



Unofficial translation
Final Statement

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Pöyry Plc and the Xayaburi hydropower project in the Lao PDR; OECD's guidelines for multinational enterprises; statement of the national contact point

The OECD's guidelines for multinational enterprises comprise recommendations issued by states to multinational enterprises. The recommendations consist of principles and norms of responsibility, based on voluntary action, and of the application of law to international business. Finland is committed to promoting compliance with the OECD's guidelines. The guidelines are supported by national contact points, established by governments of OECD member countries, which inform relevant parties of the guidelines and apply them in practice. The contact points also serve as a liaison and offer a forum for the settlement of disputes with regard to the application of the guidelines in individual cases.

The application of the guidelines to an individual case refers to a situation in which some party wishes to find out whether a specific multinational company has acted in compliance with the instructions. The contact point in Finland is the Ministry of Employment and the Economy, acting in collaboration with the Committee on Social and Corporate Responsibility under the ministry. At the request of the Ministry of Employment and the Economy, the Committee on Social and Corporate Responsibility will provide its opinion on whether the company in question has acted in compliance with the instructions.

On 11 June 2012, the Siemenpuu Foundation, Friends of the Earth Finland, and 13 other NGOs filed a complaint to the Ministry of Employment and the Economy regarding the actions of Pöyry and its Swiss subsidiary Pöyry Energy AG in the Xayaburi hydropower project in the Lao PDR. Pöyry issued a response to the complaint on 30 July 2012 and indicated that the response included confidential information with regard to the business relationship between Pöyry and its client, and that it should therefore be kept secret. On 16 October 2012, after the Committee on Social and Corporate Responsibility had given its opinion, the Ministry of Employment and the Economy decided to investigate the complaint. At the same time, the parties were offered the opportunity to reconcile their differences. The parties did not take advantage of this opportunity, however, due to the negative stance of Pöyry. The parties were heard at the Committee's meeting on 17 December 2012, with the NGOs being heard again on 3 April 2013. The Ministry of the Environment issued its statement on the complaint on 10 January 2013. The Ministry for Foreign Affairs issued its statement on 28 June 2013. Pöyry commented on these statements on 15 February 2013. The complainants also issued comments on the ministries' statements, on 16 April 2013.

1. Background

In May 2011, the Lao PDR government commissioned Pöyry Energy AG, the Swiss subsidiary of the Finnish consulting company Pöyry, to assess whether Xayaburi Power Company's plans to construct a dam in Laos were in compliance with the recommendations issued by the Mekong River Commission and whether the Lao PDR government and the power company had taken the comments submitted by the Mekong River Commission's member states (Laos, Thailand, Cambodia, and Vietnam) into consideration. The report by Pöyry was published in August 2011. The

Finnish state has supported the drafting of the Mekong River Commission's Strategic Environment Assessment report for 2010, for example.

According to Pöyry's statement, the company was commissioned in 2011 by the Lao PDR Government as a technical consultant, to report on the following:

- Had Xayaburi Power Company Limited (the owner of the plant) followed the design guidelines issued by the Mekong River Commission (MRC)?
- Had the Government of Laos and the owner taken account of the comments submitted by MRC member countries during the preliminary prior consultation process?
- Had the Government of Laos and the owner complied with the Prior Consultation Project Review Report on the Xayaburi Project, dated 24 March 2011?
- Questions and potential ambiguities, conflicts, and required changes related to the comments submitted by riparian countries.

Pöyry's report was based on third-party studies and reports delivered to Pöyry by the Government of Laos. The report highlighted some areas in which the project was not fully compliant with MRC's design guidelines, and proposed measures for rendering the project compliant with these guidelines and improving its technical design. Once the design modifications recommended by Pöyry as a result of its technical review have been implemented, the project will make use of the latest technical expertise in river hydropower plants (e.g. sediment flow, fish migration, ship locks). The Government of Laos and the developer, Xayaburi Power Company, have confirmed that the recommendations made by Pöyry will be included in the project's design. The implementation of these recommendations will cause approximately USD 100 million in additional expenses.

Pöyry emphasises that it has not been a decision-maker in the project, nor does it promote or oppose the project. Rather, the role of Pöyry has been to produce additional information for the client as an independent consultant. The services provided by Pöyry have not concerned the design or the assessment of environmental or social impacts, consisting merely of reviewing designs and documents drawn up by others.

The Lao PDR started the construction of the dam in November 2012, at which time Pöyry and the Government of Laos agreed that Pöyry would act as a consultant to the government during the hydropower project's construction stage in the Lao PDR. Pöyry's services will be implemented during the eight-year construction period, until the plant's inauguration in 2019.

2. The Specific Instance submitted

According to the Specific Instance submitted, Pöyry should have contacted the Mekong River Commission before commencing work, in order to determine the commitments made by the Lao PDR by virtue of the 1995 Mekong Agreement. According to the Specific Instance submitted, it was also contrary to the general policies of the OECD Guidelines that the consulting services were provided, although it was known that the member states of the Mekong River Commission had not reached regional agreement on the matter. According to the NGOs, Pöyry consciously became involved in a situation in which the Xayaburi project and its consultation process had become a regional dispute, and in which Pöyry's services would be used to facilitate the project's progress. The complainants state that Pöyry's review and services have been repeatedly used as a key justification for having funders and authorities in the region approve going forward with the project.

