



An Roinn Fiontar,
Turasóireachta agus Fostaíochta
Department of Enterprise,
Tourism and Employment

Final Statement

Ireland National Contact Point for the OECD Guidelines for Multinational Enterprises

Specific Instance – Global Legal Action Network
(GLAN) against the Electricity Supply Board
(ESB)

As noted in the Procedural Guidance to the [OECD Guidelines for Multinational Enterprises](#), following conclusion of a Specific Instance and after consultation with the parties involved, the NCP will make the results of the procedure publicly available.

As mediation did not take place, the NCP is issuing the following statement. This statement describes the issues raised, the reasons why the NCP decided that the issues raised merited further examination, and the procedures initiated by the NCP to assist the parties. This statement also identifies recommendations made by the NCP to the Corporation on the implementation of the Guidelines.

As specific instances are not legal cases and NCPs are not judicial bodies, NCPs cannot directly compel parties to participate in a conciliation or mediation process.

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Executive Summary

- The complaint was made by the Global Legal Action Network (GLAN), (“the Notifier”) in collaboration with Christian Aid, ABColombia, Arbeitsgruppe Schweiz Kolumbien (Ask!), AIDA (the Interamerican Association for Environmental Defense), CINEP (Centro de Investigación y Educación), and CAJAR (Colectivo de Abogados ‘José Alvear Restrepo’) (collectively referred to as “the Complainants”).
- The complaint was against the Electricity Supply Board (ESB) (“the Corporation”), regarding its purchase of coal produced at the Cerrejón mine in La Guajira, Colombia.
- The complaint related to Chapters II (General Policies); III (Disclosure); IV (Human Rights) and VI (Environment). The Complainants alleged that the Corporation failed to meet its obligations related to due diligence, disclosure, human rights and environment, linked to the alleged adverse impacts experienced in Colombia.
- The Corporation disputed each of the claims presented, stating it appropriately addressed the recommendations of the Guidelines through its membership of the “Bettercoal” initiative, including its participation in the Bettercoal Colombia Working Group. It stated it has limited leverage by itself as a minor importer and sought to cooperate with other coal purchasers to use leverage collectively and exert influence, which it argued is consistent with the Guidelines.
- The Ireland NCP decided that the complaint merited further examination and offered its good offices. Regrettably, mediation did not take place in this instance. The second appointed mediator resigned as they deemed after a long period of intense engagement with both parties that mediation would not assist in achieving a constructive outcome.
- Following the resignation of the second appointed mediator, the Ireland NCP conducted an examination of the complaint concluding with the issuance of a Final Statement including recommendations. These recommendations are:
 - Parties recognise the non-judicial nature of the NCP process and approach the process with a mindset focused on mediation to facilitate direct dialogue on the issues to find a collective resolution, which is particularly important for enterprises;
 - The Corporation as an active member of Bettercoal promote the participation of interested stakeholders as associate members and as members of the Technical Advisory Committee to ensure meaningful stakeholder engagement;
 - The Corporation as an active member of Bettercoal use its leverage to advocate for greater transparency to communicate how the impacts are addressed on an ongoing basis;
 - The Corporation continue to use its leverage and influence as a Bettercoal member to encourage a reassessment and a more detailed publicly accessible statement regarding the mine under Bettercoal Code 2.0. and
 - The Corporation consider periodic reviews of the appropriateness of its reliance on a multi-stakeholder initiative it participates in as a significant part of its due diligence and consider whether it is necessary to develop due diligence processes independently of Bettercoal.
- The Ireland NCP will follow up with the Corporation in one year following the publication of this Final Statement.

A. Submission and initial assessment

The parties

1. The complaint was submitted by the Notifier, in collaboration with a number of other civil society organisations. It was directed against the Corporation, which was established in 1927 as a statutory corporation in the Republic of Ireland under the Electricity (Supply) Act 1927, because it purchased coal produced from the Cerrejón mine in La Guajira, Colombia.

The complaint

2. The Ireland NCP received the complaint on 18 January 2021 which alleged several adverse impacts caused by the Cerrejón mine relating to human rights, public health and the environment directly linked to the business relationship, i.e. the purchase of coal from the mine by the Corporation for use at its Moneypoint Power Station. Therefore, the Complainants argued that the Corporation acted inconsistently under the OECD Guidelines and claimed it did not:
 - Carry out adequate due diligence to identify, mitigate and prevent adverse impacts caused by the mine
 - Use its leverage to encourage Cerrejón to act in accordance with the Guidelines beyond its membership of Bettercoal, which they believed is flawed
 - Be sufficiently transparent about its relationship with Cerrejón relying on Bettercoal assessments and failing to be transparent about its procurement activities
 - Adopt and implemented a human rights policy
3. The Complainants requested that the Corporation terminate its relationship with Cerrejón; issue a public statement acknowledging the need for this termination and call on the parent companies of the mine to close it and remedy its impacts; compile and publish a human rights policy and issue a formal apology to the affected communities.
4. The Corporation rejected all allegations made, stating it met the recommendations of the Guidelines in a number of ways, including, primarily, by using its limited leverage with other purchasers collectively through the ‘Bettercoal initiative’ (referred to as “Bettercoal”) which operates an assessment process to monitor the operation of this coal mine and others.
5. The Corporation stated that under the Bettercoal process, the mine is subject to independent assessments, in line with the Bettercoal Code which the

Corporation stated “*is consistent with the Guidelines and with the UN Guiding Principles on Business and Human Rights*”. It said following the assessment of Cerrejón, a Continuous Improvement Plan (CIP) was put in place and was being implemented. It stated that the CIP is monitored by the Colombia Working Group (which is part of Bettercoal), and that the Corporation is an active member of this group. The Corporation contended this process is consistent with what was envisaged under the recommendations of the Guidelines.

