



# National Contact Point

## OECD Guidelines for Multinational Enterprises

### Initial assessment

UNI Global Union vs. IKEA

12 June 2019

ArgentinaAustraliaAustriaBelgiumBrazilCanadaChileColombiaCzechRepublicDenmarkEgyptEstoniaFinlandFranceGermanyGreeceHungaryIcelandIrelandIsraelItalyJapan

**Notification to the Dutch National Contact Point by UNI Global Union, concerning an alleged violation of the OECD Guidelines for Multinational Enterprises by IKEA (dated 27 September 2018).**

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#### 1. Executive summary

On 27 September 2018 UNI Global Union, a global union federation based in Switzerland, together with its affiliates the UFCW operating in the USA; Mandate Trade Union operating in Ireland; SITESE operating in Portugal; and the Dutch FNV as a supporting voice, submitted a specific instance to the Dutch National Contact Point regarding an alleged violation of the OECD Guidelines for Multinational Enterprises (hereinafter: the Guidelines) by IKEA Group (hereinafter: IKEA), which has its headquarters in the Netherlands.

As part of the initial assessment of the specific instance, the NCP held separate, confidential meetings in December 2018 and January 2019 with both the party raising the allegations and the business involved to address the specific instance and related considerations.

The Dutch NCP concludes that the notification merits further consideration based on the following criteria:

- the notifying party is a concerned party with a legitimate interest in the issues raised in the notification;
- the issues raised by UNI Global Union are material and *prima vista* substantiated;
- there seems to be a link between IKEA's activities and the issues raised in the specific instance;
- the consideration of this specific instance may contribute to the Guidelines' objectives and effectiveness.

The decision on behalf of the Dutch NCP to examine this specific instance further is not based on substantive research or fact-finding, nor does it represent any judgment as to whether IKEA has violated the Guidelines.

In this initial assessment, the NCP explains its decision to offer parties 'its good offices' to come to a solution through dialogue, with reference to the Dutch NCP Specific Instance Procedure for handling notifications.<sup>1</sup>

<sup>1</sup> <https://www.oecdguidelines.nl/notifications/documents/publication/2018/12/05/dutch-specific-instance-procedure>

In conformity with the Dutch NCP's procedures, the draft initial assessment was sent to the parties involved, inviting them to respond to the assessment in writing within two weeks, after which the initial assessment was finalised, taking into account the parties' comments. This initial assessment has been published on the NCP's website: [www.oecdguidelines.nl](http://www.oecdguidelines.nl).

## 2. Summary of the notification

On 27 September 2018 the Dutch NCP received a notification from UNI Global Union concerning IKEA.

The backdrop of the notification concerns the alleged actions of IKEA in the United States (2016-17), Ireland (2009-11) and Portugal (2013-14 and 2017-18) with regard to anti-trade union activities. However the issue that has arisen is the alleged failure of due diligence by IKEA global management in the Netherlands, therefore making the Netherlands the *locus* of the violation of the Guidelines.

In the notification of the specific instance under the OECD Guidelines for Multinational Enterprises of 27 September 2018 the parties summarize the allegations as follows.

*"In violation of the Guidelines' human rights chapter, IKEA is failing to respect fundamental rights set out in the International Labour Organisation's Declaration on Fundamental Principles and Rights at Work.*

*In violation of the Guidelines' employment and industrial relations chapter, IKEA is failing to respect the right of workers to establish or join trade unions or representative organisations of their own choosing and have trade unions and representatives of their own choosing recognized for the purpose of collective bargaining. IKEA is furthermore failing to engage in constructive negotiations with such representatives with a view to reaching agreements on terms and conditions of employment.*

*Contrary to obligations set forth in the OECD Due Diligence Guidance for Responsible Business Conduct, IKEA is failing to use its leverage to prevent country management in the United States, Ireland and Portugal from engaging in wrongful practices that violate foregoing chapters of the OECD Guidelines."*

The reported behaviour allegedly conducted by IKEA in the three countries all relates to preventing workers from joining a trade union. Examples of the alleged conduct include (not necessarily in all three countries): denying access of trade unions to the workplace and/or to the workers, discouraging workers from joining a trade union, putting unions in a bad light, discouraging workers from sharing posts on social media about the workplace, threatening workers with replacement if they go on strike, applying disadvantageous management decisions towards workers openly supportive of trade unions, and holding repetitive so-called 'captive audience meetings'<sup>2</sup>

<sup>2</sup> Definition by [American Legal Encyclopedia](#): A union term for meetings of workers called by management and held on company time and property. Usually the purpose of these meetings is to try to persuade workers to vote against union representation.

