



National Contact Point
for OECD Guidelines
for Multinational
Enterprises

MINISTÉRIO DA
ECONOMIA



FINAL STATEMENT – Complaint of Non-Observance no. 05/2020

Complainant:

Douglas Linares Flinto

Respondent:

Petrobras S.A.

NCP Brazil

Ministry of Economy

Executive Secretariat of the Chamber of Foreign Trade
(SE-CAMEX)

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25 March 2021

1. EXECUTIVE SUMMARY.....	3
2. SUBSTANCE OF THE PRESENTATION	3
2.1. Initial Complaint	3
2.2. Response from Respondent	4
2.3. Initial Assessment.....	4
2.4. Procedures Adopted by NCP Brazil to Date	5
2.5. Review and Conclusions	6
3. RECOMMENDATIONS.....	6
ANNEX I – Chronological Summary of Specific Instance no. 05/2020 (SEI Case 19971.100638/2020-42) ...	8

1. EXECUTIVE SUMMARY

1. On 16 July 2020, the Complainant sent NCP Brazil a complaint of non-observance of the OECD Guidelines by the Respondent, requesting access to two documents attached to the reports produced in response to his complaints to the company's ombudsman in 2016, 2017 and 2019. These documents could clarify and prove the circumstances surrounding his dismissal from Agip do Brasil, which occurred in 2001.
2. The complaint was admitted and subsequently accepted. It was felt that the acceptance of the specific instance could help clarify and resolve the situation, as well as contributing to the discussion, interpretation and furthering of the application of the OECD Guidelines for Multinational Enterprises.
3. Considering that both the actors involved and the events were in Brazil, co-ordination with another NCP was not necessary.
4. The NCP presented the OECD Guidelines for Multinational Enterprises to Petrobras and offered its good offices. However, Petrobras proved that it had given Mr Douglas Linares Flinto access to the requested documents and said it did not intend to participate in the mediation.
5. Therefore, Specific Instance no. 05/2020 was closed without recommendations to the parties, as it had lost its object.

2. SUBSTANCE OF THE PRESENTATION

2.1. Initial Complaint

6. On 16 July 2020, Mr Douglas Linares Flinto presented NCP Brazil with a complaint of non-observance of the OECD Guidelines by Petrobras, specifically in relation to the provisions of part I, chapters I. Concepts and Principles; III. Disclosure; IV. Human Rights and VII. Combating Bribery, Bribe Solicitation and Extortion.
7. The Complainant sought to have the Respondent provide access to two documents attached to the Complaint Investigation Report prepared by the company:
 - i. File name: FAX_DriverCartasENIeAgip_103658.pdf - Description: Fax dated 3 October 2002 from ENI to the PRD (President) of Agip do Brasil containing several letters, in Italian, from the Complainant (Douglas Flinto) to the managers of ENI and Agip do Brasil
 - ii. File name: MemoRHeAUDIparaPRD_07out2002_085853.pdf – Description: Memo from Human Resources and Internal Audit to the President's Office, of 7 October 2002, clarifying the circumstances of Douglas Flinto's dismissal.
8. According to the Complainant, these two documents refer to the circumstances under which the Complainant was dismissed in 2001 from Agip do Brasil, (a company later acquired by Petrobras, which is why it had been sent the request). The complaint stated that reports had already been made to the company's ombudsman channel, and that administrative proceedings had been brought against the company before the Office of the Comptroller General and a writ of Habeas Data had been filed. The Complainant intended to use these documents as evidence to restore his name, honour and reputation in his dispute with the Italian company over the past 19 years. The document submitted by the Complainant contained several annexes which the Complainant said would prove the facts he had mentioned.

2.2. Response from the Respondent

9. Following a meeting on 25 November 2020 between the NCP Coordination and the company, on 16 December 2020 the company submitted its comments. In the document submitted and its attachments, Petrobras explained how it intended to proceed. It stated that

the lawsuit filed by the Complainant is still ongoing and is under appeal at the Regional Federal Court of the 3rd Region. It said that the Office of the Comptroller General, in a departure from its previous understanding, ordered the delivery of the documents contained in Annex I of Report R-03875.3.1.00.157 by 27 November 2020. The company demonstrated that it had complied with this order, having submitted the requested documents on 27 November 2020. The company stated that it had no interest in participating in the specific instance, considering the voluntary nature of the procedure. Finally, it requested that the documents submitted in respect of Petrobras Citizen Information Service (SIC) protocols 1470/2019 and 1471/2019 be treated as confidential.

2.3. Initial Assessment

10. On 12 August 2020, the Admissibility Analysis of the complaint was completed by the NCP Co-ordination, after a formal assessment of the Complainant's presentation of the elements described in chapter 4 of the Procedures Manual for Specific Instances of NCP Brazil.

11. Once admitted, the complaint became known as Specific Instance no. 05/2020. In short, the Complainant stated that he sought access to documents concerning the internal audit process conducted by the company after his complaint to the ombudsman channel. He said that a similar request was made to the Ministry of Transparency and to the Office of the Comptroller General, and a writ of Habeas Data (case 5000442-73.2020.4.03.6105 - P JUR CIV.0382123, in the Federal Court of São Paulo) was filed in order to access the documents.