6. The Corporation also stated that it has been a “*very minor contractor*”. In its initial response to the complaint, the Corporation stated that it had not taken delivery of any coal from the mine since 2018. It further stated that it had no plans to purchase coal from the mine in the future as the power plant is to be repurposed in line with the Corporation’s renewable energy objectives, but it continued to participate in the Bettercoal process. However, on 23 March 2022, the Corporation informed the Ireland NCP that it had placed an order for coal from the mine to maintain a secure coal supply to meet electricity demand due to events in the Ukraine. The Corporation has since informed the NCP that its Moneypoint Power Station no longer generates power from the burning of coal and that the Corporation therefore has no further plans to purchase coal sourced from the Cerrejón mine or elsewhere.
7. The Complainants simultaneously lodged a complaint against Anglo American plc, BHP Group Limited and Glencore International AG which owned equal shares in Cerrejón. The complaint was lodged with the NCPs of the home jurisdictions of these enterprises, the UK, Australia and Switzerland respectively. Since submission of the complaint, it was announced that Glencore International AG would acquire all the interests of Anglo American and BHP in the Cerrejón mine. The Complainants also lodged a complaint with the Ireland NCP against CMC Coal Marketing DAC, which at the time was responsible for marketing and selling the coal. Subsequently, CMC Coal Marketing DAC was absorbed by Glencore and ceased to exist as an independent entity in Ireland, rendering this aspect of the complaint obsolete.

Relevant provisions of the Guidelines

8. The complaint cited the following Chapters and paragraphs of the OECD Guidelines:

Chapter II: General Policies

A.1: Enterprises should “*Contribute to economic, environmental and social progress with a view to achieving sustainable development.*”

A10: Enterprises should “*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 as described in paragraphs 11 and 12, and account for how these impacts are addressed. The nature and extent of due diligence depend on the circumstances of a particular situation.*”

A.12: Enterprises should “Seek to prevent or mitigate an adverse impact where they have not contributed to that impact, when the impact is nevertheless directly linked to their operations, products or services by a business relationship. This is not intended to shift responsibility from the entity causing an adverse impact to the enterprise with which it has a business relationship”.

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

Chapter III: Disclosure

A.1: “Enterprises should ensure that timely and accurate information is disclosed on all material matters regarding their activities, structure, financial situation, performance, ownership and governance. This information should be disclosed for the enterprise as a whole, and, where appropriate, along business lines or geographic areas. Disclosure policies of enterprises should be tailored to the nature, size and location of the enterprise, with due regard taken of costs, business confidentiality and other competitive concerns.”

A.3: “Enterprises are encouraged to communicate additional information that could include:

- a) value statements or statements of business conduct intended for public disclosure including, depending on its relevance for the enterprise’s activities, information on the enterprise’s policies relating to matters covered by the Guidelines;
- b) policies and other codes of conduct to which the enterprise subscribes, their date of adoption and the countries and entities to which such statements apply;
- c) its performance in relation to these statements and codes;
- d) information on internal audit, risk management and legal compliance systems;
- e) information on relationships with workers and other stakeholders.”

A.4: “Enterprises should apply high quality standards for accounting, and financial as well as non-financial disclosure, including environmental and social reporting where they exist. The standards or policies under which information is compiled and published should be reported. An annual audit should be conducted by an independent, competent and qualified auditor in order to provide an external and objective assurance to the board and shareholders that the financial statements fairly represent the financial position and performance of the enterprise in all material respects.”

Chapter IV: Human Rights

A.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.”

A.4: “Have a policy commitment to respect human rights.”

A.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

A.1: “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; and
c) regular monitoring and verification of progress”

A.2: *“Taking into account concerns about cost, business confidentiality, and the protection of intellectual property rights:*

a) provide the public and workers with adequate, measurable and verifiable (where applicable) and timely information on the potential environment, health and safety impacts of the activities of the enterprise, which could include reporting on progress in improving environmental performance; and
b) engage in adequate and timely communication and consultation with the communities directly affected by the environmental, health and safety policies of the enterprise and by their implementation.”

A.3: *“Assess, and address in decision-making, the foreseeable environmental, health, and safety-related impacts associated with the processes, goods and services of the enterprise over their full life cycle with a view to avoiding or, when unavoidable, mitigating them. Where these proposed activities may have significant environmental, health, or safety impacts, and where they are subject to a decision of a competent authority, prepare an appropriate environmental impact assessment.”*

A.6: *“Continually seek to improve corporate environmental performance, at the level of the enterprise and, where appropriate, of its supply chain, by encouraging such activities as:*

a) adoption of technologies and operating procedures in all parts of the enterprise that reflect standards concerning environmental performance in the best performing part of the enterprise;

...

d) exploring and assessing ways of improving the environmental performance of the enterprise over the longer term, for instance by developing strategies for emission reduction, efficient resource utilisation and recycling, substitution or reduction of use of toxic substances, or strategies on biodiversity.”

