

## SPECIFIC INSTANCE

### GREENPEACE LUXEMBOURG AND FONDS DE COMPENSATION DE LA SECURITE SOCIALE SICAV-FIS

6 DECEMBER 2024, LUXEMBOURG

**The objective of the initial assessment process under the Implementation Procedures is to determine whether the issues raised in the specific instance warrant further examination. If so, the NCP will offer or facilitate access to consensual and non-adversarial procedures, such as dialogue, mediation or conciliation (e.g. ‘good offices’) to the relevant parties.**

**The NCP has at this stage made no determination as to whether the company has acted consistently with the OECD Guidelines. As specific instances are not legal cases and NCPs are not judicial bodies, NCPs cannot impose sanctions, directly provide compensation or compel parties to participate in a conciliation or mediation process.**

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## OVERVIEW OF THE OECD GUIDELINES, NCP AND ITS ROLE

### OECD GUIDELINES FOR MNES ON RBC

The OECD Guidelines for Multinational Enterprises on Responsible Business Conduct (the “Guidelines”) are recommendations provided by governments to multinational enterprises.<sup>1</sup> The primary aim of the Guidelines is to encourage enterprises to contribute positively to economic, environmental, and social progress while minimizing adverse impacts associated with their operations, products, and services.

Since their introduction in 1976, the Guidelines have been regularly updated to address societal challenges and the evolving context of international business. Most recently updated in June 2023, the Guidelines cover key areas of business responsibility, including human rights, labor rights, environment, bribery and corruption, consumer interests, disclosure, science and technology, competition, and taxation. The Guidelines apply to multinational enterprises operating in and from the territories of the Adherents, which currently includes 51 countries, including Luxembourg.

### NCPS FOR RBC AND LUXNCP

The OECD Guidelines are supported by a unique implementation mechanism: the National Contact Point for Responsible Business Conduct (“NCP”). NCPs are established by adhering governments to ensure the effectiveness of the Guidelines. The NCP of Luxembourg (“LuxNCP” or the “NCP”) operates within the Ministry of the Economy. In fulfilling its tasks, the LuxNCP adheres to the OECD’s core effectiveness criteria, including visibility, accessibility, transparency, accountability, impartiality and equitability, predictability, and compatibility with the OECD Guidelines. The primary responsibilities of NCPs include:

- I. Promote awareness and uptake of the Guidelines: NCPs work to increase awareness of the Guidelines among businesses, trade unions, and other stakeholders through outreach activities, training sessions, and guidance on implementation.
- II. Contribute to the resolution of issues that arise in relation to the implementation of the Guidelines in specific instances: NCPs serve as a non-judicial grievance mechanism, offering a forum for discussion and expertise to help parties resolve issues efficiently and in accordance with applicable law and the Guidelines.

In addition, NCPs may coordinate with relevant government agencies to support efforts by their governments to develop, implement, and foster coherence of policies to promote responsible business conduct.

### KEY ROLES OF NCPS IN HANDLING SPECIFIC INSTANCES

When issues arise related to the implementation of the Guidelines in specific instances, NCPs are expected to assist in resolving them. This assistance may include; supporting constructive dialogue, facilitating agreements between the parties and issuing recommendations. The aim of such assistance is to further the implementation of the Guidelines in the future and/or addressing adverse impacts in a way consistent with the Guidelines.

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<sup>1</sup> OECD (2023), OECD Guidelines for Multinational Enterprises on Responsible Business Conduct, OECD Publishing, Paris, <https://doi.org/10.1787/81f92357-en>.

## EXECUTIVE SUMMARY

On 11 March 2024, LuxNCP received a specific instance (“complaint”) from Greenpeace Luxembourg A.S.B.L. (“Greenpeace” or the “complainant”) alleging non-observance of the OECD Guidelines by the Fonds de Compensation de la Sécurité Sociale SICAV-FIS (“FDC SICAV-FIS”, or “Fund”), an open ended investment company created by the Fonds de compensation commun au régime général de pension (“FDC”), a public institution responsible for managing and investing the assets of Luxembourg’s general pension insurance scheme.

The complaint raises issues regarding alleged flaws in FDC’s current sustainability approach and argues that FDC SICAV-FIS’ investment strategy does not meet the expectations outlined in the OECD Guidelines. Specifically, Greenpeace claims that FDC SICAV-FIS fails to conduct human rights and environmental due diligence, address climate and human rights risks in its investments, and use its leverage to influence investee companies to prevent or mitigate adverse impacts identified during the due diligence process. The complaint refers to the provisions of the Guidelines in Chapter II (General Policies), Chapter III (Disclosure), Chapter IV (Human Rights), Chapter VI (Environment) and Chapter VIII (Consumer Interests).

In response, FDC asserts that FDC SICAV-FIS does not meet the criteria to be qualified as a multinational enterprise under the OECD Guidelines. It states that FDC SICAV-FIS invests globally with a commitment to sustainability, delegating asset management to external managers who adhere to strict due diligence processes. FDC claims that the Fund’s investment strategy incorporates environmental, social, and governance (ESG) criteria, aligns with international conventions, and is regularly reviewed to ensure compliance and improvement. FDC maintains that its current approach is consistent with legal and regulatory requirements and aims to foster a sustainable economy while ensuring financial returns.

The objective of the initial assessment process under the Guidelines’ Implementation Procedures is to determine whether the issues raised warrant further examination.<sup>2</sup> **In this phase, the NCP assesses whether the issues are *bona fide*, in other words real or authentic, and relevant to the implementation of the Guidelines, in other words, within the scope of the Guidelines.**<sup>3</sup> This assessment is based on six criteria specified in the Guidelines,<sup>4</sup> which are also reflected in the Rules of Procedure of the LuxNCP.<sup>5</sup> **The NCP conducted its initial assessment based on these six criteria and decided to accept the specific instance and offer its good offices on due diligence obligations of the Fund:**

1. Greenpeace Luxembourg, part of a global network focused on environmental issues, has a legitimate interest in the issues raised;
2. The alleged issues are material and prima facie substantiated with detailed submissions, appendices, and references;

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<sup>2</sup> OECD Guidelines (2023), Procedures, C(2).

<sup>3</sup> OECD, Guide for National Contact Points for Responsible Business Conduct on the initial assessment of specific instances, Revised version based on the 2023 version of the Implementation Procedures of the OECD Guidelines for Multinational Enterprises on Responsible Business Conduct, 3 May 2024 (OECD Initial Assessment Guide), p. 38.

<sup>4</sup> OECD Guidelines (2023), Commentaries on the Implementation Procedures, para. 33.

<sup>5</sup> LuxNCP, Rules of Procedure for Handling Specific Instances (herein after LuxNCP RoP), available at: <https://pcn.gouvernement.lu/dam-assets/documents/rop-vf.pdf>.

3. FDC SICAV-FIS, as a public limited company engaging in international activities through global investments, is covered by the Guidelines;
4. There appears to be a link between the enterprise's activities and the issues raised;
5. As far as is known, there are no laws or parallel proceedings addressing similar issues that would prejudice this specific instance;
6. The examination of the issues raised in the specific instance may contribute to the purposes and effectiveness of the Guidelines.

**At this stage, the NCP does not make any determination on the parties' competing submissions. Accepting the case for further examination does not mean that the issues raised have been given final consideration and does not imply any finding as to whether or not FDC SICAV-FIS has acted in accordance with the Guidelines.**

As per LuxNCP's Rules of Procedure, the NCP informs and coordinates with NCPs of other involved countries. In this case, LuxNCP is the only relevant NCP and conducted the assessment on its own.