According to the response issued by Pöyry on 30 July 2012, neither the Mekong Agreement nor the OECD Guidelines require service providers to obtain the authorisation of a third party before signing a consultation agreement. Pursuant to the Mekong Agreement, even the commissioner of the work, the Government of Laos, did not have this obligation. As an independent expert and according to its commission and operational guidelines, Pöyry did not have the obligation, or even the opportunity, to conduct a preliminary prior consultation.

Furthermore, the Specific Instance submitted states that Pöyry has violated the guidelines' recommendation on sustainable development and several other environmental recommendations, and has demonstrated a lack of due diligence as referred to in the chapters on general policies and human rights in the guidelines. The following sections deal separately with each of these claims.

2.1 General Policies

According to the Specific Instance submitted, Pöyry has firstly violated the following sections of the General Policies of the OECD Guidelines

- A.1: Enterprises should contribute to economic, environmental and social progress with a view to achieving sustainable development, and
- A.11: 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.

According to the Specific Instance submitted, it is particularly adverse to sustainable development that the dam project has proceeded despite significant risks to the environment and human rights, and even though no consensus had been reached in the region regarding the project.

Pöyry denies these allegations, referring to Section 14 of the Commentary on General Policies, in which it is stated that enterprises should address the adverse impacts created by their own operations or directly related to the enterprise's operations, products, or services through a business relationship. According to Pöyry, there is no direct connection between the project's potential impacts and the services provided by Pöyry. Pöyry has functioned as an independent technical inspector with regard to certain issues. Pöyry has nevertheless proposed several improvements to the project.

According to the Specific Instance submitted, Pöyry has also violated the following section of the General Policies of the OECD Guidelines

- A.12: 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. This is not intended to shift responsibility from the entity causing an adverse impact to the enterprise with which it has a business relationship.

According to the Specific Instance submitted, Pöyry has not complied with this recommendation of the Guidelines, since it has not, in its report, presented appropriate measures to prevent adverse impacts or highlighted the deficiencies in the assessment of environmental impacts, nor has it contacted stakeholder groups. Furthermore, it is stated in the Specific Instance submitted that Pöyry entered a conflict situation that had arisen between states during the consultation process, and Pöyry's services and good reputation were used to rapidly promote the project, without conducting an adequate assessment of impacts or consulting stakeholder groups.

Pöyry has denied these allegations as well, stating that, through its report, Pöyry has sought to mitigate adverse impacts by presenting several proposed improvements to issues such as fish migration. Another company specialising in hydropower (Compagnie Nationale du Rhône, CNR) has conducted a partial evaluation of the quality of Pöyry's report and the recommendations presented therein. This report, completed in March 2012, proposes additional improvements to the project, some of which should be made during the planning phase of the project. Similarly to Pöyry, CNR also estimates that additional investigations may be performed and solutions developed during the construction phase. Based on Pöyry's report, the dam's developer has increased the project's budget by USD 100 million, and these additional funds will be used to improve the migration opportunities of fish stock, among other things, in accordance with the recommendations presented by Pöyry and CNR. Pöyry emphasises that it has only functioned as a technical expert with regard to certain requirements of the dam project, and that it is not the Guidelines' intention to shift the investor's responsibility to consulting companies, or to limit freedom of contract.

The NGOs have highlighted the fact that, in its peer review, CNR concentrated mostly on questions of sedimentation, and did not address the fish stock or its migration at all, so CNR did not validate the work of Pöyry in its entirety.

With regard to hearing stakeholder groups, Pöyry emphasises that this was and is the responsibility of the dam's developer, and that it is the explicitly stated intention of the Guidelines not to shift to the consulting company such obligations of the client that a business partner cannot influence.

Regarding the allegation of shortcomings in the assessment of environmental impacts, Pöyry states that its tasks did not include such assessment and that, in its report, it presented significant technical improvements to matters such as fish migration and brought forward studies and models that could be used in decision-making.

According to the Specific Instance submitted, Pöyry had encouraged the Lao PDR to violate the Mekong Agreement, thus violating the following section of the General Policies:

- A.13: Enterprises should, in addition to addressing adverse impacts in relation to matters covered by the Guidelines, encourage, where practicable, business partners, including suppliers and sub-contractors, to apply principles of responsible business conduct compatible with the Guidelines.

It is stated in the Specific Instance that this encouragement of the Lao PDR violates all sections of the Guidelines pointed out in the Specific Instance.

Pöyry refutes these claims, stating that, in its report, it has recommended the use of the best hydropower technology available with regard to matters such as sediment flows and fish passes, within the framework of several systems.

