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Appendix 1

MEMORANDUM

21 March 2017

## **Stora Enso Oyj and the OECD Guidelines for Multinational Enterprises complaint relating to Corbehem paper mill (France); Committee on Corporate Social Responsibility's view**

On 16 June 2016, the associations Association Génération Ferdinand Béghin and Syndicat CGT Arjowiggins Wizernes, representing the workers of Stora Enso Oyj's Corbehem paper mill in France have made, via their lawyer, a complaint to the Ministry of Economic Affairs and Employment relating to Stora Enso Oyj's procedure in the paper mill's closure process. The complaint is based on the OECD Guidelines for Multinational Enterprises. The complaint considers that Stora Enso Oyj has not complied with the recommendations of the OECD Guidelines outlined below.

This memorandum explains how the complaint is assessed, on the basis of the OECD Guidelines, in the Ministry of Economic Affairs and Employment, and in the Committee on Corporate Social Responsibility operating in connection with it. The memorandum also expresses the Committee's view on the complaint.

### **1. OECD Guidelines for Multinational Enterprises**

The OECD Guidelines for Multinational Enterprises, first adopted in 1976, include recommendations approved by 46 governments for multinational enterprises. The recommendations, updated in 2011, provide non-binding principles and standards for responsible business conduct in a global context consistent with applicable laws. Finland is committed to promoting compliance with the OECD Guidelines. The Guidelines are supported by National Contact Points (NCPs), established by adhering governments. These NCPs promote and implement the Guidelines.

Through a complaint concerning the Guidelines, a party seeks to clarify whether a multinational enterprise has acted in accordance with the Guidelines. In such cases, in Finland a complaint is handled by the Ministry of Economic Affairs and Employment together with the Committee on Corporate Social Responsibility as the NCP (Government Decree 591/2008). At the request of the Ministry, the Committee expresses its view on whether the enterprise has acted in accordance with the Guidelines.

In the case of complaints, the NCP also serves as a mediation and conciliation platform.

On 18 October 2016, a quad-partite sub-section of the Committee on Corporate Social Responsibility consisting of members of the Committee on Corporate Social Responsibility was established. The members of the sub-section are, as individual members, representatives of the Ministry of Economic Affairs and Employment, the Ministry for Foreign Affairs, the Confederation of Finnish Industries EK, the Central Organisation of Finnish Trade Unions SAK and the Finnish Association for Nature Conservation.

### **2. Background to the complaint**

Representatives of the workers of Corbehem paper mill would like to present to Stora Enso Oyj a business plan concerning the takeover of the paper mill. The workers intend to establish a cooperative to continue operations. The workers propose a pur-

chase price of one euro. Stora Enso Oyj has refused, however, to negotiate a sale with the workers. For this reason, the complaint considers that Stora Enso Oyj has violated Article 6 of Chapter V (Employment and Industrial Relations) of the OECD Guidelines. The said article is as follows:

[Enterprises should, within the framework of applicable law, regulations and prevailing labour relations and employment practices and applicable international labour standards:] in considering changes in their operations which would have major employment effects, in particular in the case of the closure of an entity involving collective lay-offs or dismissals, provide reasonable notice of such changes to representatives of the workers in their employment and their organisations, and, where appropriate, to the relevant governmental authorities, and cooperate with the worker representatives and appropriate governmental authorities so as to mitigate to the maximum extent practicable adverse effects. In light of the specific circumstances of each case, it would be appropriate if management were able to give such notice prior to the final decision being taken. Other means may also be employed to provide meaningful cooperation to mitigate the effects of such decisions.

The objective of the complaint is the successful negotiation of the takeover of the paper mill (including the mill's operations and machinery). The complaint requests that Finland's NCP initiate a conciliation procedure for sales negotiations.

According to the complaint, Stora Enso Oyj has refused to cooperate with parties representing the workers and with the authorities. The complainant also criticises the fact that Stora Enso Oyj has not accepted purchase offers presented for the paper mill. According to the complainant, Stora Enso Oyj, through its actions, has had a negative impact on the economic, social and environmental development of the Corbehem region and has had a negative impact of the regional economy. Accordingly, the complainant considers that Stora Enso has also violated Chapter II General Policies, Paragraphs A1, A11 and A12 of the OECD Guidelines. The said recommendations are as follows:

Paragraph A1 of the Guidelines' General Policies, according to which enterprises should contribute to economic, environmental and social progress with a view to achieving sustainable development.

Paragraph A11 of the Guidelines' General Policies, according to which enterprises should avoid causing or contributing to adverse impacts on matters covered by the Guidelines, through their own activities, and address such impacts when they occur.

Paragraph A12 of the Guidelines' General Policies, according to which enterprises should seek to prevent or mitigate an adverse impact where they have not contributed to that impact, when the impact is nevertheless directly linked to their operations, products or services by a business relationship.

