



National Contact Point

OECD Guidelines for Multinational Enterprises

Initial assessment

UNI Global Union vs. VEON

6 February 2018

ArgentinaAustraliaAustriaBelgiumBrazilCanadaChileColombiaCzechRepublicDenmarkEgyptEstoniaFinlandFranceGermanyGreeceHungaryIcelandIrelandIsraelItalyJapan

Notification to the Dutch National Contact Point by UNI Global Union, concerning an alleged violation of the OECD Guidelines for Multinational Enterprises by VEON (dated 7 July 2016).

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1. Executive summary

On 11 July 2016 UNI Global Union 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 VimpelCom (hereinafter VEON since the company changed its name to VEON in February 2017).

As part of the initial assessment of the specific instance, in the first week of September 2016 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.

The NCP received a supplement to the specific instance from UNI Global Union on 20 September 2016.

In December 2016 UNI asked the NCP to put the case on hold. VEON had expressed concerns at the conduct of the NCP's procedure and explained that it could not continue to participate in it. UNI and VEON attempted to resolve the issue directly. Between January and September 2017 several meetings and conference calls between parties took place. In September 2017, the NCP received a letter from UNI, requesting the NCP to resume the specific instance notification that was filed in July 2016, in this letter UNI described the course of the attempts to come to an agreement with VEON. VEON was given the opportunity to give a reaction on the letter of UNI. It became clear to the NCP that the issues described in the notification were not resolved.

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;
- VEON is a multinational enterprise within the meaning of the Guidelines;
- the issues raised by UNI Global Union are material and prima vista substantiated;
- there seems to be a link between VEON'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 to further examine part of this specific instance is not based on substantive research or fact-finding, nor does it represent any judgment as to whether or not VEON 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.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 11 July 2016 the Dutch NCP received a notification from UNI Global Union concerning VEON. A supplement to the specific instance was submitted by UNI on 20 September 2016, requesting that the dismissals of four union leaders at Banglalink on 6 and 7 September should also be considered. UNI wrote to the NCP on 13 March 2017 to withdraw the supplementary allegations as incorrect.

In December 2016 UNI asked the NCP to put the case on hold. VEON had expressed concerns at the conduct of the NCP’s procedure and explained that it could not continue to participate in it. UNI and VEON attempted to resolve the issue directly. Between January and September 2017 several meetings and conference calls between parties took place. In September 2017, the NCP received a letter from UNI, requesting the NCP to resume the specific instance notification that was filed in July 2016, in this letter UNI described the course of the attempts to come to an agreement with VEON. VEON was given the opportunity to give a reaction on the letter of UNI. It became clear to the NCP that the issues described in the notification were not resolved.

In this initial assessment the NCP will not express an opinion on the correctness of the statements of UNI Global Union.

The notification concerns the actions of the multinational telecom operator VEON and its operations in Bangladesh (Banglalink) with regard to the registration of the Banglalink Employees Union (BLEU). In the notification of the specific instance under the OECD Guidelines for Multinational Enterprises of 11 July UNI Global Union stated that:

“VEON is a majority owner of the company Banglalink, which has engaged in blatant violations of workers’ rights. When Banglalink employees unionized and sought to engage in dialogue with the company, Banglalink responded by dismissing a union leader, threatening and harassing union members, creating a hostile working environment, and working with the Bangladeshi authorities to suppress the union. These are serious violations of workers’ human and labor rights, as well as of international labor standards as codified by the conventions of the International Labour Organization. VEON has also failed to carry out risk-based due diligence to identify, prevent and mitigate the human rights impact of their operations.”

The notification specifically concerns the alleged non-observance of the parts of the Guidelines on Concepts and Principles (Chapter 1), Human Rights (Chapter IV) and Employment and Industrial Relations (Chapter V).

In the notification, UNI Global Union stated *inter alia* the following with regard to the freedom of association in Banglalink.