According to the Specific Instance submitted, Pöyry has also violated the following section of the OECD Guidelines:

- A. 14: Enterprises should engage with relevant stakeholders in order to provide meaningful opportunities for their views to be taken into account in relation to planning and decision making for projects or other activities that may significantly impact local communities.

The Specific Instance submitted points out that Pöyry violated section A.14 of the Guidelines in not notifying the Mekong River Commission of its commission or exhorting the Lao PDR to continue the consultation process, which the MRC officially considered still to be in process in the view of the NGOs.

The complainants also refer to section 2b of the Guidelines' environmental recommendations, according to which enterprises should "engage in adequate and timely communication and consultation with the communities directly affected by the environmental, health, and safety policies of the enterprise and by their implementation". In this regard, Pöyry has pointed out that, according to the preamble to section 2, enterprises should comply with section 2b, taking into account concerns about cost, business confidentiality, and the protection of intellectual property rights.

Pöyry emphasises that hearing stakeholder groups and informing the Mekong River Commission was and is the duty of the dam project's owner, the Lao PDR. Pöyry has acted as a consultant in the project, and these duties have not been included in its tasks. According to the Guidelines, these obligations cannot be transferred to a business partner of the project's owner, and Pöyry would have violated its agreement with the client and breached confidentiality by proceeding in this manner. However, Pöyry has presented the project to stakeholder groups on several occasions, at the request of the Lao PDR.

With regard to continuing the consultation process, Pöyry has pointed out that the process had already been completed when Pöyry agreed to take on the commission and that, in its report, Pöyry recommended involving other countries in conducting further studies. In any case, deciding on the consultation process was the responsibility of the project's owner, and this responsibility cannot be transferred to consulting companies, according to the Guidelines.

According to the Specific Instance submitted, Pöyry should have been aware of its prestige and the leverage it afforded. The Lao PDR has used Pöyry's prestige and experience to justify the implementation of the project. In this regard, Pöyry states that its report is objective and neutral, which has also been verified by a third party, the Compagnie Nationale du Rhône. In no case would Pöyry have wished to risk its leading and neutral reputation in the industry.

2.2 Human rights

According to the Specific Instance submitted, Pöyry has also violated the recommendations regarding human rights, presented in Chapter IV of the Guidelines

- States have the duty to protect human rights. Enterprises should, within the framework of internationally recognised human rights, respect the international human rights obligations of

the countries in which they operate, as well as relevant domestic laws and regulations, section 2: Within the context of their own activities, avoid causing or contributing to adverse human rights impacts and address such impacts when they occur, section 3: Seek ways to prevent or mitigate adverse human rights impacts that are directly linked to their business operations, products, or services by a business relationship, even if they do not contribute to those impacts.

In the complainants' view, Pöyry has violated the above-mentioned section 2, since its report did not sufficiently describe the project's impacts on people and social conditions. Pöyry has stated that these impacts have not been specified in any detail in the complaint and denies the allegation as unfounded. Pöyry also reiterated the nature of its commission – the review of certain technical details. According to Pöyry, the report's quality has also been verified by a third-party expert (CNR).

The NGOs stress that Pöyry should have influenced the Government of Laos or, if this would not have been possible, should not have signed the agreement. According to the complainants, Pöyry is responsible for the human rights violations only indirectly, but has had an impact as a result of, for example, deficient impact assessments.

The Specific Instance submitted states that Pöyry has violated the above-mentioned section 3 of the chapter on human rights, by encouraging the Government of Laos to push forward with the dam project, using untested and inadequate procedures requiring further study. Pöyry refutes this and considers that the complainants referred to the proposed systems for fish passes and sediment flows. In the view of Pöyry, this is a scientific disagreement between the complainants on the one hand and Pöyry and Compagnie Nationale du Rhône, which have recommended the use of the best technology available, on the other. Pöyry has proposed several improvements, which have been included in the project design and can be implemented during construction. The long construction period will also provide an opportunity to modify and revise the plans. In the view of Pöyry, the allegations of violating the Guidelines' human rights recommendations are unfounded.

2.3 The environment

According to the Specific Instance submitted, Pöyry has violated section 4 of Chapter VI

- of the Guidelines: Enterprises should, consistent with the scientific and technical understanding of the risks, where there are threats of serious damage to the environment, taking also into account human health and safety, not use the lack of full scientific certainty as a reason for postponing cost-effective measures to prevent or minimise such damage, as well as
- section 6: Enterprises should continually seek to improve corporate environmental performance, at the level of the enterprise and, where appropriate, of its supply chain, by encouraging such activities as: ...b) development and provision of products or services that have no undue environmental impacts; are safe in their intended use; reduce greenhouse gas emissions; are efficient in their consumption of energy and natural resources; can be reused, recycled, or disposed of safely; c) promoting higher levels of awareness among customers of the environmental implications of using the products and services of the enterprise, including, by providing accurate information on their products (for example, on greenhouse gas emissions, biodiversity, resource efficiency, or other environmental issues); and
- section 8: Enterprises should contribute to the development of environmentally meaningful and economically efficient public policy, for example, by means of partnerships or initiatives that will enhance environmental awareness and protection.

