



# Center for Human Rights and Environment

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April 10, 2006  
Córdoba, Argentina

NORDEA

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RE: Briefing Developments Cellulose CASE Uruguay and Request for Response to Human Rights and Corporate Social Responsibility Compliance Complaint

Cc: ING: Michel Tilmant, Cees Maas, Jonathan Attack, Peter Jong, Huib te Haar, Cor Herkstroter, BBVA: José Angel Moreno, Francisco Gonzalez, Tomas Conde, Vitalino Nafria, Manuel Gonzalez Cid, Pablo Fernandez Calvo; Meg Taylor (CAO), Amar Inamdar (CAO), Alieto Guadagni, (World Bank Executive Director for Argentina), Declan Duff (IFC), Atul Mehta (IFC), Santiago Cantón (Inter-American Commission on Human Rights), Jorge Busti (Governor of Entre Ríos, Argentina); Jorge Taiana (Argentine Foreign Minister), Gualeguaychú Environmental Assembly, Keith Kozloff (US Treasury), Johan Frijns (Banktrack); Joseph Wilde (OECD); Business and Human Rights Resource Center; Karl Jackson (World Bank), O. Bordón (Argentine Embassy); Jorge Taiana (Foreign Minister, Argentina), Assembly of Gualeguaychú, Keith Kozloff, Rachel Bayley (US Treasury), BBVA.

Dear Mr. Dalborg,

Two months have past since we filed the Human Rights and Corporate Social Responsibility Compliance Complaint to Nordea regarding the Botnia-sponsored Uruguayan Pulp Paper Mill projects in Fray Bentos Uruguay, enumerating countless human rights and corporate social responsibility violations of the mentioned projects, as well as violations to national and international treaty and environmental law, as well as violations to IFC Environmental and Social Safeguard Policies, and we have as yet to receive any response regarding the issues treated and allegations made in that compliance complaint.

The pulp paper mill projects by Botnia (to be financed by in part by Nordea Group) and ENCE (to be financed by BBVA amongst others) have led to *never-before seen* mounting conflict, pitting Argentina against Uruguay, imminently to go before the International Court of Justice to resolve this still exploding dispute, while these projects continue to be the source of enormous and mounting tension between these two otherwise friendly states. Nordea's silence regarding its consideration support does NOT have a NEUTRAL result to the situation, but in fact is further aggravating present circumstances.

We have no indications from Nordea that it has reviewed the many documents that are now available, both from CEDHA, from the CAO, from the CARU, from the Government of Argentina, from the Uruguayan Prosecutor, from the Argentine Prosecutor, and from numerous other sources, which attest and substantiate the numerous allegations made in the original Human Rights and Corporate Social Responsibility Compliance Complaint submitted by CEDHA to Nordea and in the many other legal and other procedural complaints that have been filed in numerous forums and by numerous actors against these projects.<sup>1</sup>

With such growing and overwhelming evidence and public and diplomatic opposition to this investment, Nordea's public silence on this case cannot but suggest to the public that *Nordea is failing to uphold its commitment to abide by its Corporate Social Responsibility obligations*. This prolonged silence, and the negative impact it has for local stakeholders, places Nordea into the realm of legal complicity and negligence, with respect to the continued and sustained aggravating actions by Botnia (Nordea's partner), violating international law, and placing the local community of Fray Bentos and Gualaguaychú Argentina, at great social, environmental and economic risks.

Nordea's lack of transparency with regards to this project, and failure to provide evidence that it is seeking to address and clarify accusations and evidence presented in the Human Rights and Corporate Social Responsibility Compliance Complaint, to which Nordea has remained irresponsibly and negligently silent, given the ENORMOUS attention this project is attracting at the local, national and international level, further places Nordea's own investors at risk with respect to the status of its pending investment, and risk exposure.

*A proactive step by Nordea is immediately necessary* to clarify its position and avoid further damage to its own reputation as well as provide clarity for its shareholders, to the general public, and to the stakeholders impacted by this project.