All in all, the complainant considers that Stora Enso Oyj, in preventing the entry of new actors into the market, has shown its unwillingness to act in accordance with the General Policies of the Guidelines.

In its reply, submitted to the NCP on 15 September 2016, Stora Enso Oyj states that the closure of the paper mill was due to a decline in demand for the type of paper produced by the mill. Depending on the geographical area, sales of printed product paper have declined by 20-30 per cent in recent years. The mill's fixed costs were also the highest of Stora Enso's units. In 2004-12, Stora Enso Oyj invested in the mill's envi-

ronmental efficiency and machinery. A cost-reduction programme was launched at the mill in 2011. The investments and cost reductions did not, however, produce positive results.

In 2012, Stora Enso Oyj initiated studies on the possible sale of the mill. In these studies, more than 300 potential buyers were contacted in France and other countries. Although a few potential buyers indicated their interest, they ultimately did not, according to Stora Enso Oyj, wish to proceed further in the negotiations. In 2013, Stora Enso Oyj initiated a social protection programme, but was still ready to receive offers for the mill. After the announcement of the programme, three parties expressed their interest, but negotiations with them did not succeed for various reasons.

In January 2014, Stora Enso Oyj launched a workers' information and consultation process with the Corbehem work council about the possible final closure of the paper mill. At that time, the company also informed the local authorities about the situation. In May 2014, Stora Enso Oyj signed with the workers' unions a social plan on support measures and compensation for workers. According to Stora Enso Oyj, both the workers' representatives and the French labour authorities have accepted the plan in full. Stora Enso Oyj considers that through its comprehensive social plan, which exceeds the requirements of French legislation, it has also fulfilled the requirements of the OECD Guidelines.

Redundancies at the mill began in September 2014 and are still continuing. The paper machine is being sold to a suitable investor. In March 2016, Stora Enso Oyj notified the local authorities, in accordance with French law, about the closure of the mill. According to Stora Enso Oyj, Association Génération Ferdinand Béghin notified Stora Enso of its interest only in 2016, without a detailed business plan. Stora Enso Oyj is surprised as to why the workers expressed their desire to buy the mill's operations only after the closure decision. Now, according to Stora Enso Oyj, the closure of the mill is already so far advanced that it is no longer possible to negotiate a sale. To justify its position, Stora Enso Oyj highlights the following aspects:

- the paper mill's paper machine 5 was stopped in January 2014 for safety reasons and the mill is not operating;
- the paper mill no longer has an operating permit granted by the authorities;
- use of the paper machine that stopped over two years ago would be dangerous for the workers and would in any case require significant investment;
- the company had no other option than to close the paper mill finally in accordance with current legislation. The authorities were immediately informed of this decision;
- after the closure decision, the company has initiated a number of measures to implement the final closure of the paper mill, for example by informing the authorities and dismantling the paper machine.

On 10 November 2016, Stora Enso Oyj announced that a binding agreement has been made with a foreign investor on the sale of paper machine 5, and that the paper machine is being dismantled. Dismantling and shipping will take several weeks.

Stora Enso Oyj does not want to participate in the conciliation procedure offered by the NCP that has been proposed in the complaint.

Stora Enso Oyj has stated that the reply given to the NCP contains confidential information, which should be taken into account in the disclosure of information.

### **3. Initial assessment and admissibility of the complaint**

In accordance with the OECD Guidelines, it is resolved in the first stage whether a complaint merits further examination and whether the complaint is admissible (Initial Assessment). The admissibility of the complaint does not mean that the complaint is

accepted. If it is decided that the complaint is admissible, the consideration of the complaint is continued for the preparation of a Final Statement.

The sub-section of the Committee on Corporate Social Responsibility considered the complaint in its meeting held on 8 November 2016. The sub-section assessed the complaint on the basis of Paragraph 25<sup>1</sup> of the procedural guidance of the OECD Guidelines. The sub-section found that the complaint cannot be regarded as manifestly unsubstantiated, and decided to admit the complaint for more detailed consideration and examination on the following grounds.

Stora Enso Oyj is a Finnish international company, to which the complaint is directed. The complaint concerns Stora Enso Holding France SAS, Stora Enso's French holding company, which belongs to the Stora Enso Oyj Group and which is the only shareholder of the company Stora Enso Corbehem SAS, which owns the Corbehem paper mill. The Finnish National Contact Point is competent to consider the complaint. The French National Contact Point has been informed of the complaint and has agreed on coordination in the manner required by the OECD Guidelines.

The workers' associations behind the complaint wish by means of the complaint to safeguard jobs and promote the economic development of the region. The complainants have an interest in making the complaint concerning the continuation of the paper mill's operations.

The complaint is material, particularly with respect to the application of the OECD Guidelines' Employment and Industrial Relations Chapter V Article 6, which concerns cooperation between the company and the workers. The article in question is one of the key recommendations of the OECD Guidelines.