The LuxNCP shared the draft initial assessment with the parties on August 2, 2024, allowing 15 working days for their reactions. The final initial assessment was issued on 6 December 2024 and shared with the parties and the OECD Secretariat and published on the NCP's website.

#### SUBSTANCE OF THE SUBMISSION (FACTS PRESENTED) AND THE ENTERPRISE'S RESPONSE

The current section provides an overview of the issues raised by Greenpeace in their complaint, their expectations with regards to remedy, and FDC SICAV-FIS' initial response.

On 11 March 2024, LuxNCP received a specific instance ("complaint") from Greenpeace Luxembourg A.S.B.L. ("Greenpeace" or the "complainant") alleging non-observance of the OECD Guidelines by the Fonds de Compensation de la Sécurité Sociale SICAV-FIS ("FDC SICAV-FIS", or "Fund"), an open ended investment company created by the Fonds de compensation commun au régime général de pension ("FDC"), a public institution responsible for managing and investing the assets of Luxembourg's general pension insurance scheme.<sup>6</sup>

LuxNCP notes that the complaint includes allegations regarding the current sustainability approach of FDC as well as FDC SICAV-FIS' alleged failure to meet the expectations outlined in the Guidelines. The specific instance is directed at FDC SICAV-FIS, with FDC responding on its behalf. The NCP's assessment focuses on the claims related to FDC SICAV-FIS' responsibilities under the Guidelines.

The complaint refers to the following provisions in the 2011 and 2023 Guidelines:<sup>7</sup>

#### **2023 OECD Guidelines**

- Chapter II, paragraphs 11, 13, 14 and 15
- Chapter III, paragraph 3, a) and d)
- Chapter IV, paragraphs 1, 3 and 5

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<sup>6</sup> FDC was established by the [Law of 6 May 2004](#) and operates under the Code de la Sécurité Sociale (CSS).

<sup>7</sup> For full texts of the relevant chapters and sections referenced in this section, please see Annex I.

- Chapter VI, paragraph 1, a), b), c), d)
- Chapter VIII, paragraph 4

### **2011 OECD Guidelines**

- Chapter II, paragraphs 10, 12, 13 and 14
- Chapter IV paragraphs 1, 3 and 5
- Chapter VI, paragraph 1) a), b) and c)
- Chapter VIII, paragraph 4

The complaint was filed after the adoption of the 2023 OECD Guidelines in June 2023 and the allegations pertain to ongoing activities of FDC SICAV-FIS. Therefore, the NCP bases its assessment on the 2023 version of the OECD Guidelines.

The next sections set out the complaint and FDC SICAV-FIS' response. **In this initial assessment, LuxNCP refrains from commenting on the accuracy of either position.**

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## SUMMARY OF THE COMPLAINT

The substantive part of Greenpeace's allegations consists of two parts.

The first part criticizes what Greenpeace perceives as "flaws in FDC's current sustainability approach".

Greenpeace argues that the latest directive issued by FDC's Board of Directors in February 2023, which outlines its investment policy for 2023-2027, lacks essential elements required by the OECD Guidelines, including risk-based due diligence, a coherent sustainable investment strategy, and specific objectives for mitigating adverse impacts related to climate, environment, and human rights. It also claims that the exclusion policy is not clearly defined and does not exclude companies for climate reasons, despite the relevant standards in the Guidelines.

Greenpeace alleges that FDC's sustainability analysis is inconsistent among asset managers, leading to investments in companies excluded by other institutional investors. Additionally, Greenpeace states that the criteria for obtaining Luxembourg Finance Labelling Agency's (LuxFlag) ESG labels are weaker than OECD standards, and certain sub-funds do not fully meet the Guidelines' criteria due to insufficient risk-based due diligence.

While Greenpeace welcomes FDC's engagement policy, it calls for clearer definitions, exit strategies for unresponsive companies, and greater transparency in engagement activities and voting behavior. It also claims that FDC's investment strategy is inconsistent with the Paris Agreement, citing a lack of recent data on Paris-alignment and calling for a clear commitment to an emissions reduction pathway.

The second part of Greenpeace's complaint details alleged failures of FDC SICAV-FIS to meet various standards in the OECD Guidelines:

- **Chapter on General Policies (Chapter II):**

Greenpeace contends that FDC SICAV-FIS lacks a due diligence policy compliant with the Guidelines, focusing more on financial and reputational risks rather than responsible business conduct (RBC) risks, which include impacts on society and the environment. It argues that the Fund's principal adverse impact (PAI) assessments

for some sub-funds do not align with required risk-based due diligence and that the Fund fails to disclose identified adverse impacts or how they are addressed.

Greenpeace asserts that the Fund has not taken adequate steps to prevent and mitigate adverse impacts linked to their operations and that the Fund's reliance on an exclusion list is insufficient and incomplete. Greenpeace claims that there is no evidence that the Fund has encouraged its business relationships to apply principles of RBC compatible with the Guidelines.

Greenpeace also criticizes the Fund for lacking meaningful stakeholder engagement, citing instances where the Fund was unresponsive to Greenpeace's views.

- **Chapter on Disclosure (Chapter III)**

Greenpeace argues that FDC SICAV-FIS does not disclose its plans for implementing due diligence or its potential and actual adverse impacts. It states that the Sustainable Investor Factsheet 2022, published in December 2023, primarily reports on the supposed positive impacts of the Fund's investments but fails to report on negative impacts. Greenpeace asserts that FDC should be transparent about its potential and actual adverse impacts and its plans for implementing due diligence to address them.

- **Chapter on Human Rights (Chapter IV)**

Greenpeace states that it conducted an in-depth analysis of FDC SICAV-FIS' investments. A 2021 study by Nextra Consulting, in collaboration with Greenpeace Luxembourg and Action Solidarité Tiers Monde (ASTM), identified among FDC SICAV-FIS' investments 282 reported cases involving 196 companies that had failed to conduct human rights due diligence. Further analysis of FDC's 2022 annual report revealed significant investments in high-risk sectors such as automotive, food and agriculture, and IT, totaling almost two billion euros. Greenpeace argues that, according to the 2022 Corporate Human Rights Benchmark, none of these investments satisfactorily meet the due diligence requirements.

Greenpeace criticizes FDC's exclusion list, stating that it has several flaws, resulting in continued investments in companies with serious human rights abuse allegations. In a screening conducted between December 2023 and January 2024, Greenpeace compared FDC SICAV-FIS' latest investment data with the Financial Exclusion Tracker<sup>8</sup> and found that the Fund had invested in 130 companies excluded by other institutional investors for adverse human rights impacts.

- **Chapter on Environment (Chapter VI)**

Greenpeace claims that FDC SICAV-FIS lacks an effective environmental management system and risk-based due diligence. The Fund's 2023-2027 strategy allegedly lacks objectives to align with the Paris Agreement's 1.5°C target, and its carbon intensity reporting is inadequate, as it does not report annually on its alignment with the Paris Agreement.

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<sup>8</sup> The Financial Exclusions Tracker is a public database that lists companies excluded by investors and banks for sustainability reasons, including ESG risks.

Greenpeace asserts that the Fund continues to invest in major coal, oil, and gas companies, including leading carbon majors responsible for significant global greenhouse gas emissions, contradicting the best available science and the Fund's responsibilities under the Guidelines.

Additionally, Greenpeace argues that the Fund lacks measurable objectives, targets and strategies for addressing environmental impacts and fails to report on its reliance on carbon credits or offsets, despite the Guidelines' expectations for transparency in this area.