CEDHA is already taking steps to file OECD Specific Instance complaints against company sponsors at the relevant National Contact Points, and **unless we receive a convincing answer from Nordea** regarding compliance with its Business Principles, and a response that shows that Nordea is investigating the clear violations of human rights, safeguard policies, violations of the bilateral treaty between Argentina and Uruguay, and numerous other allegations made in the many other formal legal and process oriented complaints we and other actors have filed, **CEDHA will proceed to file a Specific Instance Complaint against Nordea at the corresponding National Contact Point.**

In our original Human Rights and Corporate Social Responsibility Compliance Complaint, we called Nordea to:

1. Suspend previous, and cease all present and future consideration of financing of these projects until the projects prove to comply with ALL Nordea's environmental and social obligations published on Nordea's Corporate Citizenship Principles and environmental policy, and in compliance with local statutes and international human rights and environmental law, norms and guidelines;
2. Initiate any and all internal investigations into the allegations made in this compliance complaint and be informed of and consider evidence presented in claims made on these projects to all international and local tribunals based on issues relevant to the Nordea's stated environmental commitments;

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<sup>1</sup> For a full list of filings see: [http://www.cedha.org.ar/en/initiatives/paper\\_pulp\\_mills/](http://www.cedha.org.ar/en/initiatives/paper_pulp_mills/)

3. Publicly inform clients, customers, stakeholders and the general public on its position with respect to the suspension of financing, or any consideration of financing these projects and the grounds for doing so (or not);

4. Assess and inform itself of project compliance with UNEPFI, the Global Compact, the UNCHR, the UN Norms, ILO Conventions and OECD Guidelines and only proceed to provide finance should it be perfectly clear that environmental and social impacts have been properly addressed and mitigated.

As far as we know, none of these requests, questions or issues have been addressed or publicly answered by Nordea to date.

*We take this opportunity to offer information to Nordea regarding the above mentioned issues, and will offer you additional information about developments in the case so that you can be informed about the serious and concerning evolution of this unfortunate investment project and in hopes that we can avoid taking action against Nordea for failing to adhere to its international obligations and respond to the pending Human Rights and Corporate Social Responsibility Compliance Complaint filed for Nordea participation in this investment.*

#### Escalating Diplomatic Conflict and Collapse of Negotiations between Argentina and Uruguay

Given the failure of the IFC and the project sponsors to provide convincing evidence to satisfy stakeholders and the Argentina government over the expected levels of contamination, a negotiations process was launched last month in Chile at the very highest political levels, between President Kirchner of Argentina and President Vazquez of Uruguay. The presidents had agreed to a 90-day ceasing of construction of the mills, whilst further environmental, economic, and social impacts were carried out. In exchange, the citizens of Gualeguaychú, which had blocked international traffic between the two countries for over 40 consecutive days, agreed to lift their blockade and reopen terrestrial communications. All seemed set to advance under more amicable terms, when Botnia of Finland, decided to reverse its stance and refuse to halt construction, fearing a drop in its stock value in European markets. This act essentially collapsed negotiations, and sent the situation into a diplomatic spiral now destined to the filings of complaints by both countries to the International Court of Justice, Hague.

Botnia's announcement, just hours before the announcement of the accord, refusing to abide by the presidential agreement to halt construction, brought despair to the negotiating Presidents, paralyzing efforts to find a friendly solution to this unfortunately problem. Botnia has also threatened Uruguay that it would abandon its investments if problems continue. Uruguay, meanwhile is trapped by a draconian contract signed between Uruguay and Finland, and with Botnia, that would penalize Uruguay with multimillion dollar sums should Botnia be negatively impacted by changes in the terms of the investment.

The Uruguayan Presidential Secretary, Gonzalo Fernandez, in one of the first signs of strain between the Government of Uruguay and Botnia, confronted Botnia's decision, in the midst of the worst ever diplomatic disputes between the countries, suggesting that the decision was "abrupt", and lamented that this obstructs hopes for an eventual resolution to the conflict, especially considering the good will of both nations to resolve the dispute. The Argentine Chief of Cabinet, Alberto Fernandez, lamented that Botnia "does not understand the real dimensions and reach of the binational conflict which has ensued."

