



National Contact Point

OECD Guidelines for Multinational Enterprises

Initial Assessment

Former employee of Philips Lighting vs. Philips Lighting

25 October 2017

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Notification to the Dutch National Contact Point from a former employee of Philips Lighting concerning an alleged violation of the OECD Guidelines for Multinational Enterprises by Philips Lighting.

finalised, taking into account the parties' comments. The initial assessment was subsequently published on the NCP's website: www.oecdguidelines.nl.

Executive Summary

On 17 November 2016 a former employee of Philips Lighting notified the Dutch National Contact Point of a specific instance concerning an alleged violation of the OECD Guidelines for Multinational Enterprises by Philips Lighting.

As part of its initial assessment, the NCP held separate, confidential meetings with the party raising the issue (via a Skype call) and the business involved – Philips Lighting – (in person) concerning the specific instance and related matters. Both parties were given the opportunity to provide written additional information and annexes to which they could each respond (February - June 2017).

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 accordance with the Dutch NCP procedure, the draft assessment was sent to the parties involved, with an invitation to respond in writing within two weeks, after which the initial assessment was

Summary of the Notification

On 17 November 2016 an individual from Ukraine, a former Philips Lighting employee, notified the Dutch Contact Point of a specific instance concerning an alleged violation of the OECD Guidelines for Multinational Enterprises ('the Guidelines') by Philips Lighting, headquartered in the Netherlands.

The complainant was employed at the company in Kyiv, Ukraine, from October 2013 until December 2016 when his employment agreement was terminated because of redundancy. He stated that he had been negatively affected by the behaviour, misconduct and non-observance of the Guidelines by Philips Lighting's management of the Russia & Central Asia region based in Moscow. This region includes Ukraine.

The complainant states that he was dismissed because of his complaints about human rights infringements; failure to adequately address adverse human rights impacts when they occurred; failure to conduct human rights impact assessments and exercise due diligence; discrimination and lack of equal opportunities; irregularities in redundancy schemes; and inappropriate and unjust dismissal.

Beginning in 2013, the complainant was based at the company's subsidiary in Kyiv, Ukraine. He stated that in 2015 he was promoted to a new job in Kyiv, involving regular business trips to Moscow, where his subordinates (team) were based.

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

The complainant stated that in mid-May 2016 he was told that his job required him to be based at the Moscow office, where his team was located, under a Russian employment contract. He was also offered the opportunity to transfer to a lower position according to the corporate grading system, in Kyiv. In addition, he was told that his subordinates would start reporting to another manager. The complainant refused to accept a Russian employment contract for the reasons set out below. He also refused the transfer to a less senior position in Kyiv because he considered it unlawful. He claimed that he was pressured to switch from a Ukrainian contract to a Russian contract, because otherwise his contract would be terminated.

At the end of May 2016 the complainant filed a complaint through the Philips Ethics Line (internal grievance mechanism), stating that he felt that the Russian management had discriminated against him on the grounds of nationality. Following his complaint, meetings were held between the complainant and company representatives. At those meetings the complainant made the following statements.

The complainant explained that his refusal to accept a Russian employment contract was related to the Ukrainian-Russian conflict (Eastern Ukraine/Crimea). For ethical reasons, he found it unacceptable to work under a Russian contract.

The complainant questioned the current reporting line from the Ukrainian office to the office in Russia because of the Ukrainian-Russian conflict and its possible implications for Ukrainian employees.

The complainant stated that it was not safe for Ukrainian nationals to make business trips to Moscow because of the humiliating Russian border and customs procedures, based on his own experiences and on the experience of a former employee.

The complainant stated that after filing his complaint through the Philips Ethics Line, he suffered retaliation from a Russian manager at the Moscow office. He claims to be harassed, some of his job responsibilities were transferred to other employees and he was excluded from important emails, online meetings, etc.

The complainant took the view that the company's Russian management was treating him in this way because he was a Ukrainian national. He considered that this treatment breached his human rights and that the threats made against him constituted a human rights abuse. He stated that other Ukrainian nationals had experienced the same treatment.

The complainant also felt that he was being discriminated against in terms of his salary, compared with Russian employees.

In September 2016 the conclusions of the investigation regarding the complaint through the Philips Ethics Line were shared with the complainant. He was told that no evidence of workplace discrimination had been found.

The complainant stated that a week after these conclusions were shared, he was informed that his employment would be terminated in December 2016 for economic reasons.

The notification specifically concerned the alleged non-observance of the chapters of the Guidelines on General Policies (chapter II, paragraphs A.2 and A.9), Human Rights (chapter IV, paragraphs 1, 2, 5 and 6) and Employment and Industrial Relations (chapter V, paragraphs 1, 3, 6 and 8) and referred to the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, and declarations, conventions and recommendations of the International Labour Organization.