According to the Specific Instance submitted, Pöyry has violated the above-mentioned section 4 of the environmental chapter by not presenting all background information in its report before the start of construction. Pöyry has denied this allegation, stating that it is explicitly stated under section 4 that enterprises should not use the lack of full scientific certainty as a reason to postpone cost-effective measures to prevent or minimise environmental damage when there is a threat of serious damage to the environment on the basis of a scientific and technical understanding of the risks. This section does not require the issuing of the public statement referred to in the Specific Instance. Issuing a public statement would also have constituted a breach of the obligation to secrecy included in the contract for Pöyry's commission. Confidentiality is further stressed in section 2 of the environmental chapter. Furthermore, Pöyry states that, in its report, it has proposed significant improvements for the prevention of environmental damage, to be implemented before the project is realised.

According to the Specific Instance submitted, Pöyry has acted against the recommendations presented in section 6 of the environmental chapter, since it has not admitted that it lacks the appropriate technical solutions required for the dam's construction. Neither has Pöyry exhorted its business partners and customers to develop better solutions for damming the Mekong River or producing energy, nor has it produced appropriate public information on the environmental and social impacts of the dam, such as those related to fish migration. According to the Specific Instance submitted, Pöyry has indirectly participated in withholding information from stakeholder groups.

Pöyry refutes the allegations pertaining to section 6, emphasising that it has presented several improvement proposals in its report, increasing its client's awareness of environmental impacts. The project will also significantly reduce greenhouse gas emissions in the Lao PDR and Thailand. The obligation to produce public information has rested with the project's owner. Pöyry's contract stipulates an obligation to secrecy, and compliance with such obligations is stressed in the Guidelines. Pöyry has nevertheless assisted the Government of Laos in communications regarding the project.

With regard to the recommendations of section 8 of the environmental chapter, Pöyry refers to sections 71 and 72 of the Commentary on the Environment in the Guidelines, by virtue of which the recommendations do not apply to Pöyry, as it does not have a permanent office in the Lao PDR. In any case, Pöyry has increased the awareness of the Government of Laos by presenting several proposals for improvements and drawing up the report before the final decision on the project's implementation was made.

2.4 Other claims

The NGOs point out that the national contact point may issue recommendations on how Pöyry should act to demonstrate responsibility.

According to the Specific Instance submitted, with its actions, Pöyry has undermined some of Finland's development policies and targets, and has thus led to a waste of public funding. Pöyry denies this allegation, referring to its global expertise in dam projects of this nature. According to Pöyry's view, the recommendations and conclusions presented by Pöyry have also been verified by a third party. In addition, Pöyry's actions have been fully compliant with the Guidelines.

The Specific Instance submitted also requests the national contact point to take three measures:

- to rectify Pöyry's behaviour, mitigate the damage already caused, and prevent further damage through public statements issued by Pöyry, together with stakeholder groups;
- to order Pöyry to compensate the State of Finland for the damages caused;
- to limit Pöyry's participation in other projects in the Mekong region.

Pöyry states that the national contact point is not a court of law and considers, with regard to the claims made above, that the alleged damages have not been specified, and there is no need to take mitigating action, as the Guidelines have been complied with and no damages have been caused to the State of Finland or other parties. Indemnity cases do not fall under the scope of the national contact point's duties. In addition, cooperation with stakeholder groups is the responsibility of the project's owner, not Pöyry. Pöyry is bound by the obligation to secrecy specified in the contract it has signed, so Pöyry cannot issue public statements or disclose details of its commission to third parties. The improvements proposed by Pöyry have improved the design of the dam project and prevented adverse impacts. There is no doubt that Pöyry will continue to act in this manner in the future, but it is not the national contact point's task to issue recommendations regarding future projects.

Several additional claims are made against Pöyry in the Specific Instance. A number of ways for Pöyry to mitigate the damage it has caused and will cause are proposed. According to the complainants, the national contact point could promote the implementation of these measures through dialogue with Pöyry.

The Specific Instance submitted demands that Pöyry issue a public statement regarding the deficiencies in the dam project and further studies required before construction work can be started, and to publicly state that it accepts the Strategic Environmental Assessment (SEA) carried out by the Mekong River Commission. Pöyry refutes these claims as being in contradiction with the Guidelines, referring to the obligation to secrecy specified in its commission contract, which pro-

hibits it from issuing public statements, and to the fact that, according to the Guidelines, the developer's responsibilities cannot be shifted to a consulting company. That Pöyry has presented the project in different connections at the developer's request is an entirely unrelated issue. As a neutral consulting company, Pöyry cannot be a party to the disputes between the Mekong states.

The Specific Instance submitted further demands that Pöyry should engage in an appropriate dialogue with stakeholder groups on the types of consultation that responsible companies can undertake regarding hydropower projects in the Mekong region. In the view of the NGOs, this is a question of public debate regarding the roles and responsibilities of consulting companies.

Pöyry states that it has acted in compliance with the Guidelines when drawing up its report, and that consulting companies cannot enter into a dialogue with third parties without a commission and authorisation from their customers; as a rule, such dialogue is one of the tasks of the investor.

