



Initial Assessment

Italian associations and NGOs vs Stellantis N.V. and FCA Italy S.p.A.

Date: 13 February 2023

Notification to the Netherlands National Contact Point for the OECD Guidelines for Multinational Enterprises from Veronica Dini and Luca Saltalamacchia of Studio Legale Dini-Saltalamacchia, on behalf of twenty-two Italian associations and NGOs concerning an alleged violation of the OECD Guidelines for Multinational Enterprises by Stellantis N.V. and FCA Italy S.p.A.

The objective of the initial assessment process under the Procedural Guidance is to determine whether the issues raised in the specific instance merit further examination. If so, the NCP will offer, or facilitate access to, consensual and non-adversarial procedures, such as dialogue, mediation or conciliation (e.g. ‘good offices’) to the relevant parties. As specific instances are not legal cases and NCPs are not judicial bodies, NCPs cannot impose sanctions, directly provide compensation nor compel parties to participate in a conciliation or mediation process.

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Executive summary

On 21 July, 2022 the Dutch National Contact Point for the OECD Guidelines for Multinational Enterprises (NCP) received a notification of a specific instance from Veronica Dini and Luca Saltalamacchia of Studio Legale Dini-Saltalamacchia, on behalf of 22 Italian associations and NGOs with regard to an alleged violation of the OECD Guidelines for Multinational Enterprises (hereinafter the Guidelines) by Stellantis N.V. (hereinafter Stellantis) and FCA Italy S.p.A. (hereinafter FCA Italy).

The issues raised in the submission are: an alleged violation of the OECD Guidelines of Stellantis, and its fully controlled subsidiary FCA Italy, with specific regards to disclosure of transparent and detailed

information on their suppliers' operation in the cobalt and other minerals mining sites in the Democratic Republic of Congo (DRC).

The notifying party raises the issue of uncertainty and lack of transparency around the companies' implementation of an effective risk assessment in relation to their supply chain and to the traceability of critical materials. The background of the issues raised are its concern that human rights violations in this context have been widely documented by governmental and non-governmental organizations and that it is widely known that these constitute one of the main risk factors associated with the automotive sector's supply chain for cobalt and other minerals.

The issues raised in this submission relate to the OECD Guidelines' chapter on Disclosure (Chapter III).

Coordination

The specific instance has previously been filed with the NCP of Italy, on 1 April 2022. The NCP of Italy, on 11 April, responded to the notifying party stating that "dealing with the management strategies and commercial activities of a company registered in the Netherlands, the application should be submitted to the National Contact Point of the Netherlands, as it follows from the OECD Declaration on International Investment and Multinational Enterprises art. I, as well as points 23 and 24 of Part II of the Procedures for the Implementation of the OECD Guidelines for Multinational Enterprises".

The NCPs of the Netherlands and Italy had a coordination call on 5 December 2022 and agreed that the Dutch NCP should take the lead in handling this specific instance, and that there will be an advisory role for the Italian NCP.

Brief overview of the timeline

On 26 September the NCP had a first online meeting with the notifying party. On 13 October the NCP had a first online meeting with Stellantis/FCA Italy.

Upon the request of the NCP, the notifying party clarified on 21 October that the allegations in the submission concern disclosure.

On 27 October, the NCP received a first written response from Stellantis/FCA Italy.

The NCP shared the draft initial assessment with the parties on 23 December 2022 for comments within 14 days. The Initial Assessment was published on the NCP website on 13 February 2023.

Conclusion

The Dutch NCP concludes that the notification concerning Stellantis **merits further consideration** based on the following criteria:

- The Dutch NCP is the right entity to assess the alleged violation against Stellantis and FCA Italy; there will be an advisory role of the Italian NCP;
- The notifying party is a concerned party with a legitimate interest in the issues raised in the notification;
- The alleged issues are material and prima facie substantiated, meaning that they are plausible and related to the application of the OECD Guidelines;
- There is a link between the activities of the enterprises and the issues raised in the specific instance;
- The consideration of this specific instance may contribute to the Guidelines' objectives and enhance their effectiveness.

The decision to accept this specific instance for further examination is not based on conclusive research or fact-finding, nor does it represent a conclusion as to whether the enterprise observed the Guidelines or not.

Substance of the submission

This section provides an overview of the issues raised in the submission against Stellantis and FCA Italy, how the issues concerning Stellantis and FCA Italy relate to the Guidelines, and the enterprises' initial response.

On 21 July, 2022 the Dutch NCP received a notification of a specific instance from Veronica Dini and Luca Saltalamacchia of Studio Legale Dini-Saltalamacchia, on behalf of several Italian associations and NGOs with regard to an alleged violation of the OECD Guidelines by Stellantis N.V. and its controlled subsidiary FCA Italy.