Initial assessment by the NCP

9. The Ireland NCP issued its initial assessment of the complaint on 18th July 2022. This initial assessment was issued to the parties and published on the Ireland NCP website, available [here](#).
10. On the basis of submissions received, the Ireland NCP decided, that grounds existed for further examination and the use of its good offices was offered to the parties to facilitate a discussion on the issues raised in the complaint relating to the activities of the Corporation.

B. The proceedings of the NCP

11. Since receipt of the complaint, the NCP has carried out the following actions:

Initial Assessment

18 January 2021	Complaint received by Ireland NCP from the Complainants
19 January 2021	Ireland NCP confirmed receipt
28 January 2021	The Ireland NCP met with representatives of the NCPs of Australia, Colombia, Switzerland and the UK to discuss coordination of the complaints received
9 February 2021	Letter issued by Ireland NCP to the Corporation copying complaint and Ireland NCP Procedures
7 May 2021	Response received from the Corporation
22 July 2021	Ireland NCP issued the Corporation's response to the Complainants on a confidential basis
27 January 2022	Ireland NCP issued draft Initial Assessment to the parties
21 & 23 March 2022	Ireland received comments on draft initial assessment from the Complainants and the Corporation
12 April 2022	Ireland NCP met with the Notifier to discuss draft Initial Assessment
22 April 2022	Ireland NCP met with OECD Secretariat who pointed to the Guide for National Contacts Points on the Initial Assessment of Specific Instances to confirm that NCPs are not expected to make finding at the initial assessment stage
27 April 2022	Ireland NCP met with the Corporation to discuss draft Initial Assessment
6 May 2022	Ireland NCP issued revised draft Initial Assessment to both parties
25 May 2022	Ireland NCP informed parties of internal review of the draft Initial Assessment
3 June 2022	Ireland NCP issued revised draft Initial Assessment to the parties
22 June 2022	Ireland NCP discussed updated draft Initial Assessment with Corporation

7 July 2022	Ireland NCP issued the Initial Assessment for publication to parties
18 July 2022	Ireland NCP published Initial Assessment
<i>Good Offices/Examination</i>	
26 July 2022	Ireland NCP offered good offices to parties
2 August 2022	Parties accepted NCP's offer of good offices
10 October 2022	Ireland NCP notified parties of mediator following procurement process
21 November 2022	Ireland NCP met with Complainants about the mediation process
28 October 2022 & 9 November 2022	Parties accepted the selected mediator
23 December 2022	Ireland NCP received a letter from Corporation on the mediation process
16 February 2023	Ireland NCP met with the Corporation and the mediator
13 March 2023	Correspondence received from Corporation regarding the mediation process
7 April 2023	Complainants responded to the Corporation correspondence
18 April 2023	Ireland NCP met Corporation official to discuss the mediation process
21 April 2023	Draft terms of reference shared with the parties
2 June 2023	Updated terms of reference shared with the parties
16 June 2023	VC with Complainants about the mediation process
27 July 2023	Further updated terms of reference shared with the parties

23 August 2023	Ireland NCP met Corporation officials to discuss the mediation process
13 October 2023	Mediator informed Ireland NCP they are no longer available
1 December 2023	Ireland NCP informed parties of a second selected mediator
4 December 2023	Complainants did not approve the appointment of the mediator
5 January 2024	Ireland NCP informed parties of a third selected mediator
17 & 25 January 2024	Parties approved the appointment of the third selected mediator respectively
30 July 2024	Complainants sent a signed copy of the ToR to the mediator
28 October 2024	Mediator resigned after a long period of intense engagement with both parties, deeming mediation would not assist in achieving a constructive outcome
<i>Final Statement and Follow-Up</i>	
30 October 2024	Ireland NCP requested any additional submissions for consideration by the parties
2 December 2024	Ireland NCP met with Complainants via VC
13 & 17 December 2024	Complainants submitted additional response, followed by additional supporting material
13 December 2024	Corporation submitted additional response
14 February 2025 & 11 March 2025	Three testimonials received from Complainants, which required translation and subsequently shared with the Corporation
3 March 2025	Ireland NCP sought further clarity from the Corporation
12 March 2025	Ireland NCP met with Corporation officials

14 March 2025	Corporation submitted a response to the Ireland NCP's request for further information
30 April 2025	Complainants issued a follow-up response
30 May 2025	Corporation issued a follow-up response
21 May 2025	Corporation informed Ireland NCP it is coming to the end of burning coal purchased from the Cerrejón mine
11 July 2025	Corporation notified Ireland NCP of Cerrejón 2024 Sustainability Report
8 August 2025	Ireland NCP issued draft Final Statement to Parties
30 September 2025	The Corporation issued comments to the Ireland NCP on the draft Final Statement
1 October 2025	Complainants issued comments to the Ireland NCP on the draft Final Statement
17 October 2025	Ireland NCP issued updated Final Statement to Parties
14 November 2025	Final Statement published

C. Good offices process¹

12. The Ireland NCP offered its good offices as there were significant differences in perspective between the Complainants and the Corporation and, therefore, organising dialogue between the parties could contribute to a resolution in a spirit of mutual trust and good faith and further the effectiveness of the Guidelines.