- **Chapter on Consumer Protection (Chapter VIII)**

Greenpeace claims FDC SICAV-FIS fails to provide annual information on sustainability risks, particularly climate-related financial risks, and its mitigation plans. Greenpeace asserts that the Fund's sustainability claims are difficult to verify and potentially misleading. For example, while FDC SICAV-FIS claims its forest estate absorbs nearly 7,500 tons of CO<sub>2</sub> annually, it invested in companies involved in deforestation in 2022. The Fund also claims 500 million euros are managed according to Paris Agreement objectives, but this is only 2% of its total investments, with the remaining 98% not meeting these criteria, according to the complaint.

Greenpeace argues that the Fund's overall investment trajectory aligns with a +2-3°C temperature rise, far above the 1.5°C target needed to limit severe climate impacts.

The complaint includes a case study involving ArcelorMittal, a steel manufacturing company based in Luxembourg, to illustrate perceived shortcomings in FDC SICAV-FIS' sustainability and due diligence practices, though this is not part of the formal complaint against FDC SICAV-FIS.

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#### EXPECTATIONS OF GREENPEACE WITH REGARDS TO REMEDY

Greenpeace has been engaging with FDC since 2015, including holding numerous meetings with FDC representatives, in an effort to influence FDC SICAV-FIS' investment strategy. However, these meetings have ceased at some point. Greenpeace now seeks the assistance of the LuxNCP to reinstate this dialogue and address the issues raised in the complaint.

Greenpeace requests FDC SICAV-FIS to:

- I. Set up a sustainable investment strategy in line with the RBC standards, including at a minimum;
  - “Risk-based human rights and environmental due diligence with policies and procedures to identify, prevent, mitigate and if applicable remedy adverse impacts, and ensure that any new policy or procedure is effectively implemented”; and
  - “A clear commitment of the FDC to the Paris Climate Agreement ratified by Luxembourg, with concrete, ambitious and measurable objectives and the definition of an emission reduction pathway leading to a significant reduction in emissions in order to align the Fund's investments with below the 1.5°C target required by the best available science”.
- II. Carry out human rights and environmental due diligence in relation to investments by following the process described in the OECD Due Diligence Guidance:<sup>9</sup>
  - Embed responsible business conduct into policies and management systems;
  - Identify and assess actual and potential adverse impacts associated with the enterprise's activities;

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<sup>9</sup> OECD (2018), OECD Due Diligence Guidance for Responsible Business Conduct.

- Cease, prevent and mitigate adverse impacts;
  - Track implementation and results (including alignment with the below 1.5°C target); and
  - Communicate annually on how impacts are addressed (...).
- III. Establish a grievance mechanism, including an ethics committee, in line with the expectations in the United Nations Guiding Principles on Business and Human Rights (UNGPs) allowing stakeholders to report sustainability related issues.

Greenpeace requests that if FDC SICAV-FIS refuses the NCP's good offices, withdraws after they have commenced, or if the dialogue fails to reach an agreement, the LuxNCP should further examine whether the Fund acted in accordance with the Guidelines. Additionally, Greenpeace asks the NCP to provide recommendations to the Fund to align its conduct with the Guidelines and improve due diligence processes to prevent adverse impacts.

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#### INITIAL RESPONSE FROM THE FDC SICAV-FIS

LuxNCP received an initial written response from FDC on 6 May 2024.

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#### OBJECTIONS TO BEING QUALIFIED AS AN MNE

In its response, FDC contests the classification of FDC SICAV-FIS as a multinational enterprise (MNE) under the OECD Guidelines and therefore argues that it should not fall under the scope of the Guidelines or be subject to the present specific instance.

FDC argues that FDC SICAV-FIS is established solely in Luxembourg and is not part of a corporate group with parent or subsidiary entities. It is a public limited company created under Luxembourg law and regulated by the Commission de Surveillance du Secteur Financier (CSSF). Its sole corporate objective is to invest funds derived exclusively from the Luxembourg general pension insurance scheme, with the results benefiting a single Luxembourg public institution, the FDC, under the supervision of the Ministry of Health and Social Security.

FDC points out that the decision to mandate external portfolio managers, some of whom may operate outside Luxembourg, does not render the Fund a multinational enterprise. It references two previous NCP complaints involving Norwegian and Dutch pension funds, emphasizing that those cases primarily targeted multinational companies, with the investors being secondary targets. FDC asserts that FDC SICAV-FIS' structure is fundamentally different, as it does not manage assets itself and lacks a global presence.

FDC concludes that classifying FDC SICAV-FIS as a multinational enterprise would contradict the spirit, concept, and principles of the OECD Guidelines, as it does not meet the essential criteria for such a designation.

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#### GENERAL REMARKS

FDC emphasizes that FDC SICAV-FIS has a single shareholder: the FDC itself, a public entity established by the law of 6 May 2004 for managing the assets of Luxembourg's general pension insurance scheme. The mission of FDC is to ensure the management of the pension reserve through a diversified portfolio, adhering to strict risk and return criteria to guarantee the long-term viability of the pension scheme. According to Article 248 of the Social Security Code, investments must ensure the security of the pension scheme by complying with principles of appropriate risk diversification across different investment classes and geographical sectors.



FDC invests long-term and globally, aiming to support a healthy and sustainable economy. As a public institution, it acknowledges its ecological, social, and governance responsibilities, integrating these considerations into its investment strategy and decisions. Approximately 97% of the reserve allocated to FDC is invested in financial markets through its SICAV, which, as of 31 December 2023, amounted to 24.2 billion euros spread across 25 sub-funds in four asset classes: money markets, bonds, equities, and indirect real estate. The asset management within FDC SICAV-FIS is entirely entrusted to external asset managers, while the off-SICAV balance is managed internally by FDC.

FDC asserts that its investment strategy adheres strictly to its legal mission, avoiding restrictions or limitations not derived from this mission. Investments are diversified globally and across all economic sectors to ensure security and maximize returns under acceptable risk conditions, as legally required. Sustainable investments are expected to yield returns in line with market expectations, in accordance with Article 248 of the Social Security Code. Thus, sustainable criteria are integrated into risk management when relevant to investment risks.

Sustainable criteria and aspects are considered during strategic discussions, the selection process of asset managers, and their monitoring. Structured processes based on best practices are employed to fulfill the legal mission and assume responsibility towards society and the environment. FDC's responsible investor policy aims to comply with legal requirements while ensuring that the risk-adjusted return aligns with market returns.

FDC emphasizes that its Board of Directors is not empowered to impose exclusions of companies or entire sectors from the authorized investment universe based on criteria not dictated by financial management standards. Such exclusions must adhere to restrictions imposed by existing legal provisions and international conventions in force. The Board does not consider itself in a position to exclude investments based on philosophical, religious, political, climatological, or societal controversies. FDC asserts that any consideration of such exclusions would require a modification of the current legal framework.

Since 2010, FDC has integrated a responsible investor policy into its investment strategy, incorporating sustainable criteria at various levels. This includes negative screening, positive impact investments, and the integration of sustainable approaches. The responsible investor policy is anchored in the Board of Directors' Directive and is subject to approval by the Minister of Health and Social Security.

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## REMARKS ON RESPONSIBLE INVESTMENT AT FDC SICAV-FIS LEVEL

### ***On "allowed investment universe and exclusion list":***

FDC states that since 2011, it has ensured that all FDC SICAV-FIS investments comply with international conventions through due diligence procedures. This includes a normative exclusion of companies that do not comply with international standards such as the ten principles of the United Nations Global Compact, the UNGPs, and the OECD Guidelines.

