



Follow-up on the Final Statement regarding the Specific Instance

FNV, ITF, PSI, IndustriALL Global Union vs. Chevron Netherlands BV et al.

Date: 18 December 2023

Follow-up on the Final Statement by the Dutch National Contact Point for the OECD Guidelines for Multinational Enterprises further to the Final Statement published on 24 March 2022.

Table of Contents

1. Introduction	1
2. Procedure of the Follow-up.....	2
3. Outcomes of the Follow-up.....	3
4. Conclusion	5

Note: The conclusions and recommendations in the Final Statement as well as the outcomes of the Follow-up were based on the Guidelines' version 2011. In the conclusion of this Follow-up the NCP has taken into account the updated Guidelines' version, which came into force on the 8th of June, 2023.

1. Introduction

On 24 March 2022 the Dutch National Contact Point (NCP) concluded a specific instance regarding an alleged violation of the OECD Guidelines for Multinational Enterprises (2011) (hereinafter: the Guidelines) by Chevron Netherlands BV and 13 other affiliated entities, all based in the Netherlands (hereinafter: 'the enterprise'). This notification was submitted by the trade unions FNV, ITF, PSI and IndustriALL Global Union on 8 October 2018.

The notification concerned the alleged lack of disclosure of expected enterprise information (chapter III, Disclosure, para 1-3) and the alleged non-compliance with the spirit of the Dutch tax law (chapter XI, Taxation, para 1-2) by 14 Netherlands-based entities of Chevron Corporation, which has its headquarters in the US.

On 22 June 2021 the NCP concluded that the notification merited further consideration, see the Initial Assessment [here](#). Following this conclusion, the NCP offered its good offices to the parties to

address the concerns raised by the notifying parties and seek a resolution through dialogue, in accordance with the Dutch NCP Specific Instance Procedure for handling notifications. The good offices were accepted by the notifying parties. The enterprise informed the NCP that it would not accept the good offices and wished to withdraw from further participation in the procedure. Subsequently, the NCP conducted an independent further examination and published the results in its Final Statement on 24 March 2022.

The NCP made the following assessment regarding the issues raised in the specific instance:

With regard to the paragraphs of the Disclosure Chapter: Considering the absence of information that on the basis of the Disclosure chapter and the commentary may be expected to be freely and publicly available, it was the NCP's assessment that none of the 14 corporate entities of Chevron et al. seem to observe paragraphs 1-3 of the Disclosure chapter.

With regard to paragraph 1 of the Taxation chapter: Given the (absence of) information available, the NCP was unable to confirm that Chevron et al. have any economic activities in the Netherlands. Instead, the NCP assumed that these 14 corporate entities are administered merely by trust companies and therefore their sole function is to operate as letterbox companies for the purpose of tax planning. It was the NCP's assessment that Chevron et al. have failed to demonstrate, either through freely and publicly available information or by providing answers to the NCP's questions, that the 14 corporate entities at stake comply with the spirit of the law.

With regard to paragraph 2 of the Taxation chapter: The 'Chevron's approach to tax' document explains how the risk management systems are implemented. It was not made explicit whether this policy applies to all subsidiaries and, if so, how it was implemented at subsidiary level. As result of the lack of information and cooperation of Chevron et al., the NCP was unable to establish whether Chevron et al. comply with paragraph 2 of the Taxation chapter.

Additionally, following the company's withdrawal of participation in the procedure, it was the NCP's assessment that, regarding the issues raised under the Disclosure chapter, Chevron et al. have not acted as could have been expected from them under step six of the due diligence process, as elaborated in the OECD Due Diligence Guidance for Responsible Business Conduct, i.e. to "*Provide for or cooperate in remediation when appropriate*", based on Chapter II General Policies, para A.10 of the Guidelines.

The NCP gave the enterprise four recommendations, which are the subject of the Follow-up and can be found in section three of this document.

Furthermore, taking into account the numerous policy developments at the national and the international level regarding the issues raised in the specific instance (see the findings at general level in section 6 of the Final Statement), the NCP considered it desirable that further guidance would be provided by the OECD on the meaning and application of the Disclosure and Taxation chapters, to better assist proper interpretation and implementation. The development of an (OECD) Tax Governance Code, addressing the ethics of responsible tax behaviour of enterprises, would be considered beneficial as well.

2. Procedure of the Follow-up

Standard procedure for a Follow-up is that the NCP initiates a Follow-up one year after the publication of a Final Statement. The purpose of such a Follow-up is for the NCP to assess, based on information provided by the parties, what follow-up actions were taken in relation to the results of

the dialogue and/or the recommendations made by the NCP. Usually this process is done in writing, however if parties prefer a meeting can be held.

In the case of the specific instance concerned, it was recommended in the Final Statement that a Follow-up will be conducted one year after the publication of the Final Statement. Due to the extensive workload of the NCP, the Follow-up procedure was delayed by a few months. Parties were duly informed of this delay.

The NCP initiated the Follow-up by contacting both parties with the request to give account of what follow-up actions were taken in relation to the NCP’s recommendations. The enterprise responded that it maintained its position to not participate in the NCP procedure. The notifying party provided written feedback. As none of the parties expressed the wish to hold a meeting, the procedure was continued in writing.

On the basis of the feedback received, the NCP drafted the Follow-up and shared the draft with both parties. The notifying party had no comment. The enterprise had no comment except to repeat the comments that it had previously made in response to the draft Final Statement. Afterwards, the NCP finalized the Follow-up and posted it on its website.

