



Specific Instance No. 04/2020 – Individual and Eni Spa

In accordance with the Procedural Guidance for the OECD Guidelines for Multinational Enterprises, upon completion of a specific instance and after consultation with the parties involved, the NCP will disclose the results of the procedures.

As one of the parties declined to continue the procedure, NCP issues the following statement. This statement describes the issues discussed, the reasons why NCP decided that the issues deserved further consideration, and the procedures undertaken by the NCP to assist the parties.

It should be noted that, as specific instances are not judicial cases and NCPs are not judicial bodies, NCPs cannot directly request compensation neither obligate the parties to participate in a conciliation or mediation procedure.

**National Contact Point for the OECD Guidelines for Multinacional Enterprises of Brazil –
NCP Brazil**

11/16/2022



Table of Contents

1.	NCP overview and its role	3
2.	Executive Summary	3
3.	The procedures of the NCP	5
4.	Content of the allegation and the company's response.....	6
4.1.	Allegation.....	6
4.2.	Company's response.....	10
5.	Initial assessment by NCP.....	11
5.1.	Admissibility Analysis	11
5.2.	Initial Assessment – Acceptance.....	12
5.3.	Coordination between the NCPs of Brazil and Italy	15
5.4.	Notice of the Respondent and publication.....	16
5.5.	Initial Assessment – next steps.....	17
5.5.1.	First assessment: request for additional information	17
5.5.2.	Second assessment: forwarding for offer of good offices.....	20
6.	Good offices and mediation actions.....	20
6.1.	Offer of good offices and response of the parties.....	20
6.2.	Good office procedures	22
6.3.	Access to documents, Submitter's statement, and breach of confidentiality	24
7.	Analysis and conclusions	26



1. NCP overview and its role

1. The Organization for Economic Co-operation and Development (OECD) Guidelines for Multinational Enterprises (Guidelines) are recommendations addressed by governments to multinational enterprises operating in or from adhering countries. The Guidelines are the only multilaterally accepted and comprehensive code on responsible business conduct (RBC). The National Contact Points (NCPs) operate as a central forum for issues related to the Guidelines, offering a unique mechanism for support, promotion, and implementation.
2. The Brazilian NCP was established in 2003 and had its structure revised by Decree No. 11.105, of June 27, 2022. It is currently an Inter-ministerial Working Group (IWG-NCP) coordinated by the Special Secretariat for Foreign Trade and International Affairs of the Ministry of Economy (Secint-ME) and composed of representatives from the following bodies: Attorney General's Office; Central Bank of Brazil; Comptroller General of the Union; Ministry of Agriculture, Livestock and Supply; Ministry of the Environment; Ministry of Foreign Affairs; Ministry of Justice and Public Security; Ministry of Labor and Social Security; Ministry of Mines and Energy; Ministry of Women, Family and Human Rights; and Special Secretariat of Productivity, Employment and Competitiveness of the Ministry of Economy.
3. The main objective of NCPs is to help companies, groups, associations, unions, and other stakeholders take appropriate measures to implement the Guidelines. In this context, NCPs have two main functions: to raise awareness and promote compliance with the Guidelines; and to contribute to the resolution of issues that arise concerning the implementation of the OECD Guidelines, through so-called "specific instances."
4. NCP Brazil contributes to the resolution of questions presented by offering good offices, which are usually carried out in the form of mediation between the Submitter and the Respondent. In addition, the NCP may issue recommendations on how to improve the implementation of the Guidelines in specific instances, following up on such recommendations. The handling of specific instances by NCP Brazil is carried out in accordance with its Procedure Manual for Specific Instances (Manual) and with the Procedural Guidance of the Guidelines.

2. Executive Summary

5. On July 16, 2020, Douglas Linares Flinto (Submitter) submitted to the NCP Brazil allegations of non-compliance with the OECD Guidelines by the Italian company Ente Nazionale Idrocarburi S.p.A. (Eni). On July 22, 2020, the Submitter complemented the allegation, requesting the Respondent to admit the misunderstandings committed against him since his resignation, more intensively denigrated after April 2017, in order to restore his name and his honor.
6. The allegation was admitted on August 12, 2020, giving rise to Specific Instance N°



04/2020, since the admissibility requirements provided for in item 4.12 of the Manual were met. It is worth mentioning that allegations by the Submitter in relation to the Respondent had been previously presented to the NCP Italy in 2013, and to NCP Brazil in 2015, and 2018. These previous allegations were not accepted. The NCP Brazil understood, in this new analysis, that new facts were presented by the Submitter, within the temporal scope provided for in the Manual. Under item 5.5 of the Manual, a rapporteur of the Ministry of Labor and Social Security (MTP) was appointed, according to thematic affinity with the content of the allegation.

7. The Specific Instance was accepted by the IWG-NCP on October 15, 2020, after a proposal contained in the report that analyzed the information indicated in item 5.7 of the Manual, prepared on October 9, 2020. It was considered that the acceptance of the Specific Instance could contribute to the clarification and resolution of the situation, through good offices, besides contributing to the discussion, interpretation, and promotion of the application of the Guidelines in Brazil.
8. Considering that the Respondent is of Italian nationality, contact was made with the NCP of Italy, in accordance with the provisions of item 5.3 of the Manual. Following the Guide for NCPs on Coordination when dealing with Specific Instances, cooperation was established between the NCPs, with the Brazilian NCP being the lead NCP and the Italian NCP the support NCP.
9. Under the provisions of item 5.10 of the Manual, a meeting was held with the Respondent, an opportunity in which the procedure to be adopted was explained. Subsequently, the documents presented by the Submitter were made available and a deadline for the company response was established. On March 10, 2021, the company presented its statement.
10. Pursuant to item 5.14, II of the Manual, the rapporteur, after analysis of the allegations and the company's statement, requested additional information from the parties, according to a report issued on April 12, 2021, approved by the IWG-NCP on April 20, 2021.
11. On April 23, 2021, the parties were notified of the decision and the NCP questions were presented, being granted 15 days for their response. The Submitter presented his answers within the period. The Respondent, after a deadline extension, also sent its reply.
12. In accordance with item 5.14 of the Manual, the complementary documents presented were analyzed, and the rapporteur recommended the offer of offices, according to a report issued on July 9, 2021. The recommendation was approved by the IWG-NCP on July 20, 2021.
13. The NCP Brazil offered its good offices to the parties on July 23, 2021. The parties initially agreed to participate in the procedure, and the company presented a series of conditions for its participation. One of these conditions would be not having direct contact with the Submitter, a condition that would hinder the procedure, but would not make it impossible. The Submitter agreed with the condition.
14. Mediators from the MTP were designated, and their names were approved by both



parties. A draft of the work plan was made, which was analyzed by both parties. A draft of the work plan was made, which was analyzed and approved by the Submitter. The Company, after analyzing the draft and providing some first suggestions and comments, received a letter prepared by the Submitter “Inicial Speech” and decided to withdraw its participation in the procedure, in March 21, 2022, a hypothesis provided for in item 6.10 of the Manual. In this context, it presented a letter containing the reasons for the withdrawal.

15. The Submitter was informed of the decision. As he only had access to some of the public documents submitted by the Respondent after its withdrawal, he asked to present a statement regarding those documents. The Submitter was allowed to present his statement, but only with reference to the public version documents made available to him after the withdrawal of the Respondent. On May 30, 2022, the Submitter presented his statement.
16. Therefore, Specific Instance No. 04/2020 is being concluded through this Final Statement, and no recommendation has been issued to the parties.

