

Society for Threatened Peoples files OECD complaint against Credit Suisse at the OECD National Contact Point (NCP) Switzerland

Summary, 28.4.2017

The North Dakota Access Pipeline (DAPL) in the United States has generated massive protest over several months because it threatens the local indigenous communities' main drinking water source and a leak of the pipeline may affect 17 million people downstream.¹ Moreover, important cultural sites will be destroyed. The indigenous communities have not adequately been involved in the project which is in breach with UNDRIP. Furthermore, an ample Environmental Impact Assessment (EIA) was cancelled. For these and other reasons, UN Special Rapporteurs have heavily criticized the project and urged to halt it.^{2,3,4} Consequently, numerous financial institutions have divested^{5,6,7,8} from DAPL, expressed their concerns or publicly distanced themselves from the project.^{9,10}

Despite growing awareness and criticism of DAPL, Credit Suisse has increased even further its business relations with DAPL-related companies Entergy Transfer Partners L.P (ETP), Energy Transfer Equity L.P. (ETE) and Sunoco L.P. Credit Suisse plays a leading role in financing and advising these companies and is a significant investor in their shares.

Especially critical are the services and products provided by Credit Suisse after December 2016. At that point, Credit Suisse was definitely informed about the real and potential human rights violations related to DAPL: Not only had the project been heavily criticized by UN Special Rapporteurs in September and November. Also, in a meeting with STP and Greenpeace on 8th of December, Credit Suisse assured that they were fully aware of the issue and now classify the conflicts around DAPL as high risk.

¹ <http://www.aljazeera.com/news/2016/10/dakota-pipeline-live-unharmmed-161028164735822.html>

² <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20570&LangID=E>

³ <https://www.un.org/development/desa/indigenouspeoples/news/2016/11/statement-from-the-chair-and-pfii-members-dalee-dorough-and-chief-edward-john-on-the-dakota-access-pipeline/>

⁴ <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20868&LangID=E>

⁵ Nordea excludes ETP, Sunoco Logistics and Phillips 66 from all investments due to latest decision to proceed with disputed route for DAPL <https://twitter.com/SasjaBeslik/status/829327801958465539>

⁶ <http://www.greenpeace.org/usa/news/another-major-norwegian-investor-divests-from-companies-behind-dakota-access-pipeline/>

⁷ <https://www.ing.com/Newsroom/All-news/ING-has-sold-its-stake-in-Dakota-Access-pipeline-loan.htm>

⁸ <http://www.seattletimes.com/seattle-news/environment/protesters-call-for-seattles-billions-to-be-pulled-from-wells-fargo-over-dakota-access-pipeline/>

⁹ <http://www.reuters.com/article/dnb-pipeline-northdakota-idUSL8N1D80ZG>

¹⁰ <https://www.abnamro.com/en/newsroom/newsarticles/2017/the-situation-regarding-the-dakota-access-pipeline-is-being-monitored-closely.html>

Nevertheless, Credit Suisse intensified its business relations with the investee companies by

- participating in a new loan issue for Sunoco Logistic Partners on 16th of December 2016
- being joint-lead manager of books for 2 new long-term Senior Notes for ETP worth 1.5 billion with maturities as far out as 2027 and 2047 on January 11th 2017
- lending a USD 2.2 billion senior secured term loan to ETE on February 3rd 2017
- increasing managed shares on ETP¹¹ sevenfold, quadrupled the ones on ETE¹² between October 1st and December 31st 2016 despite escalations of the protests on the ground at that time.

This ongoing relationship with the above mentioned clients Sunoco, ETE and ETP is a continuous disregard for the banks' internal policies: With regards to oil and gas companies, Credit Suisse states: "Credit Suisse will not finance or advise oil and gas companies against which there is credible evidence of involvement in grave human rights abuses such as. [...] the use of violence against local communities and indigenous groups".¹³

The fact that Credit Suisse continues to play a key role in providing funding and financial advice to companies related to DAPL as well as investing in their shares, contrasts with several international standards, such as the UN Guiding Principles, the UN Declaration on the Rights of Indigenous Peoples and the UN Global Compact, and represents a breach of the OECD Guidelines for Multinational Enterprises. **This is why STP files a complaint at the OCED National Contact Point of Switzerland against Credit Suisse. It contains mainly the following allegations:**

First, Credit Suisse is in breach with the principle to carry out risk-based and human rights due diligence.¹⁴ Although STP questions whether the bank carried out a proper risk-based due diligence *before* entering in business relations with ETP, ETE and Sunoco, we essentially criticize Credit Suisse for having failed to carry out "*ongoing* monitoring".¹⁵ STP has observed that Credit Suisse does not possess any mechanism that enables the bank to stop services, operations and management of products to clients and investees if they do not comply with Credit Suisse's internal policies and international standards.

Second, Credit Suisse as a key bank in providing funding and financial advice to DAPL-related companies, as well as a significant investor in shares of these companies, failed to actively encourage its investees to prevent or mitigate adverse impacts of the project

¹¹<http://www.nasdaq.com/symbol/etp/institutional-holdings?page=2> (25.4.2017)

¹²<http://www.nasdaq.com/symbol/ete/institutional-holdings> (25.4.2017)

¹³<https://www.credit-suisse.com/media/assets/corporate/docs/about-us/responsibility/banking/policy-summaries-en.pdf>

¹⁴ OECD Guidelines for Multinational Enterprises: 2011, Chapter II [10] and Chapter IV [5].

¹⁵ OECD Responsible Business Conduct for Institutional Investors: 2017, p.33.

as stipulated in the OECD Guidelines.¹⁶ The OECD Guidelines make clear that an investor's due diligence must go beyond its own activities and operations and cover the entire value chain.¹⁷

Further, by enabling the construction of a pipeline through managing shares of oil and gas companies and providing financial advice and arranging and providing funding to them, Credit Suisse breaches the OECD principle to contribute to sustainable development and to protect the environment.¹⁸

Credit Suisse has not only increased business relations with ETE, ETP and Sunoco against its better judgement. Until now, Credit Suisse has not met with STP's demand to meet a representative of the bank in a decision-making position. Furthermore, the bank has not communicated any concrete steps on how to avoid involvement in adverse human rights impacts through their operations, products and services to investees in the future.

This and other factors have persuaded STP that a more formal way is now required to convince Credit Suisse to fully acknowledge its social corporate responsibilities beyond its own operations and activities. STP hopes that an independent mediation will create awareness in Credit Suisse and other investors, that through their services, operations and products, they might become complicit in adverse impacts caused by their investees.

¹⁶ OECD Guidelines for Multinational Enterprises: 2011, Chapter II [13].

¹⁷ OECD Responsible Business Conduct for Institutional Investors: 2017, p. 7-8.

¹⁸ OECD Guidelines for Multinational Enterprises: 2011, Chapter VI.