The complainant submits that VEON should take “the necessary measures to stop the violations of the OECD guidelines (...) and put an end to the anti-union actions carried out by Banglalink management”. “VEON also needs to prevent the violations from reoccurring through publicly stating that Banglalink respects the right of all its employees to organize, and to put in place companywide mechanisms that ensure respect for workers’ freedom of association. Finally, VEON must remedy the situation by recognizing BLEU for purposes of collective bargaining and engage with the union in social dialogue.”

“UNI would like to enter into a dialogue with VEON with a view to bringing about a negotiated settlement that will correct the serious violations of workers’ freedom of association in Banglalink and would also like to reach an agreement with the company on mechanisms that would improve the company’s due diligence monitoring and response throughout the VEON group to prevent that similar violations occur elsewhere.”

“UNI regards the good offices approach of the OECD process as an eminently suitable vehicle for bringing about a resolution in this case. UNI understands that the NCPs seek to resolve complaints by facilitating conciliation or mediation between the complainant and the company. UNI welcomes the opportunity to engage in such a process and looks forward to securing a positive, negotiated and mutually beneficial solution.”

“Should a negotiated agreement prove impossible, UNI would request that the NCP issues a final statement concerning whether or not the Guidelines have been respected.”

In the supplement to the specific instance, submitted on 20 September, UNI states that shortly after the NCP’s meetings with UNI and VEON, four other union activists were dismissed. The company’s stated reason for the dismissals was “harassment, confinement, blockade and abuse in the workplace violating the Code of Conduct of the Company”. UNI furthermore describes the course of events after the dismissal of a union leader in February.

¹ <https://www.oecdguidelines.nl/notifications/documents/publication/2016/12/31/dutch-specific-instance-procedure>

The union will appeal against the decisions using the procedures available under Bangladeshi law but also states that dismissing employees on the basis of their support for a union violates Chapter V, paragraph 1(a) and (e), as well as Chapter IV of the Guidelines concerning respect for the human rights of workers to exercise their right to organise. Furthermore, UNI states that VEON violates Chapter II, paragraph 9 of the Guidelines which requires that companies “refrain from (...) disciplinary action against workers who make *bona fide* reports (...) on practices that contravene (...) the Guidelines.” UNI also refers to paragraph 13 of the Commentary on Chapter II.

In March 2017 UNI informed VEON and the NCP that it would withdraw the allegations of retaliation for using the OECD process but nevertheless wish to continue pursue its allegations that the dismissals and the refusal to recognize the union were in violation of the Guidelines.

In its letter of September 2017, UNI concludes with regard to their contact with VEON in the period January – September 2017 that; *“While some advances have been made to improve our mutual understanding of the situation in Banglalink, we have not made any progress towards resolving the issues regarding trade union rights in Banglalink, even after a considerable amount of time and good-faith efforts from UNI’s side. UNI therefore asks the NCP to resume its handling of the Specific Instance and offer its good offices to find a resolution to the issue.”*

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

3. Summary of the initial response of VEON

At the request of the NCP VEON submitted additional comments on UNI Global Union’s notification on 17 September 2016. In this initial assessment, the NCP will not express an opinion on the correctness of VEON’s response.

VEON is of the opinion that UNI’s complaint contains material deficiencies and is an inappropriate invocation of this process concerning VIP’s operations in Bangladesh. VEON states, for example, the following:

“VEON is committed to working with legitimate, representative unions wherever it operates. BLEU is not a legitimate representative union and, as such has not been able to obtain registration as a trade union in accordance with Bangladeshi law. VEON acknowledges and works with those unions which represent its workforce in other jurisdictions in the world.”

“VEON respects its workforce in Banglalink as well as in all of its countries of operation. (...)”

“Nothing in VEON’s policies or codes or conduct could be construed as ‘anti-union’. To the extent that the NCP feels it wishes to discuss any wording relating to VEON’s corporate responsibilities in this context, VEON’s is happy to enter into such discussion with it. However, for the reasons set out below, the opening of a specific instance procedure and/or mandated mediation is not an appropriate course of action. VEON is in any event in constant dialogue with its employees.”