3. The procedures of the NCP

17. Since receiving the submission, the NCP has practiced the following actions:

	Receipt and initial assessment
07/16/2020	Receipt of submission
07/22/2020	Receipt of submission complementation
08/12/2020	The allegation was accepted
08/21/2020	Communication of the Submitter on the admission of the allegation
09/14/2020	Rapporteur's appointment
10/15/2020	Acceptance of the Specific Instance by IWG-NCP
11/06/2020	Communication of the Submitter on the acceptance of the allegation
11/24/2020	NCP Brazil and NCP Italy Meeting
01/22/2021	NCP and Company Meeting
03/10/2021	Receipt of the submission response by the Respondent
04/23/2021	Request for additional information for the parties
05/11/2021	NCP Brazil and Submitter Meeting and receiving his additional information
06/04/2021	Receiving additional information from the Respondent
07/20/2021	Decision of good offices proposal by IWG-NCP
	Good offices and mediation
07/23/2021	Forwarding the offer of good offices to the parties
07/29/2021	NCP Brazil and Submitter Meeting and acceptance of the offer by the Submitter
08/06/2021	NCP Brazil and Respondent Meeting
09/03/2021	Acceptance of the offer of good offices of the Respondent
10/26/2021	Acceptance of mediators by the Submitter
11/08/2021	Acceptance of mediators by the Respondent
11/19/2021	Start of the preparation of the Work Plan
01/13/2022	NCP Brazil and Submitter Meeting
03/21/2022	Discontinuance of good offices
04/15/2022	Presentation of documents by the Respondent in the public version



05/30/2022	Statement of the Submitter on the documents presented in the public version Conclusion
07/11/2022	Presentation of the Final Statement draft by the rapporteur
08/03/2022	Approval of the Final Statement draft by the IWG-NCP
08/22/2022	Forwarding of the Final Statement for analysis of the parties and the NCP Italy
12/01/2022	Approval of the Final Statement by IWG-NCP
06/02/2023	Publication of the Final Statement

4. Content of the allegation and the company's response

4.1. Allegation

18. On July 16, 2020, Douglas Linares Flinto submitted to the NCP Brazil an allegation of non-compliance with the OECD Guidelines by ENI Spa, particularly in relation to the provisions of chapters I. Concepts and Principles, item 2; II. General Policies, item 9; III. Disclosure, item 3, "b" and "d"; IV. Human Rights, items 1 and 2; and VII. Combating Bribery, Bribe Solicitation and Extortion, item 1. This is the fourth allegation made by the Submitter in relation to the Respondent in the NCPs Network.
19. In July 2013, the Submitter presented the situation to the NCP Brazil, which concluded that the allegation did not comply with the admissibility requirements since the alleged facts had occurred more than 12 months before the petition, and it was considered that there was a final and unappealable court decision on the matter. On June 17, 2015, the Submitter presented an allegation before the NCP Italy, which also did not accept it. On August 8, 2018, the Submitter filed the second allegation before the NCP Brazil, which was also not accepted due to non-compliance with the filing period and the existence of a final and unappealable court decision.
20. The Submitter presented the following situations as new facts that would support his allegation and would be within the 60-month period required by the Procedure Manual for Specific Instance:
 - I - information presented by the company ENI Spa, at the Shareholders' Meeting held in April 2017, concerning the reasons for the dismissal of the Submitter, which occurred in August 2001; being the justification presented different to previous justifications, false and offensive, denigrating his name, his honor and his reputation, which could lead to the violation of the aforementioned Guidelines;
 - II - filing of a second lawsuit by the company ENI Spa against the Submitter and the Brazilian Institute of Business Ethics at the Civil Court of Rome, in September 2017, with misuse of purpose, which could lead to the violation of the following Guidelines: chapter I, paragraph 2; chapter II, paragraph 9; chapter III, paragraph 3, items "b" and "d"; chapter IV, paragraph 2; and chapter VII, paragraph 1.
21. Subsequently, on July 22, 2020, the Submitter presented additional information to the allegation, mentioning the existence of two documents that would demonstrate the



reasons for his dismissal. The Submitter informed that he was seeking access to such documents from the Ministry of Transparency and General Controllershship of the Union (CGU), based on the legal precepts of the Access to Information Law (LAI), to be provided by a Brazilian company, which succeeded Agip do Brasil.

22. The Submitter informed that he was dismissed, on August 1, 2001, from the company Agip do Brasil, controlled by the company ENI Spa. The dismissal would have occurred after having made a complaint about internal fraud and corruption at the Regional Sales Management of Cuiabá (GRV-Cuiabá), acting in accordance with the company's Code of Ethics. At the time, it would have been verbally informed that the reason for his dismissal would be the "breach of trust," and formally the dismissal occurred without any motivation (without cause). The Submitter understands that he was dismissed in "retaliation" by the executives he had denounced, including members of the board of Brazilian subsidiary of the Respondent.
23. Since then, the Submitter has sent mails to different recipients of different levels and functions within the company structure questioning the reasons for his dismissal. On February 19, 2002, the Submitter received an email from the CEO of the company informing him that his dismissal did not occur due to a "breach of trust", but due to an administrative and organizational restructuring of GRV-Cuiabá; and that the contractual termination was settled normally, without just cause, and Agip spontaneously maintained benefits after the worker's dismissal; the Company consider the reference made by the Submitter related to the Eni Group's unnecessary, as it has always been and will be the guiding principle of the company's actions. This would be, in the Submitter's view, the first version he received from the company about his dismissal.
24. In July 2003, the Submitter filed a labor claim against his employer (Agip do Brasil), demanding compensation for his dismissal, in addition to moral damage. The Brazilian Court considered that the termination was carried out in accordance with Brazilian law. The decision did not recognize the moral damage for lack of evidence. It was acknowledged that there was a regular exercise of the company's right to dismiss the worker without just cause. It was also acknowledged that there was a complaint by the Submitter following the Company's Code of Ethics, but considered that a dismissal without cause would not characterize the alleged moral damage. The lawsuit became final and unappealable in 2009, according to case record TST-AIRR-1793/2003-018-02-40.7.
25. In July 2010, the Submitter received a letter rogatory for a lawsuit filed by the Respondent against him and the Brazilian Institute of Business Ethics, which he presides. It would be a civil lawsuit for slander and defamation requesting a compensation of 15 million euros. In the lawsuit, the company would have stated that the dismissal of the Submitter would have occurred due to his reticent and non-cooperative conduct during confidential investigations that sought to reveal potential acts harmful to the company itself. Such conduct would have caused the relationship of trust with the company to cease, and the dismissal would have been indisputably confirmed and recognized by the Brazilian judicial instances. In the Submitter's view, this would be the second version presented by the



company for his dismissal.

26. In April 2017, the journalist Mauro Meggiolaro, as a "critical shareholder", representing the "Fondazione Finanza Etica - Grupo Banca Etica", took the case to the Shareholders' Meeting (AGM) of ENI. He made ten questions to be answered by the Board of Directors during the Shareholder's Meeting (AGM 2017):

- a) Are the employees, at any hierarchical level, encouraged by Eni to report to the company's internal channels — and / or the immediate superior — any fraud and corruption, misconduct of any other Eni employee, including the CEO, or even because of disagreements with the words and spirit of the company's Code of Ethics? Why is it important that its employees provide reports of irregularities and illegal activities? What are the measurable (and immeasurable) gains for the company?;
- b) If an employee who reported something suffers any kind of retaliation, what actions should this employee take? Who, within the company's organizational chart, should the employee who's suffered some type of reprisal look for? If the retaliation to an employee is confirmed, what are the attitudes that Eni will take?;
- c) In 2001, after Mr. Flinto invoked Eni's "Ethics Commission" in Brazil, the CEO of the company's Brazilian operation stated (through an e-mail sent directly to Mr. Flinto) that his resignation was not a "retaliation", but rather an "administrative and organizational restructuring". Eni's headquarters in Italy says that it conducted an "internal investigation" in Brazil to investigate possible damage to the company itself and Mr. Flinto "did not cooperate" with the investigations and had a "reticent posture", resulting in a "breach of trust" and also in his "dismissal". Which of the "versions" presented by Eni about Mr. Flinto's dismissal is "true"?;
- d) If there was an "internal investigation" in Brazil, why did Eni not present the results of this investigation as a "proof" in the lawsuit filed by Eni at the Court of Rome against Mr. Flinto?;
- e) Eni states that the resignation of Mr Flinto was "confirmed" by the competent courts of Brazil. Did Eni have access to the sentence of the Brazilian Justice? What was sentenced ("in full") by the Brazilian Judge?;
- f) If, in fact, Eni had access to the Brazilian court ruling, the company would know that the Judge stated in its sentence that "there was a Code of Ethics in Eni", that "there were irregularities and illegal activities in the Brazilian subsidiary of Eni", and that "Mr. Flinto provided a report to the company's internal channels" as it is imperative in the code itself. Now, if Mr. Flinto blew the whistle, if he sounded the alarm, providing a report about an alleged million-dollar scheme of fraud and corruption installed in the Brazilian subsidiary, then how come that Mr. Flinto "did not cooperate" and had a "reticent posture" in the time when the "internal investigations" were conducted, as it is stated by Eni?;
- g) Why did Eni not respond to Mr. Flinto's correspondence sent to the company's "Board of Directors" under the management of Mr. Vittorio Mincato (2002), Mr. Paolo Scaroni (2009), and Mr. Claudio



Descalzi (2014) reporting in full detail his retaliation case after filing a complaint?;

h) Why did Eni instead choose to move a lawsuit against Mr. Flinto and the Brazilian Business Ethics Institute asking for a reparation of €30m?;

i) The ruling of the court of Rome says that the lawsuit brought by Eni against Mr. Flinto (and against the Brazilian Business Ethics Institute) is "groundless" and that the company hasn't specified any criteria for the assessment of alleged damages amounting at €30m. Why did the Board of Eni not ask the company's Internal Audit Department to conduct an "investigation" into Mr. Flinto's case?;

j) What does Eni intend to do in Mr. Flinto's case? What are the corrective actions against Mr. Flinto that can be put into practice by the company?.