According to the complainants, IKEA Global was fully informed by trade union representatives of the incidences in Ireland and the U.S. and some meetings between the notifying parties and IKEA Global have taken place, but, according to the notifying parties, with unsatisfactory results.

In an Annex to the submission, the complainants included a collection of the U.S. National Labor Relations Board (NLRB) documents concerning allegations the UFCW brought against IKEA relating to some of the occurrences described above in the years 2014-17. According to the complainants the NLRB would have ruled in one case that, concerning IKEA U.S. East, IKEA management interfered with the workers' organising rights and destroyed the conditions necessary to a free and fair election and in another case the NLRB would have found merit in the unfair labour practice charges arising from management's anti-union campaign tactics.

The notifying parties seek the good offices of the Netherlands' NCP to bring together the trade unions and IKEA global management to resolve the "conflicts and create conditions for employees to exercise their right to freedom of association and collective bargaining in a climate free of fear and intimidation".

Concerning the situation in the U.S., the notifying parties seek the good offices to establish a binding agreement on the part of IKEA "not to interfere in the representation process with anti-union captive-audience meetings, threats of permanent replacement and other tactics used to thwart workers' organising rights". "The future agreement would need to make reference to effective remedies in the case of non-compliance."

In this initial assessment the NCP refrains from commenting on the accuracy of complainants claims.

## 3. Summary of the initial response of IKEA

In this initial assessment, the NCP will not express an opinion on the correctness of IKEA's response.

IKEA states in its letter of 17 October 2018 to the NCP that this complaint belongs primarily with the United States' NCP and that the U.S. NCP should take the lead, since the majority of the complaints have allegedly taken place in the U.S.

*"Our initial review indicates that this matter principally arises out of issues in three countries, the United States, Ireland and Portugal. However, it is also clear the dispute that is the primary focus of the submission involves IKEA North America in the United States."*

*IKEA continues to say "Under the Procedural Guidance and Commentary of the Guidelines, it would appear that because the matter arises in several OECD nations, there will need to be coordination among the NCP's to determine which NCP should take the lead in handling the matter. Because the primary dispute arose in the United States, and the remedy the unions seek is a "binding agreement" addressing IKEA's actions in the United States*

(Submission at page 29), it would appear appropriate for the U.S. National Contact Point to take the lead. Not only will the U.S. National Contact Point offer the parties a unique understanding of U.S. laws through their inter-agency working group, but key IKEA stakeholders necessary for participation in any mediation proceeding are located in the United States. We believe that because of these issues, permitting the U.S. NCP to take the lead would be the most effective way to further the Guidelines and address the dispute.”

On the issues raised that have allegedly taken place in Portugal and Ireland, IKEA claims these are old claims and have been resolved a long time ago. “The disputes that arose in Ireland or Portugal were concluded a long time ago at the national level.”

Regarding the reference that IKEA’s headquarters, INGKA Holdings B.V., has failed to undertake due diligence, it states that INGKA Holdings B.V. is fully informed on the disputes raised in the notification as it exercises due diligence regarding workers’ issues.

“We note that in the submission the unions assert that the Dutch NCP is the proper jurisdiction for this matter under a theory that INGKA Holdings B.V. has failed to undertake due diligence as called for in the Guidelines. We note that through IKEA’s global co-worker relations function, INGKA Holdings B.V. is fully aware of the disputes raised by the unions in all of the countries mentioned in the submission. Such awareness is the result of the company’s global due diligence in connection with co-worker relations and the company’s commitment to comply with applicable national law, and IKEA’s policies, which include the IKEA Global Co-worker Relations Principles.”

During the meeting between IKEA and the NCP, IKEA’s representative stressed that IKEA upholds international standards including the ILO-standards, and that freedom of association is not a problem for IKEA. IKEA also stated that its Code of Conduct and principles are already sufficiently covering the same issues that would be covered by a possible framework agreement with the trade unions.

It should be noted that over the years, IKEA has engaged in discussions with UNI Global Union and the UFCW regarding issues of mutual concern, and that IKEA is not opposed to additional meetings with these trade unions as part of a process overseen by the Dutch NCP.

## 4. Initial assessment

In accordance with the OECD Guidelines and the Dutch NCP Specific Instance Procedure, the NCP concludes that, in light of the following considerations, the notification merits further examination.

### Is the Dutch NCP the right entity to assess the alleged violation?

Although the backdrop of the Specific Instance is the misconduct that has allegedly taken place in IKEA’s offices in the U.S., Ireland, and Portugal, the notifying parties specifically aim at addressing the failure of IKEA’s head office, which is based in the Netherlands, to apply due diligence throughout its world-wide company structure,

ensuring full respect of the ILO fundamental principles and rights and the OECD guidelines at all levels of the company.