The complainant would like the NCP to facilitate mediation with the company for the following reasons:

- to receive compensation (for lost wages due to unlawful dismissal, back pay, future losses and the emotional pain and suffering experienced as a result of the company's discriminatory conduct);
- to change the reporting line from Philips Lighting Ukraine LLC to Philips Lighting Eurasia LLC (Russia);
- and in the event that the mediation process fails, to receive a statement on breaches and violations by the company.

In addition to what was stated in the notification, the complainant informed the NCP that he had also initiated parallel employment proceedings in the Ukrainian courts. He stated that he preferred to reach a solution through the NCP procedure.

Summary of Philips Lighting's initial response

Philips Lighting was of the opinion that the statements in the notification had not been properly substantiated and were incomplete and misleading and on some essential points even incorrect.

Philips Lighting noted that the complainant had initiated a court case in which he was demanding reinstatement in his position in Ukraine.

The company referred to its General Business Principles (GBP), which include a section on 'fair employment practices' and explicitly state that the company rejects any form of discrimination. To ensure that the company lives up to its GBP, it has implemented a GBP compliance programme. It focuses on preventing and identifying problems. There is a complaint procedure, including a Philips Lighting Ethics Line, which enables employees to report incidents, if preferred anonymously. Issues can also be raised through several other channels. The company emphasised that, apart from this complaint, they had never received any complaints, indications or evidence concerning discrimination, human rights violations, harassment, bullying or travel/safety issues in relation to Ukraine and Russia.

The company stated that the complainant was offered a new position in 2015 on condition that he would move to Moscow and switch to a Russian contract. The job had to be performed in

Moscow because both the team that the complainant would head and his line manager were based there. The condition attached to the Russian contract had nothing to do with nationality preferences, but with local immigration requirements. This was discussed with the complainant. He was given time to consider the promotion and move to Moscow with his family. The complainant initially accepted the offer but changed his mind later.

The company noted that, pending the immigration procedure (e.g. work permit), which would take months, it was agreed that the complainant would start his new job from Kyiv, on the basis of a Ukrainian contract, on the understanding that he would have to make regular business trips to Moscow. This was a temporary solution; it was never agreed that the complainant could permanently carry out his job from Kyiv.

The company stated that the complainant later refused to move to Moscow, on the grounds that his salary and housing allowance were not high enough and that he did not want to register with the Russian Federal Migration Service. The company's management decided that he could continue his job from Ukraine on the basis of a Ukrainian contract, while making regular business trips to Moscow.

There was no discrimination. Nationality was not a factor at all, nor was there a preference for someone of Russian nationality.

Regarding the alleged salary-related discrimination based on nationality, the company noted that the Russian management does not determine the salary of Ukraine employees by itself. Salaries are based on salary ranges that are reviewed by the Global Philips Lighting team responsible for compensation and benefits. The salary ranges for Ukrainian employees are in line with the recommended ranges. These are based on annual assessments/surveys, such as the Hay Group's global reward survey. The company noted that there are different surveys for Russia and Ukraine. The complainant's promotion implied a salary increase. As to the complainant's statements about differences in salaries of employees in Ukraine and Russia, the company has noted that the reason for any difference is that there are different market circumstances and costs of living for these countries. Market circumstances and costs of living are a factor that is taken into consideration in Philips Lighting's global compensation policy.

The company concluded that differences in remuneration do not signify discrimination. Multinationals offer different employment conditions in different regions or countries. The complainant has been treated as any other employee would have been in his situation.

The company emphasised that the complainant's claim that his contract had been terminated because of his complaint was incorrect. The company decided to restructure the market organisation. As part of the restructuring process, the complainant's new position was evaluated, taking into account that there was hardly any face-to-face time with his team, work

had to be taken over by another manager, and there were high travel costs involved. Two new positions in Kyiv, with better remuneration, were offered to the complainant but he rejected them. The complainant also rejected an offer for a mutual termination agreement with payment of an annual salary. In line with local legislation, the only remaining option was termination for economic reasons.

The company took the view that its organisational structure did not result in discrimination, intimidation, bullying and unlawful termination. The company reiterated that it had several channels for raising issues or concerns and that quarterly surveys were held among the employees, including the Ukrainian organisation. The company had taken the political situation into account and ceased all operations in the unstable regions of Ukraine (i.e. eastern Ukraine and Crimea). The company had monitored the situation but so far – apart from the present complaint – there were no indications that it was causing problems for Ukrainian employees or other employees in that region.