In its response to the questions raised, the company would have presented a third version for the worker dismissal: the former employee would have been dismissed *"together with other actors of illicit behavior, for having violated the obligation of confidentiality and for trying to use ENI's Code of Ethics to obtain personal advantages from the company"*. The Submitter understands that this justification would be unfounded and untrue, would have cruel and cowardly content, hazardous and harmful, in addition to being known to the company's shareholders around the world, being available on the corporate website. According to him, such a fact offends his honor, consisting of one of the new facts that give rise to this specific allegation.

27. In December 2017, the Respondent filed a new lawsuit against the Submitter, arguing new injurious facts: it maintains that the Submitter had been carrying out a defamatory campaign before the company and some managers for years, since 2014, having created a blog, a *website*, in addition to making use of social networks. This lawsuit, on July 1, 2020, is taken to a mediation body, with no agreement, and the date of the next hearing is scheduled for September 7, 2021. Such action would be, in the vision of the Submitter, another of the new facts that base the present submission. The Submitter also highlight that this mediation procedure just happened because of a determination of the magistrate of the Civil Court of Rome, as a necessary step according to the Italian legislation.
28. In May 2018, the journalist Mauro Meggiolaro, according to the Submitter, again at the Shareholders' Meeting, would have verbally questioned the situation of the worker's dismissal, proposing a meeting between the parties to solve the dispute, but without a response from the Company. The situation would have been repeated in the following years (AGM 2020 and AGM 2021).
29. In September 2019, the Comptroller General of the Union determined that the Brazilian company that succeeded Agip to provide the Submitter with a copy of the Complaint Investigation Report, prepared from the Submitter's complaint in the company's ombudsman.



30. Considering the facts of the submission reported above, the Submitter requested that the Respondent admit the misconceptions practiced against him from his dismissal, so that he could rescue and restore his name, honor, and reputation.

4.2. Company's response

31. According to the Manual currently in force, the company is only notified after the Acceptance of the Specific Instance, the second stage of the Initial Assessment. Thus, this response was received after the steps reported in items 5.1, 5.2, 5.3, and 5.4 below.
32. On March 10, 2021, the Respondent submitted its statement on the allegation. It should be noted that the document was sent in a confidential manner, only presenting a public version on April 15, 2022, after a new request from the NCP Brazil.
33. In the public version presented by the company, the Respondent mentions that the case was previously submitted to the NCP Brazil and the NCP Italy and in both cases the allegations were not accepted and would have been based on the same facts. Likewise, it argues that there are lawsuits related to the case pending decision in Italy and a lawsuit already closed in Brazil, so that the acceptance of the Specific Instance would go against the Manual. It informs that there has already been an attempt to mediate between the parties, in July 2020, during the procedure initiated in 2017, and, although unsuccessful, the company has been available for further discussions with the Submitter.
34. In addition, in January 2021, the Submitter sent a proposal for a settlement in which Eni should recognize the Submitter's right to receive a compensation of 5,500,000 euros for the damages suffered over those years. In the company's view, such a proposal would make it clear that it was not a question of ethics or recovery of the name of the Submitter. It seemed to the Company that the true purpose of the Submitter would be to obtain a financial compensation that was not granted by legal proceedings, rather than to pursue the OECD Guidelines.
35. The Respondent states that it is not clear how the mediation of the NCP Brazil could work and be effective, especially because, according to the company's view, over the time the Submitter promoted a defamatory conduct against the Respondent. The company does not see how mediation could be effective and contribute to the effectiveness of the OECD Guidelines.
36. Finally, the Respondent claims not to have violated any OECD guideline, questions what it could have done differently in relation to the Submitter's dismissal and concludes that the Submitter's purpose is not aligned with the objectives of the OECD Guidelines, also understanding that further investigations are unnecessary. Notwithstanding such situations, the Company made itself available to provide clarifications, if necessary.



5. Initial assessment by NCP

5.1. Admissibility Analysis

37. During the Admissibility Analysis, the NCP Coordinator assesses whether the specific instance has the minimum requirements for its subsequent evaluation. These are listed in item 4.12 of the Manual:

- I. identification of the Complainant(s) and, where applicable, the organization represented, specifying names, CPF or CNPJ (passport or I.D, if foreign), addresses (physical and electronic) and telephone numbers (baseline and mobile, when applicable);
- II. identification of the multinational company(ies) Respondent, specifying the name of the representative in Brazil with a mailing address (physical and electronic) and telephone number;
- III. indication of the country(ies) in whose territory the issues arose;
- IV. a detailed description of the facts, indicating the article(s) of the Guidelines that would not have been or are not being observed by the multinational company(ies) regarding this Specific Instance;
- V. indication of how the alleged non-observance of the Guidelines affects, even potentially, the Complainant(s) or the persons represented by them;
- VI. a description, if applicable, of the efforts made by the Complainant(s) aiming at the Respondant(s) to deal with the alleged non-compliance with the Guidelines and the results of those efforts;
- VII. copy of document or information that may serve to understand the facts or circumstances that would characterize the alleged non-compliance with the Guidelines, as well as the efforts referred to in item VI;
- VIII. indication of data considered confidential;
- IX. information related to the analysis of the Complaint object by the Brazilian Judiciary branch, other national or international administrative bodies, or any international entity. The Party(ies) shall submit to the NCP any documentary evidence of these proceedings relevant to the Specific Instance; and
- X. electronic signature(s) of the person(s) submitting the Specific Instance.

38. It is also noted the compliance with the provisions of items 4.8, 4.16, and 4.17 of the Manual, namely:

4.8. The presentation of a Specific Instance should clearly demonstrate the relationship between the issue raised, the company's (Respondent) activities or responsibilities, and the OECD Guidelines, as well as the direct involvement of the Complainant with the breach of the Guidelines concerning available rights.

4.16. The Specific Instance will not be accepted if it is based on facts known which occurred more than **60 (sixty) months** from the date of receipt of the Complaint by the NCP.

4.17. If the same elements of the Specific Instance (the Parties, the facts that leads to the Complaint and the request from the Respondent) are already



being processed in courts, this information shall be written in the Specific Instance. It could be agreed by the Parties that they will communicate a possible mediation to the Judiciary branch, with possible suspension of the judicial process.

39. As stated, the allegation was received on July 16, 2020. On July 21, 2020, the NCP Executive Secretariat requested additional information from the Submitter, in order to verify if the facts object of the allegation were within the temporal scope of up to 60 months from the submission to the NCP, according to item 4.16 above.
40. The Submitter replied on July 22 by submitting additional information which was considered sufficient to complete the analysis. He informed that the new facts are: response presented by the company at the 2017 General Shareholders' Meeting; documents on the reasons for his dismissal, of which he became aware in 2019 and accessed in 2020; and filing of a second lawsuit by the company against the Submitter in September 2017.
41. On August 12, 2020, the Admissibility Analysis was completed, deciding on the admission of the specific instance. The Submitter was informed on August 21, 2020.
42. Between August and September 2020, the NCP Coordinator held consultations in order to appoint a rapporteur for the case among the members of the IWG-NCP. According to item 5.5 of the Manual: "5.5. The Coordinator of the Brazilian NCP, after consulting with the members of the IWG-NCP, will appoint the rapporteur of the Specific Instance, according to its matter."
43. On September 14, 2020, it was confirmed the appointment of a rapporteur from the Special Secretariat for Social Security and Labor of the Ministry of Economy, currently the Ministry of Labor and Social Security (MTP), due to the thematic affinity with the allegations.

