



National Contact Point (NCP) for the OECD Guidelines for Multinational Enterprises

Initial Assessment

Maurice Kajangu vs. Bralima (Bukavu, DRC) and Heineken N.V.

7 August 2019

ArgentinaAustraliaAustriaBelgiumBrazilCanadaChileColombiaCzechRepublicDenmarkEgyptEstoniaFinlandFranceGermanyGreeceHungaryIcelandIrelandIsraelItalyJapan

Notification to the Dutch National Contact Point by Maurice Kajangu, concerning an alleged violation of the OECD Guidelines for Multinational Enterprises by Bralima and Heineken N.V. (dated 17 October 2018).

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1. Executive summary

On 17 October 2018 Mr Maurice Kajangu 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 Bralima, based in Bukavu, Democratic Republic of Congo and its parent company Heineken N.V., based in Amsterdam, the Netherlands.

As part of the initial assessment of the specific instance, the NCP held separate, confidential meetings, with both the party raising the issue and the business involved to address the specific

instance and related considerations in respectively December 2018 and January 2019.

The Dutch NCP concludes that this notification does not merit further consideration and has decided to close the specific instance. In this initial assessment, the Dutch NCP explains its decision not to offer the parties its good offices to help them reach a solution through dialogue, with reference to its specific instance procedure for handling notifications.¹

In conformity with the Dutch NCP's procedure, 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.

2. Summary of the notification

On 17 October 2018 the Dutch NCP received a notification from Mr Maurice Kajangu, a former employee of Bralima, based in Bukavu, Democratic Republic of Congo.

¹ <http://www.oecdguidelines.nl/notifications/contents/specific-instance-procedure>.

According to Mr Kajangu, the termination of his employment contract and the surrounding circumstances were unlawful.

Allegedly, Bralima informed him on 9 December 2016 that he was dismissed without giving a reason, and immediately afterwards Bralima denied him access to his workstation. Despite the fact that the claimant filed requests to be reinstated, these remained without positive response. Mr Kajangu states that he felt forced to sign the termination contract (a settlement agreement) on 24 February 2017 as his salaries for January and February were blocked. According to the claimant, Bralima did not pay the full outstanding payment, and it still owes him money for salary increases and social benefits during the notice period. Also according to the claimant, the termination of the employment contract was not done in compliance with the Congolese Labour Code.

He states that, including himself, a mass layoff took place of a total of 15 employees in this period under similar circumstances and without approval of the trade union.

The claimant accuses Bralima of unfair competition, bribery and fraudulent practices in the writ of execution that followed his settlement agreement, since the wrong Managing Director was mentioned in it, and it was allegedly filed on a non-working day. Furthermore, he states that Bralima lacks the presidential order to be formally registered in DRC. The claimant accuses Bralima of bribery by hiring a law firm which is owned by the governor of the province.

Furthermore, allegedly, Bralima threatened to involve the police and military to enforce its allegedly fraudulent ordinances. This allegation is based on the fact that in the writ of execution issued by the Tribunal de Grande Instance de Bukavu, the FARDC, the Armed Forces of the DRC, are requested to lend a strong hand. Mr Kajangu also claims he never received a response to the complaint he filed with Heineken's Global Business Conduct department.

The notification specifically concerned the alleged non-observance of the chapters of the Guidelines Concepts and Principles (Chapter I, paragraphs 1 and 3), General Policies (chapter II, paragraphs 1, 2, 5, 6, 9, 13 and 15), Employment and Industrial Relations (chapter V, paragraph 6) and Combating Bribery (Chapter VII, paragraph 7) and referred to the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, and conventions of the International Labour Organization.

The notifying party seeks the good offices of the Netherlands' NCP to receive \$ 250,000 as financial compensation from Bralima, and for Bralima and Heineken to recognize the dismissal as unlawful.

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

3. Summary of the initial response of Heineken N.V.

Heineken is of the opinion that the complaints in the notification have not been substantiated and were incomplete and misleading and on a number of points even incorrect.

With respect to the alleged unlawful dismissal, Heineken/Bralima note that Mr. Kajangu was not dismissed and/or prohibited to work at all, but left the company with mutual consent by signing a termination contract in accordance with Congolese labour law. The reason was that Bralima was not satisfied with Mr Kajangu's performance. Pursuant to the termination contract, which was authorized by the competent court, Mr Kajangu received substantial payment and other benefits above what was legally required. Heineken/Bralima state that negotiations about the conditions of the termination contract have taken place, to which also a trade union representative was brought along by Mr Kajangu. The Labour Inspection was present when the termination contract, which was a settlement agreement including a final pay, was signed. Heineken/Bralima deny the allegation that pressure to sign the contract was exercised.

With reference to bank statements, Heineken/Bralima note that the agreed final accounts and settlement amount have been fully paid. Mr Kajangu was not entitled to any salary increase or other financial benefits after termination of his employment contract, since he received payment in lieu of notice and no longer worked for Bralima. Heineken/Bralima note that there was no massive dismissal; the number of employees who left the company (15) remains well below the threshold for a massive dismissal under Congolese law and the employees concerned left the company by mutual agreement which provided better conditions than dismissal with prior approval by local authorities.