The notifying party is a coalition of twenty-two Italian associations and NGOs, represented by two lawyers from the law firm Studio Legale Dini-Saltalamacchia.

The associations and NGOs are:

1. Solidarietà e Cooperazione - CIPSI - Coordinamento di Iniziative Popolari di Solidarietà Internazionale, <https://www.cipsi.it/>;
2. Voglio Vivere Onlus; <http://voglio-vivere.it/>;
3. Chiama l'Africa; <https://chiamaffrica.it/>;
4. FORUMSAD, <https://forumsad.org/>;
5. Cilap Eapn Italia - CILAP - <https://www.cilap.eu/>;
6. Associazione Sulla Strada OdV, <https://sullastrada.org/>;
7. Associazione LA ROSA ROJA, <https://larosarojainternational.org/>;
8. Centro di Volontariato Internazionale ODV-CEVI-<https://www.cevi.ngo/>;
9. Associazione Arcobaleno ODV, <https://www.arcobalenoweb.org/>;
10. Movimento per la Lotta contro la Fame nel Mondo Odv - MLFM - <https://www.mlfm.it/>;
11. Progetto Continenti Onlus, <https://progettocontinenti.org/>;
12. V.I.M. Volontari Italiani per il Madagascar - VIM - <https://www.vimadagascar.org/>;
13. Federazione Organismi Cristiani Servizio Internazionale Volontario-FOCSIV-
<https://www.focsiv.it/>;
14. Human Rights International Corner - HIRC - <https://it.humanrightsic.com/>;
15. Associazione-Fairwatch-Cooperazione-e-Mondialità,
<https://www.facebook.com/AssociazioneFairwatch/>;
16. MEDITERRANEO SIAMO NOI, <https://www.facebook.com/profile.php?id=100067855081100>
17. Federazione per l'Economia del Bene Comune in Italia - FEBC - <https://www.economia-del-bene-comune.it/>;
18. Time For Africa, <https://timeforafrica.it/>;
19. Nigrizia, <https://www.nigrizia.it/>;
20. Diritto Diretto, <https://dirittodiretto.webnode.it/>;
21. COORDINAMENTO-DIASPORE-IN-SARDEGNA-Co.D.I.Sard-
<http://coordinamentodiasporeinsardegna.org/>;
22. AOI Cooperazione e Solidarietà Internazionale, <https://www.ong.it/>.

The submission details an alleged violation of the OECD Guidelines' Chapter III (Disclosure) regarding the behaviour of Stellantis, and its fully controlled subsidiary FCA Italy, with specific regards to their alleged failure to disclose transparent and detailed information on their suppliers' operations in the cobalt and other minerals mining sites in the DRC. The notifying party also states that FCA Italy's and Stellantis' disclosure practices do not comply with the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas (2016), and its Five-Step Framework for Risk-Based Due Diligence in the Mineral Supply Chain.

The notifying party raises the issue of uncertainty and lack of transparency around the companies' implementation of an effective risk assessment in relation to their supply chain and to the traceability of critical materials. They assert that human rights violations in this context have been widely documented by governmental and non-governmental organizations and that it is widely known that these constitute one of the main risk factors associated with the automotive sector's supply chain for cobalt and other minerals.

Furthermore, they assert that despite the initiatives it claims to have undertaken, Stellantis hasn't satisfactorily fulfilled its international duties, as required by the OECD Guidelines, failing to provide relevant information to verify the fairness and correctness of their business model. According to the notifying party, Stellantis/FCA Italy in its reports forgets to identify its suppliers, their location and contact information. Also, there is no indication of the results following risk assessment nor any data regarding the traceability of its supply chain and the mineral sourcing.

The notifying party indicates that the duty to conduct due diligence is a duty of a progressive nature, to be fulfilled through a gradual process, and that it entails obligations to adequately document every initiative undertaken and any concrete progress in such a way as to guarantee access to information on the results obtained for all interested stakeholders.