FDC SICAV-FIS assigns "observation" status to "companies with no confirmed violations but which are at risk of contributing to violations of international standards". Securities of companies with a prolonged under observation status and no concrete outlook for improvement are excluded from the FDC SICAV-FIS' authorised investment universe. Additionally, companies involved in controversial weapons are also excluded. The exclusion list is periodically reviewed and updated in collaboration with Sustainalytics, a specialised,

independent external service provider. *FDC has provided information on Sustainalytics and its methodology to the NCP, requesting that the document be kept confidential due to the commercial sensitivity of its content. The NCP has agreed to this request at this stage of the proceedings.*

Companies under observation with ongoing investigations or continued engagement by the Fund's service provider may later be classified as either compliant or non-compliant. FDC asserts that this engagement process aims to change the policy and governance of the companies in question.

FDC considers that it operates due diligence throughout the investment processes. It mentions that Greenpeace's list of companies excluded by other investors does not differentiate the reasons for exclusion, which may include ethical, philosophical, or regulatory considerations not applicable to FDC under current legislation. Furthermore, different investors may have diverse missions and objectives.

FDC stresses that:

“As an example, the Financial Exclusions Tracker mentioned by Greenpeace is a list of companies that have been publicly excluded by nearly 90 financial institutions, for reasons ranging from human rights violations to environmental impact and other supposedly sustainability issues. Without considering any exclusion motivation and by just eliminating double counting (i.e. a same company referenced twice by a same institution but for different motivations), the average number of excluded companies (at group level) per investor is approximately 280, entire sector exclusions still included. FDC currently excludes nearly 140 companies while not considering sector exclusions. A more detailed analysis of the data of the Financial Exclusions Tracker is certainly in order, but in the current presentation within Greenpeace's complaint, hardly any relevant conclusions can be drawn (citations omitted)”.

FDC states that it regularly compares its exclusions with those of similar institutional actors and maintains that its exclusion list is extensive and compliant with its legal framework.

FDC also addresses the issue of divestment, stating that eliminating numerous companies is not standard market practice. In the context of transitioning to cleaner energy and more climate-neutral investments, FDC supports the view that engaging with companies to support their transition is more appropriate than divesting. FDC believes divestment results in a loss of influence as a sustainability-aware owner, as the buyer might prioritize returns over engaging with the company on extra-financial criteria. Consequently, FDC's responsible investor policy emphasizes engagement, rather than divestment.

***On “sustainability at sub-fund/asset manager level”:***

FDC emphasizes the importance of responsible investing by FDC SICAV-FIS' asset managers, prioritizing the integration of sustainable aspects and criteria early in the selection process.

Since 2010, FDC has focused on incorporating sustainable criteria into the investment strategies and decision-making processes of tendering asset managers. From 2017, this sustainable approach has been mandatory for actively managed sub-funds, evaluated through a comprehensive questionnaire including a dedicated section on sustainability.

FDC states that sustainable investing is integral to its asset managers' investment strategy and processes, particularly regarding financial and risk analysis. FDC SICAV-FIS' asset managers specialize in assessing financial and extra-financial risks, including climate risks, incorporating ecological, social, and governance aspects into

portfolio construction. Some asset managers maintain internal exclusion lists based on low ESG ratings or product-specific exclusions such as tobacco, gambling, nuclear power, shale drilling, fur and leather, thermal coal, oil sands, or adult entertainment.

FDC notes that all actively managed equities, bonds, and money market sub-funds of the FDC SICAV-FIS are voluntarily classified as compliant with Articles 8 and 9 of the EU Sustainable Finance Disclosures Regulation (SFDR).<sup>10</sup> FDC SICAV-FIS' Issue Document includes wording about sustainability risks and how they are addressed. SFDR website and pre-contractual disclosures, published on FDC's website, report on environmental or social characteristics, monitoring, due diligence, engagement, sustainability indicators, principal adverse impacts, and good governance. *FDC provided SFDR periodic disclosures to the NCP, requesting confidentiality as these documents have not yet been reviewed and assessed. The NCP has agreed to this request during this initial stage of the proceedings.*

FDC states that active sub-funds are labeled by LuxFLAG, an independent non-profit promoting sustainable investments. ESG-labeled sub-funds must select portfolios based on ESG screening, comply with LuxFLAG's exclusion policy, and submit responsible investment strategies to LuxFLAG. Environment-labeled sub-funds must invest at least 75% of their assets in environment-related sectors and incorporate ESG considerations in investment decisions. Although classified as Article 6 sub-funds within the SFDR regulation, FDC's actively managed real estate sub-funds also include sustainable characteristics, reporting on the Global Real Estate Sustainability Benchmark (GRESB) score, aligning with international reporting frameworks such as the Task Force on Climate-related Financial Disclosures (TCFD), the Paris Climate Agreement, and the UN SDGs.

FDC asserts that Greenpeace should address concerns about LuxFLAG's eligibility criteria and the SFDR regulation directly with the concerned parties instead of criticizing the Fund for using these certifications and classifications.

FDC claims that implementing sustainable development or socially responsible investment approaches for passively managed sub-funds would significantly reduce the authorized investment universe, compromising the objective of replicating a predefined benchmark index. Despite the increase in sustainable, climate, or ESG benchmarks, these are often less diversified and vary in methodology. To address this, FDC SICAV-FIS has launched equity and bond sub-funds aligned with the Paris Agreement to limit global warming to below 2°C. These sub-funds are classified under SFDR Article 8, with further evaluations and disclosures ongoing.

FDC claims that all asset managers of FDC SICAV-FIS are signatories to the Principles of Responsible Investments (PRI or UNPRI) and participate in various sustainable development and responsible investment initiatives. The FDC SICAV-FIS aims to address the United Nations' 17 Sustainable Development Goals (SDGs) to the extent possible and encourages asset managers to report on their sustainable impact. FDC's sustainable investor report for 2020 indicated that each SDG is considered in the management of FDC SICAV-FIS, with coverage reassessed in 2024.

FDC asserts that its contractual agreements with external portfolio managers include provisions for financial and extra-financial reporting. These reports are part of the internal due diligence, monitoring, and control processes exercised by FDC and FDC SICAV-FIS. *FDC has provided the sustainable reports for relevant sub-funds*

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<sup>10</sup> Sustainable Finance Disclosures Regulation (SFDR) - 2019/2088/EU.

to the NCP, requesting confidentiality due to their commercial sensitivity. The NCP has agreed to this request at this stage of the proceedings.

#### ***On “dedicated investments with positive impact”***

FDC claims that FDC SICAV-FIS includes dedicated actively managed green bond and equities impact investing sub-funds. These investments aim to finance low-carbon projects, supporting ecological transition. However, the market lacks a standard classification for green bonds, prompting the European Commission to propose a draft taxonomy for sustainable growth.

According to FDC, in early 2019, it launched a green bond sub-fund based on International Capital Market Association’s (ICMA) Green Bond Principles, focusing on use of funds, project selection, management, and reporting. The same year, an equities impact investing sub-fund was introduced, targeting companies that generate positive social or environmental impacts and cover at least 5 of the 17 SDGs.

FDC also states that its responsible investor strategy includes investments in clean energy infrastructure and other sustainable sectors. A mandate for this was awarded to an external portfolio manager in May 2024, following a tender process launched at the end of 2023. Setting up this 500-million-euro sub-fund will be a key focus in 2024.

#### ***On “climate analysis”***

FDC asserts that it has consistently aimed to maintain transparency in its investment inventory and its role as a responsible investor. According to FDC, the current responsible investor policy requires FDC SICAV-FIS to report annually on its carbon footprint for equities and bonds. Additionally, FDC conducts a comprehensive analysis every three years to assess its alignment with the Paris Agreement, with the first such analysis based on data from the end of 2019. The next Sustainable Investor Report, similar to the one issued in 2019, is scheduled for release in 2024.