Heineken/Bralima note that Mr Kajangu only started filing complaints more than a year later, in what they believe to be an attempt to exert pressure to claim more money from the company. Contrary to Mr Kajangu's allegations, Heineken's Global Business Conduct department did respond to his complaint and request for payment of alleged damages of \$ 250,000. Heineken responded in writing that upon review of his complaint, the Speak Up review team concluded it was a labour dispute handled accordingly by Bralima, which was already involved in legal proceedings started (and later withdrawn) by Mr Kajangu.

With respect to the other complaints about bribery, fraud, unfair competition and threatened use of the Congolese army, Heineken and Bralima state they are false and unsubstantiated.

Heineken/Bralima note that the complaint concerning ‘bribery’ is merely based on the claim that a lawyers’ office is owned by the governor of the province South Kivu. According to Heineken/Bralima, engaging a law office that is linked to a politician does not constitute bribery. This office has many lawyers, operates in several provinces in the DRC and has many large corporate clients.

Heineken/Bralima point out that the complaint concerning ‘fraudulent practices’ is merely based on 2 errors in a court order (namely an incorrect filing date and incorrect manager’s name) and a 2006 newspaper article alleging Bralima could not operate and exist in the DRC because it allegedly lacked a presidential ordinance. According to Heineken and Bralima, two non-material errors by the court are no indication, let alone evidence, of fraudulent practices by Heineken/Bralima. Heineken/Bralima refutes the claim that Bralima does not exist legally in the DRC, noting that this allegation apparently does not take into account that the company is clearly recognized by the authorities of DRC as it is paying large amounts of tax in DRC.

Heineken/Bralima strongly reject Mr Kajangu’s accusation that Bralima has involved or has threatened to involve the Congolese armed forces in its dispute with Mr Kajangu or otherwise. According to Bralima, after signing a settlement agreement it is standard procedure to apply a writ of execution. It is also standard that Court orders mention the *forces armées* in the writ of execution (which is comparable to ‘de sterke arm’ in Dutch). Lastly, the allegation about unfair competition is not explained at all.

In conclusion, Heineken/Bralima reject the complaints and hold there has been no violation of the OECD Guidelines.

In this initial assessment, the NCP will not express an opinion on the correctness of Heineken’s initial response to the Specific Instance.

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 does not merit further examination.

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

In principle a notification should be filed at the NCP of the country where the alleged problems, caused by the company, are occurring. The DRC is not a member of the OECD and therefore has no NCP. Bralima is a subsidiary company of Heineken N.V.,

a company based in the Netherlands. Therefore, the Dutch NCP is the right entity to assess the alleged violation.

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

The notifying party is a former employee of Bralima. He worked at Bralima, based in Bukavu, DRC from 1987 until February 2017, when he signed an agreement through which his employment was terminated. The notification concerns the circumstances of the employment termination and alleged fraudulent practices.

Are the issues raised by Mr Kajangu material and substantiated?

The NCP is of the opinion that although the complainant may have grievances about the issues at stake, his claims have not been sufficiently substantiated in respect of the company’s responsibilities under the Guidelines.

The notification concerns alleged non-observance of the chapters of the Concepts and Principles (Chapter I), Guidelines on General Policies (chapter II), Employment and Industrial Relations (chapter V) and Combating Bribery (Chapter VII).

The issues raised concern an individual labour dispute and these issues are in principle not covered by the Guidelines, unless there are wider aspects or implications to the case that are relevant to the Guidelines. The NCP has not found such wider aspects or implications in this case.

In conclusion, the NCP is of the opinion that, based on the information provided, the issues raised by the claimant are not sufficiently substantiated.

Does there seem to be a link between Bralima and Heineken’s activities and the issues raised in the specific instance?

There is a link between Bralima’s and Heineken’s activities and the issues raised in the specific instance by the complainant, a former employee of Bralima.

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

Several procedures between Mr Kajangu and Bralima have taken place in this case. First, the mutual agreement on employment termination and the final sum to be paid to Mr Kajangu were confirmed by the Labour Inspection. Second, a writ of execution by the Grande Tribunal which confirmed (homologated) the termination of employment and stipulated that Mr Kajangu had no further right to process in court. Third, Mr Kajangu filed a case against Bralima, however this case was withdrawn for unknown reasons.

The NCP is of the opinion that the information provided on the various stages of the termination process and the court cases that took place in this case do not sufficiently substantiate that the procedures followed during the termination of employment were incorrect, and/or are of such a nature that they justify recourse to the NCP because of a potential violation of the OECD guidelines.

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 in 2014 has some similarities with the underlying notification. It concerned an individual labour dispute which according to the French NCP should be handled by local judicial authorities².

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

Taking into account the specificities of this case, the Dutch NCP is of the opinion that dealing with this notification would not contribute to the Guidelines' purpose and effectiveness by helping to clarify the notified issues.

5. Conclusion

This Specific Notification concerns an individual labour dispute and these issues are in principle not covered by the Guidelines, unless there are wider aspects or implications to the case that are relevant to the Guidelines. The NCP has not found such wider aspects or implications in this case.

Based on the above, the Dutch NCP is of the opinion that this specific instance does not merit further consideration. While the complainant may have grievances about the issues at stake, the NCP concludes that, based on the information provided, his claims have not been sufficiently substantiated in respect of the company's responsibilities under the OECD Guidelines.

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 decisions, in accordance with the Procedural Guidance section of the Guidelines. In line with this, the Dutch 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.

² <http://mneguidelines.oecd.org/database/instances/froozo.htm>

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