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Ministry of Employment and the Economy

Committee on Corporate Social Responsibility

Jorma Immonen, ministerial adviser

Reference: Ministry of Employment and the Economy request for a statement, 5 November 2012

Hänvisning

Subject: STATEMENT, Pöyry plc and the dam project in Xayabury, Laos

Ärende

The Ministry of Employment and the Economy has requested the Ministry of the Environment to provide a statement on a complaint regarding the instructions provided by the OECD to multinational companies. The Siemenpuu Foundation and other NGOs filed a complaint on 11 June 2012 with the Committee on Corporate Social Responsibility, which acts as the national liaison body for these instructions, along with the Ministry of Employment and the Economy, addressing the actions of Pöyry plc (hereinafter 'Pöyry') in the Xayabury dam project in Laos. A decision to investigate the complaint was made on 16 November 2012. One of the duties of the Committee on Corporate Social Responsibility is to promote efficient application of the directives and, at the request of the Ministry of Employment and the Economy, provide statements on

whether a company has acted in compliance with the directives. The Ministry of the Environment is represented on the Committee on Corporate Social Responsibility.

In the opinion of the Ministry of the Environment, the complaint features well-supported observations.

The Ministry of the Environment bases its opinion in particular on subsections AI and A11–A14 of Section II ('General Principles') and subsections 1–4 and 8 of Section VI ('The Environment'), along with the introduction to the latter section, of the OECD's directives.

According to these instructions, companies should promote economic, ecological, and social development in order to fulfil the objectives of sustainable development. Companies should avoid causing adverse effects or contributing to their generation with regard to matters addressed by the directives. Similarly, companies should try to prevent or reduce adverse effects in situations in which the companies themselves have not contributed to the creation of these adverse effects but wherein the effects nevertheless are directly linked to said companies' operations, products, or services via business relationships. In addition, companies should, wherever this is possible, encourage their business partners to comply with the principles of responsible business practices in accordance with the directives in question.

Insofar as environmental aspects are concerned, the starting point provided by the directives is for companies to strive to protect the environment and act in a manner promoting the objectives of sustainable development. One special point of emphasis is that companies should understand the environmental risks related to their operations. The environment-related explanatory section of the instructions refers to sensible environmental management, which should be understood through its larger meaning to comprise the management of the direct and indirect long-term environmental effects of company operations, the restriction of pollution, and resource management. Companies should take action to prevent or reduce the foreseeable environmental effects of their processes, commodities, and services and to prevent or minimise harm to the environment even in the event that no absolute certainty as to the effects of the actions exists. Moreover, companies should contribute to the development of environment-friendly and economically efficient social policy. The environment-related explanatory section of the instructions further specifies that companies should appropriately consider the societal and economic effects of their operations in developing countries.

In the opinion of the Ministry of the Environment, the directives' 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.

Pöyry has been tasked with assessing whether the dam-project plans comply with the recommendations of the Mekong River Commission and whether the government of Laos and the power company responsible for the project have taken into consideration the comments of the Mekong River Commission member states. In addition, according to a response issued by Pöyry on 30 July 2012, the assignment included the duty of providing proposals for the reduction of the project's effects with regard to the dam project's development, construction work, and implementation.

According to the complaint, the recommendations pertaining to River Commission projects steer project planning, providing recommendations for such matters as reducing the impact of projects. When assessing whether the dam project complies with the Mekong River Commission's recommendations for projects, Pöyry has, for instance, issued acquisition proposals on development-related information and other

additional information, about sediment movements and fish-stock migration opportunities, and proposals on the scope in which additional information should be obtained during the various phases of project planning and implementation. The complaint refers to a technical assessment of the project, commissioned by the Mekong River Commission and published in March 2011, according to which there is no evidence to support the conclusion that current technology would enable fish stocks to migrate through the dam area in conditions such as those provided by the Mekong River. Moreover, it refers to a recommendation that the commission has issued for projects, according to which technology that ensures an opportunity for safe migration for 95% of the stocks of target species must be employed. According to the complaint, Pöyry has concluded that basic information related to the migration opportunities of fish stock may be complemented and the necessary technical changes to plans made after the dam's construction phase has commenced.

With respect to the enabling of sediment movement, the complaint states that Pöyry has provided a proposal for technology to be used while at the same time confessing that no specific information on the river's natural sediment movements exists at this time. The response states that Pöyry has recommended that basic information be obtained on the sediment structure.

On the basis of the above, Pöyry may be considered to have had, via its commission, the opportunity to influence the content of the dam project and the schedule for commencement of its construction phase.

Even though the directives acknowledge practical limitations to a company's ability to change its business partners' actions, the explanatory section of the general principles of the directives emphasises that the company should exert its influence on operators causing adverse effects in order to prevent or mitigate these adverse effects. In order to comply with the directives, 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 of the Environment would like to draw attention especially to Pöyry's position as one of the leading, internationally renowned experts in the hydropower sector.

The Ministry of the Environment is of the opinion that Pöyry should have been aware of its prestige 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 measures necessary for obtaining additional information on the project and its environmental effects and to minimise those environmental effects 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. It is not quite clear, from the material presented, that Pöyry has done everything in its power to promote addressing of the above-mentioned issues.

According to the general principles of the directives, a company should ensure that interest groups are heard in connection with the plans for a decision of the type that may have a significant impact on local communities. The section of the directives pertaining to environmental issues also refers to interaction with interest groups and the need to provide sufficient and up-to-date information publicly on the potential environmental effects of operations. The Ministry of the Environment can understand the observation, presented in Pöyry's response, according to which the non-disclosure obligation involved in the commission relationship has restricted Pöyry's opportunities to hear interest groups while making the assessment. In this context, however, the Ministry of the Environment pays attention to Pöyry's possibilities to influence

the content of the commission and the manner in which the customer ensures that interest groups are consulted. Considering the dam project's estimated effects on local communities in Laos and the other member states, transparency and consultation of the interest groups would have been of heightened importance in this project. However, from the material provided, the extent to which this has happened is not clear.

In the opinion of the Ministry of the Environment, the recommendation to consult interest groups can be considered related to the recommendation to avoid causing harmful effects or contributing to their generation.

The Ministry of the Environment may further specify its opinion when the national liaison body processes the complaint.

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