5.2. Initial Assessment – Acceptance

44. The next step was to carry out the Initial Assessment by the rapporteur, indicating opinion on the acceptance, rejection, or transfer of the case. According to the Manual, the rapporteur had 30 calendar days to submit his report, which was issued on October 9, 2020. The Report was approved by the IWG-NCP at its 4th Ordinary Meeting on October 15, 2020.
45. The Initial Assessment Report regarding the acceptance covers the following factors, listed in item 5.7 of the Manual:
 - I. the identity of the party(ies) concerned and its interest in the matter;
 - II. whether the issue raised is legitimate, presented in good faith and relevant to the interpretation of the Guidelines;
 - III. whether the issue is relevant and substantiated;
 - IV. whether there is a direct link, albeit a potential one, between the Complainant and the issue raised;



V. whether there seems to be a link between the company'(ies) activities and the issue raised in the Specific Instance;
VI. whether the Specific Instance gathers elements that hold thematic pertinence with the chapters addressed by the Guidelines;
VII. whether the Complaint contains sufficiently delimited focus;
VIII. whether the Specific Instance presents facts and evidence, verifiable by objective criteria;
IX. the relevance of applicable laws and procedures, including court rulings;
X. how similar issues have been or are being treated in other domestic or international proceedings;
and XI. whether the consideration of the specific issue would contribute to the purposes and effectiveness of the OECD Guidelines.

46. As for the requirements of item 5.7, it was verified the evident identity of the interested party and its involvement with the matter (item I, of item 5.7), as well as it was considered that the issues raised were legitimate, assumed in good faith and relevant to the interpretation of the Guidelines (item II, of item 5.7, of the Manual).
47. The question presented was relevant, contained serious statements of misconduct against a large company, mentioning an undesirable conduct that deserved to be better clarified, in addition to being well substantiated (item III, item 5.7). The connection between the Submitter and the facts object of the allegation (item IV, of item 5.7) was very clear, as it is the theme of the statement at the shareholders' meeting. Likewise, the documents that the Submitter had access only from 2019 also concern him and the legal relationship existing between the parties.
48. As for item V (of item 5.7), all allegations made relate to acts performed by the Respondent (or its subsidiary), whether against the Submitter, in a reactive attitude to complaints of fraud made, whether in the development of its relationship with shareholders. The issue was closely linked to the way the company was run and its business, as well as the treatment of workers and whistleblowers. Issues such as compliance with legislation, ethical conduct related to employees who make complaints, transparency, respect for human rights, combating corruption are certainly issues that have thematic relevance with the topics covered by the Guidelines (item VI, item 5.7) and would all be related to the allegation.
49. Regarding item VII (of item 5.7), this allegation had a very well-defined fact: the third version given by the company, in April 2017, of the dismissal of the Submitter, occurred in 2001, this version being different to the previous and contrary to that presented before the Brazilian Court. In addition, the facts regarding access to new documents in 2019 were accepted, the content of which refers to the circumstances of the dismissal in 2001, which could help to elucidate whether or not the version presented in 2017 is consistent with reality. In addition, there was a robust set of evidence in the allegation that instructed the specific instance, the facts being verifiable by objective criteria (item VIII, of item 5.7),



leaving open the reasons why they were practiced.

50. As to the relevance of the applicable legislation and procedures, including legal actions (IX), it is necessary to make some observations. As for the fact that there was a previous lawsuit with a final and unappealable decision in Brazil, it was found that the object of the action was an Respondent moral damage resulting from the dismissal that occurred in 2001, therefore, different from the object of this allegation. At the time, the company stated that the dismissal would have occurred without cause, but the version presented differs from the version presented by ENI SpA at the 2017 Shareholders' Meeting. As for the claims in progress in Italy, they have a different object from the allegation since they deal with acts practiced by the Submitter and not by the Respondent. Although the Submitter quotes the second action, filed in 2017, as one of the new facts to support the acceptance of the allegation, this action is not being considered in the present instance.
51. Regarding item X (item 5.7), how similar issues were or are being dealt with in other national or international proceedings, it was found that there was a specific instance before the NCP Italy, proposed by the same Submitter against the same Respondent, referring to previous facts (dismissal) and different from the object of this allegation (new facts occurred in the period of 60 months prior to the presentation of the allegation). Contrary to the understanding of the NCP Italy, the NCP Brazil understood that this specific issue could contribute to the objectives and effectiveness of the OECD Guidelines (item XI, item 5.7), allowing not only the clarification of the circumstances in which the company acted, but also would allow the NCP Brazil to exercise its role: promoting the Guidelines and dealing with specific instances. In addition, it should be noted that this was the third time the Submitter sent to the NCP Brazil an allegation against ENI, but the two previous ones were not analyzed, since the former RoP limited the acceptance of instances to facts that occurred in the last 12 months.
52. From the analysis of the allegations made by the Submitter, it was found that the company presented different versions on the dismissal of the worker and that the third version, submitted in 2017 at the General Shareholders Meeting, used words that the Submitter considered offensive to his honor. The company presented three different versions of the dismissal, with a possible improper conduct which could portray a violation of the OECD Guidelines: chapter I, paragraph 2; chapter II, paragraph 9; chapter IV, paragraph 2. There could also have been a violation of chapter III, paragraph 1, paragraph 2, item "g", and paragraph 3, items "b" and "d" since the documents with information regarding his dismissal were not made available to the Submitter. On the other hand, it was considered that the guideline contained in chapter VII, paragraph 1, despite being mentioned in the Submitter's complaints, was not directly related to the present specific instance.
53. It was presented a chronology of facts that showed that over time the Submitter had been questioning the reasons for his dismissal, referring questions to a series of *stakeholders*, *shareholders*, and others, in addition to having created a blog on the world wide web dealing with information related to the Respondent, information that the Respondent quotes as a defamatory conduct of the Submitter. This alleged defamatory conduct is the



subject of the two lawsuits before the Italian Court.

54. It became evident that both parties were not satisfied with the situation and a space for dialogue was identified if the parties expressed an interest in resolving the issue. The long confrontation seemed exhausting and harmful to both the Submitter and the Respondent. In this context, the acceptance of the specific instance was proposed.
55. On November 6, 2020, the Submitter was informed of the acceptance of the Specific Instance. The Respondent was notified on December 21, 2020, after coordination between the NCPs of Brazil and Italy.

5.3. Coordination between the NCPs of Brazil and Italy

56. With regard to coordination between NCPs, the recommendations of the Guidelines and the OECD Guide for NCPs on Coordination when handling Specific Instances were considered. In this Specific Instance, NCP Brazil is the host country (*host country*) and the leading NCP, while NCP Italy is the home country (*home country*) of the multinational company and supporting NCP.
57. Paragraph 23 of the Comments on Procedures for the Implementation of the Guidelines provides the following provisions for coordination between NCPs:
- Generally, issues will be dealt with by the NCP of the country in which the issues have arisen. Among adhering countries, such issues will first be discussed on the national level and, where appropriate, pursued at the bilateral level. The NCP of the host country should consult with the NCP of the home country in its efforts to assist the parties in resolving the issues. The NCP of the home country should strive to provide appropriate assistance in a timely manner when requested by the NCP of the host country.
58. Thus, with regard to the decision on the leading NCP, consideration was given to the guidance that it is generally the NCP of the country in which the issues arose. In addition, as instructed, the NCP Brazil carried out its Admissibility Analysis and Acceptance procedures internally and then contacted NCP Italy, as described below. Likewise, the NCP Italy offered to provide the necessary support for the case.
59. On November 9, 2020, the Coordinator of the NCP Brazil contacted NCP Italy, on a confidential basis, informing about the acceptance of the Specific Instance and requesting a meeting to discuss collaboration between the NCPs in the case. He also indicated the intention to carry out such coordination before notifying the Respondent.
60. In response, on November 13, 2020, the person in charge of the NCP Italy presented a summary of facts related to the Submitter and the Respondent. She highlighted the prior rejection of allegations from the Submitter in relation to the Respondent by the NCPs Brazil (2013) and Italy (2015 and 2017), as well as the lawsuits filed against the Submitter. In addition, she agreed to hold a meeting.
61. On November 24, 2020, a meeting took place between representatives of the NCPs Brazil and Italy. On that occasion, the NCP Brazil provided details on the allegation received,



informing about the reasons for the rapporteur's decision to accept the Specific Instance, a decision that was ratified by the IWG-NCP. It was established that the NCP Brazil would provide a translated version of the allegation and document that demonstrates new facts of the case. In turn, the NCP Italy would provide additional elements on the analyses carried out in 2015 and 2017. These pieces of information were shared by the NCPs in November 2020.