In this regard the OECD Guidelines read that “Enterprises should: Carry out risk-based due diligence, to identify, prevent and mitigate actual and potential adverse impacts, and account for how these impacts are addressed; avoid causing or contributing to adverse impacts on matters covered by the Guidelines, through their own activities, and address such impacts when they occur; 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.” (Chapter II, paragraphs 10, 11 and 12).

In other words, the head office has the duty of due diligence and is therefore accountable for responsible business conduct in its branches worldwide.

Furthermore, the OECD Guide for National Contact Points on Coordination when handling Specific Instances<sup>3</sup>, explains that where the Guidelines state that “Generally, issues will be dealt with by the NCP of the country in which the issues have arisen,” “the ‘issues’ in question could refer to a general policy set by a company at headquarter level which may lead to impacts in several locations. In such a case the location of the ‘issues’ may be traced back to the location of the company headquarters.” Also, “if the issues in question relate to actions or decisions made at headquarters level of a company, the NCP based in the country of company’s headquarters may be best positioned to apply leverage and in reaching a resolution between the parties.”

Examples of previous notifications concerning similar situations of alleged conduct by a subsidiary located in one country and addressing the due diligence duty of the parent company located in another country, which were then handled by the NCP of the *locus* of the mother company are *Unite Here vs. Natixis Group* (2017)<sup>4</sup>, handled by the French NCP, and *NGOs vs. Nidera Holding B.V.* (2012)<sup>5</sup>, handled by the Dutch NCP.

Based on the above the Dutch NCP is the right entity to assess the alleged non-observance of the Guidelines.

In accordance with the OECD Procedural Guidance on coordination between NCPs<sup>6</sup> the Netherlands NCP has consulted the NCPs of Ireland, Portugal and the U.S. regarding this Specific Instance, and has proposed, that the Netherlands NCP in this case would take the lead. The three relevant NCPs as mentioned have agreed that in this case it is appropriate that the Dutch NCP takes the lead, based on the judgement that – although the backdrop of the

<sup>3</sup> <http://mneguidelines.oecd.org/Guide-for-NCPs-on-Coordination-when-handling-Specific-Instances.pdf>

<sup>4</sup> <http://mneguidelines.oecd.org/database/instances/frooz3.htm>

<sup>5</sup> <http://mneguidelines.oecd.org/database/instances/nl0019.htm>

<sup>6</sup> <http://mneguidelines.oecd.org/mneguidelines/>, Part II, Commentary on the Implementation Procedures of the OECD Guidelines for Multinational Enterprises, paragraphs 23, 24.

notification concerns the alleged actions of IKEA in the United States (2016-17), Ireland (2009-11) and Portugal (2013-14 and 2017-18) with regard to anti-trade union activities, the issue that has arisen is the alleged failure of due diligence by IKEA global management in the Netherlands, making the Netherlands the *locus* of the violation of the Guidelines.

Furthermore, the three NCPs have been given the opportunity to comment on the draft Initial Assessment. The Dutch NCP will keep the three NCPs informed on the progress and share future documents before publication.

### **What is the identity of the reporting party and its interest in the case?**

The notification has been signed by five trade unions. These are: UFCW operating in the USA; Mandate operating in Ireland; SITESE operating in Portugal; the Dutch FNV as a supporting voice and the global union federation UNI Global Union (based in Switzerland) of which all the aforementioned trade unions are an affiliate.

UNI Global Union acts as representative for all parties. UNI Global Union is a global union federation and represents more than 20 million workers in more than 150 countries. UNI Global Union has negotiated Global Framework Agreements with several major multinational companies including, in the retail sector, Carrefour, H&M and Inditex Group. UNI Global Union affiliated unions represent tens of thousands IKEA workers worldwide.

Since the case concerns alleged violations on the right to freedom of association and collective bargaining, and since the notifying parties are on the one hand local unions directly affected by the activities of IKEA, on the other hand a global trade union organization representing those local unions, as well as acting in the broader interest of trade unions and workers' rights, the Dutch NCP is of the opinion that they have a legitimate interest in the issues raised in the notification.

### **Are the issues raised by UNI Global Union material and substantiated?**

The issues raised are **prima facie** material and substantiated by documentation describing the course of events, and the notification refers to relevant provisions of the Guidelines. The notification concerns the alleged non-observance of the OECD Guidelines relating to General Policies (Chapter II, paragraphs 10, 11 and 12), Human Rights (Chapter IV, paragraphs 1 and 2) and Employment and Industrial Relations (Chapter V, paragraphs 1(a), 1(b), 2(a) and 3).