#### Review the Cumulative Impact Study" prepared by the IFC

Following public disclosure by the IFC (of the World Bank Group) and by the Compliance Advisory Ombudsman (the World Bank's internal control mechanism to oversee IFC policy

compliance), of clear shortfalls and policy compliance problems in the original social and environmental impact studies, particularly the failure of the IFC to command cumulative impacts of the two mills, the IFC attempted to correct its gross errors by commissioning a Cumulative Impact Study (CIS) on the combined impact of the Botnia and ENCE mills, a study which *would never have been made available* to the World Bank if stakeholders had not complained about the failure of project sponsors and the IFC to consider impacts across the border to the Argentine community of Gualaguaychú.

At present, the IFC has completed a *first draft* of this CIS, and has taken in comments through its website and through a unilaterally presented schedule of local meetings. However, the consultation process established by the IFC failed to create stakeholder credence and/or involvement in the process, as it was hurriedly carried out in the middle of holiday season. Furthermore, the terms of reference of the CIS were never shared with stakeholders before the study was designed, as is mandated by IFC's Environmental Safeguard Policy (Paragraph 12 OP 4.01). Further, the CIS consultation was fixed on inflexible time tables set out by the IFC, unilaterally designed by the IFC with no stakeholder participation, and failed, despite repeated requests by the CAO and by stakeholders, to establish clear, transparent and agreed-upon rules of engagement. This is a basic request and condition for ANY consultation process to occur in a fair and transparent manner. Even this was ignored by the IFC.

A new consultant has been hired by the IFC for a panel which it unilaterally created which was supposed to have members offered by Argentina and Uruguay. Since NEITHER country lent credibility to this unilaterally proposed panel, neither country offered candidates for it and hence the IFC was forced to unilaterally select a candidate of its own choice, without the blessing of either country. In fact, both Argentina and Uruguay have discarded the CIS as it is not a credible study, and have of their own volition and at the presidential level, discussed conducting *their own* studies in their own independent process. It is critical to stress that the CIS, whenever it is published, DOES NOT address the concerns of the vast majority of stakeholders of these projects (particularly the Assembly of Gualaguaychú, consisting of nearly 50,000 stakeholders immediately affected by the projects, which refused to participate in the unilaterally imposed and no-rules IFC consultation). The CIS, for example, fails to explore impacts on tourism, which is by far the most principle concern of local stakeholders who depend on tourism in the region for their livelihoods.

#### Applicable Uruguayan environmental and social laws

In a continuing case before national courts, the Uruguayan prosecutor has unearthed evidence pointing to illicit handling of the application for environmental permits for the pulp mill projects.<sup>2</sup> Additionally in Argentina, a television program broadcast recently on Channel 9 in Argentina, an interview with an Uruguayan Environmentalist (Marcel Kairuz) claiming that Carlos Faroppa, the legal representative of Botnia in Uruguay, paid him and one other Uruguayan environmentalist so that they would quell protests in Uruguay against the mills.<sup>3</sup>

Taking into account all available evidence, the project is at serious risk of violate environmental and social norms established by the Uruguayan Constitution, namely Article 44 'right to health', Article 47 1(b) that establishes the necessity of sustainable development especially pertaining to the waterways, whilst guaranteeing the involvement of civil society and the public in decision-making processes; and Article 47 1(d) 'prioritizing the supply of potable water over other factors such as economic development'.<sup>4</sup>

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<sup>2</sup> [www.cedha.org.ar/en/initiatives/paper\\_pulp\\_mills/denuncia-uruguay-viana.pdf](http://www.cedha.org.ar/en/initiatives/paper_pulp_mills/denuncia-uruguay-viana.pdf)

<sup>3</sup> See for example [www.lanacion.com.ar/EdicionImpresa/politica/nota.asp?nota\\_id=786884](http://www.lanacion.com.ar/EdicionImpresa/politica/nota.asp?nota_id=786884)

<sup>4</sup> Available at <http://www.georgetown.edu/pdba/Constitutions/Uruguay/uruguay04.html>

Applicable regulations issued by the Comisión Administradora del Río Uruguay (CARU) established by the Republic of Argentina and the Oriental Republic of Uruguay