13. The parties were presented with the proposed nomination of an external mediator, which they agreed to. Discussions took place between the Ireland NCP and the

¹ As the mediation process is confidential, the Ireland NCP has provided limited information on this element of the complaint handling process.

parties on separate occasions to discuss aspects of the mediation process, including the draft terms of reference.

14. Given the amount of time that passed to agree terms of reference, the Ireland NCP procured the services of a new mediator as the first appointed mediator was no longer available. The second mediator selected was not approved by the Complainants which meant the Ireland NCP selected a third mediator who was subsequently approved by the parties (referred to as the second appointed mediator).
15. The second appointed mediator undertook to work with the parties to agree terms of reference and get the parties to engage in mediation. Following extensive engagement with the parties over an extended period, the mediator informed the Ireland NCP of their resignation as there was not sufficient preparedness by the parties to engage within the framework and characteristics of a mediation process.

D. Examination and conclusions

16. Following the resignation of the mediator who noted the spirit of mediation and trust in the process needed was not present, the Ireland NCP moved to an examination of the complaint to issue a Final Statement. The parties were informed and provided the opportunity to provide further submissions to be considered at this stage in the process.

The Complainants' submission

17. The Complainants issued a response which sought to underline their argument that the Guidelines had been breached by the Corporation through its business relationship as a coal purchaser from the Cerrejón mine. The submission alleged that the Corporation('s):
 - i. Failed to meet the due diligence requirements (including the 6-step process in the Due Diligence Guidance, referred to as the 'Guidance')
 - ii. Reliance on the Bettercoal assessment is no remedy to their inadequate due diligence processes
 - iii. Duty to carry out due diligence is independent from the amount of coal purchased
 - iv. Failed to disengage responsibly from the business relationship
 - v. Failed to engage in good faith with the Specific Instance process
18. The Complainants stated the Corporation published its Human Rights Policy on 23 March 2022, which was not in place at the time when the complaint was lodged

with the Ireland NCP and it was the same year the Corporation resumed purchasing coal from Cerrejón, following the outbreak of the war in the Ukraine.

19. The Complainants stated that given the amount of evidence available, including numerous Colombian Court rulings outlining the impacts the mine was having on the environment and people in the area, demonstrated the need for heightened due diligence.
20. The Complainants stated the Corporation's reliance on Bettercoal to meet the recommendations of the Guidelines is both inadequate and it is their individual responsibility to carry out due diligence, referencing the 2023 Guidelines *"Although enterprises can collaborate at an industry or multistakeholder level, they remain individually responsible for ensuring that their due diligence is carried out effectively."*²
21. The Complainants stated the Bettercoal assessment of the mine failed to meet the due diligence requirements under the Guidelines as they believed it is neither credible, transparent or has good governance. They pointed to Guidelines which state *"Self-regulatory practices and multi-stakeholder initiatives should be credible and transparent"*³ and the clarification by OECD Investment Committee which confirmed that *"the [2018 Guidance] recognises the benefits of such collaborative initiatives but requires that these should be characterised by good governance and be credible."*⁴
22. The Complainants stated that none of these requirements were met by Bettercoal. First, they noted that Bettercoal displaced a clear lack of transparency as the publicly available report on the Cerrejón mine is a summary only. The full report is only available to Bettercoal members which includes the Corporation. The Cerrejón Continuous improvement plan ("**CIP**") is not publicly available which further demonstrates the lack of transparency according to them and prevents external stakeholders from properly understanding and assessing Cerrejón's performance against the Bettercoal standards.
23. Second, the Complainants stated Bettercoal lacks credibility as it does not involve a broad range of stakeholders referencing back to the OECD Investment Committee clarification which stated *"industry-led initiatives are most credible when they*

² 2023 OECD Guidelines, Chapter II (General Policies), pg. 17, [12]

³ 2023 OECD Guidelines, Chapter II (General Policies), pg. 17, [12]

⁴ [OECD Investment Committee, Engagement with trade unions in due diligence processes conducted by industry-led or multi-stakeholder initiatives: Clarification by the OECD Investment Committee](#) (2021), pg. 8

involve not only business but also civil society”⁵ and that the views of stakeholders have not been sought about the credibility of the initiative.

24. Third, the Complainants stated Bettercoal fails to apply good governance because it has no grievance mechanism for stakeholders to raise concerns, and it only enables limited stakeholder and expert consultation.
25. The Complainants also stated the last Bettercoal assessment was carried out in 2019 which was before Bettercoal 2.0 was in place and no assessment has been carried out since. They noted that a due diligence process, to be considered adequate, should be ongoing as per the recommendations in the Guidelines and the Principle 17 of the UN Guiding Principles on Business and Human Rights (“UNGPs”).
26. The Complainants dismissed the Corporation’s argument justifying their reliance on Bettercoal to increase its leverage and carry out due diligence because of the small volume of coal purchased. They stated because of the severity of the impacts, the measures the Corporation take be consistent with the Guidelines, i.e. *“be risk-based, commensurate to the severity and likelihood of the adverse impact and appropriate and proportionate to its context. Where it is not feasible to address all identified impacts at once, an enterprise should prioritise the order in which it takes action based on the severity and likelihood of the adverse impact”*.⁶
27. The Complainants stated the Corporation failed to disengage responsibly as it did not seek meaningful consultation with relevant stakeholders.
28. Finally, the Complainants requested the Ireland NCP note the Corporation’s lack of full cooperation and good faith in the process which is called for under the Guidelines.