62. On December 10, 2020, the NCP Brazil informed that it was preparing a notification for the Respondent and confirmed if the contact details were correct. In addition, it pointed out that the NCP Italy would be copied in communications with the parties to remain informed about any developments.
63. As will be highlighted in item 6, the NCP Italy participated more actively in the procedures related to good offices, at the request of the Respondent and with the agreement of the NCP Italy.

5.4. Notice of the Respondent and publication

64. As informed, according to the NCP Brazil's Procedure Manual currently in force, the Respondent is notified after the acceptance of the case: "5.10. The company (ies) (Respondent) identified in the Specific Instance will be notified and will be given access to the documents (provided by the Complainant). It will also have the opportunity to comment on the Complaint, after its acceptance." The Manual also provides that, in its item 5.11, that "In the communication to the Respondent(s), the Brazilian NCP will describe the points raised by the Complainant and the article (s) of the Guidelines allegedly not complied with, taking into account information considered confidential."
65. On December 21, 2020, the SEI Official Letter no. 313320/2020/ME was sent addressed to the Respondent CEO. The document was forwarded to the Vice President of Projects and Sustainability of the company, with a copy to the NCP Italy. In the communication, the NCP Coordinator informed about the Guidelines and the work of the NCPs, the specific instance, the procedures adopted so far and the publication that would occur on the NCP website (<https://www.gov.br/produtividade-e-comercio-exterior/pt-br/assuntos/camex/NCP/produtos/alegacoes-de-inobservancia/banco-de-dados-de-alegacoes-de-inobservancia/instancia-especifica-no-4-2020-eni-spa>) and the OECD database (<http://mneguidelines.oecd.org/database/instances/br0039.htm>).
66. In addition, he requested the scheduling of a meeting with the company to provide additional clarifications. This meeting was held on January 22, 2021. On January 28, the documents of the allegation were sent to the company with a request for its statement. Besides, additional clarification was provided regarding the transparency procedures provided for in the Manual.
67. Due to the pandemic situation, the period for sending the statement was extended from 15 to 30 days. In addition, there was an additional extension until March 10 requested by the Respondent and authorized by the NCP. On the new agreed date, the Respondent



forwarded its response to the allegations.

5.5. Initial Assessment – next steps

5.5.1. First assessment: request for additional information

68. After the statement of the company, which occurred on March 10, 2021, the facts were examined and the versions of the Respondent and the Submitter were compared. This is the last stage of the initial assessment, by which, according to the Manual:

5.14. The rapporteur will analyze the Respondent(s)'s answers and make recommendations on the next steps of the procedure. Recommendations could be:

I - closure of the Specific Instance. In this situation, a Final Declaration will be written and published, according to the procedures defined in this manual;

II - request more information from the Parties. Therefore, the NCP's Executive Secretariat will take the necessary measures;

III – offer of Good Offices, including mediation between the Parties. To this end, the Coordinator of the Brazilian NCP will inform the Parties about the Good Offices (and mediation, if applicable) offering;

IV - other recommendations.

69. Additional information was requested from the parties in view of: the divergence of the versions concerning the dismissal of the Submitter; the lack of exact understanding regarding the distinction between the two lawsuits filed by the Respondent against the Submitter before the Italian Court; the presentation of a new document (2002 Memorandum) that clarified the reasons for the Submitter's dismissal; the Respondent's statement on the proposal for a settlement made by the Submitter and the lack of clarity as to the circumstances in which this proposal was made (the reason of the Submitter send a proposal during the procedure of this specific instance), among other reasons mentioned in the report issued on April 12, 2021. This recommendation, made based on item 5.14, item II, of the Manual, was approved by the IWG-NCP on April 20, 2021.

70. On April 23, 2021, the parties were notified of the decision and the questions were shared with them, being granted a period of 15 days for their response, until on May 10, 2021.

71. The NCP asked the Submitter: In what context was the proposal for a settlement submitted to the company? Which party has taken the initiative to seek the other and what is the stage of negotiations, if any?

72. The Submitter promptly responded to the inquiries made, as well as submitted additional information. He informed that his lawyer was approached by a third-party lawyer representing the Respondent, on November 25, 2020, requesting the submission of a proposal for an amicable settlement. The information that the proposal had been requested by the company was confirmed by the Italian Embassy in Brazil, according to the Submitter.

73. The NCP asked the Respondent:



When did the Italian company ENI, the parent company of the Economic Group, become aware of the reasons for the worker's dismissal and how was the disclosure of this information managed? Was there any mention to this fact in ENI's balance sheet in 2002? Why was the content of the Memorandum 2002 only used from 2010?

Why did the company present another version, more detailed and considered offensive by the Submitter, at the shareholders' meeting in 2017, if it had previously informed the worker directly and also the Brazilian Labor Court that the dismissal would have occurred without cause, denying the facts narrated in the Memorandum 2002?

Were the second and third versions of the Submitter's dismissal, presented in 2010 and 2017, respectively, prepared based on the Memorandum issued in October 2002 by the HR and Internal Audit Managers of the company Agip? If not, are there any other documents that support these versions?

What is the company's conduct regarding employees who report corruption or non-compliance with its code of ethics? Are there protection mechanisms in place to prevent whistleblowers from reprisals or retaliation? Are these mechanisms, if any, transparent and have they fulfilled their purpose? How was the Code of Ethics, specifically regarding the items questioned above, applied in the present case by Agip and ENI?

Was there an administrative and organizational restructuring of the Regional of Cuiabá at the time of the dismissal of the Submitter? Is this supposed restructuring related to the dismissal of the worker? Why are such circumstances not included in the October 2002 Memorandum?

What are the lawsuits that the company bring against the Submitter and what is the current stage of the lawsuits? What is the difference between the first and second lawsuits as to the subject matter and the claim?

In what context was the proposal for an agreement submitted by the Submitter's lawyer? Which party has taken the initiative to seek the other and what is the stage of negotiations, if any? It was requested the presentation of the minutes of attempted agreement in English, if possible.

74. The Respondent requested a deadline extension, and submitted its response on June 4, 2021, as granted by the NCP Brazil. This response was sent as confidential, and a public version was presented on July 23, 2021, which was adopted for the preparation of this Final Statement.
75. In its answer, the Respondent informed that the facts occurred long ago and it would not be possible to precisely obtain some of the pieces of information. It was stated that, at the time, the facts were practiced by Agip do Brasil, a company controlled by Eni, but information related to the Agip is not available on Eni's files. Also, the events occurred twenty years ago, when the management of the subsidiaries was different, as well as the management of employees. At the time, the system was not centralized, and much



information was not forwarded to Eni's headquarters. Moreover, according to the Italian law, the company has an obligation to keep the files for ten years. All these issues would make it difficult to access information and rebuild events.

