **Submission of the instance and complains of the Complainant**

1. On the 17th October 2016 the Complainant notified by e-mail a specific instance to the Italian National Contact Point, complaining about an alleged violation of the OECD Guidelines for Multinational Enterprises by an individual against one Italian bank, one insurance company, one President of Tribunal one judge of Tribunal, several clerks of Tribunal and, one bailiff.
2. He lamented the serious irregularities in the conduct undertaken by the Bank, in alleged violation of some principles of the Guidelines. In particular, he represented:
  - a) serious irregularities in the request by the Bank of payment of a credit whose existence and evidence he challenged;
  - b) violations of privacy combined with threats against himself and his family by telephone and email, resulting in existential and financial damage;
  - c) the initiation of the enforcement proceedings brought by the Bank before the Court, concerning his only dwelling house.
3. The Complainant also implicated the judge of the enforcement proceedings to have endorsed all of it by initiating the enforcement procedure itself and reported to have proposed two criminal complaints, in the context of which he had requested the Public Prosecutors of three different constituencies the precautionary seizure of the dossier of the enforcement proceedings in order to bring out the illegal aspects. He also reported that these complaints had been submitted to the Council of the Judiciary and sent to appropriate assessment to the UNICRI, the United Nations High Commissioner for Human Rights; the European Court of Human Rights and to international arbitration bodies to verify the correct application and implementation of international treaties.
4. In the opinion of the Complainant all of it implied the violation of the European Convention on Human Rights (ECHR), of the Universal Declaration of Human Rights (UDHR), of the La Hague Convention, of the Maastricht and Lisbon Treaties, and of several internal regulations including laws n 881/77, 848/55 and 364/89

### **Involved chapters of the OECD Guidelines**

5. The Complainant pointed out that the following chapters of the OECD Guidelines are affected by the issue raised:
  - a) Disclosure;
  - b) Human rights;
  - c) Consumer interests;
  - d) Taxation.

### **OECD Guidelines for multinational enterprises**

6. The Guidelines are recommendations addressed by signatory Governments of the OECD Declaration of the 25th May 2011 to multinational enterprises, providing for voluntary principles and standards for responsible business conduct.
7. They aim to encourage the positive contribution that multinational enterprises can give to economic, social and environmental progress, and to minimise and solve issues that may arise from their operations in the global market;
8. Moreover, the Guidelines provide for the "specific instance" mechanism that can be activated by the submission from one party and is functional to the correct implementation of the Guidelines. This mechanism enables the NCP to offer its good offices to the complainant and the enterprise in order to achieve an agreed resolution of the dispute.
9. The offering of good offices depends on the initial assessment, which is aimed to appraise whether the issue raised by the complainant merits further examination. The NCP will thus have to verify whether the issue is *bona fide* and relevant to the implementation of the Guidelines. In this context, the NCP will take into account:
  - a) the identity of the party concerned and its interest in the matter;
  - b) whether the issue is material and substantiated;
  - c) whether there seems to be a link between the enterprise's activities and the issue raised in the specific instance;
  - d) the relevance of applicable law and procedures, including court rulings;
  - e) how similar issues have been, or are being, treated in other domestic or international proceedings;
  - f) whether the consideration of the specific issue would contribute to the purposes and effectiveness of the Guidelines

#### **a) The identity of the party concerned and its interest in the matter**

10. Indubitably the Complainant seems to have a relevant interest in the matter. As it will be clarified further ahead, yet, that's an interest that does not fall within the competence of this NCP, given its nature, its functions and the ratio of the Guidelines.

#### **b) Whether the issue is material and substantiated**

11. First of all, it should be noted that any questions on the legitimate exercise of the judicial function by national or international courts falls outside the proceedings before the NCP, since the Guidelines consist of recommendations addressed to the multinational enterprises

in order to encourage them to adopt a responsible conduct. Indeed, the Guidelines (§26 of the Commentary on the Implementation Procedures) recommend the NCP not to undermine the authority of justice. The conduct of the judge or of its subsidiary bodies or any of their alleged failure must therefore be regarded as irrelevant to these proceedings. Any alleged damage resulting from legal proceedings is also irrelevant (in particular the consequences of the credit claimed by the Bank on the home ownership in question, that went through the scrutiny of the Courts).

12. Even the alleged "serious irregularities" attributed to the Bank as far as we understand, have already been brought to the Criminal Judge. In any case, they are a narration of the facts by one party, not supported by any evidence.

**c) Whether there seems to be a link between the enterprise's activities and the issue raised in the specific instance**

13. The Complainant reports of vexatious actions (demands, threats, violations of privacy) undertaken by the Bank without further evidence / documentation / factual circumstances that would clearly suggest the existence of a link between the Bank's activities and the issue raised in the specific instance.
14. However, as explained above, the "ratification" of the judicial authority, leads to attribute many of the "detrimental" circumstances complained rather to the judicial decisions, than to the Bank.
15. Finally, the reasons for involving the insurance institute's in the instance are not explained.

**d) The relevance of applicable law and procedures, including court rulings**

16. It is worth repeating that, as it can be inferred by the instance itself, the dispute has been already decided by a jurisdictional Court and it is still pending before national Courts. This applies in particular: for the enforcement proceedings on the house of the Complainant, which have been run by the judge with all the legal guarantees; for the detection of any fraud, for which the criminal court is competent; and for the appraisal of the judges themselves that, as in other cases, lies with the authorities charged to do so by law and not, of course, with the NCP. The NCP, again, has not the aim to undermine the authority of justice and has no power of interference in the exercise of the judicial function, characterized by impartiality, independence and autonomy.

**f) Whether the consideration of the specific issue would contribute to the purposes and effectiveness of the Guidelines**

17. The issue raised in the instance doesn't seem to contribute to the purposes and effectiveness of the Guidelines. The purpose of the Guidelines essentially is to encourage a responsible business conduct, with particular regard to multinationals. NCP's good offices are aimed to ensure an effective implementation of the Guidelines in concrete cases through the search of an agreed resolution of the dispute, using as a parameter the responsible business conduct described in the Guidelines.

18. Indeed, in this complaint the NCP is urged to intervene in ways that clearly fall outside its remit. It is not in the NCP powers "to bring out the evidence, by the bank and the proceeding courts that there was not an aggravated and continued fraud"; to have an expert assessment control on the file relating to the enforcement actions; to require the submission of documents; to require a court-appointed technical consultant; let alone to condemn anyone to perform specific acts.
19. Moreover, with the present instance the Complainant asks the NCP to intervene not only against the Bank, but also against other non entrepreneurial subjects, by virtue of the institutional roles they play in several jurisdictional proceedings. Speaking of which, *vice versa*, it must be repeated that the NCP is not allowed to interfere with the legitimate exercise of the jurisdictional functions, characterized by impartiality, autonomy and independence.
20. Finally, in this specific case, we are in front of an old and complex situation that has been and is being widely debated in courts, where all the parties' opinions are clear, well-defined and sharp. Therefore, with regard to this specific case it not possible (nor the Complainant suggests how) to find any room for mediation.

### **Conclusions**

21. In the light of the above considerations, since there are not the necessary and sufficient elements to offer its good offices, the NCP concludes this initial assessment considering that the issue raised doesn't merit further examination.

The president of the National Contact Point  
Stefano Firpo