According to the Specific Instance submitted, Pöyry should pledge not to undertake other dam projects in the Mekong region. Pöyry refutes this demand as being in contradiction with the Guidelines, considering that it is not the task of the national contact point to comment on what types of projects consulting companies may take part in.

In the Specific Instance submitted, it is also demanded that Pöyry issue guarantees or start a fund to cover the damages caused by the dam's construction. In the view of Pöyry, the demand regarding damages caused is not specific and is in contradiction to the Guidelines, and Pöyry has not caused any damage to any parties. The demand is thus unfounded. It is an entirely different matter that, in its report, Pöyry has proposed, in accordance with international standards and national legislation, that the dam's developer approve a plan on compensating damages caused to persons who have suffered a loss of income or had to move from their homes.

Finally, the Specific Instance demands that Pöyry should compensate the State of Finland for the costs it has incurred in supporting the Mekong River Commission and drawing up the Strategic Environmental Assessment (SEA). Pöyry refutes these demands as contrary to the Guidelines and Finnish legislation, considering that no damages have been caused to the State of Finland and that resolving such demands does not fall under the competence of the national contact point.

3. Statements

3.1 Statement of the Ministry of the Environment

In its statement issued on 10 January 2013, the Ministry of the Environment stated that the Specific Instance includes well-supported observations. In the opinion of the Ministry of the Environment, the directive's scope of application is not limited to situations in which a company has permanent offices in the state in which the effects of its operations are felt. According to the Ministry of the Environment, the directives must be applied as extensively as possible.

The Ministry of the Environment points out that, according to OECD's Guidelines, enterprises should strive to prevent adverse impacts that they have not caused, but which nevertheless have a direct connection to their operations through a business relationship. In the view of the Ministry, Pöyry has had the opportunity to influence the content and schedule of the dam project, through its commission. Matters such as the effects of changes to the river's flow on the movement of sediments and safeguarding the migration of fish stocks through the dam area remain unclear. In its report, Pöyry states that additional information can be acquired and changes made while the dam project is in progress.

The Ministry of the Environment is of the opinion that Pöyry should have been aware of its prestige as one of the world's leading experts in hydropower and, accordingly, attempted to exert influence over the schedule and content of the dam project in a manner ensuring that dam construction would not commence before all necessary additional studies had been carried out. The Ministry of the Environment considers this issue an especially significant one on account of the fact that the dam project has been assessed as having a significant impact on local communities (e.g. on fish stocks, sediment movement, occurrence of floods, erosion, the river's ecosystem services, biodiversity, and housing) in Laos and in other MRC member states. In the view of the Ministry of the Environment, it is not quite clear, from the material presented, that Pöyry has done

everything in its power to promote addressing the above-mentioned issues. In order to comply with the Guidelines, a company should, in the opinion of the Ministry of the Environment, even restrict its freedom to agree on the content or duration of a business relationship, in some cases.

The Ministry also requests Pöyry to provide an additional report on how the company has heard local communities in Laos and other countries in the Mekong region. Considering the dam project's estimated effects on local communities in Laos and the other member states, transparency and consultation with the interest groups would have been of heightened importance in this project.

3.2 Pöyry's response to the statement of the Ministry of the Environment

In its response, submitted on 15 February 2013, Pöyry states that it has not been in a position to make decisions regarding the project; rather, Pöyry has reviewed the design prepared by ÅF Colenco as an independent technical expert. Pöyry refers to section A. 14 of the Guidelines' General Policies. Pöyry has made numerous recommendations for improvements, based on which the project budget has been increased by USD 100 million. The measures recommended by Pöyry have significantly mitigated the project's adverse environmental and social effects, which has been verified by the independent assessment of Compagnie Nationale du Rhône. Even though there may be a scientific disagreement on whether studies may be carried out during the project's construction phase, this does not mean that Pöyry has acted contrary to the Guidelines. With regard to the project's schedule, Pöyry has made an objective assessment on what additional information can be acquired after the start of construction.

With regard to hearing local communities, Pöyry emphasises that it has not been a designer or decision-maker in the project. Hearing stakeholder groups has been the responsibility of the Government of Laos. The Guidelines explicitly state that it is not the intention to shift responsibility from the entity causing an adverse impact to the enterprise with which it has a business relationship. Pöyry is bound by the confidentiality obligations specified in its agreement with the Government of Laos. However, Pöyry has, at the request of the Government of Laos, participated in seminars where stakeholder groups have been informed of the project. Furthermore, Pöyry has advised the Government of Laos to inform the Mekong River Commission's Secretariat, which has been done.