#### ***On “engagement policy”***

FDC claims that its investment strategy places particular emphasis on engagement. The SICAV has established an engagement policy targeting major greenhouse gas-emitting companies, requiring portfolio managers to actively engage with these entities.

FDC is affiliated with the Institutional Investors Group on Climate Change (IIGCC), a European membership body focused on achieving a net-zero and resilient future, and supports the Climate Action 100+ initiative, the largest investor engagement initiative on climate change. These affiliations aim to ensure that major corporate GHG emitters align their strategies with the Paris Agreement goals.

In support of its arguments, FDC has submitted the following documents, some of which were shared with Greenpeace, while others have been treated as confidential at FDC’s request during this initial assessment phase.

- SICAV’s audited annual statements 2023
- FDC Directive
- Exclusion list
- Sustainalytics methodology (confidential)

- FDC reply to Greenpeace meeting request
- SICAV SFDR pre-contractual and website disclosures
- SICAV SFDR periodic disclosures (confidential)
- SICAV LuxFLAG labels
- Sustainable approaches of the SICAV’s real estate fund managers
- SICAV SFDR disclosures for Paris aligned sub-funds (partially confidential)
- Sustainable reporting of the SICAV’s active fund managers (confidential)
- FDC Sustainable Investor Report and Factsheet

## THE PROCEEDINGS OF THE NCP TO DATE

Since receipt of the submission, the NCP has undertaken the following actions:

<b>Date</b>	<b>Action</b>
30 January 2024	Greenpeace contacted LuxNCP to request a meeting to inform the NCP about a potential specific instance and discuss procedural questions.
7 February 2024	Representatives of Greenpeace and LuxNCP had a videocall during which Greenpeace stated its intention to file a complaint and sought clarification on procedural matters.
<b>11 March 2024</b>	<b>NCP received a submission from Greenpeace against FDC SICAV-FIS.</b>
12 March 2024	NCP acknowledged receipt of the submission and notified FDC, providing it with a copy of the complaint and inviting it to a meeting with the NCP. FDC acknowledged receipt and expressed interest in meeting with the NCP.
26 March 2024	A meeting was held between representatives of FDC and the NCP, explaining the specific instance procedure and inviting FDC to respond to the allegations in writing within 6 weeks. Greenpeace was informed about the meeting and reminded of the NCP’s availability for a meeting with Greenpeace.
6 May 2024	NCP received the first written response and supporting documents from FDC.
8 May 2024	NCP forwarded FDC’s response to Greenpeace, except for certain documents FDC requested to be kept confidential.
10 May 2024	NCP received an additional document from FDC and forwarded it to Greenpeace.
16 May 2024	Greenpeace requested additional time until 7 June to respond to FDC’s arguments. NCP granted the extension, noting that this would delay the publication date of the initial assessment.
21 May 2024	Greenpeace requested access to confidential documents submitted by FDC. NCP responded, emphasizing their commitment to transparency and stating that no decision will be based on information unavailable to both parties. The confidentiality of the documents will be re-evaluated if good offices are offered after the initial assessment.
7 June 2024	NCP received Greenpeace’s response to FDC’s written comments.
11 June 2024	NCP shared Greenpeace’s response with FDC.
12 June 2024	FDC expressed their interest to respond to Greenpeace’s additional comments.

13 June 2024	NCP informed both parties that they could submit additional documents or comments at any stage of the procedure while emphasizing that the initial assessment will be based on the six criteria defined in the Procedures to the Guidelines.
19 June 2024	NCP received additional comments from FDC.
20 June 2024	NCP shared the comments with Greenpeace.
2 August 2024	NCP sent the draft initial assessment to both parties for comments within 15 working days.
5 August 2024	FDC requested an extension to submit their comments on the draft initial assessment until 30 September 2024, citing internal approval processes and scheduling challenges due to the summer holiday period.
6 August 2024	NCP granted FDC the requested extension and informed the parties about it.
2 October 2024	FDC submitted their comments on the draft initial assessment.
6 December 2024	NCP share the final initial assessment with the parties and the OECD Secretariat and published it on its website.

Unfortunately, the initial assessment deadline could not be met due to the additional time required to consider further responses and comments received from the parties.

#### INITIAL ASSESSMENT BY THE NCP

The objective of the initial assessment process under the Implementation Procedures of the OECD Guidelines is to determine whether the issues raised warrant further examination.<sup>11</sup> The NCP reviewed the submissions from both parties. Greenpeace has raised diverse issues regarding FDC SICAV-FIs' responsibilities under the OECD Guidelines, while the Fund has provided detailed arguments contesting these allegations. At this stage, the NCP does not make any determination on the competing submissions of the parties.

In the initial assessment phase, the NCP is assessing whether the issues raised are *bona fide*, in other words real or authentic, and relevant to the implementation of the Guidelines, in other words, within the scope of the Guidelines.<sup>12</sup> This assessment is based on six criteria specified in the OECD Guidelines Procedures,<sup>13</sup> which are also reflected in the Rules of Procedure of the LuxNCP:

1. *the identity of the party concerned and its interest in the matter;*
2. *whether the issue is material, i.e. relevant to the implementation of the Guidelines; and substantiated, i.e. supported by sufficient and credible information;*
3. *whether the enterprise is covered by the Guidelines;*
4. *whether there seems to be a link between the enterprise's activities and the issue raised in the specific instance;*
5. *the extent to which applicable law and/or parallel proceedings limit the NCP's ability to contribute to the resolution of the issue and/or the implementation of the Guidelines;*

<sup>11</sup> OECD Guidelines (2023), Procedures, C(2).

<sup>12</sup> OECD Initial Assessment Guide (May 2024), p. 38.

<sup>13</sup> OECD Guidelines (2023), Commentaries on the Implementation Procedures, para. 33.

6. *whether the examination of the issue would contribute to the purposes and effectiveness of the Guidelines.*

The NCP conducted its initial assessment based on the six criteria mentioned above and decided that the specific instance merits further examination. The NCP will offer its good offices to the parties on due diligence obligations of the Fund.

**Accepting the case for further examination does not mean that the issues raised have been given final consideration and does not imply any finding as to whether or not FDC SICAV-FIS has acted in accordance with the Guidelines.**

As per LuxNCP's Rules of Procedure, when a specific instance is submitted, the NCP will inform the NCPs of other involved or potentially involved countries and coordinate with them in a timely manner. In the present complaint, LuxNCP is the only relevant NCP and has conducted the assessment on its own.

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#### *1. WHAT IS THE IDENTITY OF THE PARTY CONCERNED AND ITS INTEREST IN THE MATTER?*

According to the OECD Guide for NCPs on the initial assessment of specific instances, an NCP may consider the mandate of an organisation as well as its stated objectives in submitting a specific instance in considering the legitimacy of its interest in the matter<sup>14</sup>.

Greenpeace Luxembourg is part of the global environmental organization Greenpeace, which operates in over 55 countries and focuses on global environmental issues such as climate change, deforestation, pollution, and biodiversity loss. Greenpeace aims to promote environmental sustainability through direct action, lobbying, and research.<sup>15</sup>

Greenpeace Luxembourg has a history of engagement with FDC. This engagement includes dialogues, campaigns, and formal submissions aimed at encouraging the adoption of sustainable investment policies.