The Corporation’s submission

29. The Corporation’s response built on its comprehensive original submission rejecting all the allegations made and restated that it has acted in accordance with the recommendations of the Guidelines in a number of ways, including, primarily, as an active member of Bettercoal and its Colombia Working Group (“CWG”). The Corporation strongly noted it has limited leverage and by acting collectively with other utilities through Bettercoal they have been able to apply leverage which they stated is in accordance with the Guidelines.
30. The Corporation stated it has always been transparent about its sourcing of coal,

⁵ OECD Investment Committee, Engagement with trade unions in due diligence processes conducted by industry-led or multi-stakeholder initiatives: Clarification by the OECD Investment Committee (2021), pg. 8

⁶ 2023 OECD Guidelines, Chapter II (General Policies), pg. 18, [19].

noting information is published in its annual report. In addition, it stated independent of being part of Bettercoal, it has directly engaged with the operator of the Cerrejón mine and the marketing company CMC discussing issues raised connected to human rights and the environment e.g. met with Cerrejón corporate social responsibility (“CSR”) representative in November 2018 and visited the Cerrejón mine in 2019 meeting different representatives including Tabaco community leaders.

31. The Corporation stated it had adopted and published a suite of corporate governance policies that demonstrated its commitment to respecting human rights. Since the issuance of the complaint, it subsequently published a specific Human Rights Policy drawing together and collating the content of those existing policies which more closely aligns to the Guidelines and the UN Guiding Principles. In addition, in April 2024 a new Head of Sustainability position was created to deliver the sustainability strategy.
32. The Corporation also stated it did not disengage but rather stopped purchasing coal until it was necessary to do so again and that it is committed to cease burning coal at the Moneypoint Power Station by the end of 2025, which has meant very limited purchases of coal over the last 18 months. The Corporation informed the Ireland NCP in May 2025 that it was approaching the last of the purchased coal to be used and has since informed the NCP that it reached that milestone in summer 2025 and no longer generates (or will in the future generate) electricity from the burning of coal.

Testimonials

33. In February 2025, the Complainants furnished testimonials from three different community members who outlined their experiences of the impacts from the coal mine.

Ireland NCP request for further clarity from the Corporation

34. At the beginning of March 2025, the Ireland NCP requested additional information from the Corporation on its due diligence processes. A meeting with Corporation officials took place shortly after where they further outlined the steps taken to adhere to the recommendations of the Guidelines.

The Corporation’s submission following the request from the Ireland NCP

35. Following this request from the Ireland NCP, the Corporation issued a submission

largely in response to the allegations made which are referenced in Paragraph 17 of this Final Statement.

36. The Corporation stated it had a suite of policies in place covering all aspects of human rights before it published its consolidated policy on human rights in March 2022. This consolidated policy was approved at the highest levels and developed in line with the Guidelines and the UNGPs. It was further updated in 2024.
37. The Corporation stated it recognised the severity of the risks in coal mining, and it sought an effective way to carry out its due diligence. It stated that as a purchaser of only a very small amount of coal from the Cerrejón mine (averaging 3% of the output of the mine between 2013 and 2015), it had limited ability to exert influence acting individually and accordingly sought to exert influence collectively through Bettercoal which was made up of a number of European utility companies. The decision to join Bettercoal was made at the highest management levels and was considered the most effective way to influence the Colombian mine to identify, prevent and mitigate any actual or potential adverse impacts.
38. The Corporation stated that the Guidelines and the Guidance include the possibility of collaborating with others to meet their due diligence obligations as stated in the Guidance *“Enterprises can collaborate at an industry or multi-industry level as well as with relevant stakeholders through the due diligence process, although they always remain responsible for ensuring that their due diligence is carried out effectively.”*⁷
39. The Corporation further stated the Guidance supports and encourages collaboration to *“pool knowledge, increase leverage and scale up effective measures”*.⁸ It stated that through this collaborative approach, improvements at the mine to address the impacts have occurred. These improvements are tracked and monitored following an independent assessment of the mine that resulted in a CIP.
40. The Corporation stated that it is an active member of the initiative and has been involved in the development of the Bettercoal Code, its implementation and the development and monitoring of the CIP both as a Bettercoal member and a member of the Colombia Working Group.
41. The Corporation stated that as a member of the Colombia Working Group, it participated in regular meetings with the assessors and the mine regarding progress against the actions points in the CIP. It stated it had access to all documents including all the actions in the CIP and noted a 10-page summary assessment report is publicly available. Some of the delivered changes improvements included the

⁷ OECD Due Diligence Guidance, 2018, page 19, Box 2

⁸ OECD Due Diligence Guidance, 2018, page 19, Box 2

response were indigenous communities' recognition and new protocols on free, prior and informed consent ("FPIC"); staff health and safety; security of contractors; publication of air quality monitoring, water quality monitoring and mine closure consultation with communities.