3.3 Statement of the Ministry for Foreign Affairs

According to the statement submitted by the Ministry for Foreign Affairs on 28 January 2013, countries may have contradictory interpretations of the cooperation agreement between the Mekong River states. The parties have diverging views as to the phase in which the consultation process related to the Xayaburi dam project currently is, and what should happen after this process. The question of whether the consultation process still continues or whether it has been completed or perhaps been transferred over to the dispute settlement mechanism is unclear due to the open-to-interpretation agreement, non-existent case law, and diverging opinions of the parties to the agreement. According to Pöyry's report, the meeting of the Joint Committee referred to in the agreement on 19 April 2011 decided to conclude the process, as the member states did not agree on any extension of the period and all additional subjects related to the project were directed to be processed at ministerial level.

With regard to environmental impacts, the Ministry for Foreign Affairs refers to the complaint that claims that the technical analyses presented by Pöyry in the report underestimate the effects caused by the Xayaburi power station in the downstream region of the Mekong River and, moreover, that the report fails to present all the technical challenges related to the project.

The comments submitted to Laos by the countries in the downstream region are based on an assessment of the accumulated strategic environmental effects (SEA) of the 12 dam projects, commissioned by the MRC in 2010. In its report to Laos, Pöyry proposed for the comments of these countries to be taken into account and also recommended that the project should not be carried out if technical solutions were not found for certain problematic issues. In Pöyry's opinion, such solutions can, however, be identified. As a result of Pöyry's recommendations, the budget of the project has increased by USD 100 million. It is unclear whether investigations performed during the construction project can affect the sustainability of the dam project. In its report, Pöyry has identified the environmental risks and proposed technical improvements to the solutions related to these risks. Assessment of the adequacy of the quality and quantity of the improvements

to the technical solutions for power plant design proposed by Pöyry requires profound technical expertise and expertise in environmental questions, as well as familiarity with the detailed plans for the dam.

In the assessment of the Mekong River Commission's Secretariat on the conclusions and recommendations presented in Pöyry's report, published on 24 November 2011, it is stated that the Pöyry report, including its recommendations for changes to the dam plans and the proposed additional investigations, provides additional information on the planned dam and, were Pöyry's recommendations to be taken into account, how the dam plans with regard to the MRC's Design Guidance would be improved. The MRC considers problematic Pöyry's proposal for surveys, monitoring, and modelling that are to be performed during the construction. In the opinion of the MRC Secretariat, it would be better for these to be carried out before construction commences, instead of simultaneously with construction; the MRC Secretariat recommends a minimum of two years to be reserved for additional investigations. The MRC Secretariat states in its report that, even if all of Pöyry's recommendations were to be included in the project, this would not answer all the concerns of the countries - especially the concern that no construction should be carried out in the trunk of the river before adequate investigations have been performed.

Laos has commissioned another company specialising in hydropower (Compagnie Nationale du Rhône) to conduct a peer assessment that also assesses the quality and recommendations of the Pöyry report. This report, completed in March 2012, proposes additional improvements to the project, some of which should be made during the planning phase of the project. Similarly to Pöyry, CNR also estimates that additional investigations may be performed and solutions developed during the construction phase.

According to the statement submitted by the Ministry for Foreign Affairs, these expert reports have advanced international discussion, yet they have failed to altogether erase the divergent views apparent in the discussion or the uncertainties concerning the scope of the environmental effects of the Xayaburi power station and the several power stations built after that.

With regard to impact on human rights, the Ministry for Foreign Affairs has, on the basis of the available material, been unable to assess the extent to which Pöyry has fulfilled and/or neglected the due diligence obligation for companies, the obligation to adequately assess impact on human rights, or the obligation to consult possible local victims of human rights violations. Further clarification should be requested from Pöyry in this issue.

Concerning Finland's development cooperation, according to the Ministry for Foreign Affairs, Finland uses development cooperation funds to support sustainable development in the Mekong region through the promotion of natural resource and environmental management and cross-border cooperation, while also attempting to bolster human rights orientation, development towards constitutional states, good administration, and transparent practices. Finland supports regional programmes and bilateral projects in Laos and Cambodia and a peace mediation-related project in Myanmar.

A sustainable energy supply is a harbinger of development of the highest importance, and so it is in the Mekong, in which the majority of the population in the region's poorest countries lives outside the electricity grid. In the development of energy, the countries in the region largely rely on hydropower, the huge potential of which is only beginning to be harnessed. In promoting development, Laos places a strong emphasis on export income obtained from electricity. The majority of the 12 power stations planned for the trunk of the Mekong River are located in Laos. The countries in the region would have a lot of potential to develop renewable energy, but are hamstrung by a low level of know-how and low capacity for long-term energy planning. Finland supports more widespread adoption of renewable energy through the Energy and Environment Partnership Programme (EEP).

The Mekong River Commission (MRC) is the most important regional organisation for the management of water resources in the Mekong region. The MRC attempts to promote regional cooperation and coordination and the observation of environmental and social factors with regard to hydropower construction. Finland's long-term goal in supporting the River Commission with development cooperation funds is to increase regional cooperation and bolster the water institutions in the region. The objective is to ensure the River Commission has sufficient authority and capacity for its member states to systematically resolve issues in the region in a peaceful manner and in accordance with the goals of sustainable development.