**LuxNCP considers Greenpeace Luxembourg an organization with a relevant mandate to the issues raised in the complaint and a legitimate interest in the matter.**

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#### *2. WHETHER THE ISSUE IS MATERIAL, I.E. RELEVANT TO THE IMPLEMENTATION OF THE GUIDELINES; AND SUBSTANTIATED?*

LuxNCP interprets 'material and substantiated' to mean that, based on the information submitted, the issues raised are plausible and related to the application of the OECD Guidelines. The objective at this stage is to determine whether the issue raised warrants further examination, not to undertake fact-finding or a thorough assessment of all the issues raised on their merits. Therefore, it is necessary to establish that the issues are relevant to the implementation of the Guidelines (material) and supported by sufficient and credible information (substantiated).

Greenpeace's submission is material as it refers to alleged non-observance of specific provisions of the OECD Guidelines. Specifically, Greenpeace alleges that the current investment strategy of the Fund has not met the

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<sup>14</sup> OECD Initial Assessment Guide (May 2024), p. 4.

<sup>15</sup> See, <https://www.greenpeace.org/international/> and <https://www.greenpeace.org/luxembourg/fr/>.

following provisions of the OECD Guidelines (2023): Chapter II - General Policies, paragraphs 11, 13, 14 and 15; Chapter III - Disclosure, paragraph 3, a) and d); Chapter IV - Human Rights, paragraphs 1, 3 and 5; Chapter VI - Environment, paragraph 1, a), b), c), d); Chapter VIII - Consumer Interests, paragraph 4.

Greenpeace has prima facie substantiated its complaint through its detailed submission, appendices and references to various publications.

**Therefore, LuxNCP considers that the issues raised in the complaint are material and substantiated sufficiently for the purposes of initial assessment.**

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### 3. *WHETHER THE ENTERPRISE IS COVERED BY THE GUIDELINES?*

This criterion relates to whether the entity mentioned in the specific instance qualifies as an enterprise to which the Guidelines apply.<sup>16</sup>

FDC SICAV-FIS an open-ended investment company with variable capital, established by FDC under Article 266 of the Code de la Sécurité Sociale (CSS) which allows FDC to create one or more collective investment undertakings subject to the Law of 2007.<sup>17</sup> FDC SICAV-FIS is governed by the Law of 1915,<sup>18</sup> the Law of 2007, and its Articles of Association, registered with the Luxembourg trade and company register and published on 7 May 2020.

The sole objective of FDC SICAV-FIS is the prudent management of all or part of the assets of the general pension insurance scheme with the aim of ensuring the long-term viability of that scheme.<sup>19</sup> The shares of the Fund are exclusively reserved for the FDC, making it the sole shareholder. FDC SICAV-FIS is an umbrella investment vehicle, meaning it consists of several sub-funds each representing a pool of specific assets and liabilities.<sup>20</sup> The Fund's Board of Directors delegates the management of its assets to various fund managers, who are responsible for managing specific sub-funds. These managers operate under the terms of the management agreements entered into with FDC SICAV-FIS.<sup>21</sup>

In its response to Greenpeace's complaint, FDC asserts that FDC SICAV-FIS should not be considered an MNE under the Guidelines for several reasons: FDC SICAV-FIS is established solely in Luxembourg and not in multiple countries, it is not part of a group, as it has no parent company, local entities, or subsidiaries, it operates exclusively under Luxembourg law, investing funds derived from Luxembourg's general pension insurance scheme solely for the benefit of a Luxembourg public institution, FDC, which is supervised by the Ministry of Health and Social Security. FDC SICAV-FIS delegates all asset management functions to external portfolio managers who may be based outside Luxembourg; however, it argues that this does not qualify the Fund itself as an MNE. Therefore, FDC contends that the Fund does not meet the key criteria to be considered a multinational enterprise as defined by the OECD Guidelines.

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<sup>16</sup> OECD Initial Assessment Guide (May 2024), para. 18.

<sup>17</sup> Law of 13 February 2007 on specialized investment funds, as amended. Quoted in SICAV, Issue Document (June 2023).

<sup>18</sup> Law of 10 August 1915 on commercial companies, as amended. Quoted in SICAV, Issue Document (June 2023).

<sup>19</sup> SICAV, Issue Document (June 2023), p. 2.

<sup>20</sup> Ibid.

<sup>21</sup> Ibid., p. 10.



The OECD Guidelines do not provide a precise definition of MNE but note that this notion includes enterprises in all sectors of the economy, and that ownership may be private, State or mixed. Accordingly, the Guidelines are applicable to the financial sector, including to fully or partly state-owned enterprises.<sup>22</sup>

When identifying which entities may be considered multinational enterprises for the purposes of the Guidelines, two main factors are considered:<sup>23</sup> 1) **its commercial form, purpose, or activities**, and 2) **the international nature of an enterprise's structure or activities**.

### ***Commercial dimension***

The commercial form of FDC SICAV-FIS, a public limited company established for the purpose of investment activities, is indisputable. Moreover, FDC SIVAC-FIS' activities are commercial, as they involve the investment of capital in business enterprises with the aim of receiving a return on investment.

### ***International dimension***

There is no internationally agreed definition of what makes an enterprise "multinational". The Guidelines and existing authoritative interpretations thereof suggest that the assessment of the international dimension of an enterprise should be flexible and dynamic and take into account strategic objectives such as furthering the effectiveness of the Guidelines.

FDC SICAV-FIS operates as an umbrella investment vehicle with multiple sub-funds, each focusing on different asset types, including equity, bonds, money markets, and real estate. It engages in international activities through its investments in global markets and the management of its sub-funds by international fund managers based in countries such as France, the UK, the Netherlands, Germany, Ireland, and Luxembourg. This global reach signifies the international dimension of FDC SICAV-FIS' operations and scope.

In any event, it should be noted that the Guidelines are not intended to introduce differences in treatment between multinational and domestic enterprises. Instead, "[t]hey reflect good practice for all. Accordingly, multinational and domestic enterprises are subject to the same expectations in respect of their conduct wherever the Guidelines are relevant to both".<sup>24</sup>

**Based on the above, the LuxNCP concludes that the FDC SICAV-FIS qualifies as an enterprise to which the Guidelines apply.**

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#### ***4. WHETHER THERE SEEMS TO BE A LINK BETWEEN THE ENTERPRISE'S ACTIVITIES AND THE ISSUE RAISED IN THE SPECIFIC INSTANCE?***

At the initial assessment stage, the NCP is not required to make a definitive judgment on the existence of a link between the enterprise's activities and the issues raised; rather, it needs to determine if a sufficient link appears to exist.<sup>25</sup>

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<sup>22</sup> WPRBC, Application of the OECD Guidelines for MNEs with respect to sovereign wealth funds and central banks (28 February 2014), para. 5.

<sup>23</sup> OECD Guidelines (2023), Chapter I, paras 4 and 5. See, Annex II for the Guidelines language on the notion of multinational enterprise.

<sup>24</sup> Ibid

<sup>25</sup> OECD Initial Assessment Guide (May 2024), para. 22.

The OECD Guidance on “Responsible business conduct for institutional investors” (2017) notes that in the context of adverse impacts arising from investee companies, investors will in most instances not cause or contribute to, but only be directly linked to the adverse impact through a business relationship.<sup>26</sup> The Guidance states:<sup>27</sup>

“[i]nvestors, even those with minority shareholdings, may be directly linked to adverse impacts caused or contributed to by investee companies as a result of their ownership in, or management of, shares in the company causing or contributing to certain social or environmental impacts. In other words, the existence of RBC risks (potential impacts) or actual RBC impacts *in an investor’s own portfolio* means, in the vast majority of cases there is a “direct linkage” to its operations, products or services through this “business relationship” with the investee company”.