42. The Corporation also stated that Bettercoal has been a signatory of the UN Global Compact since 2017, which commits it to the Ten Principles on human rights, labour, environment and anti-corruption and that the ILO positively commented on the initiative.
43. The Corporation stated that *"Since the Bettercoal Code was launched in 2013, it has become the internationally recognised standard for assessing, assuring, and sustaining stringent ethical, environmental, and social performance across the coal mining supply chain. The Bettercoal Code 2.0, launched in 2021, is the third iteration of the standard and has even greater alignment with international best practices in mining."*⁹
44. Based on this information, the Corporation firmly believed it has acted in accordance with the Guidelines particularly because it stated it has limited leverage due to the relatively small amounts of coal purchased by it and given the complexity on the ground where the mine operates. It has been able to amplify its leverage as a result by acting collectively with other utilities.
45. The Corporation rejected the comments from the Complainants that it did not engage constructively with the process but that it engaged respectfully and in good faith.

The Complainants' final submission

46. The Complainants issued a further submission to the Ireland NCP based on the responses from the Corporation. In their response, they focussed on two points – (i) the Corporation failed to demonstrate that Bettercoal meets the standards of the Guidelines and (ii) the Corporation failed to provide evidence that it satisfied their due diligence duty independently from Bettercoal.
47. On the first point of the allegation that Bettercoal does not meet the Guidelines standards, the Complainants focussed on two aspects, i.e. lack of transparency and lack of credibility. Referring to their previous submission, the Complainants stated Bettercoal *"by no means qualifies as transparent multi-stakeholder initiative"*.¹⁰ They stated the Bettercoal Assessment Public Report provides no concrete and

⁹ Response from Corporation, 14 March 2025, pg. 1

¹⁰ Response from Complainants, 30 April 2025, pg. 3 [6]

transparent information but rather the assessment provides “a series of very abstract ratings organized in a graph, with no explanation whatsoever as to how each of the principles assessed were met or the consequence of their non-satisfaction in practice.”¹¹

48. The Complainants also stated that as a Bettercoal member, the Corporation can perhaps verify the mine’s compliance with the actions outlined in Bettercoal’s assessment, but no external stakeholder can. In addition, the Complainants also point out that the 10-page summary assessment report “contains only sparse information concerning the so-called mine’s performance”.¹² Therefore, they argued this lack of transparency does not fulfil Step 5 of the due diligence process set out in the Guidance.
49. The Complainants stated this lack of transparency correlates to a lack of credibility as it questioned how such an initiative can be credible when there is no evidence of its findings that can be verified.
50. The Complainants stated that the lack of credibility is further reinforced because there is “no continuous and on-going assessment of the Cerrejón mine”.¹³ They noted Bettercoal confirmed no reassessment took place since 2018 even though the CIP process is supposed to restart after 4 years according to the Bettercoal website.
51. The Complainants reiterated their position that the Corporation failed to satisfy the due diligence expectations by not carrying out its own due diligence and rather relied on the Bettercoal initiative, which in their view fails to meet the Guidelines standards.

The Corporation’s final submission

52. The Corporation restated its position that through its various interactions, including, primarily, through its active participation in the Bettercoal initiative, it has adhered to the recommendations in the Guidelines. It stated “*The Bettercoal Assessment, and the agreed Continuous Improvement Plan (CIP) process by which identified issues are dealt with demonstrates how Cerrejón has made improvements to processes and procedures at the mine to bring it into line with the Bettercoal Code.*”¹⁴

¹¹ Response from Complainants, 30 April 2025, pg. 5 [11]

¹² Response from Complainants, 30 April 2025, pg. 4 [10]

¹³ Response from Complainants, 30 April 2025, pg. 8 [18]

¹⁴ Response from Corporation, 30 May 2025, pg. 2

53. The Corporation further stated the governance and processes embodied in the Bettercoal Code are fully in line with the Guidelines and the UN Sustainable Development Goals. It said this is the reason why it and other European utilities joined Bettercoal, as it provides a credible due diligence process in line with international standards.
54. According to the Corporation, the Complainants' assertion that Bettercoal is neither credible or transparent is unfounded and without merit. It once again stated that Bettercoal has been a signatory of the UN Global Compact since 2017. It stated that the 2011 Guidelines do not set out objective standards around transparency or credibility.
55. On the issue of credibility, the Corporation stated the Guidance provides examples of good governance that *"may help an enterprise in determining whether the collaborative initiative that it is engaged with is credible"*¹⁵ which includes *"a functioning, accessible and effective grievance mechanism"*.¹⁶ It pointed to its previous submission that it stated demonstrated a grievance mechanism is in place for Bettercoal.
56. It also stated that there is a Bettercoal Technical Advisory Committee that facilitates the type of consultations in line with the Guidance, and the Complainants could request to be a member. There was also an external consultation process for the revision of the Bettercoal Code that resulted in Bettercoal Code 2.0. This included almost 350 comments and 70 UN Sustainable Development Goals-related recommendations for a broad range of stakeholders including civil society, trade unions, standards consultancies and coal producers.
57. The Corporation stated Bettercoal is bound by confidentiality provisions with the mines that are assessed against its code for *"commercial and general sensitivity reasons"*¹⁷ which limit the amount of information publicly available. It stated this is not unusual and believed it has assisted with mines participating. It also stated that the Guidelines (Chapter III, Para 35, pg. 23) recognise there may be limitations to disclosure and transparency and the limitations of Bettercoal are consistent with the Guidelines.
58. The Corporation stated the testimonials provided were from a *"discrete number of people"*¹⁸ living in the vicinity of the mine and it believed they *"can neither be considered to be representative of the views of any one community in particular nor can they be considered to represent the view of all communities, as a whole, in*

¹⁵ OECD Due Diligence Guidance, 2018, page 52, Box 3

¹⁶ OECD Due Diligence Guidance, 2018, page 52, Box 3

¹⁷ Response from Corporation, 30 May 2025, pg. 5

¹⁸ Response from Corporation, 30 May 2025, pg. 7

the region.”¹⁹ It noted there are at least 430 recognised Indigenous and Afro-descendant communities in the vicinity of the mine and that agreements were made between Cerrejón and 401 of the communities under the Constitutional Court Ruling T-704, while works continues of reaching agreement with the remaining communities.

