



Complaint submitted to the Italian NCP on June 17, 2015 by

Douglas Linares Flinto versus ENI S.p.A.

INITIAL ASSESSMENT

Submission of the complaint

1. On June 17, 2015 Mr. Douglas Linares Flinto, a Brazilian citizen (hereinafter: the "complainant"), submitted a complaint to the Italian NCP against ENI S.p.A, complaining that, in 2001, he was wrongfully dismissed by Agip do Brasil - which was at the time (and until 2004) an ENI Group's company - where he worked as a manager. According to what the complainant declares, the dismissal happened after he had discovered a millionaire internal fraud scheme and he had reported it promptly to the President of Agip do Brasil. Mr. Flinto appealed also to the Ethics Committee and the Board of Directors denouncing that the behavior of the company towards him was in breach of the provisions its Codes of Ethics.
2. Mr. Flinto complained, as well, about the subsequent persecution against him as whistleblower by ENI S.p.A., consisting of a "frivolous lawsuit" initiated by the Company before the Italian court in 2009.

Communications between the NCP and the complainant

3. During the informal contacts prior to the submission of the complaint, the NCP had informed the complainant that it is not up to it to determine whether a lawsuit is frivolous or more or less founded, since this is a matter to be decided by the Court.

Affected chapters of the OECD Guidelines

4. In the complaint, the following areas of the Guidelines were indicated as affected by the case: *Human Rights; Employment and Industrial Relations*.
5. On July 2, 2015, the NCP asked the complainant to provide further details on the facts related to the complaint and to state, exactly, which chapters and paragraphs of the Guidelines he considered violated. The NCP also warned him that, given the time when the



facts took place, reference had to be made to the version of the Guidelines prior to the 2011 review.

6. The complainant replied on July 3, 2015 alleging that the relevant conduct of the enterprise was not limited to the year 2001 and that some important developments took place in recent times. Thus, reference should be made to the current version of the Guidelines, and in particular to the following chapters:

II. General Policies

[...] A. enterprises should: "6", "8", "9", "10", "11" and "12":

Commentary on general policies: "7", "8", "13"

III. Disclosure

3. Enterprises are encouraged to communicate additional information, that could include: "a", "b", "c",

Commentary on disclosure: "34"

IV. human rights

States have the duty to protect human rights. Enterprises should, within the framework of internationally recognised human rights, the international human rights obligations of the countries in which they operate as well as relevant domestic laws and regulations: "1", "2" and "6".

Commentary on human rights: "42"

Informing the multinational

7. With a letter sent by e-mail on July 2, 2015 the Italian NCP merely informed ENI S.p.A. - in the person of the Managing Director and, for information, of the Chairman of the Sustainability and Scenarios Committee – of the complaint submitted to it by Douglas Linares Flinto.
8. ENI S.p.A., considered worthwhile to send a note to the NCP (dated July 9,2015) in which it pointed out that:
 - a) the complainant, after being fired in 2001, brought a lawsuit against AGIP do Brasil before the Brazilian judge and lost the case;
 - b) since 2002 the complainant, in person and as representative of the Brazilian Institute of Business Ethics, had sent to a multitude of persons and institutions a large number of e-mails defaming ENI; in 2014 he had also created a blog



(<http://blogenisway.blogspot.it/>) dedicated to the collection and publication of negative news about ENI;

- c) consequently, in 2009, ENI had undertaken a civil suit for defamation against Mr. Flinto – that is still underway on appeal;
- d) in 2015, the company had filed a complaint against Flinto with the Public Prosecutor of Rome.

Informing the Brazilian NCP

9. With a letter sent by e-mail on July 15, 2015 the Italian NCP informed the Brazilian NCP of the received instance, asking, in particular:

- a) to confirm what it had communicated by email to the Italian NCP in 2013, regarding the complaint by Mr. Flinto against ENI on the same facts;
- b) if other complaints had been submitted to the Brazilian NCP by Mr Linares Flinto on the same matter;
- c) if it had any information on the labour lawsuit brought by Mr. Flinto before the Brazilian courts in 2003;
- d) to provide any relevant and appropriate information in relation to the case.

2. The Brazilian NCP replied on July 23, 2015 confirming that:

- a) It ratified the information reported in the email dated September 11th, 2013 (i.e. that the Brazilian NCP rejected the instance submitted at that time by Mr Flinto, refusing the notification on the basis of its criteria for admissibility of notifications (Resolution PCN No. 01/2012), which states, among others, that (i) the fact violating the OECD Guidelines cannot have occurred more than 12 months before the presentation to the NCP; and (ii) cannot have a final judgment in a court of law).
- b) Mr. Linares Flinto did not submit to the Brazilian NCP any other instance against ENI regarding the same facts;
- c) Mr. Flinto brought suit against AGIP do Brasil, part of the ENI Group, on August 1st, 2003, for damages. The Brazilian Labor Justice Court – 18th São Paulo County, on March 29th, 2004, considered the suit inappropriate and, as final decision discharged the company.



Outcomes of the initial assessment

3. When receiving a complaint, the NCP should make a first assessment of the issue raised to determine if it merits further examination (*Guidelines, Procedural Guidances, I, C, 1; Commentary on the implementation procedures..., I, 25-27*);
4. In making an initial assessment of whether the issue raised merits further examination, the NCP will need to determine 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.
5. The case submitted to the NCP by Mr. Douglas Linares Flinto refers to facts dating back to 2001, has been treated and mostly defined by both national courts and by the Brazilian NCP (see below).
6. These circumstances suggest that there is no room for mediation between the parties or any positive contribution to be given to the resolution of the issues raised. The consideration of the specific issue would hardly contribute to the purposes and effectiveness of the Guidelines. (criterion f). Moreover, as explained below, the relevance of court rulings is remarkable, in this case (criterion d).
7. According to the information collected, the main issue, concerning the dismissal, was defined in 2004 by the Brazilian Court that concluded that it had been made in compliance with the law.



8. On this point, the Italian NCP will stick to that conclusion, since questioning court decisions does not fall within its competence.
9. Regarding the different and distinct issue of the alleged persecuting behavior of ENI towards the complainant, consisting of the legal suits filed with the Italian court, that behavior seems to be the reaction to the campaign carried out by the complainant, as president of the Brazilian Institute of Business Ethics, against the company. As mentioned, Mr. Flinto sent, "dozens and dozens" [in his words] of e-mails to the top managers of ENI S.p.a., to the stakeholders of the multinational, to the Italian Government and to a multitude of people and institutions. He also published negative news on ENI through the aforementioned blog.
10. The relationships between the parties are exacerbated by a long-running *crescendo* of moves and countermoves. This issue has been brought to the knowledge of the Italian courts and, in the course of the proceedings, according to the complainant, a tentative agreement between the parties was experienced and failed.
In this context it is hard to see room for mediation and solutions that would contribute to the purposes and effectiveness of the Guidelines.
11. It should finally be noted that, in June 2013, the case has already been submitted by the complainant to the Brazilian NCP, that determined that it did not merit further examination, since the related facts were placed too far back in time.

In light of these considerations, the Italian NCP finds that the complaint submitted by Mr. Douglas Linares Flinto against ENI S.p.A, on June 17, 2015, does not merit further examination.

Rome, 03 AGO. 2015

GENERAL DIRECTOR
CHAIR OF THE NATIONAL CONTACT POINT

(Stefano Firpo)