These mills are being constructed on the border of the Uruguay River, dividing Argentina and Uruguay. Both countries signed a bilateral treaty in 1975 called the Uruguay River Treaty, which established a collaborative framework for management and protection of these very sensitive waters, whose oversight is entrusted to the CARU (or Binational Commission). The IFC and World Bank Group, it is important to note, also has an International Waterways Safeguard Policy, established precisely so that World Bank projects do not harm border waters, and that they comply with international law established to protect such waters. The project sponsors and the IFC ignored the stipulations of the River Uruguay Treaty, and the government of Uruguay ignored its responsibilities to inform Argentina of its intentions to locate two contaminating industries on the river. As a result, Argentina has complained on numerous occasions to Uruguay and to the World Bank President, that it does not agree with the decision to locate these mills at that precise site on the Uruguay River. Argentine experts have provided thousands of pages of technical analysis from worldly recognized environmental experts substantiating the concerns expressed by local citizens, environmental groups and scientific experts.<sup>5</sup>

Two reports were issued by Uruguay and Argentina respectively detailing issues and concerns, as well as the numerous violations that Argentina alleges against Uruguay.<sup>6</sup> The summary report presented by Argentina states among other things, that the authorization of the plants was a “unilateral decision of Uruguay ... violating its international obligations as established by the Uruguay River Treaty of 1975. ...” (p.1), and that these projects fail to comply with the necessary legal responsibilities mandated in their own countries ... with respect to projects that can have cross-border environmental impacts”. (p.1). Further the report states: “both the Environmental Impact Assessments done by the companies, and the Draft Cumulative Impact Assessment presented by the IFC, fail to clarify considerations for citing and justification of citing of, as well as alternatives to the mills, ... [going on to say] that when confronted with this issue, the Uruguayan delegation of the Binational Commission responded that it had no need to answer this question as it was a done deed”. (p.1) The report reads: “the Argentine Delegation [of the Binational Commission] with evidence to sustain its opinion, concludes that the proposal to install the Orion and M'Bopicuá plants does not attain the objective of preserving the environment and the ecosystem of the River Uruguay to the ‘highest degree possible as per international standards’, as was agreed it should by the Binational Commission in its first meeting”. (p.2) “The eventual operation of the plants will negatively impact the Province of Entre Rios, affecting productivity, existing industries, commerce – especially relative to tourism, property values, and the health of the local community, livestock and crop”. (p.3)

These observations by the Argentine technical experts of the Binational Commission, summed to the escalating diplomatic conflict that these projects are having between Argentina and Uruguay, which will now face trial at the International Court of Justice at the Hague, in addition to the other legal complaints that have already been filed at local and international tribunals, are an indication, that not only are these projects violating international law, human rights and environmental law, as well as environmental safeguards of the IFC, and numerous other codes of conduct, as well as ethical business practice; it is clear from the evidence of these findings, **that these projects are unwanted by local residents of Argentina**, and specifically, by the communities that reside, work, and take leisure in the surroundings of the projected mills. President Kirchner has ALREADY gained both

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<sup>5</sup> See for example: the abbreviated version (180pp) of the Sejenovich Report at: [http://www.cedha.org.ar/en/initiatives/paper\\_pulp\\_mills/sejenovich-report-spa.zip](http://www.cedha.org.ar/en/initiatives/paper_pulp_mills/sejenovich-report-spa.zip); or the Cordoba University Report at: [http://www.cedha.org.ar/en/initiatives/paper\\_pulp\\_mills/informe-papelera-unc-cordoba-spa.doc](http://www.cedha.org.ar/en/initiatives/paper_pulp_mills/informe-papelera-unc-cordoba-spa.doc).

<sup>6</sup> see: [http://www.cedha.org.ar/en/initiatives/paper\\_pulp\\_mills/analisis-ministerio-exterior-spa.pdf](http://www.cedha.org.ar/en/initiatives/paper_pulp_mills/analisis-ministerio-exterior-spa.pdf)

Congressional and Senate support, as is needed to take this action and is presently preparing the complaint to the Hague.

Because of a World Bank project and the negligent actions of project sponsors and IFC project staff, two otherwise friendly nations are about to enter a maximum dispute settlement process at the international level. By supporting Botnia or any one of these projects and their related activities, Nordea would be erroneously and unwisely taking sides in an unprecedented international legal dispute between two otherwise friendly states.