The complainant cited the case of a former employee who was allegedly deported from Russia and detained without receiving any help from the Russian management, but the company stated that this was incorrect and there were no corroborating documents. The company had never received any indications or evidence that Ukrainian employees face or have faced travel or customs issues which can be substantiated with information from the Ukrainian country leader and his team.

The company held that it had not violated the Guidelines and saw no basis for mediation.

Further communications

After the meetings with the complainant and the company, both were given the opportunity to provide clarification. Clarifications concerning the notification, respective responses, annexes and the views of current or former employees were shared among the parties and analysed by the NCP.

The procedure of the Dutch NCP

Initial assessment

In accordance with the Guidelines and the Dutch NCP's specific instance procedure, the Dutch 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 with the NCP of the country where the alleged problems caused by a company occur. Philips Lighting RCA (Russia, Ukraine & Central Asia) is a subsidiary of Philips Lighting Holding B.V. Philips Lighting Holding B.V. of

Eindhoven is the owner and founder of Philips Lighting Ukraine LLC. In December 2016 there was no NCP established in the Ukraine; the Dutch NCP is therefore the right entity to assess the alleged breaches by Philips Lighting. Ukraine adhered to the Guidelines on March 27, 2017. The Dutch NCP has informed the new Ukrainian NCP of the outcome of the initial assessment.

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

The notifying party is a former employee of Philips Lighting. He worked at Philips Lighting Ukraine from 2013 until December 2016, when his employment was terminated. The notification concerns his termination and the organisational structure.

Is Philips Lighting a multinational enterprise according to the Guidelines?

Philips Lighting² is a multinational enterprise according to Chapter I (Concepts and Principles) of the Guidelines. It is headquartered in the Netherlands.

Is there a link between Philips Lighting's activities and the issues raised in the specific instance?

There is a link between Philips Lighting's activities and the issues raised in the specific instance by the complainant, a former employee of the company.

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

The NCP is of the opinion that the issues raised are not substantiated in respect of the company's responsibilities under the Guidelines. The NCP understands that the complainant has grievances about his treatment and the procedure leading to his redundancy, particularly in view of the political situation. However the evidence submitted does not establish a violation of the Guidelines. Nor does the NCP see how a mediation based on its own procedures could successfully bring the complainant and the company to an agreement.

The notification concerns alleged non-observance of the chapters of the Guidelines on General Policies (chapter II), Human Rights (chapter IV) and Employment and Industrial Relations (chapter V).

The complainant alleges that his treatment, salary and redundancy indicate that he was discriminated against on the grounds of his nationality. The NCP is of the opinion that the evidence submitted does not substantiate this allegation. Nor is it corroborated by the statements made by the witnesses. The NCP finds the company's arguments concerning the complainant's redundancy, travel-related health and safety issues, and alleged salary-related discrimination plausible.

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

The complainant has filed a court case in Ukraine, which is pending. Besides the considerations set out above, the NCP is of the opinion that the complaint process under the Guidelines would have no added value in respect of resolving the notified issues.

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

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.

Further considerations

As stated in the Commentary on the Procedural Guidance for NCPs, the National Contact Points play an important role in enhancing the profile and effectiveness of the Guidelines. Although enterprises are responsible for observing the Guidelines in their day-to-day conduct, NCPs can help improve the effectiveness of the implementation procedures. The company showed that it understands the importance of monitoring issues that can arise when operating in conflict areas. The NCP is of the opinion that operating in conflict areas increases the need for enterprises to comply with the Guidelines. This means that it may at times become necessary in conflict situations for companies to change reporting lines to prevent discrimination.

Enterprises should provide clear and transparent information to employees on their actions and on any changes that could have a major impact on their livelihoods. This will enable enterprises to further clarify their position if a discussion on their actions/decisions arises. The NCP recommends that enterprises' policies for dealing with conflict situations should include transparency and good communication with employees.

The NCP encourages enterprises to take this into account in their policies and processes so that specific issues on the ground can be addressed in the light of the Guidelines and the UN Guiding Principles on Business and Human Rights. The NCP invites Philips Lighting to discuss this topic more broadly and is willing to give advice where necessary.

Conclusion

The Dutch NCP is of the opinion that this specific instance does not merit further consideration. It concludes that while the complainant may reasonably have grievances about the issues at stake, the issues have not been substantiated in respect of the company's responsibilities under the Guidelines.

The NCP invites Philips Lighting to discuss the topic of operating in conflict areas in accordance with the Guidelines more broadly and is willing to give advice where necessary.

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² <http://www.lighting.philips.nl/bedrijf>.