76. In response to the questions, the Respondent informed that the dismissal, which occurred in 2001, and the information on the reasons for the dismissal were issued by Agip do Brasil and not by Eni. It was pointed out that the Respondent had no relation to the dismissal, nor it was informed of the matter. It also was informed that, in 2002, the Submitter sent a complaint to the Company's Board of Directors, which immediately initiated the investigations, requesting further information from Agip do Brasil. The results of these activities would have been disclosed in the 2002 balance sheet. In 2009, after further questioning of the Submitter, the company would have sent him a letter stating the reasons for his dismissal. In 2017, the reasons for the Submitter's dismissal would have been informed in response to a questioning made, based on the information available, arising from the 2002 Memorandum. According to the company, this would be the only version that Eni informed about the facts over time.
77. The Respondent also informed that, in 2009, the Submitter sent new documents to Eni. However, the company Agip had already been sold and the company had not been able to carry out further investigations. The information would have been forwarded to the Submitter, whose reactions would become increasingly offensive.
78. The company clarified the progress of the lawsuits in Italy filed by the company against the Submitter, stating that the main difference between the two lawsuits, in addition to the chronological aspect and the initial attempt at conciliation, would be in the increase in the severity of the Submitter's conduct. None of the lawsuits became final and unappealable. As for the code of ethics, the Respondent informed that it was implemented in 1998 and has been updated several times, following the world's best practices, even having ISO 37001 certification, besides being in compliance with the OECD Guidelines. The Respondent reported that the Submitter's case was, in 2017, audited by the certifying body (period from May 10 to June 12, 2017), which concluded that the company's conduct was in accordance with the applicable rules of conduct. The company informed that ensuring identity protection of whistleblowers to avoid any kind of retaliation is a fundamental principle maintained and strengthened over time.
79. Finally, the Respondent expressed its dissatisfaction with the Submitter's stance, did not agree that there was a violation of any rule, ethical principle or OECD guideline, as well as did not recognize the Submitter's right to financial compensation. The company claimed that the case already has judicial decisions in Brazil and Italy, in addition to having already been subject to mediation procedures, in which Eni demonstrated availability for a mutual understanding. It concluded by expressing its disappointment with the continuation of the specific instance, understanding that the situation does not fit the requirements of the Procedure Manual of the NCP Brazil, especially in terms of effectiveness of the OECD Guidelines.



5.5.2. Second assessment: forwarding for offer of good offices

In view of the information collected, although each party express dissatisfaction with the conduct of the other party, both express an interest in resolving the dispute that has already dragged on for a long time, and for this reason it was understood that it would be possible to obtain an understanding through a mediation process. The report, prepared on July 9, 2021, was concluded, recommending the offer of good offices, pursuant to item 5.14, III, of the Manual. On July 20, 2021, the IWG-NCP adopted the opinion of the rapporteur offering good offices to the parties.

6. Good offices and mediation actions

80. According to the Procedure Manual for Specific Instances of the NCP Brazil:

6.1. At this stage of the procedure, NCP Brazil seeks to facilitate access to the dialogue to help the parties reach a mutual agreement on the resolution of issues raised in the Specific Instance, in line with the OECD Guidelines. Good offices may also include mediation conducted by the NCP or professional mediators.

6.1. Offer of good offices and response of the parties

81. Also according to the Manual, in its item 6.3, "The Good Offices' offering by the NCP will be preceded by a preparatory phase, in which the NCP will inform the Parties on the Specific Instance and prepare a plan for conducting it. This will be followed by a phase in which the issues raised will be discussed, towards a mutually satisfactory solution." According to item 6.5., "In order to begin the preparatory phase, the NCP will meet with each Party separately to explain the process and options, including mediation."
82. Thus, on July 23, Sei Official Letter no. 191638/2021/ME and Sei Official Letter no. 195204/2021/ME, were sent to the Submitter and the Respondent, respectively. In both documents, meetings were requested with the parties for further clarification and offer of good offices.
83. A meeting was scheduled between the NCP Coordinator and the Submitter, held on July 29, 2021. At the time, questions about the procedure were clarified. On the same date, the Submitter sent a message agreeing to participate in the good offices.
84. The meeting with the Respondent was held on August 6, 2021, at which doubts about the procedure of good offices were also clarified. Subsequently, on September 3, 2021, the Respondent expressed its agreement to participate in the procedure, but conditioned its participation to a series of requirements, according to the letter sent. This document was also sent on a confidential basis, so it could not be shared with the Submitter. The public version was submitted on April 15, 2022, and was adopted for the following notes.
85. In this document, the Respondent, as it did in all its statements, questioned the continuation of the specific instance. At this point, it indicated that NCP Italy stated, on



August 2, 2021, that it understood that the new case did not bring any significant new element that justified the reopening of the case. It was considered that, in 2015, there was no room for mediation and that now it seems even more difficult.

86. Furthermore, the Respondent stated that it would be clear to the company that the Submitter would seek a counterpart for the multiple proceedings initiated by Eni due to his defamatory conduct. That in these cases there has already been an attempt of unsuccessful conciliation since the Submitter requested a compensation of 5 million euros. In addition, the Respondent informed that it understood that there would be no need to examine the situations dated more than five years ago.

87. Finally, the Respondent presented its list with eight conditions to adhere to the procedure, transcribed below (our translation):

- 1 - participation in the procedure without any admission of liability on the part of Eni and with renewed affirmation of the correctness of Eni's actions in Submitter's case, including the responses in the shareholders' meeting made in 2017;
- 2 - participation in the all steps of the procedure without any waiver by Eni of pending and future legal actions due to the offensive behavior held by Submitter since 2009 and still ongoing;
- 3 - request for strict confidentiality during the mediation process: in particular, it should be noted that Eni is not available for a direct confrontation with Submitter in order to avoid possible inappropriate use of video and/or audio of video meetings at a distance;
- 4 - involvement of the Italian National Contact Point in the Good offices procedure;
- 5 - participation in the procedure for mutual clarification without any payment of compensation for damages, nor labour reinstatement, given the absence of any title of liability on the part of Eni;
- 6 - request for the removal of the offensive content from the website, blog and social network "Eni's way" and abstention from further denigrating campaigns against Eni;
- 7 - request to the BNCP [Brazilian NCP] to provide/formulate guarantees in favor of Eni in case of breaches of confidentiality agreements or further defamatory conduct by Submitter;
- 8 - exposure of Eni's position, as well as the advice of the Italian NCP in this procedure, in the final decision even in the event of early closure of the procedure.

88. Regarding the third condition, on October 1, 2021, NCP Brazil questioned the Respondent whether it would be possible to relax it in order to establish a mediation process between the parties, but the company refused. In view of the response, the NCP Secretariat consulted with the OECD Secretariat on the feasibility of the good offices procedure without contact between the parties. It was considered that the promotion of dialogue between the parties could be done in this way, provided that the Submitter accepted. On October 19, 2021, the Submitter was questioned about this condition and agreed to it.

89. It should be noted that, at this time, the Submitter did not have access to the full response



of the company, being consulted only as to the third and sixth conditions.

6.2. Good office procedures

90. Having been defined among the parties that the good office procedures would continue, even without direct contact, the next step was the definition of the team of mediators. According to the Manual:

6.7. Mediation is a negotiation that seeks, in a structured way, a non-judicial resolution of conflicts. It is conducted by a mediator – appointed by the IWG-NCP members, and previously accepted by the Parties –, who will seek to facilitate and organize communication between them.

91. Given the thematic affinity, on October 26, 2021, the names of two mediators of the Undersecretariat of Labor Relationship of the Ministry of Labor and Social Security were submitted to the evaluation of the parties. The Submitter responded on the same date manifesting his acquiescence. In turn, the Respondent responded on November 4, expressing concern about possible bias of the mediation discussions due to the mediators area of expertise. After clarifying that there would be no such interference, the Respondent agreed to the proposed names on November 8.

92. Once the names of the mediators were defined, the work plan of good offices was drawn up, as provided for in the Manual:

6.9. Once Parties accept the mediation, the Brazilian NCP will prepare a work plan containing the objectives sought with the mediation, deadlines, means of communication, confidentiality requirements, identification of authorized negotiators and a confidentiality agreement in handling the information provided, among other information. The Parties may propose adjustments to the plan. The final version will be signed by both Parties and the mediator. Work plans may vary in format and will be defined for each Specific Instance, observing any practical restrictions that may exist.

93. During November 2021, allegations brought at the beginning of the Specific Instance were studied in contrast to the constraints imposed by the Respondent in order to identify any issues that could be dealt with during the good offices. There was a meeting between mediators, rapporteur, and the NCP Brazil Secretariat in order to discuss the analysis. Finally, on December 10, 2021, a draft Work Plan was sent to the parties, indicating the difficulty to make compatible the demands and constraints and asking the parties to describe what they were willing to discuss.