The notifying party requests that Stellantis and its fully controlled subsidiary FCA Italy agree to disclose material in order to be able to verify:

- a) The effective system, if any, that is in place in order to identify and correct potential human rights violations within its supply chain for cobalt or other minerals originally sourced from the DRC;
- b) The specific risk assessment measures, if any, taken by FCA Italy/Stellantis to reduce and prevent potential human rights violations within its supply chain in the DRC;
- c) The appropriate action, if any, taken by FCA Italy/Stellantis against those suppliers who were unable to categorically rule out fundamental human rights violations in the process of extracting and processing the minerals;
- d) The necessary steps taken, if any, to compensate local communities and eventual victims in the occasion of damages caused;
- e) The information, if any, on the potential risks of human rights violations within its supply chain for cobalt or other minerals originated from the DRC, in a transparent and detailed manner (as required by Article 3 letter c of Legislative Decree 254/2016). Please note, this request for disclosure pertains to information that is supposed to be publicly shared;
- f) The thorough investigations, if any, made by FCA Italy/Stellantis into its cobalt suppliers, and/or suppliers of other minerals sourced from the DRC - with specific reference to Huayou Cobalt;
- g) The correspondence, if any, exchanged between FCA Italy/Stellantis and its suppliers registering its commitment to stop trading untraced cobalt and other minerals originated from the DRC.

The notifying party argues that although Stellantis and FCA Italy claim to have complied with their duties of diligence by establishing a mechanism to identify, prevent and mitigate their negative externalities, they have failed to provide sufficiently detailed information about the functioning and outcomes of this mechanism. They state that Stellantis and FCA Italy haven't complied with due diligence standards because the transparency of information has not been guaranteed, nor is it possible to ascertain and assess any negative impacts that occur along the company's supply chain.

According to the Specific instance, the notifying party requests that the Netherlands' NCP:

1. play an effective role in the definition of the issues raised;
2. actively follow and assist the parties in resolving the issues through a mediation process.

Provisions of the Guidelines referred to in the specific instance

Chapter III of the Guidelines on Disclosure, §1, 2 and 3.

§ 1: "Enterprises should ensure that timely and accurate information is disclosed on all material matters regarding their activities, structure financial situation, performance, ownership and governance."

§ 2: "Disclosure policies of enterprises should include, but not be limited to, material information on: [...] b) enterprise objectives; [...] f) foreseeable risk factors; [...] h) governance structures and policies, in particular, the content of any corporate governance code or policy and its implementation process".

§ 3: "Enterprises are encouraged to communicate additional information that could include: a) value statements or statements of business conduct intended for public disclosure including, depending on its relevance for the enterprise's activities, information on the enterprise's policies relating to matters covered by the Guidelines; b) policies and other codes of conduct to which the enterprise subscribes, their date of adoption and the countries and entities to which such statements apply; c) its performance in relation to these statements and codes; d) information on internal audit, risk management and legal compliance systems; e) information on relationships with workers and other stakeholders".

The notification also contains references to the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas (2016), the OECD Due Diligence Guidance for Responsible Business Conduct (2018) and other OECD and international reports and ILO standards regarding mining (in DRC) and regarding risks to health, risks associated with working conditions and child labour.

The enterprises' initial response

Stellantis, in its initial response, has stated that it appreciates the opportunity to engage on the specific instance's subject matter. However, they do have questions regarding the identity and objectives of the main actors on the side of the notifying party. They note that the author of the submission is a law firm, acting for several separate entities with potentially different goals, and expressed a concern that the specific instance proceedings may result, contrary to its purpose, in a sort of pre-litigation exercise. In addition, they believe that the allegations raised in the submission are based on an incorrect interpretation of the OECD Guidelines, on an omissive reading of their disclosures, and on a mischaracterization of their activities and their purchasing and due diligence practices.

Stellantis believes that the notifying party's interpretation of the OECD Guidelines is overly expansive. They indicate that they have not been able to identify recommendations in the OECD Guidelines with respect to disclosures that are as broad and definitive as what the notifying party describes. They also state that it is incorrect that the notifying party considers the activities of their indirect suppliers as evidence that they are "operating in" the DRC, as they have no direct operations in the DRC. Stellantis has identified businesses in the DRC in its supply chain starting on the tier five level and below. They state, however, that the nature of their relationship with these battery suppliers who may indirectly source cobalt from the DRC provides them very little leverage to influence the behaviour of those suppliers.

Stellantis also indicates that the notifying party's summary of their disclosures is incomplete. They feel that the disclosures in their 2021 Corporate Social Responsibility Report (CSR) Report were not

fully described in the submission, and that a number of additional disclosures (equivalent to those of several competitors) have been omitted.