### **Further Issues to Consider**

#### **Public Opposition**

These projects ran into problems when nearly 50,000 people took to an international bridge uniting Argentina and Uruguay in the site vicinity, in early 2005, in opposition to the installation of these mills in the heart of a thriving and environmentally pristine tourist region and on the waters of one of the cleanest river systems in the southern cone region. A Citizen's Environmental Assembly was born from this movement that has not only signed the complaint filed to the CAO (with 39,366 hand written signatures) on these projects in September, but which today is still and ever-more fervently actively protesting against the installation of these mills. Neither the project sponsors (Botnia or ENCE) nor the IFC have appropriately taken into account the opinion of Argentine stakeholders who live immediately within the projects sphere of influence or of the Assembly of Gualeguaychú which in the words of the CAO is a "powerful and coherent voice which has raised legitimate questions about how to promote development on the Rio Uruguay".<sup>7</sup> There is no evidence to show that Nordea has taken into account this very concerning situation. Several other assemblies in other cities both in Argentina and Uruguay, have since joined the Assembly of Gualeguaychú to opposed these mills. Recently, in an IFC-summoned meeting with the Assembly of Gualeguaychú, the IFC delegation refused to attend the meeting on the grounds that too many stakeholders were present (see letter to Paul Wolfovitz regarding this incident).<sup>8</sup> Eight hundred common citizens, including, elderly, women, and children stakeholders awaited eagerly to talk to the IFC but the delegation never showed up. The IFC did meet that day, and all that week, however, with pro-mill actors lending further legitimate belief to stakeholders that the IFC is biased in favor of investors in these projects. The IFC team gave illegitimate and ridiculous excuses for not showing up to the meeting, such as that their translator could not be present at the meeting at the time agreed. As representatives of the Assembly and other stakeholders, we reiterated on numerous occasions, to the IFC and to the World Bank President, that the IFC's negligent behavior was not only generating mistrust, but also causing desperation and social unrest due to the imminent installation of these mills, without any local say in the matter. It should be stressed, that the IFC not only has done nothing to avoid this unfortunate conflict, but on the contrary, its disrespectful conduct towards the local citizenry and the violations of its own Operational Safeguard Policy have served to further aggravate the conflict.

#### **Media Attention**

Since tensions over these projects escalated over the past several months, due to the international complaints filed, due to more and extended public protest (local and regional press have covered the issues permanently, making headlines, appearing in ALL local and major newspapers, everyday, and raising the degree of tension and conflict over these projects). Argentina and Uruguay are at the verge of breaking diplomatic relations as these

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<sup>7</sup> see CAO Preliminary Assessment p10 at: [http://www.cao-ombudsman.org/html-english/documents/preliminary\\_assessmentFINAL.pdf](http://www.cao-ombudsman.org/html-english/documents/preliminary_assessmentFINAL.pdf)

<sup>8</sup> [http://www.cedha.org.ar/en/initiatives/paper\\_pulp\\_mills/carta-wb-ene-2006.pdf](http://www.cedha.org.ar/en/initiatives/paper_pulp_mills/carta-wb-ene-2006.pdf)



mills have caused seemingly irresolvable problems in the region. We have also begun to see these projects appear in international press, including the New York Times, BBC, Univisión, CNN, and other major media channels. Newer press coverage point not only to ongoing concerns the companies are raising in other investments internationally, but also to alleged videotaped bribes given by one of the company's executives to local civil society organizations to avoid local protest. Another article which recently appears reveals a draconian host government agreement signed between Botnia and the Uruguayan government exempting Botnia from any losses due to public protest stemming from eventual environmental impacts of the firms, and a specific clause in this agreement exempting Botnia from appearing in local courts in the case of any future disputes regarding environmental contamination. The press is also reporting that ENCE, the Spanish company, fearing backlash, is now suggesting that Botnia's last minute appearance with its mega investment, and increased strain on the environment, is accountable for problems the investments have produced locally and internationally.

#### Other Legal Action taken due to these projects

The CAO complaint was only the first complaint filed against these projects. Many others have followed including:

- Criminal complaint against company executives of Botnia and ENCE in Argentina for which a Federal Circuit Judge has order an investigation;<sup>9</sup>
- Civil suit by an Uruguayan Prosecutor for dubious permit granting in Uruguay;
- Complaint to the Inter-American Commission on Human Rights against Uruguay for which the Commission has initiated investigations; it should be noted that due to this case, a World Bank Project is FOR THE FIRST TIME EVER, subject of a complaint filed to an international human rights tribunal;<sup>10</sup>
- An additional Equator Principle Compliance Complaints filed against BBVA of Spain<sup>11</sup> for project failure to meet up to IFC Environmental and Social Safeguards;
- Human Rights and Corporate Social Responsibility violations against Nordea;<sup>12</sup>
- Four imminent OECD Guidelines complaints to be filed in Finland, Netherlands, Sweden and Spain;
- And finally, in preparation is the filing of Argentina against Uruguay in the International Court of Justice, the Hague.

