



National Contact Point

OECD Guidelines for Multinational Enterprises

Initial Assessment

Specific instance former employees of Bralima -
Bralima and Heineken
28 June 2016

ArgentinaAustraliaAustriaBelgiumBrazilCanadaChileColombiaCzechRepublicDenmarkEgyptEstoniaFinlandFranceGermanyGreeceHungaryIcelandIrelandIsraelItalyJapan

Notification to the Dutch National Contact Point of Mr. Namegabe Bugabo, Mr. Matabaro Rubanza, and Mr. Bayongwa Mirimba representing a group of 168 former employees of Bralima Heineken in Bukavu, Democratic Republic of the Congo (DRC) concerning an alleged violation of the OECD Guidelines for Multinational Enterprises by Bralima in Bukavu, Democratic Republic of Congo, and Heineken N.V. (14 December 2015).

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Executive summary

On 14 December 2015 Mr. Namegabe Bugabo, Mr. Matabaro Rubanza, and Mr. Bayongwa Mirimba, stating to represent a group of 168 former employees of Bralima Heineken in Bukavu, DRC who were dismissed in the period 1999-2003 notified a specific instance with the Dutch National Contact Point with regard to an alleged violation of the OECD Guidelines for Multinational Enterprises (hereafter: the Guidelines) by Bralima in Bukavu, Democratic Republic of Congo, and Heineken N.V., based in Amsterdam, The Netherlands.

In February Heineken offered to organize a meeting, as a first step, without interference of the NCP, with a delegation of the

complainants and the Bralima management in Bukavu, Congo. The NCP decided to postpone its Initial Assessment till after this meeting. Finally this meeting took place on the 13 of April. This is the reason for the delay in the draft of the Initial Assessment by the NCP.

Because the specific issue took place before the revision of the OECD Guidelines of 2011, the NCP has determined whether the notification merits further consideration on the basis of the Commentary on the implementation procedure of the OECD Guidelines for multinational enterprises of June 2000.

The NCP concludes that on the basis of the criteria for further examination of the Commentary on the implementation procedure of the OECD Guidelines for multinational enterprises (2000) the notification merits further consideration:

- the notifying party is a concerned party with a legitimate interest in the issues raised in the notification;
- the issues raised by the former employees are material and *prima vista* substantiated;
- the consideration of this specific instance may contribute to the Guidelines' objectives and effectiveness.

A decision to further examine this specific instance does not entail substantive research or fact finding in the individual cases of the 168 former employees, nor does it entail a judgment on whether or not Bralima and/or Heineken has violated the Guidelines.

In conformity with the Dutch NCP's procedure, the draft initial assessment has been sent to the parties involved, inviting them to respond to the assessment in writing within a two weeks' notice, after which the initial assessment has been finalized, taking into account the parties' comments. This initial assessment was subsequently published on the NCP's website: www.oecdguidelines.nl, in accordance with the specific instances procedure of the Dutch NCP.

Summary of the notification

On 14 December 2015 the Dutch NCP received a notification of Mr. Namegabe Bugabo, Mr. Matabaro Rubanza, and Mr. Bayongwa Mirimba stating to represent a group of 168 former employees against Bralima and Heineken. In this initial assessment the NCP will not express an opinion on the correctness of the statements of the former employees.

The notification of the former employees concerns:

“Violation of the human rights of their own workers in the Bralima company in Bukavu, RDC in the period 1999-2003”

“Cooperation with the rebel movement of RCD-Goma from 2000-2003 in RDC and the consequences for the workers of Bralima at Bukavu, RDC and their families”

“Illegitimate dismissals of 168 employees of Bralima, Bukavu, RDC between 1999 and 2003”

“Irregularities and deliberate omissions in the individual redundancy schemes of the dismissed workers”

“Serious errors concerning mass dismissals in the period 1999-2003 contrary to the Congolese law by Bralima”

Taking the above into account Bralima and Heineken should pay two hundred million (200.000.000) euros to the former employees and their families as a compensation for the damages”

The notification specifically concerned the alleged non-observance of OECD Guidelines for Multinational Enterprises (version 2000) under the sections:

Chapter I, Concepts and Principles, Chapter II, General Policies, Chapter IV Employment and Industrial Relations, Chapter VI Combating Bribery

In the notification of the specific instance under the OECD Guidelines, the former employees stated the following (summary of the notification):

A group of 168 employees has been dismissed in the period 1999-2003. The reasons for the dismissals and the conditions vary, according to the notification documents.

Some employees were sent into early retirement in the year 2000, lacking adequate compensation and depriving them of social welfare. They were not given due notice; no reference has been made to the reasons of their dismissal; they did not get a chance to appeal the termination; and as a direct consequence of their early retirement, their state pension has been drastically diminished.