94. In sending the document, the NCP Secretariat highlighted to the Submitter a provision referring to the sixth condition requested by the Respondent, regarding the removal of offensive content from his virtual pages (website, blog, and social networks) and abstention of new campaigns against the Respondent. The Submitter promptly complied with the request and, on December 13, forwarded a revised Work Plan and an additional



document addressed to the Respondent demonstrating compliance with the sixth condition, although the Submitter understand that *these publications were only “publicity negative” against the Respondent replicated from the internet.*

95. On December 21, the NCP shared the document with the Respondent. On the same date, the Respondent responded with the revised Work Plan. On December 24, the NCP presented a consolidated Work Plan with the revisions from the parties, and called each party for a preliminary meeting with the mediation team.
96. Between December 2021 and January 2022, the Respondent asked additional questions regarding the fourth condition, referring to the role of the NCP Italy in the Specific Instance. As a reaction, in January 2022, there was a new coordination between the NCPs Brazil and Italy, as well as a request for guidance to the OECD Secretariat. It was established that the NCP Italy would continue with its supporting role, being informed about the developments of the Instance, and would also participate as an observer in the mediation.
97. On January 13, 2022, the preliminary meeting with the Submitter took place. At the time, the role and limits of the NCP were reaffirmed, explaining that what the Submitter sought to discuss would need to be inserted in the Work Plan for the Respondent to evaluate its feasibility. The Submitter informed that is waiting this opportunity to dialogue with the company for 20 years and showed his concern about the possibility of the company deal in a instrumentalized way in the Specific Instance. He also mentioned that expect good faith of the Respondent. In addition, it requested that a document entitled "Initial Speech" be shared with the Respondent.
98. On February 2, 2022, the Work Plan was forwarded to the Respondent, along with the document of "initial speech" shared by the Submitter, being requested its response until February 17. Subsequently, the company reported that it did not receive this e-mail, which was re-sent on February 11 and 15, with a new deadline until February 24. The company requested an extension of the period, and the new date was set for March 11, 2022.
99. On March 21, 2022, the Respondent sent a message to the NCP Brazil Secretariat informing its withdrawal from the mediation process. This possibility is provided for in the Procedure Manual, in its item 6.10: "The mediation may be interrupted at any time at the request of either Party and/or the NCP.". The entire communication was confidential, and the public version was made available on April 18, 2022.
100. Among the reasons presented by ENI to support of the exit, the company considered with the "Initial Speech" the Submitter demonstrated a distorted use of PCN Institute, pursuing the sole purpose of exploiting the PCN as an alternative jurisdiction to those that had already rejected its monetary claims; that the investigations promoted by the company have not revealed any violation of the law or the principles of Eni Group's Code of Ethics; that the company has not breached any OECD guideline; and that the conditions established by the company would not be being observed.
101. In addition, the company again questioned the acceptance and continuation of the specific instance. The company confirmed that the Submitter momentarily stopped his



conduct, which it considered defamatory, but had no guarantee that the stoppage would continue. The company also affirmed that since the beginning of the procedure, it was willing to cooperate, but always had doubts about the possibility of reaching a mediation with the Submitter, given the facts already exposed. The company pointed out that the opportunity for good offices of NCP Brazil needed a precondition: the effective willingness and feasibility to reach a mutual solution and/or promote a genuine and transparent dialogue on the subject. However, the Submitter's position would not have shown any provision to that effect.

102. The company's position was informed to the Submitter, who requested the scheduling of a meeting to deal with the matter. At that meeting, the company's choice and the procedures that would be adopted then were informed, terminating the specific instance. The full response of the company in its public version was shared with the Submitter on April 29, 2022.

6.3. Access to documents, Submitter's statement, and breach of confidentiality

103. On March 23, 2022, after being informed of the Respondent intention to withdraw from the procedure, the NCP Secretariat requested that the company submit the documents previously shared only on a confidential basis. The company was reminded that, according to item 10.6 of the Manual, all documents provided in a confidential version should be accompanied of their public versions. It was also informed that such documents would be necessary for the preparation of the Final Statement, so they should be presented by April 15.
104. On the date indicated, the Respondent submitted the public versions of the documents, which were shared with the Submitter on April 29, 2022. The Submitter requested the possibility of presenting a statement about these documents' public versions, shared throughout the specific instance, to which he had no previous access. In this context, after consulting the OECD Secretariat and the NCP Italy, the NCP Brazil Secretariat authorized the statement, which should be restricted to new facts to which it had had access with the recent receipt of public versions.
105. It was established the deadline of May 20, 2022, date on which the Submitter sent a document outside the set limits. There was a deadline extension, at the request of the Submitter, to May 30, date on which he sent a more synthetic document, which the NCP understood to meet the requirements. As for the content, the Submitter highlights the lack of evidence of the Respondent's allegations, that the situation destroyed his career, as well as the company adopted a corporate strategy of retaliation and victimization to exempt from its responsibility for the damage caused.
106. According to the Submitter, the company's mention of good faith, active participation and cooperation would not correspond with the truth, as it would never have shown interest in a friendly dialogue. He reiterated information about his history with the company, stating that the posture of non-cooperation would have been evidenced at



various times.

107. On the previous attempt at mediation between the parties, the Submitter pointed out that the company would have requested a proposal for an amicable agreement, but never responded it and used it to malign him. The Submitter also reported that he sent two proposals of agreement to the company's lawyers, one in 2015 and another in 2020, and that, on the second occasion, he had previously talked with the Ambassador of Italy in Brazil, who would have confirmed that the company was waiting for this proposal. The Submitter expressed the legitimacy of a request for compensation, presenting the criteria used to estimate the value cited in its proposal for amicable compensation.
108. Finally, on the constraints for good offices, the Submitter understood that the Respondent would be acting in bad faith, with a lack of active participation and lack of cooperation. According to the Submitter, the requirements posed by the Respondent would contradict the commitments made by the company with Stakeholders, in addition to the corporate and international ones. The Submitter also presented a series of corporate and international commitments of which the Respondent would be a party, confronting with his case aiming at demonstrating the non-compliance of the company's behavior with those commitments.
109. Still during the process of negotiating the work plan, it should be noted that the Submitter published on the website of his legal entity¹ a text that mentioned that the Respondent was responding to the NCP Brazil for not complying with the Guidelines. Upon becoming aware of the fact, on March 9, 2022, the NCP Secretariat contacted the Submitter to request clarification in this regard. At the time, the Submitter was informed that the statement did not reflect the position of the NCP and reminded him about the provisions of item 10.2 of the Manual regarding good faith and confidentiality. He was also reminded of his commitment with the Respondent to remove content about it in the context of the conditions for good offices. After the notification by the NCP Secretariat, the text was removed by the Submitter.
110. After being informed of the withdrawal by the Respondent, the Submitter restarted to send e-mails with information related to the Respondent to different stakeholders. In this context, on April 7, 2022, the Submitter sent a letter to the NCP Secretariat stating that it had submitted information to the United Nations special procedures. As an attachment, the Submitter included a document entitled "Memorial" in which he shared confidential documents discussed within the specific instance, such as correspondence exchanged with the NCP and the draft mediation work plan. On April 29, 2022, the NCP Secretariat warned the Submitter about the inadequacy of its conduct and the consequences provided for in the Manual:

10.10. If one of the Parties covered by confidentiality violates it, it shall be subject under national law to:

¹ <http://eticanosnegocios.org.br/quem-somos/> .



- a) In the event that the information is used in judicial or arbitral proceedings, there is a violation of the duties of good faith and loyalty, making evidence inadmissible, in accordance with paragraph 2, of Art. 30, of Law No. 13.140/2015;
- b) Possibility of indemnification in the judicial sphere if such information causes harm to one of the Parties.

111. The above-mentioned facts were discussed at the 1st Extraordinary Meeting of the IWG-NCP, held on May 13, 2022. It was agreed that the violations committed would appear in the final statement and that the NCP would seek to strengthen the data protection and confidentiality measures in the specific instances, from the revision of the Procedure Manual. It was also agreed that the possibility of additional measures in the event of bad faith by either party would be discussed.