In closing, we would like to call on you, Nordea to seriously and closely consider the issues at stake if you are to proceed with financing these mills, given the great degree of project failure to comply with World Bank Environmental and Social Safeguards, the public disgrace and bad example that these projects will create for Nordea as a private sector investment, given the growing and widespread public opposition that exists to these projects by local stakeholders, given outstanding litigation that exists on numerous fronts (locally, regionally and internationally), and given that the projects have caused enormous damage to bilateral relations between Argentina and Uruguay. Under such conditions, Nordea should categorically refuse to provide any financing to these projects.

Investment decisions, and especially pull out decisions, are always difficult, and even risky. Yet it is more risky and ethically unsound to sit idly awaiting for someone else to make decisions for us. Nordea has promised to uphold and strive for responsible investment. In the midst of this flagrant violation of policy and international law by these projects, it behooves Nordea to take a proactive stance, and publicly withdraw its support, at least until the local

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<sup>9</sup> [http://www.cedha.org.ar/en/initiatives/paper\\_pulp\\_mills/denuncia-penal-botnia-ence-spa.pdf](http://www.cedha.org.ar/en/initiatives/paper_pulp_mills/denuncia-penal-botnia-ence-spa.pdf)

<sup>10</sup> [http://www.cedha.org.ar/en/initiatives/paper\\_pulp\\_mills/peticion-cidh-final.doc](http://www.cedha.org.ar/en/initiatives/paper_pulp_mills/peticion-cidh-final.doc)

<sup>11</sup> [http://www.cedha.org.ar/en/initiatives/paper\\_pulp\\_mills/complaint-letter-to-bbva-eng.doc](http://www.cedha.org.ar/en/initiatives/paper_pulp_mills/complaint-letter-to-bbva-eng.doc)

<sup>12</sup> [http://www.cedha.org.ar/en/initiatives/paper\\_pulp\\_mills/denuncia-nordea-csr-eng.pdf](http://www.cedha.org.ar/en/initiatives/paper_pulp_mills/denuncia-nordea-csr-eng.pdf)

actors can sort out their differences and settle this matter, without the pressure of international financial groups like Nordea, taking complicit sides to foreign grievances, against the interests of sustainable development, against the respect for the law and against the very essential need to defend human rights of local communities.

It is clear to us and should be to Nordea that the evidence regarding these projects clearly suggests that Nordea should under no circumstance, choose to proceed consideration of financing Botnia for its investment in Uruguay in pulp mills. While we are not opposed to the pulp paper mill industry in general, we find clear evidence that this project was not designed in compliance with the regulatory frameworks, national, international and of the IFC that correspond to investments in this sector. Furthermore, this project, along with the investment by Botnia and ENCE is resulting in tense diplomatic and public opposition

We are at your disposal to provide you with ANY and all further evidence you made need to clarify the points presented in this brief. We take the opportunity to send you a full brief and additional relevant information regarding these projects via electronic mail.

Sincerely,

Romina Picolotti\*<sup>13</sup>  
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<sup>13</sup> Romina Picolotti was named Sophie Prize recipient for 2006. The prize ceremony will be held in Oslo in mid June. The Sophie Prize is given to one persons globally each year promoting environmental sustainability and the protection of communities affected by environmental degradation. This prize receives global attention and has already placed Ms. Picolotti in a the eye of global media. It is likely that Ms. Picolotti will continue to be in press and particularly in Nordic press through to the award ceremony and for much of the remainder of 2006. If Nordea proceeds with its intentions to support Botnia and its associate partners, it will have highly negative press coverage, which will undoubtedly affect public opinion and place its reputation at great risk. We urge you to think carefully and responsibly about your involvement in the Botnia venture. And take a position and publicly respond to this communication and to CEDHA's compliance complaint.