Some were dismissed after signing a so-called Convention de separation à l'aimable. These employees were not given due notice of their dismissal, nor were they given any information about the intention to release them beforehand. They were summoned to attend a meeting on short notice and without giving them any further information on the purpose of that meeting. During the meeting they were confronted with a contract already signed by the employer, which they were pressurized to co-sign. They were offered a sum of cash money and they were told that they would not be entitled to any form of compensation if they would not sign the convention right there and then. The amount of compensation however was below what is legally required had consent been given.

Other employees have been dismissed as a consequence of a Convention de separation à l'aimable. No safeguards or adequate compensation has been offered. The signed conventions refer to alleged authorization by rebel movement RCD Goma.

Some employees were the subject of a mass dismissal in 2000. The compensation granted to these employees has been calculated at variance with applicable Congolese law. Contrary to Congolese law moreover, these mass dismissals were not authorized by a competent authority, but by RCD Goma. The legitimacy of the mass dismissals cannot be substantiated by reference to RCD Goma's approval.

The complainants state that Bralima has taken advantage of a period of economic and political agitation in the DRC to dismiss a large number of employees in a brief period of time, without fulfilling basic guarantees of Congolese and international law. The employees thus dismissed have been replaced by temporary workers.

The complainants state that under the Guidelines (version 2000):

*“Bralima is in breach of **Chapter I, Concepts and Principles**, because of its failure to respect the law of RDC; Bralima does not function on a legal basis in the RDC, because it doesn't have an “ordonnance présidentielle” which authorizes its activities in RDC.*

Heineken and Bralima are in breach of **Chapter II, General Policies**: paragraph 1 “contribute to economic, social and environmental progress with a view to achieving sustainable development” because they had resort to: day-laborers who were paid low wages (till today), mass dismissals without economic reasons, dismissals of older workers exposing them to poverty because of their age and the lack of pensions, bad payment of redundancy schemes.

Paragraph 2 “respect the human rights of those effected by their activities” by not respecting the rights of its our employees specifically the right to labour, because of dismissals without economic reasons or serious mistakes of the worker, the right to a decent life by ending the family income by ending the job, the right to life for the worker who was denied transport for medical reasons and died as a consequence, the right to life for the workers dismissed while they were in hospital and died, the right to life for the workers who were dismissed while they were sick and died because of the lack of medicines to be provided by the company.

Paragraph 5: “refrain from seeking or accepting exemptions not contemplated in the statutory or regulatory framework related to environmental, health, safety labour, taxation, financial incentives, or other issues” by seeking and accepting exemptions in order to be able to dismiss their workers; Bralima has signed agreements with a rebellion movement.

Paragraph 6: “support and uphold corporate governance principles and develop and apply good corporate governance practices” by dismissing workers in Bukavu without written authorization of the general management in Kinshasa, by dismissals by interim-management in Bukavu, by using the services of an armed rebellion movement which fights against a legitimate government.

Paragraph 9: “refrain from discriminatory or disciplinary action against employees who make bona fide reports tot management, or competent public authorities, on practices hat contravene the law, the Guidelines principles or the enterprise’s policies” as a result of its disciplinary action (dismissals) against two representatives of a labour union for reporting on practices that contravene the law, the Guidelines principles or the enterprise’s policies and for refusing to approve of the mass dismissals.

Paragraph 10: “encourage, where practicable, business partners, including suppliers and sub-contractors, to apply principles of corporate conduct compatible with the Guidelines” by encouraging their sub-contractors to underpay their workers by setting an example with the Bralima workers. Because of this the workers of the sub-contractors live in misery and without the perspective of social security.

Paragraph 11: “abstain from any improper involvement in local political activities” as a result of its improper interference with the local political activities by cooperating with the rebellion movement.

Bralima and Heineken are in breach of **Chapter IV Employment and Industrial Relations**, paragraph 6: by practicing a policy of intimidation, of surprise and of lies in respecting the right of priority to employment of the dismissed workers, by the unilateral ending of labour contracts by Conventions de separation à amiable not negotiated, by the corruption policy etc.

Bralima and Heineken are in breach of **Chapter VI Combating Bribery**, paragraph 6: “not make illegal contributions to candidates for public office or to political parties or to other political organizations. Contributions should fully comply with public disclosure requirements and should be reported to senior management” by making illegal contributions the rebellion movement by paying taxes to RCD-Goma, by paying administration costs while RCD-Goma was giving authorization for the dismissals and other documents, by financial reporting of the Bralima Group to the rebels of RCD-Goma. Bralima and Heineken have never published their financial contributions to the rebel movement RCD-Goma in the period 1999-2003. Bralima and Heineken have legitimated the rebel forces fighting against the Government.

Summary of the initial response of Heineken

On 10 February 2016 the NCP received an initial response of Heineken on the notification of the former employees. In this initial assessment the NCP will not express an opinion on the correctness of response of Heineken:

About Heineken

Heineken strives to create shared, sustainable value for the Heineken group and for the communities it operates in. The Heineken Code of Business Conduct and underlying policies, including the Heineken Policy on Employees’ & Human Rights, the Heineken Policy on Bribery and Improper Advantages and the Heineken Supplier Code (the “Heineken Code”) and other instruments apply to all companies within the Heineken group (including Bralima) in the more than 70 countries in which the companies of the Heineken group operate.