Date	Action that occurred
13 July 2023	NCP sent mails to both parties requesting information on what follow-up was given to the NCP’s recommendations. The deadline for responses was 15 September.
4 September 2023	NCP received response from the enterprise
14 September 2023	NCP received response from the notifying party
24 November 2023	Draft text sent to both parties for comments
6 December 2023	Response received from enterprise
11 December 2023	Response received from notifying party
18 December 2023	Publication of the Follow-up on the Final Statement

3. Outcomes of the Follow-up

As mentioned above, only the notifying party reported its findings in relation to the recommendations to the enterprise. The NCP conducted its own desk research.

Recommendation 1: “to aligns its conduct with paragraphs 1-3 of the Disclosure chapter, i.e. increase its transparency on material company information and policies, including economic activities and related tax payments per entity, per country”

The notifying party stated that the enterprise “has not increased transparency in relation to tax payments per entity or per country. This is best reflected by Chevron’s active resistance to publish Country-by-Country reports”.

Based on its own desk research, i.e. checking the enterprises' publicly and freely available sources, the NCP has not observed progress in the implementation of this recommendation.

Recommendation 2: "to cooperate with any legitimate remediation mechanisms including non-judicial state-based mechanisms such as the NCP procedure with a view to addressing and resolving the issues raised by impacted stakeholders and rights holders"

The notifying party "*could not identify any other instance of remediation procedures involving Chevron since the NCP procedure initiated by FNV. Chevron's lack of cooperation and delay tactics used throughout the NCP procedure best illustrate the lack of engagement of the company with legitimate remediation mechanisms. In addition, Chevron has taken no visible measure to address the issues raised by the FNV complaint.*"

The NCP notes that the enterprise still refuses to cooperate with the NCP, a legitimate remediation mechanism.

Recommendation 3: "to adapt its tax policy and related conduct where necessary in accordance with the latest developments and increasing worldwide consensus on responsible tax behaviour"

The notifying party reported that "*Chevron's [tax policy online document](#) has last been updated on March 2023. However, it is not possible to know what changes or improvements were made since the FNV complaint as the previous versions are not available online. The current tax policy of Chevron is quite broad and superficial, only presenting broad principles that are directly contradicted by the FNV complaint and the findings of the NCP. The document does not indicate any concrete move towards responsible tax behavior.*"

The NCP compared the updated document 'Chevron's approach to tax' to the previous version of 2021 but has not found substantial progress in the implementation of this recommendation. Illustrative in this regard is the negative result of the shareholders' vote on the resolution to provide more tax transparency mentioned below by the notifying party.

Recommendation 4: "to follow the best practice example of other multinational enterprises by e.g. publishing a Country-by-Country-Report of its tax payments"

The notifying party stated that "*Chevron does not publish Country-by-Country reports in any form. Chevron has not adopted the GRI Tax Standard. Chevron states in its current tax policy that "In every jurisdiction where we operate Chevron complies with the tax requirements, including disclosing tax payment information as required by local laws and regulations", which strongly indicated that Chevron does not intend to adopt voluntary transparency measures and limit its transparency to legal requirements in line with the letter of the law – not with its spirit, as indicated by the filers.*" Also it reported that "*In advance of the last annual Chevron meeting of shareholders (31 May 2023), Oxfam US presented the following [shareholder's resolution](#) for a vote: "Shareholders request that the Board of Directors issue a tax transparency report to shareholders, at reasonable expense and excluding confidential information, prepared in consideration of the indicators and guidelines set forth in the Global Reporting Initiative's (GRI) Tax Standard". The resolution was actively criticized by Chevron and defeated by shareholders, having received 14% of votes – see [Oxfam US reaction](#).*"

Based on the lack of progress concerning Recommendation 1 and Recommendation 3, in combination with the fact that the NCP has not been able to find a publicly available Country-by-

Country-Report, the NCP finds that the enterprise has not made any progress in the implementation of this recommendation.

4. Conclusion

Overall, the NCP concludes the enterprise has not followed up on the recommendations.

In the updated Guidelines, which came into force on 8 June 2023, the expectations concerning Disclosure and Taxation have been clarified and updated. Concerning Disclosure, enterprises should among other things: 1) disclose material information on capital structures and beneficial owners; 2) communicate responsible business conduct information as part of their responsibility to carry out due diligence, i.e. the enterprise's actual or potential adverse impacts on people, the environment and society; 3) be transparent towards the public in their operations and responsive to the public's increasingly sophisticated demands for information, in order to improve public understanding of the structure and activities of enterprises, their corporate policies and performance with respect to environmental, social and governance matters. (See Disclosure chapter, para 2-3, Commentary 30).

The enterprise has therefore still many steps to take in order to act in line with the updated Guidelines.

In relation to the NCP's assessment that further guidance by the OECD on the meaning and application of the Disclosure and Taxation chapters would be desirable, the NCP notes that the Guidelines in these two chapters have been updated and that several issues have been clarified concerning public disclosure. However, the expectations concerning public tax transparency still merits further addressing of and alignment with current developments and best practices. Therefore the NCP's wish for further guidance on this particular matter remains relevant.

Finally, the NCP regrets that the enterprise has not cooperated in the Follow-up and that the notifying party remains without the prospect of a satisfactory resolution of its issues.

The NCP would like to thank the notifying party for its cooperation in this follow-up procedure.

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](#)

Published by:

© National Contact Point OECD Guidelines
for Multinational Enterprises

Ministry of Foreign Affairs

P.O. Box 20061

2500 EB The Hague

The Netherlands

[NCP Website](#)