The OECD adopted a Due Diligence Guidance for Responsible Business Conduct in May 2018. While a Specific Instance cannot be submitted on the basis of the OECD Due Diligence Guidance itself, it does promote a common understanding of the characteristics and processes of due diligence under the OECD Guidelines and therefore is a useful reference and tool.

### **Does there seem to be a link between IKEA's activities and the issues raised in the specific instance?**

The notification concerns anti-union activities which are allegedly conducted by IKEA management in Ireland, Portugal, and the United States, as well as IKEA Group's responsibility to prevent or mitigate alleged adverse impacts on human and workers' rights. Therefore, the Dutch NCP believes there seems to be a link between IKEA's activities and the issues raised in the specific instance.

### **What is the relevance of applicable legislation and procedures, including court rulings?**

At international level the international standards on human rights, the ILO standards on labour and the UN Guiding Principles on Business and Human Rights apply.

On national level, national labours laws concerning Freedom of Association and the Right to Collective Bargaining are applicable.

Concerning the U.S., its National Law allows employers to a certain extent to voice opinions on unionization, stating that "[t]he expressing of any views, argument, or opinion, or the dissemination thereof, . . . shall not constitute or be evidence of an unfair labor practice . . . if such expression contains no threat of reprisal or promise of benefit."<sup>7</sup> This provision permits employers to communicate their views about unions as long as the communications do not contain a threat of reprisal or force or a promise of benefit<sup>8</sup>.

Some of the issues raised concerning IKEA in the U.S. have been subject to NLRB administrative procedures, and were determined to have affected the results of a representational election such that a new election was ordered.<sup>9</sup>

### **How have similar issues been, or how are they being treated in other domestic or international proceedings?**

A previous case taken up by the French NCP has some similarities with the underlying notification. It concerned an industrial dispute related to unionization at DIAM Vitrin in Turkey, a subsidiary of DIAM International Group, which has its headquarters in France<sup>10</sup>. Another case<sup>11</sup>, handled by the Dutch NCP concerned labour and human rights due diligence policy issues of the subsidiary Nidera S.A. based in Argentina, while the parent company Nidera Holding B.V. was based in the Netherlands. In both cases the issues were taken up under guidance of the good offices of, respectively, the French and Dutch NCPs.

<sup>7</sup> 29 U.S.C. § 158(c).

<sup>8</sup> See *NLRB v. Gissel Packing Co.*, 395 U.S. 575, 618 (1969).

<sup>9</sup> See *IKEA U.S. East, LLC*, Case 01-RC-176529, docket available at <https://www.nlr.gov/case/01-RC-176529>

<sup>10</sup> <https://www.tresor.economie.gouv.fr/Articles/a7d964fb-e65a-42c5-8bf5-e4ab171365ff/files/bc4bcf3e-2320-45fc-8afe-dca49e5a40b7>

<sup>11</sup> <http://mneguidelines.oecd.org/database/instances/nl0019.htm>

### **Would the consideration of this specific problem contribute to the Guidelines' objectives and effectiveness?**

The NCP believes that dealing with this notification will contribute to the objectives and effectiveness of the Guidelines in the sense that it will help clarify the due diligence recommendations for multinational enterprises vis-à-vis their subsidiaries and branches world-wide regarding workers', human and labour rights.

## **5. Conclusion**

The NCP is of the opinion that this specific instance merits further consideration and will therefore, in accordance with the Dutch NCP specific instance procedure, offer its good offices to facilitate a dialogue between the parties. The objective is to bring the parties to an agreement on the issues raised.

In the opinion of the NCP this may help clarify the OECD guidelines chapter II, paragraphs 10, 11 and 12 which state that *"enterprises should: carry out risk-based due diligence to identify, prevent and mitigate actual and potential adverse impacts, and account for how these impacts are addressed; avoid causing or contributing to adverse impacts on matters covered by the Guidelines, through their own activities, and address such impacts when they occur; 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."*

The complainant and IKEA have both accepted NCP's good offices. In accordance with the NCP procedure, further examination or mediation will be confidential while dialogue is in progress. The NCP will take the necessary steps to guarantee a careful process. It will complete the procedure by issuing a final statement, which it will publish on its website.

The role of National Contact Points (NCPs) is to further the effectiveness of the OECD Guidelines. The Dutch government has chosen to establish an independent NCP which is responsible for its own procedures and decision making, in accordance with the Procedural Guidelines section of the Guidelines. In line with this, the Netherlands NCP consists of four independent members, supported by four advisory government officials from the most relevant ministries. The NCP Secretariat is hosted by the Ministry of Foreign Affairs. The Minister for Foreign Trade and Development Cooperation is politically responsible for the functioning of the Dutch NCP.

More information on the OECD Guidelines and the NCP can be found on [www.oecdguidelines.nl](http://www.oecdguidelines.nl)

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