Finally, Stellantis feels that the notifying party has provided an incomplete picture of their purchasing and due diligence practices and relevant disclosures. Stellantis indicates that, in order to comply with U.S. and EU law, including the Dodd-Frank Act and EU Regulation 2017/821, it conducts extensive supply chain mapping of conflict minerals including tin, tungsten, tantalum, and gold. The company has also partnered with additional third-party audit providers as well as the Responsible Minerals Initiative to further ensure compliance with all conflict mineral laws. In particular, concerning its practices, Stellantis states: *“Stellantis purchasing department is relying on three successive pillars regarding corporate social responsibility (“CSR”) in the relationship with our supply chain. The first pillar focuses on our purchasing guidelines and related public communication, mostly based on the CSR report and a dedicated webpage. First tier suppliers (the only suppliers with which we have a direct relationship) are required to specifically acknowledge and commit to observe the guidelines. These guidelines entitle Stellantis to act in case of any breach (p. 1 of the purchasing guidelines). In particular, the CSR performance of our suppliers is systematically taken into account in awarding business to suppliers and we strive to select only suppliers that share our values and can maintain the required compliance and performance (p. 275 of the CSR report). The second pillar is a large screening of our direct supply base, based on a long-term partnership with two recognized third-parties EcoVadis (EcoVadis) and Drive sustainability (SUPPLIERASSURANCE). The results of this activity are largely detailed in the CSR report (p. 18, 19, 82, 273 to 277) and in the Vigilance plan (p. 3 to 9). This screening is complemented by an onsite audit program conducted with another well-recognized third-party (SGS), also detailed in our CSR report and Vigilance plan (p. 3 to 9).”*

In addition to these two pillars, the enterprise states that it has developed a risk matrix on the value chain of the thirty raw materials found in a vehicle and the relevant country of origin. For Cobalt, the enterprise states that it has engaged RCS Global since 2020 : *“This partnership includes a mapping of our value chain for high voltage batteries from Stellantis plant down to the mine level. It also includes several audits realized according to the OECD Guidelines. The results are published in our CSR report. This mapping also allows us to publish the full list of refiners on our website.”*

The proceedings of the NCP to date

Since the receipt of the submission, the NCP has carried out the following actions:

On 9 August 2022, the NCP has sent a confirmation of receipt to the notifying party and on the same date, has informed the enterprise of the notification. Both parties also received a description of the NCP procedure.

On 14 September 2022, the notification was sent for information to the NCP of Italy.

Following introductory calls on the NCP procedure between the NCP secretariat and representatives of the notifying party (14/9), as well as representatives of Stellantis (19/9), the NCP had its first online meetings.

On 26 September 2022, the first online meeting with the notifying party took place.

On 13 October 2022, the first online meeting with representatives of the enterprise took place.

Upon the request of the NCP, the notifying party clarified on 21 October that the allegations in the submission concern disclosure.

On 27 October 2022, the NCP received a first written response of Stellantis/FCA Italy.

On 5 December 2022 a coordination call took place between the NCPs of Italy and the Netherlands.

On 23 December 2022, the draft initial assessment was sent to both parties for comments within 14 days.

On 13 February 2023, the initial assessment was published.

All documents provided in the submission were shared with Stellantis/FCA Italy.

Initial assessment by the NCP

The NCP has decided to accept the submission. This decision has been taken following an elaboration of the criteria below, as outlined in the commentary to the Procedural Guidance, para 25.

Is the Dutch NCP the right entity to assess the alleged violations against Stellantis and FCA Italy?

The submission concerns Stellantis N.V. (the holding company) and its 100% owned subsidiary FCA Italy.

The OECD Guide for National Contact Points on Coordination when handling Specific Instances explains that where the Guidelines state that “[g]enerally, issues will be dealt with by the NCP of the country in which the issues have arisen”. It also states that “if the issues in question relate to actions or decisions made at headquarters level of a company, the NCP based in the country of company’s headquarters may be best positioned to apply leverage and in reaching a resolution between the parties.”

Stellantis is headquartered in the Netherlands and therefore the Dutch NCP can act as the lead NCP in assessing the alleged violations against Stellantis and its subsidiary FCA Italy.

The Dutch NCP has asked the Italian NCP to assist the Dutch NCP and fulfill an advisory role in the process. The Italian NCP has indicated that it is willing to fulfill this role.

What is the identity of the submitter(s) and what is the nature of their interest in the submission?

The submitting associations and NGOs are 22 Italian organisations defending varying causes, amongst others solidarity, equality, social justice, sustainability, climate change, human rights and children’s rights, integration of immigrants and the fight against poverty. Some of the organisations are only active at the national level (Italy), some are active at the global level and some defend causes in Africa or in the southern parts of the world. They state to be part of an informal coalition that already existed prior to the notification. They are represented by two lawyers of the law firm Studio Legale Dini-Saltalamacchia.

It is standing practice that NCPs will accept a submissions filed by trade unions, NGOs or other organisations that address causes they defend (Guide for NCPs on the Initial Assessment of Specific instances, p. 6.).