59. The Corporation stated that the reference by the Complainants to the Dutch NCP statement concerning the ING complaint is a markedly different situation and there is nothing in the findings that supports a conclusion of the Corporation acting inconsistently with the Guidelines.
60. Finally, the Corporation provided some updates from the Cerrejón mine regarding the Colombian Court Ruling T-704 that Cerrejón comply with a mitigation plan for the communities in the area, the Bruno Creek including the Court Ruling SU-698 of 2017 regarding the creek diversion and the roundtable with the Tabaco community (which was a result of the Constitutional Court Ruling T-329).

Recommendations

61. The Ireland NCP wishes to note the complexity of this complaint, which was also noted by other NCPs who handled complaints connected to the Cerrejón mine. The Ireland NCP recognises the efforts of the parties investing significant time and resources in the proceedings, including the drafting of the terms of reference for mediation. The Ireland NCP regrets that mediation was not possible in this instance, which could have established a basis for a possible future-oriented solution to the issues raised in the complaint.
62. The Ireland NCP recommends that parties should note the non-judicial nature of the NCP mechanism and approach the process in a non-adversarial, constructive and future-oriented manner, with a mindset focused on mediation to facilitate direct dialogue on the issues to find a collective resolution. This is particularly important for enterprises, who should approach the non-judicial process more receptively in an effort to find a resolution through constructive dialogue.
63. The Ireland NCP notes as per the recommendations of the Guidelines and the Guidance, that enterprises can collaborate in carrying out due diligence, for instance through joining multi-stakeholder initiatives. However, an enterprise is always responsible for ensuring it carries out effective due diligence in line with the recommendations of the Guidelines. The Guidance states that “[e]nterprises can collaborate at an industry or multi-industry level as well as with relevant stakeholders throughout the due diligence process, although they always remain

¹⁹ Response from Corporation, 30 May 2025, pg. 7

responsible for ensuring that their due diligence is carried out effectively."²⁰

64. While the Guidance recognises the benefits of such collaborative approaches to carrying out due diligence, it points out that such initiatives should be characterised by good governance and be credible and that an enterprise should first assess the quality of the initiative. Box 3 in the Guidance includes some examples of good governance to help an enterprise decide if a collaborative initiative is credible which includes an effective grievance mechanism and a process for enabling stakeholder and expert consultation on the objectives and activities of the initiative. As noted in the OECD Investment Committee's clarification "[a] major factor in determining the quality of an initiative is therefore the existence of sufficiently robust engagement with the company's stakeholders or their representatives".²¹ The Investment Committee when providing clarity made the following recommendation:

*"When examining due diligence steps taken by a company in respect of risks to workers based on industry-led or multi-stakeholder initiatives, NCPs, should consider whether these initiatives include meaningful engagement..."*²²

65. The Ireland NCP noted in the Corporation's responses that there has been some stakeholder engagement. This has included the public consultation on the updated Bettercoal Code 2.0 and the Bettercoal Technical Advisory Committee which is made up of a number of stakeholders including a civil society organisation with a focus on human rights. The Corporation stated "*Bettercoal is open for civil society organisations to join as associate members and as members of the technical advisory committee which provides access to all of Bettercoal's deliberations*".²³
66. The Ireland NCP recommends that the Corporation as an active member of Bettercoal should promote the participation of interested stakeholders as associate members and as members of the Technical Advisory Committee to ensure meaningful stakeholder engagement.
67. The Ireland NCP also emphasises the importance that any enterprise seeking to participate in a multi-stakeholder initiative should first carry out an assessment of the initiative which can include seeking the views of relevant stakeholders about its credibility which is in line with the Guidance.
68. The Ireland NCP notes the Complainants argument that the Bettercoal process is

²⁰ OECD Due Diligence Guidance, p. 19

²¹ OECD Investment Committee, Engagement with trade unions in due diligence processes conducted by industry-led or multi-stakeholder initiatives: Clarification by the OECD Investment Committee (2021), pg. 8

²² OECD Investment Committee, Engagement with trade unions in due diligence processes conducted by industry-led or multi-stakeholder initiatives: Clarification by the OECD Investment Committee (2021), pg. 8

²³ Corporation response, 14 March 2025, pg. 9

not transparent as only a summary report of the findings is available with no specific information about the impacts identified and the actions taken to address those impacts. The Complainants argued that a lack of transparency correlates to a lack of credibility and noted that the 2023 Guidelines state multi-stakeholder initiatives should be credible and transparent.