Finland and the other donors have - in high-level meetings and otherwise - expressed their concerns over the hydropower construction planned for the trunk of the Mekong River, while also stressing the comprehensiveness, transparency, and cautious rate of progress of the planning and dam impact assessment processes. Finland funded a strategic environmental assessment (SEA), commissioned by the MRC, and finds its observations deeply troubling. Finland has appealed to the governments in the region to take the recommendations of the SEA into account in their decision-making related to the dams. Finland has emphasised that the dam projects should not move forward before the accumulative effects of the dams planned for the catchment area have been comprehensively assessed. In addition to the trunk of the river, the assessments and planning should take its tributaries into account. However, the ultimate right of decision lies with the countries themselves.

According to the Ministry for Foreign Affairs, it is too early to assess, at this point in time, whether Pöyry's actions have had or whether they will have an effect on Finland's development policy objectives in the Mekong region.

3.4 Pöyry's response to the statement of the Ministry for Foreign Affairs

In its response submitted on 15 February 2013, Pöyry states that the Ministry for Foreign Affairs has misunderstood Pöyry's role in the project. Pöyry's assignment was not to assess whether the Government of Laos had fulfilled its obligations to other countries. Pöyry's task was to conduct an independent technical review of certain matters (see section 1 above), including the design prepared by ÁF Colenco. Pöyry emphasises that the services provided by it have not included design or assessment of environmental or social impacts. Pöyry has been producing additional information for its client as an independent technical consultant, and has not been a decision-maker in the project. Pöyry states that it has had no role relating to the consultation process referred to in the Mekong Agreement, which had, according to Pöyry's view, been completed before Pöyry began its commission.

With regard to environmental and human rights impacts, Pöyry reiterates that it has not been a designer or decision-maker in the project. Pöyry refers to section A. 14 of the Guidelines' General Policies, and considers that informing stakeholder groups, such as the MRC, was the responsibility of the project's owner and the Lao PDR. The Guidelines explicitly state that it is not the intention to shift responsibility from the entity causing an adverse impact to the enterprise with which it has a business relationship. Pöyry is bound by the confidentiality obligations specified in its agreement with the Government of Laos. However, Pöyry has, at the request of the Government of Laos, participated in seminars where stakeholder groups have been informed of the project. Furthermore, Pöyry has advised the Government of Laos to inform the Mekong River Commission's Secretariat, which has been done.

3.5 The response of the NGOs to the statements of the Ministry of the Environment and the Ministry for Foreign Affairs and to Pöyry's responses

In the opinion of the NGOs, the view presented by the Ministry of the Environment (MoE) supports the complainants' demands, particularly with regard to the fact that Pöyry may be considered to have had the opportunity to influence the content of the dam project and the schedule for the commencement of dam construction. The NGOs also refer to the fact that, in the opinion of the Ministry of the Environment, a company should even restrict its freedom to agree on the content or duration of a business relationship, in some cases.

With regard to Pöyry's response to the statement issued by the Ministry of the Environment, the NGOs point out that Pöyry has either completely misunderstood the complaint or is attempting to divert attention from its role in the dam project. Pöyry's actions have had a considerable influence on the progress of the dam project, as the Government of Laos has based its statements on Pöyry's reports. According to the Guidelines, 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. Pöyry has hindered the consultation process regarding Xayaburi, instead of supporting its continuation.

Pöyry's view that the dam project's sustainability can be influenced through studies carried out during its construction has, in the opinion of the NGOs, undermined the possibility of downriver states to understand the impacts of the dam project, for example through environmental assess-

ments carried out before construction. Pöyry's actions have justified a dangerous and highly risky project to proceed, contrary to the recommendations of experts and the Mekong River Commission. According to the complainants, Pöyry's claims of a scientific disagreement have not been proven or justified adequately. The NGOs emphasise the fact that independent scientists and research institutes have, for the time being, denied Pöyry's claim that any problems could be solved during the construction phase. As Pöyry will function as the construction consultant of the dam project, the company will still have significant influence over the dam project's schedule and contents, by requiring new studies to be carried out, for example.

With regard to the statement issued by the Ministry for Foreign Affairs, the NGOs state that this statement also supports the complainants' demands regarding matters such as the scientific concerns over the impacts of the dams, as the Strategic Environmental Assessment (SEA) recommends postponing all dam projects for ten years. The Ministry for Foreign Affairs highlighted Finland's position that the dam projects should not move forward before the accumulative effects of the dams planned for the catchment area have been comprehensively assessed. The NGOs refer to the fact that, in the opinion of the Ministry for Foreign Affairs, the Mekong River Commission considers as problematic Pöyry's proposal for the surveys, monitoring, and modelling that are to be performed during the construction. These should be carried out before the start of construction. The Mekong River Commission further states that, even if all of Pöyry's recommendations were to be incorporated into the project, this would not answer the concerns of the various countries – especially the concern that no construction should be carried out before adequate investigations have been performed.