Furthermore, Heineken is committed to making a positive contribution to the communities and environments in which it operates through its corporate social responsibility program, and its “Brewing a Better World” strategy for sustainability.

About Bralima

Bralima is a subsidiary company of Heineken N.V, based in Amsterdam. Heineken indirectly holds around 95% of the shares in Bralima.

Bralima has been operating in (the challenging business environment of) the DRC for more than 90 years. Bralima stayed in the country because the business case continued to be valid and because Bralima and Heineken believed and believe that Bralima's presence in the DRC created and creates value to the country and its inhabitants.

About the specific instance

About the question whether there is a material and substantiated problem in this specific instance Heineken stated the following:

“Concerning the dismissals in the period 1999-2003 the existing procedures have been followed carefully. Bralima had to improve the productivity of its plant. For this reason a plan has been made up to reduce the number of full time employees. It concerned a group of approximately 160 employees. A part of them was sent with early retirement, another part was dismissed with a redundancy scheme. The former employees started to contact Heineken from 2004 on, because they were not satisfied with the amount of the severance pays by Bralima.”

Heineken states that it has always been of the opinion that it was a case for Bralima, but it did follow the case.

Heineken is of the opinion that there is no breach of the OECD Guidelines. The employment relations have ended. Heineken has no information from Bralima that at the present moment individuals of the group of complainants are still employed by Bralima. The cases are 15 years old. The archives do not contain all the information on all the individual cases c.q. not all the cases are documented.

Heineken also states that the specific instance procedure is a forward looking process, in which the NCP may try to verify the facts and organize interaction between the parties, aimed at addressing the issues raised. Heineken has a business conduct framework for all companies within the Heineken group (including Bralima) in the more than seventy countries in which the Heineken group is active. Heineken continues to review and further improve (the implementation of) its business conduct framework. Bralima implemented the Heineken business conduct framework.

Proposed first step

Heineken organized a meeting on the 13 of April, as a first step, without interference of the NCP, with a delegation of the complainants and the Bralima management in Bukavu, Congo. Both parties informed the NCP that the meeting has not divulged anything new.

Initial assessment

In accordance with the OECD Guidelines (2000) and the Dutch NCP Specific Instance Procedure, the Dutch 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?

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. So the Dutch NCP is the right entity to assess the alleged violation. The goal of the notification aims to affect change at the highest corporate entity; the Dutch entity Heineken N.V.

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

The documents received by the NCP give sufficient evidence for the existence of a group of approximately 168 persons, formerly employed by Bralima. The three persons representing this group of people are themselves part of this group of former employees. The documents show that Mr. Namegabe Bugabo, Mr. Matabaro Rubanza, and Mr. Bayongwa Mirimba are representatives of the group of former employees for over a longer period.

Are the issues raised by the former employees material and substantiated?

The issues raised are **prima vista** material and substantiated by documents and the notification refers to relevant provisions of the Guidelines (version 2000). The notification concerns the alleged non-observance of OECD Guidelines Chapter I, Concepts and Principles, Chapter II, General Policies, Chapter IV Employment and Industrial relations and Chapter VI Combating Bribery.

What is the relevance of the applicable law and procedures?

Congolese law and the Code de travail congolais are applicable.

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

A small number of the former employees has got redress on an individual basis by a domestic court procedure. At least one person was reemployed at the time.

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

The Netherlands NCP believes that dealing with this notification will contribute to the purpose and effectiveness of the Guidelines in the sense that it may help clarify the responsibility under the Guidelines of Bralima and it may also help clarify the independent responsibility under the Guidelines of Heineken N.V. towards its subsidiary Bralima, operating in DRC in the period 1999-2003.

Conclusion

The Dutch NCP is of the opinion that this specific instance merits further consideration on the basis of the criteria for further examination of the Commentary on the implementation procedure of the OECD Guidelines for multinational enterprises (2000).

The NCP will therefore, in accordance with its specific instance procedure, offer its good offices to facilitate a dialogue between the representatives of the complainants and Heineken.

The consideration of this specific instance does not entail substantive research or fact finding in the individual cases of the 168 former employees.

The NCP is of the opinion that a dialogue between the parties facilitated by the NCP may help clarify the responsibility under the Guidelines of Bralima towards its employees. It may also help clarify the independent responsibility under the Guidelines of Heineken N.V. towards its (around 95%) subsidiary Bralima, operating in DRC in the period 1999-2003.

The complainants have accepted the NCP's offer to engage in mediation. Heineken has accepted the offer to engage in mediation.

In accordance with the NCP procedure, mediation or further examination will be confidential while in progress. The NCP 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

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