69. The Corporation noted in its March 2025 response that it *“has raised and supported greater transparency in reporting, however we recognise the limitations of these calls given Bettercoal’s need to ensure continued ‘buy in’ from the mining companies from which members of Bettercoal purchase their coal.”*²⁴ The Corporation informed the Ireland NCP that, as a member of Bettercoal, it has access to the information that tracks the actions and can verify if they have been implemented.
70. The Ireland NCP points to the fifth step of the due diligence process in the Guidance, i.e. communicate how impacts are addressed. The CIP created after the mine assessment is not publicly available but available to Bettercoal members. A 10-page summary report of the findings is publicly available. The information contained in this summary report provides minimal detail on the actions. Therefore, the Ireland NCP recommends the Corporation, as an active member of Bettercoal, use its leverage to advocate for greater transparency to communicate how the impacts are addressed on an ongoing basis.
71. The Ireland NCP notes that the last assessment of the Cerrejón mine took place in 2018 using a previous iteration of the Bettercoal Code as Bettercoal Code 2.0 was not yet in place. According to the Bettercoal website, assessments are to take place every 4 years. In the Corporation’s response in March 2025, it stated it *“has written to Glencore to encourage it to engage with Bettercoal for a reassessment under Code 2.0”*.²⁵ The Ireland NCP recommends that the Corporation continue to use its leverage and influence as a Bettercoal member to encourage a reassessment of the mine under the Bettercoal 2.0 in accordance with Bettercoal’s Code.
72. Given the criticism of Bettercoal by some, the Ireland NCP emphasises the importance of periodic reviews by the Corporation of the appropriateness of its reliance on a multi-stakeholder initiative it participates in as a significant part of its due diligence and consider whether it is necessary to develop due diligence processes independently of Bettercoal.
73. The Ireland NCP notes the Corporation did not have a consolidated Human Rights Policy at the time the complaint was submitted. It did have a series of policies

²⁴ Corporation response, 14 March 2025, pg. 9

²⁵ Corporation response, 14 March 2025, pg. 2-3

connected to various aspects of human rights. Since the submission of the complaint, the Corporation has published a consolidated Human Rights Policy which has subsequently been updated. The Ireland NCP recommends that the Corporation continue to review and update its Human Rights Policy as and when needed. This may include being informed by relevant internal or external expertise in the area of human rights.

Follow-up

74. While the Ireland NCP notes the Corporation's plans for the Moneypoint Power Station, which means no longer burning coal, there is merit in following up with the Corporation regarding the recommendations outlined above.
75. The Ireland NCP will contact the parties one year after the publication of the Final Statement to take account of the situation and will conclude the Specific Instance.

ENDS

**Ireland National Contact Point
OECD Guidelines for Multinational Enterprises
Department of Enterprise, Tourism and Employment**

The OECD Guidelines for Multinational Enterprises are recommendations on responsible business conduct (RBC), addressed by Governments to multinational enterprises operating in or from adhering countries. They provide non-binding principles and standards for RBC in a global context consistent with applicable laws and internationally recognised standards. As an adhering country, Ireland is required to maintain a National Contact Point (NCP) to promote and raise awareness of the Guidelines and to consider complaints of alleged non-observance of the Guidelines. As the complaint was submitted in 2021, the Ireland NCP has handled this specific instance using the 2011 Guidelines.

The Ireland NCP is a standalone unit in the Department for Enterprise, Trade and Employment.

Appendix I: Overview of Bettercoal

Introduction

Bettercoal was established by a group of European utility companies to ensure that the coal they purchase comes from responsible mines committed to enhancing their operations on ESG issues. Bettercoal's purpose is to promote continuous improvement in the mining and sourcing of coal for the benefit of all people impacted by the industry, workers and coal mining communities.

Bettercoal Code 2.0

The Bettercoal Code was developed between 2011 and 2013. The third iteration of the Bettercoal Code 2.0 was launched in 2021, covers 12 principles and contains 144 provisions, divided into three main areas – governance, social and environment. Human rights is included under the social element as 'Principle 5'. They created the Bettercoal Code Guidance to further assist suppliers.

Bettercoal suppliers agree to be assessed against the Bettercoal Code standards and engage with the ongoing assessment process. Independent lead assessors assess coal producers through an onsite assessment, against the 144 provisions of the Code and create a CIP based on the findings of the assessment. Throughout the 4-year cycle, assessors review the performance of the coal producers and report on the progress, verifying whether the actions contained in the CIP have been met. This will involve the assessor visiting the mine site as on-site verification is needed for many actions. After 4 years, the CIP process starts afresh, with new assessments and a new tailored CIP created.

Colombia Working Group (CWG)

In 2018, the Colombia Working Group was established to facilitate a more coordinated approach to monitoring the CIP. One of the aims of the CWG is to foster better relationships with all stakeholders in the complex environment.

Bettercoal developed a specific Country Prioritisation Strategy for Colombia, which included the establishment of a Country Working Group for Colombia in 2018 to monitor 3 mines including Cerrejón.

The objective of this is to facilitate a more coordinated approach to the monitoring of CIP as well as build knowledge and measure impact. One of the aims is to foster better relationships with all stakeholders involved in this complex environment, from business to government, to international NGOs and local communities.

The CWG set three objectives, building on work programmes over previous years:

1. Monitoring the CIP of Bettercoal Colombian Producers
2. Developing and implementing actions on prioritised contextual issues
3. Engagement with Colombian stakeholders