According to the same Guidance, investors are not responsible for addressing those adverse impacts themselves, but they are expected to consider RBC risks throughout their investment process and to use their so-called “leverage” with companies they invest in to influence those investee companies to prevent or mitigate adverse impacts.<sup>28</sup> The approaches investors can use to exert their leverage on companies they invest in are “broad in scope”. These are not limited to direct engagement with investee companies but could also include, as appropriate, directing capital towards responsible investee companies over time, participation in industry initiatives targeting certain RBC risks, collective action on specific geographic or company-specific issues, etc. What is suitable will vary according to the characteristics of an investor, the investment strategy, and relevant regulatory obligations. The Guidance underscores the importance of exerting such leverage within the framework of good corporate governance.<sup>29</sup>

The specific instance raises issues regarding FDC SICAV-FIS’ responsibility “to conduct human rights and environmental due diligence, address climate and human rights risks in [its] value chains throughout [its] investment process and use [its] leverage to influence investee companies to prevent or mitigate adverse impacts identified as part of the due diligence process”. Specifically, the complaint addresses a range of companies and sectors in which FDC SICAV-FIS invests in spite of their alleged adverse impacts on human rights and the environment.

**On the basis of the above, LuxNCP considers that there is a sufficient link between FDC SICAV-FIS’ activities and the issues raised in the specific instance.**

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5. *WHAT IS THE EXTENT TO WHICH APPLICABLE LAW AND/OR PARALLEL PROCEEDINGS LIMIT THE NCP’S ABILITY TO CONTRIBUTE TO THE RESOLUTION OF THE ISSUE AND/OR THE IMPLEMENTATION OF THE GUIDELINES?*

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<sup>26</sup> OECD, Responsible business conduct for institutional investors: Key considerations for due diligence under the OECD Guidelines for Multinational Enterprises (2017), p. 20.

<sup>27</sup> Ibid., p.13, emphasis original.

<sup>28</sup> Ibid.

<sup>29</sup> Ibid, p. 14.

This criterion assesses whether the NCP's ability to address the issues and implement the Guidelines is limited by existing laws or other proceedings.<sup>30</sup> **As far as is known, there are no laws or parallel proceedings addressing similar issues that would prejudice the current specific instance.**

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#### 6. *WHETHER THE EXAMINATION OF THE ISSUES CONTRIBUTES TO THE PURPOSES AND EFFECTIVENESS OF THE GUIDELINES?*

The purpose of the Guidelines is to enhance the business contribution to sustainable development and address adverse impacts associated with business activities on people, planet, and society. They aim to encourage positive contributions by enterprises to economic, environmental, and social progress while minimizing adverse impacts related to their operations, products, and services.<sup>31</sup>

Regarding effectiveness, the Guidelines' Implementation Procedures mandate that NCPs contribute to resolving issues related to the Guidelines' implementation. NCPs should consider whether facilitating exchanges between parties, discussing the issues and expectations outlined in the Guidelines with concerned enterprise, or developing meaningful recommendations would help support or encourage the resolution of the issues.<sup>32</sup>

Therefore, under this criterion, the NCP considers whether an offer of good offices could:

- Facilitate an exchange between the parties, in particular to discuss the issues and expectations of the Guidelines with the enterprise in question, *and/or*
- Lead to an agreement or concrete recommendations with respect to the conduct of the enterprise that would support or encourage the resolution of issues.<sup>33</sup>

LuxNCP notes that the parties have been engaged in discussions since at least 2015 to address the issues raised in this specific instance. **The NCP believes that accepting this specific instance and offering good offices could facilitate the continuation of this dialogue and help address the issues raised in the specific instance. The NCP also considers that further examination of Greenpeace's complaint may contribute to a strengthening of the Fund's understanding of its responsibilities under the OECD Guidelines, in particular, in respect of its investments in business activities that may pose adverse impacts to human rights and the environment.**

#### CONCLUSION

**The NCP believes that the specific instance merits further consideration based on the above criteria and extends its good offices to facilitate dialogue between Greenpeace and FDC SICAV-FIS.**

**The NCP's conclusions in this initial assessment are derived from the information provided by both parties. The NCP does not currently offer any opinion on the accuracy of the statements or the validity of the submitted documents.**

#### NEXT STEPS

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<sup>30</sup> OECD Initial Assessment Guide (May 2024), para. 27.

<sup>31</sup> OECD Guidelines (2023), Foreword and Preface, para. 1.

<sup>32</sup> OECD Initial Assessment Guide (May 2024), para. 36.

<sup>33</sup> OECD Initial Assessment Guide (May 2024), Annex to template, p. 43.

**The NCP accepts this case for further examination and notes the active participation of both parties during the initial assessment process.** Their detailed written submissions and exchange of arguments demonstrate a shared willingness to engage with the issues raised, which the NCP views as a positive foundation for future dialogue.

However, the NCP also notes that the **FDC has declined the offer of good offices, citing its firm opposition to the classification of SICAV-FIS as a multinational enterprise.** Despite this position, the NCP acknowledges the FDC's stated willingness to meet with Greenpeace or other NGOs to discuss its responsible investment policy and related instruments. The NCP encourages the parties to pursue constructive dialogue, even outside the NCP framework, and remains available to provide expertise and assistance to facilitate such discussions, should the parties wish.

Given the rejection of good offices by the FDC, **the NCP will proceed to the next phase of the specific instance process. Following its examination of the issues raised by Greenpeace, the NCP will issue a final statement. This statement may include recommendations to the enterprise on improving its conduct in accordance with the Guidelines or determinations regarding the observance of the Guidelines.**

**2023 OECD Guidelines**

- **Chapter II: General Policies**

[E]nterprises should take fully into account established policies in the countries in which they operate, and consider the views of other stakeholders. In this regard: Enterprises should ...

- **Paragraph 11:** “Carry out risk-based due diligence, for example by incorporating it into their enterprise risk management systems, to identify, prevent and mitigate actual and potential adverse impacts [...], and account for how these impacts are addressed. The nature and extent of due diligence depend on the circumstances of a particular situation.”
- **Paragraph 13:** “Seek to prevent or mitigate an adverse impact where they have not contributed to that impact, when the impact is nevertheless directly linked to their operations, products or services by a business relationship. This is not intended to shift responsibility from the entity causing an adverse impact to the enterprise with which it has a business relationship.”
- **Paragraph 14:** “In addition to addressing adverse impacts in relation to matters covered by the Guidelines, encourage, where practicable, entities with which an enterprise has a business relationship to apply principles of responsible business conduct compatible with the Guidelines.”
- **Paragraph 15:** “Engage meaningfully with relevant stakeholders or their legitimate representatives as part of carrying out due diligence and in order to provide opportunities for their views to be taken into account with respect to activities that may significantly impact them related to matters covered by the Guidelines.”

- **Chapter III: Disclosure**

- **Paragraph 3, sub-paragraphs a) and d):** “It is also important that enterprises communicate responsible business conduct information including as part of their responsibility to carry out due diligence [...]. Responsible business conduct information can include:
  - (a) “value statements or statements of business conduct intended for public disclosure including policies on responsible business conduct issues that articulate the enterprise’s commitments to the principles and standards contained in the Guidelines, and its plans for implementing due diligence;”
  - [...]
  - (d) “the enterprise’s identified areas of significant impacts or risks, the adverse impacts or risks identified, prioritised and assessed, as well as the prioritisation criteria”.