12. It was ascertained that the complaint contained the elements relevant to the topics covered by the OECD Guidelines for Multinational Enterprises, in particular the duty of transparency and respect for Brazilian legislation in force (item VI), contained in chapter III, paragraphs 1, 2 and 3, items "b" and "d", and chapter I, paragraph 2. Thus, the complaint was accepted and warranted further clarification by the Respondent.

13. After examining the documentation presented, the instance was accepted, according to the report prepared by the rapporteur on 9 October 2020 and was approved by the Inter-ministerial Working Group of the NCP (IWG-NCP) during a videoconference held on 15 and 16 October 2020.

2.4. Procedures Adopted by NCP Brazil to Date

14. The complaint was filed on 16 July 2020.

15. Firstly, an assessment was made of the admissibility of the instance, which had been admitted on 12 August 2020. Subsequently, a more in-depth analysis was conducted in respect of the allegation, which was accepted at a meeting of the IWG-NCP held on 15 and 16 October 2020, following the presentation of the report delivered by the rapporteur on 9 October 2020.

16. Once the specific instance had been accepted by the IWG-NCP, the parties were informed of the facts on 6 November 2020, in accordance with item 5.8 of the NCP Procedures Manual, see Electronic Information Service (SEI) Case 19971.100638/2020-42.

17. Subsequently, in accordance with the provisions of item 6.5 of the Manual, NCP Brazil scheduled a meeting with the Respondent for 25 November 2020 to explain the process and the options available, including mediation. At the time, the company was given the opportunity to comment on the complaint, pursuant to item 5.10 of the Manual.

18. After the company presented its response, together with attached documents, this response was analysed, and it was found that the two documents forming the basis of the Complainant's request had been delivered to him. Furthermore, the Respondent stated it was not interested in participating in the specific instance.

19. The NCP contacted the Complainant to confirm receipt of the requested documents, having received confirmation of delivery.

20. Considering that the object of the instance has been met in full by the Respondent, the present draft final statement was prepared, which proposes the conclusions and recommendations set out below.

21. Considering that both the actors involved and the events were in Brazil, co-ordination with another NCP was not necessary.

2.5. Review and Conclusions

22. In view of the substance of the response and the attached documents, it can be seen that the company did indeed provide the Complainant with the documents requested in the specific instance.

23. At the rapporteur's request, NCP Brazil contacted the Complainant on 21 December 2020 to confirm that he had received the requested documents.

24. In a reply also sent on 21 December 2020, the Complainant confirmed receipt of the documents. Appended to his reply was the Office of the Comptroller General's opinion in case 99909.001360/2019-81, which denied Petrobras' appeal and upheld the decision of opinion no. 1 042 of 26 August 2019. Mr Douglas also presented his comments on the documents, making further requests for NCP Brazil to intervene in respect of Petrobras, given the seriousness of the conduct of the company's employees when investigating his complaint, mentioning the need for Petrobras to "correct" the Complaint Investigation Report.

25. In view of the facts presented, it can be seen that the request made by the Complainant when filing the specific instance has been fully satisfied, and its purpose has been met in full. In this respect, there is no reason to continue the procedure. In accordance with items 5.14 and 7.5 of the Procedures Manual, we propose to **close the inquiry and close Specific Instance no. 05/2020.**

26. Although the Respondent has expressed its intention not to participate in the specific instance (a situation provided for under item 6.6.2 of the Manual) since it is a voluntary procedure, in this case it would not be possible to proceed with the instance since the object sought by the Complainant has already been obtained in full. Access was granted to the requested documents, as has been shown, leaving no alternative other than to bring this instance to a close.

27. As for the claimant's new request, asking the NCP to intervene in order to secure a correction of the audit report prepared by the Respondent, it should be noted that this request diverges from the initial request for which the specific instance was accepted. This question was not analysed, nor were the contents of the documents requested by the Complainant and submitted during the course of the administrative proceeding by the Office of the Comptroller General. Thus it is not possible to extend the work of NCP Brazil within the scope of Specific Instance no. 05/2020 to encompass other issues separate from those presented when the instance was established.

3. RECOMMENDATIONS

28. For all the foregoing, no recommendations are proposed to the parties, and the following steps are proposed:

29. CLOSURE OF SPECIFIC INSTANCE NO. 05/2020 IN VIEW OF THE SATISFACTION OF ITS OBJECTIVE

30. THAT THE DOCUMENTS BE TREATED AS CONFIDENTIAL AS PROPOSED BY THE OFFICE OF THE COMPTROLLER GENERAL IN ITS DECISION IN CASE 99909.001360/2019-81.

31. So states the report.

32. To be submitted to the IWG-NCP for appreciation and forwarding, under the terms of item 7 of the Procedures Manual for Specific Instances.

Document signed electronically
Fábio Lacorte da Silva
Rapporteur of Specific Instance no. 05/2020

**ANNEX I – Chronological Summary of Specific Instance no. 05/2020
(SEI Case 19971.100638/2020-42)**

Description	Date
Receipt of Complaint no. 05/2020	16 July 2020
Acceptance at NCP Brazil Meeting	12 August 2020
Communication to the Respondent and request for counterclaims	6 November 2020
Receipt of response from Respondent	11 December 2020
Approval by IWG	17 February 2021
Dispatch of the Draft Final Statement to the Parties	18 February 2021
Preparation of the version of the Final Statement for publication	8 April 2021