

**Complaints not accepted for in-depth examination
by Germany's National Contact Point
for the OECD Guidelines for Multinational Enterprises**

Since 2001, i.e. since the establishment of the Complaint Procedure, a total of 21 complaints have been submitted to the German National Contact Point (NCP) (as of December 2012). Of these, the NCP accepted and concluded five complaints. 14 inquiries were not accepted for further examination either because the case fell within the jurisdiction of another OECD member country or because of the lack of indications for of a violation of the OECD Guidelines for multinational enterprises (OECD Guidelines). However, the NCP frequently provided support in these cases.

The NCP aims to enhance the transparency of its decisions, which are based on a comprehensive assessment of each individual case. To this end, we are providing in this report a summary of the reasons why the various complaints were not accepted for further examination.

- 1. Germanwatch and FIAN concerning Continental AG, 2002**
- 2. Greenpeace e.V. concerning TotalFinalElf, 2002**
- 3. urgewald, WEED, Germanwatch und BUND concerning BP AG (BTC pipeline), 2003**
- 4. Greenpeace concerning West LB, 2003**
- 5. Krall concerning A. Knight International Ltd. (Karl-Heinz Albers), 2004**
- 6. Scientific, Industrial & Environmental Consultants GmbH concerning DaimlerChrysler, 2005**
- 7. Germanwatch e.V. concerning Volkswagen AG, 2007**
- 8. Transparency International Deutschland e.V. concerning 57 companies (Oil for Food programme), 2007**
- 9. Gesellschaft für bedrohte Völker (Society for Threatened Peoples) concerning Volkswagen AG, 2008**
- 10. EPMU concerning Hochtief Visionstream Proprietary Ltd., 2009**
- 11. Greenpeace e.V. concerning Vattenfall, 2009**
- 12. Saami Council concerning KfW IPEX Bank, 2010**
- 13. Indonesian citizen concerning a German multinational enterprise, 2012**
- 14. Russian citizen concerning a company based in Germany, 2013**

1. Germanwatch and FIAN concerning Continental AG

This complaint, filed on 27 May 2002, alleged that Euzkadi de México, a subsidiary of Continental AG, was unlawfully closing a factory in Mexico and dismissing the workers employed there. In accordance with the procedural guidance of the OECD Guidelines, the German NCP referred the case to the Mexican NCP in June 2002. At the same time, the German NCP provided assistance in the case and conducted talks with the involved parties. The dispute, which was also the subject of court proceedings, was ultimately settled in 2005 through an agreement that arranged for the factory to be taken over by a joint venture between the union-represented workers and a Mexican company, whereupon production was resumed.

2. Greenpeace e.V. concerning TotalFinalElf

In a complaint filed on 16 December 2002, Greenpeace alleged that the German headquarters of TotalFinalElf participated in environmental crimes in connection with the extraction and transport of oil from Russian oil fields. The complainants argued that the German management board – despite its business relations with Russian oil companies and despite long-term supply contracts – was closing its eyes to the conditions under which oil was being extracted in western Siberia. The NCP had doubts as to whether the Guidelines applied to this case, because the allegations involved trade relations only. The NCP submitted this question to the OECD Investment Committee, which is competent for such matters; it also attempted simultaneously to obtain support with regard to the questions raised in the complaint and arranged talks. The Investment Committee's deliberations on the issues of "investment nexus" and "supply chain" gave the NCP no cause to affirm that the Guidelines were applicable to this case, which the NCP pointed out in its letter of 16 July 2004.

3. urgewald, WEED, Germanwatch and Friends of the Earth Germany (BUND) concerning BP AG (BTC pipeline)

On 29 April 2003, the non-governmental organisations urgewald, WEED (World Economy, Ecology and Development), Germanwatch and Friends of the Earth Europe (BUND) filed a complaint against Deutsche BP AG, as part of the BP Group, in connection with the Baku-Tbilisi-Ceyhan (BTC) pipeline. Complaints in the same case were also filed with the U.K., U.S. and French NCPs. The complaints alleged that the BTC consortium – led by BP as the main shareholder – had committed numerous violations of chapters II, V and VII of the OECD Guidelines. Germany's NCP did not

accept the complaint for further examination, because Deutsche BP AG was not involved in the consortium or any other part of the project. In its decision of July 2003, the German NCP found that a subsidiary company cannot be held generally responsible for the activities of its parent company (BP United Kingdom).

4. Greenpeace concerning West LB

In a complaint dated 15 May 2003, Greenpeace Germany alleged that the West LB bank had participated as creditor in a syndicated loan to finance a pipeline project in Ecuador. In the complainant's view, the pipeline project violated the human rights and environmental standards contained in the OECD Guidelines. The complaint was rejected because the Guidelines apply only to investments and not to mere loans.