The complaint is therefore material from the perspective of the OECD Guidelines, and the making of the complaint is not manifestly unsubstantiated as far as the workers' associations are concerned.

There would appear to be a link between Stora Enso Oyj's actions and the case that has been raised.

A similar case has been considered in the French NCP in 2014. That case involved the consideration of a purchase offer by workers concerning the Docelles paper mill, owned by UPM Kymmene, with respect to the application of the OECD Guidelines. On 25 February 2015, the French NCP found that UPM Kymmene had not acted fully in accordance with the OECD Guidelines, on the grounds, among other things, that the company had refused to conciliate and cooperate with the workers.

More detailed consideration of the complaint would serve the purpose and effective application of the OECD Guidelines with respect to the recommendations of the Guidelines referred to in the complaint concerning the cooperation of the company and the workers in the event of changes in business activity. The Finnish NCP will investigate whether Stora Enso Oyj's procedure has been in accordance with the OECD Guidelines.

As Stora Enso Oyj has refused a meeting with the complainants and an opportunity for conciliation offered by the Ministry of Economic Affairs and Employment, it has not been possible to initiate the conciliation procedure referred to by the OECD Guidelines.

The parties concerned as well as the French NCP have been informed about the admissibility of the complaint.

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<sup>1</sup> OECD Guidelines for Multinational Enterprises, p. 82–83, <http://www.oecd.org/corporate/mne/48004323.pdf>.

Next, the handling of the case will continue through more detailed consideration of the submissions made by the parties.

#### **4. Assessment of the case**

With respect to the Final Statement, the key recommendation of the OECD Guidelines is the requirement included in Chapter V Article 6 that the company should cooperate with the worker representatives and appropriate governmental authorities so as to mitigate to the maximum extent practicable adverse effects. This recommendation is very general, and it is not apparent in more detail from its justifications what is required of cooperation.

Stora Enso Oyj has notified in advance and in good time the workers and the authorities about the future changes in the manner required by French legislation. Stora Enso Oyj states that it tried purposefully for a number of years to find a party to continue the operations. The complainant, on the other hand, has called into question the genuineness of these efforts and the company's willingness to sell the paper mill. It is undisputed, however, that a significant social plan to mitigate the adverse effects of the closure of the paper mill has been approved together with the workers and the French authorities. Stora Enso Oyj has therefore acted in cooperation with the workers and the authorities.

With respect to the Final Statement, an essential question is whether Stora Enso Oyj should have, in addition to correspondence, met the workers' representatives further and negotiated the purchase offer made by them in spring 2016 in a situation in which the paper mill's operations had already, to a large extent, been run down. It seems, however, that the workers have made their purchase offer too late. The workers' negotiation proposal should clearly have been made to the company earlier in order to enable further meaningful negotiations on the matter to take place. In any case, now that the paper machine in question has been sold, nothing can be done to influence the situation.

#### **5. Committee's view**

In its meeting held on 21 March 2017 the Committee on Corporate Social Responsibility considered a proposal for a Final Statement made by the sub-section of the Committee on 24 January 2017, and decided on the following view.

The opportunities for the National Contact Point to investigate the case have been limited, because the complainant, despite repeated requests by both Finnish and French NCPs, has not responded to Stora Enso Oyj's reply, but has remained passive in the case. It is also unclear whether the complaint has been made so late that the purchase offer made by the complainant would no longer be at all viable. One of the grounds for the complaint is that Stora Enso Oyj has not agreed to meet the complainant and given it an opportunity to make a more detailed presentation of its offer and business plan. In its reply, Stora Enso Oyj has, however, stated it responded to the complainant in writing and highlighted the situation of the paper mill's closure and the sales process involving its machinery.

As Stora Enso Oyj has refused a meeting with the complainants and an opportunity for conciliation offered by the Ministry of Economic Affairs and Employment, the National Contact Point is unable to implement the negotiating meeting desired by the complainant to present a business plan to Stora Enso Oyj.

The obligation to cooperate set for a company in the OECD Guidelines is defined as broad and general. When discontinuing operations, a company should work in cooperation with workers' representatives to mitigate adverse effects as much as possi-

ble. Stora Enso Oyj's procedure would also have been more in accordance with the wording of the OECD Guidelines and its previous application practice if the complainant's offer and request for discussion would have been answered in a more cooperative manner.

Stora Enso Oyj has, on the other hand, express its regret that its sales efforts had not produced results, and in its reply has stated that closure measures at the paper mill had, when the purchase offer arrived, advanced so far that discussion of the business plan and the offer were no longer viable. As the complainant has not exercised the opportunity offered to it to respond to Stora Enso Oyj's reply, the National Contact Point does not consider it appropriate to continue more detailed assessment of the case.