- **Chapter IV: Human Rights**

[S]tates have the duty to protect human rights. Enterprises should, within the framework of internationally recognised human rights, the international human rights obligations of the countries in which they operate as well as relevant domestic laws and regulations:

- **Paragraph 1:** “Respect human rights, which means they should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved.”
- **Paragraph 3:** “Seek ways to prevent or mitigate adverse human rights impacts that are directly linked to their business operations, products or services by a business relationship, even if they do not contribute to those impacts.”
- **Paragraph 5:** “Carry out human rights due diligence as appropriate to their size, the nature and context of operations and the severity of the risks of adverse human rights impacts.”

- **Chapter VI: Environment**

[E]nterprises play a key role in advancing sustainable economies and can contribute to delivering an effective and progressive response to global, regional and local environmental challenges, including the urgent threat of climate change. Within the framework of laws, regulations and administrative practices in the countries in which they operate, and in consideration of relevant international agreements, principles, objectives, and standards, enterprises should conduct their activities in a manner that takes due account of the need to protect the environment, and in turn workers, communities and society more broadly, avoids and addresses adverse environmental impacts and contributes to the wider goal of sustainable development. Enterprises can be involved in a range of adverse environmental impacts. These include, among others:

- a) climate change;
- b) biodiversity loss;
- c) degradation of land, marine and freshwater ecosystems;
- d) deforestation;
- e) air, water and soil pollution;
- f) mismanagement of waste, including hazardous substances

Important differences across environmental impacts are outlined in the commentary to this chapter, including with respect to climate change and how an individual enterprise’s relationship to such impacts should be considered in the context of relevant frameworks. In particular, enterprises should:

- **Paragraph 1, sub-paragraphs a), b), c), and d)**

“Establish and maintain a system of environmental management appropriate to the enterprise associated with the operations, products and services of the enterprise over their full life cycle, including by carrying out risk-based due diligence, as described in Chapter II, for adverse environmental impacts, including through:

- (a) “identifying and assessing adverse environmental impacts associated with an enterprise’s operations, products or services, including through collection and evaluation of adequate and timely information regarding the adverse impacts associated with their

operations, products and services and where activities may have significant adverse environmental impacts, preparing an appropriate environmental impact assessment”;

- (b) “establishing and implementing measurable objectives, targets and strategies for addressing adverse environmental impacts associated with their operations, products and services and for improving environmental performance. Targets should be science-based, consistent with relevant national policies and international commitments, goals, and informed by best practice”;
- (c) “regularly verifying the effectiveness of strategies and monitoring progress toward environmental objectives and targets, and periodically reviewing the continued relevance of objectives, targets and strategies”;
- (d) “providing the public, workers, and other relevant stakeholders with adequate, measurable, verifiable (where applicable) and timely information on environmental impacts associated with their operations, products and services based on best available information, and progress against targets and objectives as described in paragraph 1.b”.

- **Chapter VIII: Consumer Interests**

[W]hen dealing with consumers, enterprises should act in accordance with fair business, marketing and advertising practices and should take all reasonable steps to ensure the quality and reliability of the goods and services that they provide. In particular, they should:

- **Paragraph 4:** “Not make representations or omissions, nor engage in any other practices that are deceptive, misleading, fraudulent unfair or that otherwise subvert consumer choice in ways that harm consumers or competition”.

## 2011 OECD Guidelines

- **Chapter II: General Policies**

[E]nterprises should take fully into account established policies in the countries in which they operate, and consider the views of other stakeholders. In this regard: Enterprises should:

- **Paragraph 10:** “Carry out risk-based due diligence, for example by incorporating it into their enterprise risk management systems, to identify, prevent and mitigate actual and potential adverse impacts [...], and account for how these impacts are addressed. The nature and extent of due diligence depend on the circumstances of a particular situation”.
- **Paragraph 12:** “Seek to prevent or mitigate an adverse impact where they have not contributed to that impact, when the impact is nevertheless directly linked to their operations, products or services by a business relationship. This is not intended to shift responsibility from the entity causing an adverse impact to the enterprise with which it has a business relationship.”
- **Paragraph 13:** “In addition to addressing adverse impacts in relation to matters covered by the Guidelines, encourage, where practicable, business partners, including suppliers and sub-contractors, to apply principles of responsible business conduct compatible with the Guidelines.”

- **Paragraph 14:** “Engage with relevant stakeholders in order to provide meaningful opportunities for their views to be taken into account in relation to planning and decision making for projects or other activities that may significantly impact local communities.”

- **Chapter IV: Human Rights**

[S]tates have the duty to protect human rights. Enterprises should, within the framework of internationally recognised human rights, the international human rights obligations of the countries in which they operate as well as relevant domestic laws and regulations:

- **Paragraph 1:** “Respect human rights, which means they should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved.”
- **Paragraph 3:** “Seek ways to prevent or mitigate adverse human rights impacts that are directly linked to their business operations, products or services by a business relationship, even if they do not contribute to those impacts.”
- **Paragraph 5:** “Carry out human rights due diligence as appropriate to their size, the nature and context of operations and the severity of the risks of adverse human rights impacts.”

- **Chapter VI: Environment**

[E]nterprises should, within the framework of laws, regulations and administrative practices in the countries in which they operate, and in consideration of relevant international agreements, principles, objectives, and standards, take due account of the need to protect the environment, public health and safety, and generally to conduct their activities in a manner contributing to the wider goal of sustainable development. In particular, enterprises should:

- **Paragraph 1, sub-paragraphs a), b), and c):**

Establish and maintain a system of environmental management appropriate to the enterprise, including:

- (a) “collection and evaluation of adequate and timely information regarding the environmental, health, and safety impacts of their activities;”
- (b) “establishment of measurable objectives and, where appropriate, targets for improved environmental performance and resource utilisation, including periodically reviewing the continuing relevance of these objectives; where appropriate, targets should be consistent with relevant national policies and international environmental commitments;”
- (c) “regular monitoring and verification of progress toward environmental, health, and safety objectives or targets.”

- **Chapter VIII: Consumer Interests**



[W]hen dealing with consumers, enterprises should act in accordance with fair business, marketing and advertising practices and should take all reasonable steps to ensure the quality and reliability of the goods and services that they provide. In particular, they should:

- **Paragraph 4:** “Not make representations or omissions, nor engage in any other practices, that are deceptive, misleading, fraudulent or unfair.”

## ANNEX II: THE GUIDELINES LANGUAGE ON THE NOTION OF MULTINATIONAL ENTERPRISE

- *Chapter I, para. 4:* “[A] precise definition of multinational enterprises is not required for the purposes of the Guidelines. While the Guidelines allow for a broad approach in identifying which entities may be considered multinational enterprises for the purposes of the Guidelines, the international nature of an enterprise’s structure or activities and its commercial form, purpose, or activities are main factors to consider in this regard. These enterprises operate in all sectors of the economy. They usually comprise companies or other entities established in more than one country and so linked that they may co-ordinate their operations in various ways. While one or more of these entities may be able to exercise a significant influence over the activities of other entities in a group, their degree of autonomy within the group may vary widely from one multinational enterprise to another. Ownership may be private, State, or mixed. The Guidelines are addressed to all the entities within the multinational enterprise (parent companies and/or local entities). According to the actual distribution of responsibilities among them, the different entities are expected to co-operate and to assist one another to facilitate observance of the Guidelines.
- *Chapter I, para. 5:* [T]he Guidelines are not aimed at introducing differences of treatment between multinational and domestic enterprises; they reflect good practice for all. Accordingly, multinational and domestic enterprises are subject to the same expectations in respect of their conduct wherever the Guidelines are relevant to both.