The Ministry for Foreign Affairs also states that, on the basis of the available material, it is reasonable to expect that, in the absence of appropriate preventative or mitigating measures, the potential for an adverse impact on human rights does exist. The NGOs agree with the Ministry for Foreign Affairs on the fact that additional reports on human rights impacts must be requested from Pöyry, as these cannot be assessed on the basis of the existing documents. The NGOs interpret the obligations of the Lao PDR by virtue of the Mekong Agreement more extensively than the Ministry for Foreign Affairs does.

With regard to Pöyry's response to the statement issued by the Ministry for Foreign Affairs, the NGOs point out that Pöyry's task has been more extensive than mere technical consultancy. The NGOs emphasise that Pöyry's role in the dam project cannot be assessed solely on the basis of its commission; rather, account must be taken of Pöyry's de facto actions in advising the Government of Laos. It is not significant whether Pöyry has functioned as a designer or decision-maker in the dam project or not, as the OECD's Guidelines are extensively applied to business relationships. In the letter presented during the hearing held on 3 April 2013, the NGOs provided detailed justifications for their complaint, particularly with regard to events after its filing.

4. Final Statement of the national contact point

The Ministry of Employment and the Economy has, after having heard the opinion of the Committee on Social and Corporate Responsibility, decided to issue the following statement as the national contact point.

The national contact point evaluates Pöyry's actions and practices with regard to the OECD's Guidelines, so each assessment must be based on a specific section of them. According to the contact point's competence, this statement is explicitly based solely on the Guidelines and on compliance with them, and the contact point cannot comment on questions regarding, for example, the scientific basis of studies or its adequacy.

From the perspective of the OECD's Guidelines, key factors in evaluating the case include the environmental impacts of the Xayaburi dam project and the human rights impacts resulting from them. A second object of assessment consists of the process between governments, governed by the Mekong Agreement, in which the parties have diverging views on the current state of the consultation process for the dam project.

The national contact point states that the complainants, the subject of the complaint, and, in part, the authorities that have issued statements on the matter have very different views of the situation.

In its evaluation, the national contact point takes account of the fact that, as described in section 1, Pöyry has functioned as a technical consultant for the Government of Laos in the Xayaburi dam project and has drawn up a technical comparison of the original design for the hydropower plant and the recommendations of the Mekong River Commission. Pöyry's commission has not included design or the assessment of environmental and social impacts.

The national contact point notes that the OECD's Guidelines are applied to service companies as well, in which case responsibility and the obligation of due diligence specified in the Guidelines extend to the service company and other companies in the procurement chain, in addition to the final decision-makers or manufacturers of end products. Thus, the Guidelines are applied to global consulting companies such as Pöyry with regard to the Xayaburi dam project, even though Pöyry does not have a permanent office in the Lao PDR.

As a leading company in the industry, Pöyry has had the opportunity to influence the progress of the project. Pöyry has operated within the framework of a relatively limited commission, which has limited its freedom of action in matters such as hearing stakeholder groups. As Pöyry's commission involved uncertainties with regard to environmental impacts and human rights, as well as the interpretation of the Mekong Agreement, these should have been expressed more clearly in the report delivered to the client. In its technical comparison, Pöyry makes several detailed recommendations to increase consideration of the environment in the project's design, such as the carrying out of new environmental studies, construction of fish passes, and changes to technical designs in order to improve the passage of sediments and nutrients. Since then, Pöyry has acted as a consultant for the Government of Laos in the preparation of the project, in order to ensure the implementation of these recommendations. There is scientific disagreement between the parties over the adequacy of these recommendations, which cannot be assessed in advance. Pöyry has nevertheless attempted to mitigate the environmental risks and adverse impacts related to the project, although the opinions of the various parties differ on the adequacy of these measures.

As its statement, the national contact point concludes that Pöyry cannot be considered to have violated the OECD's Guidelines, but the complaint and statements issued in response to it are justified in expecting Pöyry to be more aware of its overall role in the project.

The national contact point recommends that greater care should be taken with regard to risk assessment and the consideration of stakeholder views through more open dialogue in similar projects, and large-scale projects that entail potential environmental risks and impacts that extend into the territories of several states, and whose processes are governed by treaties between states, in particular. Dam projects similar to the Xayaburi project should not proceed before sufficiently thorough studies have been carried out.

The national contact point considers that the case being evaluated gives cause to recommend companies to pay sufficient attention to their international obligation to respect human rights, to give the risk of potential adverse human rights impacts the consideration required by the OECD's Guidelines, to carefully evaluate how such impacts could be prevented or mitigated, and to communicate the measures taken in an adequate manner.

The complaint also issued, in section 2.4. above, demands obligating Pöyry to mitigate caused damages by issuing public statements together with stakeholder groups, compensating the State of Finland for damages caused to it, limiting Pöyry's participation in other projects in the Mekong region, obligating Pöyry to issue a public statement on the deficiencies of the dam project, and acceptance of the environmental assessment commissioned by the Mekong River Commission, as well as establishing a fund or issuing guarantees to cover any damages caused by the dam's construction. Deciding such demands does not fall under the compe-

tence of the national contact point, which functions as a negotiation and arbitration body, so the national contact point cannot comment on these demands.

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