5. Krall concerning A. Knight International Ltd. (Karl-Heinz Albers)

The complaint filed by Krall in November 2004 referred to the activities of the A. Knightly International Limited company in the Democratic Republic of Congo (DRC). The company had contacts to a German national, Mr. Karl-Heinz Albers, and allegedly supplied German and Austrian companies with the mineral coltan. The charge levelled in the complaint focused on the illegal extraction of natural resources and the export of minerals from conflict regions. Complaints on the same matter were pending at the NCPs in the United Kingdom and Austria; both of these were rejected due to the lack of an investment nexus. The German NCP became involved in the case only after the procedure had been resumed. Following careful assessments and consultations, the German and Austrian NCPs came to the conclusion that an in-depth examination of the allegations was impossible due to the war-like conditions in the DRC.

6. Scientific, Industrial & Environmental Consultants GmbH concerning DaimlerChrysler

This complaint, which was submitted to the Austrian NCP on 1 February 2005 by a competitor of Daimler Chrysler, accuses the latter – in cooperation with IPC Motors Turkmenistan and other companies belonging to the IP Group – of numerous violations of the Guidelines in connection with the awarding of a contract. The Austrian NCP asked the German NCP, as the responsible agency, to conduct the initial assessment. The German NCP rejected the complaint in July 2005 for various reasons. First, it stated that IPC Motors is an independent company and, further, that as a representative of DaimlerChrysler AG, IPC Motors was required by DaimlerChrysler as a rule to conduct its business on the basis of the OECD Guidelines. In addition, DaimlerChrysler

was not involved in the court dispute between Scientific, Industrial & Environmental Consultants GmbH and IPC Motors, and the existing court structures were appropriate for clarifying the legal questions at hand. Finally, the issues raised in the complaint involved sales and trade activity; as a result, they did not fall within the OECD Guidelines' scope of application, because the Guidelines apply to investments or investment nexuses. The NCP also stated that the guidelines were not applicable to this complaint from the point of view of supply chains, because such relationships did not exist in this case.

7. Germanwatch e.V. concerning Volkswagen AG

In this complaint, which was filed on 7 May 2007, the company was accused in particular of violating chapter V (Environment) as well as chapter III (Disclosure) and chapter II 11 (improper involvement in local political activities) of the OECD Guidelines. The complaint argued that the company's policies are insufficiently adapted to the challenges of climate change. Following careful assessment of the case, including consultation with other federal ministries, the NCP rejected the complaint in a letter dated 20 November 2007. According to the procedural guidance of the OECD Guidelines, the initial assessment is to focus on whether the questions raised by the complaint merit in-depth examination. The NCP found that this was not the case, since no violation of the Guidelines' recommendations – which do not take precedence over national laws and regulations – was evident.

8. Transparency International Deutschland e.V. concerning 57 companies (Oil for Food programme)

The complaint dated 5 June 2007 alleged a violation of chapter VI (Combating Bribery) of the OECD Guidelines by 57 companies based in Germany which had supplied goods, chiefly of a medical and technical nature, to the Iraqi government within the framework of the UN Oil for Food programme. Following careful assessment of the case, including consultation with other federal ministries, the NCP rejected the complaint in a letter dated 31 August 2007. According to the procedural guidance of the OECD Guidelines and its explanatory comments, the initial assessment of a complaint must also address the question of whether an investigation of the problem in question serves the objectives of the Guidelines. All of the cases in this complaint involved only the supply of goods. No investment nexus or supply chain relationship was involved. Therefore the OECD Guidelines did not apply. The NCP pointed out that the competent law enforcement authorities had examined the events, and it also referred to the

Federal Government's efforts to raise companies' awareness of their obligations in combating bribery.

9. Gesellschaft für bedrohte Völker (Society for Threatened Peoples) concerning Volkswagen AG

This inquiry, which was filed on 28 April 2008, referred to Volkswagen's involvement in promoting the Olympic torch relay in the People's Republic of China in spring and summer 2008, alleging in this connection a violation of chapter II 2 (Human Rights) of the OECD Guidelines. Following careful assessment of the case, including consultation with other federal ministries, the NCP rejected the complaint in a letter dated 3 June 2008. The NCP found that the financing of the Olympic torch relay in China did not involve an "investment nexus", nor did it constitute or foster a violation of human rights. The OECD Guidelines do not posit that companies share a general co-responsibility for human rights violations by host governments.