As the notifying party is a group of associations and NGOs defending causes that relate, albeit to varying degrees, to the issues raised, the NCP is of the opinion that the notifying party has a legitimate interest in the issues raised in the submission.

Are the issues raised by the submitter(s) material and substantiated?

The NCP interprets ‘material and substantiated’ to mean that, based on the information submitted, the issues raised are plausible and related to the application of the OECD Guidelines.

The submission is material in the sense that it refers to the alleged non-observance of provisions of Chapter III (Disclosure) of the OECD Guidelines.

The notification and the additional information provided by the notifying party contain extensive information relating to the issues raised and references to a wide variety of reports by international organizations and NGOs concerning negative impacts on human rights and the environment related to the extraction of cobalt and critical minerals in, amongst others, the DRC. The Dutch NCP finds that the notification refers to relevant provisions in the OECD Guidelines' text and commentary, and is substantiated with documentation.

Is there a link between the activities of the enterprise and the issues raised?

The notification concerns disclosure of transparent and detailed information by Stellantis and by its subsidiary FCA Italy about the operations of FCA Italy's suppliers in the cobalt and other minerals mining sites in the DRC.

Therefore, the Dutch NCP considers there is a link between the activities of Stellantis and FCA Italy and the issues raised in the specific instance.

What is the relevance of applicable legislation and procedures, including court rulings?

Existing domestic legislation and past and ongoing procedures, including court rulings, may provide useful orientation for the NCP in reviewing the submission. According to the Guidelines, companies are expected to meet the requirements of domestic legislation. However, even if the company is compliant in terms of domestic law, this is not equivalent to observing the Guidelines, as the Guidelines "extend beyond the law in many cases" (OECD Guidelines 2011, Chapter 1, para 2).

The NCP is not aware of any relevant court rulings.

How similar issues have been, or are being, treated in other domestic or international proceedings?

As noted in the Commentary to the Procedural Guidance for NCPs, paragraph 26, already concluded or ongoing domestic or international parallel proceedings do not necessarily prevent the NCP from handling the specific instance by offering its good offices to the parties. However, in each individual case the NCP assesses whether or not the offer of good offices would make a positive contribution to the resolution of the issues raised or if it would prejudice either of the parties involved in other proceedings.

The specific instance has previously been filed with Italian NCP. The Italian NCP has indicated that the submission should be filed with the NCP of the Netherlands. The NCP is not aware of any past or ongoing parallel proceedings.

Would considering this submission contribute to achieving the Guidelines' objectives and enhancing their effectiveness?

The Dutch NCP believes that dealing with this notification may contribute to achieving the Guidelines' objectives and enhancing their effectiveness in the sense that it could help clarify the responsibilities under the OECD Guidelines Chapter III for Stellantis and its subsidiary FCA Italy concerning public disclosure of information on their suppliers' operations, especially with regards to operations in high-risk areas.

Conclusion

The NCP is of the opinion that this submission **merits further consideration** on the basis of the criteria laid out in the commentary to the Procedural Guidance, para 25.

The conclusions reached by the NCP in this initial assessment are based on the information received from both parties. The NCP does not express an opinion on the correctness of the statements of the

parties or the validity of the documentation provided by them, nor on their possible impact on the issues raised in the specific instance.

Next steps

In accordance with the Dutch NCP Specific instance Procedure, the NCP accepts this case for further examination and offers its good offices to the parties. The NCP will ask both parties whether they are willing to engage in a mediation/conciliation process, with the aim of agreeing how the issues to be taken into consideration can be successfully addressed.

The notifying party and the enterprise, Stellantis/FCA Italy, **have accepted** the NCP's good offices. In accordance with the NCP procedure, further activities relating to the specific instance procedure will be confidential while good offices are ongoing. The NCP will, together with the parties, take the necessary steps to guarantee a careful and confidential process.

If the parties cannot reach agreement as a result of the good offices, the NCP will examine the issues and provide recommendations concerning the observance of the Guidelines. It will complete the procedure by issuing a Final Statement, which it will publish on its website.

The role of National Contact Points (NCPs) is to further the effectiveness of the OECD Guidelines. The Dutch government has chosen to establish an independent NCP, which is responsible for its own procedures and decisions, in accordance with the Procedural Guidance section of the Guidelines. In line with this, the Dutch NCP consists of four independent members, supported by four advisory government officials from the most relevant ministries. The NCP Secretariat is hosted by the Ministry of Foreign Affairs. The Minister for Foreign Trade and Development Cooperation is politically responsible for the functioning of the Dutch NCP. More information on the OECD Guidelines and the NCP can be found on the [NCP Website](#)

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