7. Analysis and conclusions

112. First, it is necessary to clarify that the Specific Instance is a procedure of voluntary participation by companies. Under item 7.5.1 of the Manual, the NCP makes no judgement about the conduct of companies in relation to the OECD Guidelines questioned. The NCP is responsible, according to item 6.1 of the Manual, for seeking to facilitate access to dialogue to help the parties reach a mutual agreement on the resolution of the problems raised. In this context, the NCP Brazil sought to play its role in the treatment of this Specific Instance, with the promotion of the Guidelines and the attempt to bring the parties closer together, stimulating the responsible business conduct. In this way, the conclusions of this instance does not mean that the company is acting in accordance with OECD guidelines or is not acting in accordance with OECD guidelines.
113. The allegation submitted fulfilled the requirements for its admissibility and acceptance, indicating new facts occurred within the 60-month period of its proposal. Due to the history between the Submitter and the Respondent, facts dating back to 2001 were mentioned, but the Specific Instance focused on the events that occurred from 2017, exposed below.
114. The allegations presented focused on three facts. The first was the company's statement at the General Shareholders' Meeting in April 2017, when, after questioning one of the shareholders, he informed the reasons for the dismissal of the Submitter. According to the allegation, this third version given by the company for the dismissal of the Submitter would be unfounded and untrue, offensive in nature and different to the versions previously presented. The second fact would be the existence of two documents that would deal with the reasons for the dismissal of the Submitter, about which he became aware in 2019 and would be seeking access. The third fact would be a second lawsuit filed by the company against the Submitter.
115. According to the Submitter, those actions would breach the provisions of the following chapters of the OECD Guidelines: I. Concepts and Principles, II. General policies, III.



Disclosure, IV. Human Rights, and VII. Combat against Corruption, Solicitation of Bribery, and Extortion.

116. In relation to Chapter I, item 2, the Submitter claimed the company's failure to comply with national legislation. This would have occurred when mentioning a version for the dismissal that, in addition to being offensive to the Submitter, could constitute damage to his image, or even set up a crime against honor, once it was not supported by evidences. In this context, there could also be a violation of Chapter IV, since the right to honor is one of the human rights protected by the Brazilian law and international conventions, being covered by the Guidelines. This third version was different from the other versions mentioned by the company before and was different from the version analyzed by Brazilian Justice.
117. With regard to Chapter III, the Submitter reported that the company did not comply with its own Code of Conduct and did not protect the whistleblower (letter "b") and the internal audit carried out at Brazilian subsidiary of Respondent have been false. As for Chapter II, item 9, the Submitter reported that he had been discriminated when he was unfairly dismissed in retaliation, which was contrary to Respondent's Code of Ethics as well as the Brazilian and Italian law and at the time of the lawsuits brought against him.
118. Finally, in relation to Chapter VII, item 1, the Submitter is based on the acts denounced by him in 2001. Such allegation was not considered in this Specific Instance, because it dealt with facts that occurred in 2001, outside the scope of 60 months required by the Manual. Similarly, the dismissal occurred in 2001, the first version presented by the company Agip do Brasil, the version presented by the company in the lawsuit in Brazil that was finalized in 2009 and the version presented in the Italian Court in 2010 were also not objects of this Instance, despite having relationship with the facts and in some way reflecting on the discussion.
119. The Respondent sought to demonstrate the righteousness of its conduct regarding the OECD Guidelines, denying any violation, as well as reinforced its stance on its actions. In addition, it sought to demonstrate the attacks that the Submitter promoted against its image, through the publication of negative articles and sending emails to shareholders, stakeholders, and other actors. Thus, it justified the unfeasibility of the continuation of the Instance.
120. In relation to the first allegation, the Respondent reported that the version of the resignation presented at the Shareholders' Meeting in 2017 was based on the existing documents. It also informed that the dismissal of the Submitter has already been judged by the Brazilian Justice and examined by both the NCP Brazil and Italy, so there would be no reasons for the continuation of the Specific Instance. It is important to highlight that the first allegation is related to the version of resignation presents in 2017, and this version was considered offensive for the Submitter. Brazilian Justice never analyzed this version reported in 2017, as the Brazilian NCP.
121. As for the second allegation, it was highlighted a memorandum produced in 2002 which presents the reasons why the Respondent dismissed the Submitter, in addition to



demonstrating by whom and when the investigation was made. The document was kept in possession of the successor of the Brazilian assets of the Respondent, coming to the attention of the Submitter in 2019 and being made available to him only in 2020. These documents were not analyzed before by the Brazilian Justice and Brazilian and Italian NCP and indicate the reasons of the resignation of the Submitter.

122. Finally, with regard to the third allegation, it was considered that the exercise of that right alone does not constitute any discriminatory procedure, and any abuse in the Law may be considered unlawful, but that decision of abuse must be assessed by the Judiciary system itself. According to the company, the second action deals with new facts practiced by the Submitter and is different from the first one.
123. As for the proposal for good offices, it is first worth saying that this is the logical development of the Specific Instance provided for in the OECD procedures and in the NCP Brazil Manual. The main requirement for dialogue is the will of the parties. Since the specific instance is a voluntary procedure, if the parties express a willingness to dialogue, it is the NCP role to offer the opportunity for submitter and respondent to seek an understanding, before a neutral third party. The main requirement for dialogue is the will of the parties, in addition to the expectation that they will act with good faith and transparency. The offer of good offices seemed especially important because it was found that there was no dialogue between the parties over all these years and there was the expectation that a neutral third party could help them to evolve in the dialogue.
124. The Respondent initially accepted the offer of good offices, but conditioned its participation to eight requirements, some of them frontally contrary to the Submitter's claim. In this context, it should be said that there is no fence to this procedure and that each party may lay down the conditions it deems necessary. During the preparation of the Work Plan, the company received an opening letter from the Submitter, which it understood as opposed to the conditions previously presented, and decided to withdraw from the process.
125. Throughout the Specific Instance, the Submitter sought to demonstrate the violations of the Guidelines and the Respondent sought to demonstrate the absence of such violations, as well as to show the attacks on its image promoted by the Submitter and the misuse of purpose of the Specific Instance. The Submitter was seeking an admission of responsibility from the Respondent. The company, refused to rediscuss the situation, understanding that the facts have already been appreciated and considered regular by the Justice and in allegations with the same object had already been rejected by the NCPs of Brazil and Italy, besides being a situation with low chance of agreement. Such positions may have contributed to hindering the efforts of understanding. Nonetheless, as mentioned in paragraph 122, the new fact of 2017 (third version) and the new documents were never analyzed by Brazilian Justice and Brazilian NCP before. The Submitter did not have access to the Memorandum of 2002 until 2020.
126. One of the points in disagreement was the possibility of paying financial compensation. The Submitter, at no time, excluded from the discussion possible financial



compensation. The Respondent has vetoed this possibility in one of its conditions. In that context, the parties mentioned a proposal for an amicable settlement made by the Submitter in a parallel procedure, a proposal which was requested by the Respondent and on which there is no news of the reply to date (company informed in October 2022, during the final statement review, that answered the proposal in July 28, 2022).

127. On the discussions related to confidentiality, it is worth mentioning that transparency is one of the pillars defended and encouraged by the OECD, but this is not confused with the freedom to use information at one's discretion, as well as confidentiality does not constitute a shield to hide facts and documents. Observing the limits established by the Manual and the Brazilian legislation, all data was made available, seeking to make the documents available in a timely manner so that the parties were aware of the development of the Instance. In the event that the Respondent submitted the documents in public version after their withdrawal, a period was granted for the Submitter to be able to express his considerations. Thus, both parties had equally ample freedom to expose their versions of the facts and present evidence they considered pertinent to base their allegations.
128. Finally, despite some progress being observed in the interaction between the parties, there were no conditions to evolve in the dialogue, even though the NCP exercised its role, in a neutral and impartial manner, and in accordance with its rules of procedure.
129. Thus, considering that it is not for the NCP to issue a value judgment on the conduct adopted by the Respondent in respect of compliance with the OECD Guidelines; considering that the Specific Instance deals with acts relating to a specific case involving litigation between the parties; considering that the Submitter's intention was to specifically discuss compliance with the OECD Guidelines in its specific case; considering that every effort has been made to bring the parties closer together so that there is room for dialogue and a pacification of their relationship through good offices; considering that the Respondent has expressed its intention to not continue the good offices; this Specific Instance is concluded without recommendations for the parties.
130. With this Final Statement, the NCP concludes the specific instance.