

COMMUNIQUE OF THE
ARGENTINE NATIONAL CONTACT POINT (ANCP)
for the OECD Guidelines for Multinational Enterprises
as closing of the specific instance “*ACIJ v. Ferrostaal Argentina S.A*”

**Buenos Aires, Argentina.
11 November 2016**

The functions of the Argentine National Contact Point (ANCP) are to promote the Guidelines for Multinational Enterprises of the Organization for Economic Co-operation and Development (OECD) and to contribute to the resolution of issues related to their implementation. The OECD Guidelines for Multinational Enterprises are recommendations issued by governments to multinational companies that operate in adhering countries or with headquarters in said countries. The Guidelines set forth voluntary principles and rules for responsible corporate conduct that is compatible with applicable legislations and internationally recognized rules.

The ANCP is the authority in charge of receiving claims involving non-compliance with or breach of the OECD Guidelines for Multinational Enterprises. The ANCP acts in compliance with its recently adopted Procedure Manual and within the framework of the abovementioned Guidelines.

Request for specific instance: ACIJ / Ferrostaal Argentina S.A.

Claimant

On 17 March 2011, Mr. Ezequiel Nino, in his capacity as attorney-in-fact for NGO *Asociación Civil por la Igualdad y la Justicia* (ACIJ), filed a request with ANCP arguing that the OECD Guidelines for Multinational Enterprises had allegedly been breached by Ferrostaal Argentina S.A., controlled by the MAN Ferrostaal AG Group, headquartered in Germany.

The object of the claim was related to the alleged criminal activity carried out by executives of said company, who allegedly bribed members of the Argentine military, public officers and lawyers, in order to secure the award of a contract for the design of sea patrol vessels.

In its request, Claimant asked that Ferrostaal Argentina S.A.:

- Recognize that the OECD Guidelines for Multinational Enterprises are in force;
- Explain its policy and the measures it implements to fight corruption, both internally and externally;
- Exhibit a collaborative attitude both before courts and in the context of the Specific Instance of ANCP;

- Explain its position in relation to the reported fact.

Proceedings:

In May 2011, following an analysis of the correspondence between the ANCP's argument, the documents submitted and the objectives proposed by OECD in the Guidelines, as well as the interest in the case, the ANCP declared the formal admissibility of it, since it considered that, *prima facie*, the complaint submitted by the ANCP complied with the formal requirements set forth in the OECD Guidelines for Multinational Enterprises. In this context, the ANCP offered its good offices to the parties in order to facilitate the dialogue process for them to reach an understanding that is beneficial to all parties involved.

After the Formal Admissibility of the case was admitted by ACIJ, the ANCP maintained individual contact with each party.

On 3 August 2011, the President of the Board of Ferrostaal Argentina S.A., through his lawyers, submitted a brief to the ANCP, requesting the end of the specific instance because of the following:

- Ferrostaal Argentina S.A. acknowledges that there is undeniably an ethical side to doing business. For this reason, the entire Ferrostaal Group attaches great importance to compliance with the OECD Guidelines for Multinational Enterprises, bearing in mind that, in essence, they are recommendations and, as such, they are not binding in a legal sense.
- The company has no duty to express its opinion with respect to the complaint, given that criminal court proceedings are still pending with respect to the facts under investigation, and that the ANCP has no power to investigate the possible commission of crimes.
- Ferrostaal Group and Ferrostaal Argentina S.A. have adopted preventive internal control measures and procedures in order to fight corruption. In this respect, a new Code of Conduct describing the principles and rules shared by the Ferrostaal Group, Ferrostaal Argentina S.A. and their directives and employees has been issued. He states that the Ferrostaal Group is aware of its corporate social responsibility and has allocated both human and material resources to the prevention of improper behaviour and to the investigation into suspicious events, as well as to take appropriate preventive and corrective action with respect to breaches of the Code of Conduct.

Conclusion:

The ANPC has duly considered the arguments of the two parties involved and has acted within the framework of the powers and functions vested upon it by the OECD Guidelines.

In this respect, the ANPC has attempted to bring the parties together in order to foster dialogue between them, with a view to complying with the role assigned to it under the

Guidelines -that is, the role to serve as a discussion forum for interested parties; however, no agreement was reached.

Based on the above paragraph and considering the time that has elapsed, as well as the lack of progress in the demarches undertaken for the two parties to sit at a dialogue table, the ANCP considers that it cannot continue effectively implementing its role of facilitator. Consequently, the ANCP should put an end to the proceedings of this specific instance.

It should be noted that the OECD Guidelines provide for the closing of the procedures of a specific stage when no agreement is reached by the parties or when either party is not willing to take part in the proceedings.

Nevertheless, the ANCP encourages the parties to consider finding a way to generate the conditions required to engage in dialogue and constructively work for the resolution of the issues in which they are involved.

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Ministry of Foreign Affairs, International Trade and Worship