

Final statement by the German National Contact Point for the OECD Guidelines for Multinational Enterprises regarding a specific instance by an NGO headquartered in the UK about violations of the OECD Guidelines for Multinational Enterprises by a company in the field of communication technologies incorporated in Germany

On March 20, 2015, an NGO headquartered in the UK (hereinafter referred to as “the Complainant”), lodged a specific instance with the German National Contact Point for the OECD Guidelines for Multinational Enterprises (NCP).

The Complainant claims that a German communications technology company does not comply with paragraphs 1 to 3, 5 and 6 of Chapter IV, Human Rights, of the Guidelines. It states that in May 2014 the company concluded a Teaming Agreement with an US-company that enables the use of communication technology in drones provided by the US-company. It claims that these drones have been used by US armed forces for operations including in some countries on which no war had been declared. The complaint relates specifically to the human rights impacts of these operations on Yemeni and Somali individuals between 2012 and 2013 as well as on the populations of Yemen and Somalia as a whole in the same period. The Complainant also asserts that the company does not have an internal policy for reviewing due diligence with regard to its social responsibility and human rights impacts of its activities according to the OECD Guidelines.

The OECD Guidelines for Multinational Enterprises are part of the OECD Declaration on International Investment and Multinational Enterprises and contain recommendations for responsible business conduct for multinational enterprises when undertaking foreign investment and conducting foreign trade. The governments of the OECD Member Countries and other participating countries have committed themselves to having their respective National Contact Points promote the use of this voluntary code of conduct and assist with finding solutions to specific instances by means of confidential mediation involving the relevant partners.

In keeping with the Procedural Guidance for the OECD Guidelines for Multinational Enterprises the NCP and the ministries represented in the Interministerial Steering Group for the OECD Guidelines conducted an initial evaluation in order to examine whether the issues raised in the specific instance warranted a more in-depth investigation. The company was given the opportunity to comment.

The main points made by the company are as follows:

The company asserts that no link can be made between the drone attacks described in the text of the complaint that took place in Yemen between 2012 and 2013 and the agreement with the US company that was concluded in 2014, given the timing of each of these events. Concerning due diligence with regard to its social responsibility and responsibility for protecting human rights, the company points in particular to point 1.2 of its code of conduct: “We adhere to international accepted human rights within the realm of our business activities and never make ourselves an accomplice to human rights violations.” The company further states that its suppliers are required to have signed up to their own code of conduct. It notes that the contracts it has with its suppliers and service providers contain paragraphs on respecting international human rights. The company affirms that it has set up its own compliance programme and a system for monitoring compliance that is in line with the standards set out in the OECD Guidelines. Its comments have been forwarded on to the Complainant.

In conducting its assessment, the National Contact Point has considered the text of the complaint and the comments provided by the company, including the documents appended to it. First of all, it concludes that the drone attacks that took place between 2012 and 2013 which are described in the text of the complaint were conducted at time before the company concluded its agreement with the US company. Therefore, specific human rights violations cannot be taken as being the object of the proceedings.

With regard to the issue as to whether the company adequately complies with general human rights due diligence “...as appropriate to their size, the nature and context of operations and the severity of the risks of adverse human rights impacts”, the complaint points out in particular that the company’s website does not make any reference to social responsibility (and therefore no reference to responsibility for protecting human rights). The NCP is of the opinion that the company adequately demonstrates in its comments that it fulfils its duty of care (due diligence) in accordance with the

requirements of the Guidelines. The NCP is of the opinion that although this information, in particular the code of conduct, does not appear on the company's website, this fact alone does not warrant the undertaking of a more in-depth investigation. Concerning the recommendation "to prevent or mitigate adverse human rights impacts that are directly linked to their business operations, products or services by a business relationship, even if they do not contribute to those impacts", the NCP takes the view that not every potential causal contribution to a human rights violation should be seen as a direct link as defined in Chapter IV, Human Rights, paragraph 3, of the OECD Guidelines. Whether or not a "direct" link has been made must be assessed and decided upon on a case-by-case basis. The NCP considers that due account should be taken of the fact that the radio transmitters covered by the agreement are unable to navigate drones, particularly over greater distances, as the company has credibly demonstrated. The NCP takes the view that this rules out the possibility that a direct link to a human rights violation has been established.

The complaint therefore cannot be accepted for further consideration.

The proceedings brought before the NCP in Germany are thus terminated.

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For the National Contact Point
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