10. EPMU concerning Hochtief/Visionstream Proprietary Limited

On 28 September 2009, the New Zealand-based labour union EPMU filed a complaint with the German NCP in connection with the responsibility of Hochtief AG as the parent company of Visionstream Proprietary Limited (Visionstream). The complaint targeted Visionstream's activities on the New Zealand telecommunications market. The NCPs in New Zealand and Australia were already in the process of addressing the case. The three NCPs agreed to cooperate under the leadership of the New Zealand NCP, since the Visionstream investment in question had been undertaken in New Zealand. Following careful assessment and consultation with the other NCPs, the New Zealand NCP rejected the complaint on the grounds that New Zealand law – which provides substantially more far-reaching protection than the OECD Guidelines – had not been violated.

11. Greenpeace e.V. concerning Vattenfall

In a complaint filed on 30 October 2009, Greenpeace e.V. alleged violations of chapters II (General Policies), V (Environment) and VII 4 (Consumer Interests) of the OECD Guidelines by Vattenfall, primarily in connection with the planned Hamburg-Moorburg coal-fired power station and the Krümmel nuclear power plant. Following careful consideration of the case and consultation with the federal ministries represented in the interministerial task force that oversees implementation of the OECD Guidelines (especially the Federal Ministry for the Environment, Nature Conservation and Nuclear

Safety), the NCP rejected the complaint in a decision dated 15 March 2010. According to the procedural guidance of the OECD Guidelines, the initial assessment is to focus on whether the questions raised by the complaint merit in-depth examination. The NCP found this not to be the case, since some of the allegations made in the complaint were unsubstantiated, and other allegations were based on an overly broad interpretation of the Guidelines that was not consistent with the objectives of the Guidelines. The OECD Guidelines cannot be interpreted as an imperative against the generation of power from coal or the construction of a new power plant for this purpose.

12. Saami Council concerning KfW IPEX Bank

The complaint, which was filed on 16 April 2010, alleged that the rights of the Saami community in Lappland, Sweden, were being violated by the construction of wind power facilities and the co-financing of a pilot project by the KfW IPEX Bank. After mutual consultation, the German NCP turned the case over to the Swedish NCP as the agency responsible for handling the case because, according to the Guidelines, inquiries are to be handled by the national NCP of the country in which the matter in question occurs. To be sure, the decision to co-finance the project was taken in Germany. However, the project planning process, hearings and licensing – and therefore the main factors addressed by the complaint – took place in Sweden. Following consultations with the German NCP, the Swedish NCP rejected the complaint because the procedure for licensing the wind power facility has not yet concluded, and the affected Saami community may still have access to legal remedies including the possibility of asserting claims for compensation.

13. Indonesian citizen concerning a German multinational enterprise

On 17 September 2012, an Indonesian citizen submitted a specific instance to the German NCP accusing a German multinational enterprise to have operated in non-compliance with chapter IV (Human Rights) and chapter V (Employment and Industrial Relations) of the OECD Guidelines. Until 2008, the claimant was working for a subsidiary of the German enterprise in Indonesia. Due to a reorganisation process, the company where the claimant was employed was closed. Thus the company offered him employment in a new established subsidiary in Indonesia. They wanted the claimant to sign a settlement agreement as well as a new employment agreement. With his complaint submitted to the German NCP, the claimant criticised that specific clauses of these agreements violated the Universal Declaration of Human Rights, the ILO -

Discrimination (Employment and Occupation) Convention, 1958 (No. 111), the Constitution of Indonesia and Indonesian labour law.

After comprehensive evaluation of the complaint by the NCP with several Federal Ministries, the NCP declared the complaint inadmissible to the mediation process on 7 December 2012. The NCP is of the opinion that the issues raised by the claimant merit no further examination. Neither the settlement agreement nor the new employment agreement violated human rights or rules of non-discrimination. In addition, the NCP has found no indication of a violation of chapter V of the OECD-Guidelines.

14. Russian citizen concerning a company based in Germany

The complainant is a Russian citizen who, up to May 2013, was employed by a subsidiary of a German company in Russia. She filed a complaint alleging violations of her human rights and her rights as an employee. Furthermore she claimed that, upon being presented with evidence of these violations, her employer had not investigated the matter with due diligence. The National Contact Point (NCP) interpreted this complaint as an allegation of breaches of Chapter II (General Policies), Chapter IV (Human Rights) and Chapter V (Employment and Industrial Relations) of the OECD Guidelines.

Having conducted an initial evaluation of the complaint, the NCP declared it inadmissible. It found that, in the absence of substantial evidence of the alleged breaches of the OECD Guidelines, the matter did not merit further investigation. Moreover, there were proceedings pending between the complainant and the Russian subsidiary of the company in question. An additional examination of the matter, beyond the ruling to be handed down by the court, was deemed unnecessary to ensure the enforcement of the OECD Guidelines.