“The NCP is bound by the Procedural Guidelines based on its own principle of predictability and cannot legitimately open a procedure. Further, and entirely independent from the substantive insufficiencies of the UNI submission, we consider that the NCP’s own Procedural Guidelines warrant summary dismissal of the complaint because the complaint wholly fails to provide the requisite evidentiary basis substantiating UNI’s claims. Under the Procedural Guidelines the NCP may only open a procedure if all of the admissibility criteria are met. UNI has provided no evidence to substantiate any alleged infringement of the MNE Guidelines in the specific instance notification or otherwise. (...)”

“The NCP should not ask VEON to enter into mediated discussion/ negotiations with UNI or with BLEU as to do so is likely to constitute a potential infringement of Bangladeshi law and would be in direct contravention of the MNE Guidelines. “

In its letter of October 2017 VEON reacts to the request of UNI to resume the handling of the specific instance. VEON states the issues mentioned in their talks with UNI have been addressed through the discussions or will be addressed by the courts in Bangladesh. VEON is of the opinion that *“..there are no substantiated allegations nor surviving issues from the original notification which VEON can identify which are not before the Bangladeshi courts. These last will be decided through the national justice system which is the appropriate forum for the matters.”*

“It is apparent that UNI is vigorously pursuing an overriding policy objective of its own – which is the establishment of unions in telecommunications companies in Bangladesh. UNI has expressly stated this to VEON. While this may be a legitimate objective for UNI, VEON does not accept it is legitimate that UNI should pursue this regardless of circumstances, nor through inappropriate and unsubstantiated allegations to an NCP. To the extent that UNI wishes to lobby for changes in the law in Bangladesh, it should address its requests to the Bangladeshi government.”

In this initial assessment the NCP refrains from comment on the accuracy of VEON’s response.

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?

The Dutch NCP is the right entity to assess the alleged non-observance of the Guidelines. A specific instance should be submitted to the NCP in the country where the alleged breach of the OECD Guidelines has occurred. If there is no NCP located in that country, the specific instance can be submitted in the country of the headquarters of the multinational enterprise involved.

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

UNI Global Union is a global trade union federation of over 900 affiliated unions in 150 countries. It represents over 20 million workers in the services sector around the world, including 3 million in the Information and Communication Technology Services (ICTS) sector. UNI's mission is to create a better world for working people by means of organisational activities and by seeking action at political and regulatory level, thereby striving to improve working conditions and raise employment standards in the services sectors around the world. UNI represents the interests of affiliated unions and their members vis-à-vis multinational companies, governments, and national and international bodies that take decisions affecting jobs, employment conditions and workers' rights. UNI has signed over 50 Global Agreements with multinational companies to secure respect for workers' rights in Africa, the Americas, Asia Pacific and Europe. UNI submitted the complaint on behalf of the Banglalink Employees Union (BLEU), which represents employees in VEON's Bangladeshi subsidiary Banglalink.²

Is VEON a multinational enterprise according to the Guidelines?

VEON is a multinational telecom and technology company and a multinational enterprise within the meaning of the Guidelines. VEON is headquartered in Amsterdam, the Netherlands, and is traded on both the NASDAQ Global Select Market and Euronext in the Netherlands under the symbol "VEON". VEON's reporting structure is divided into three business units – Major markets (Russia and Italy), Emerging Markets and Eurasia, all of which report to the Company's headquarters in Amsterdam.³

Banglalink Digital Communications Ltd. is a fully owned venture of Telecom Ventures Ltd., which itself is a 100% owned subsidiary of Global Telecom Holding. VEON owns 51.9% of the shares of Global Telecom Holding.⁴

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

The issues raised are **prima facie** material and substantiated by documents describing the course of events and the notification refers to relevant provisions of the Guidelines. The notification concerns the alleged non-observance of OECD Guidelines, relating to Concepts and Principles (Chapter 1, paragraph 1), Human Rights (Chapter IV, paragraphs 1, 2 and 4) and Employment and Industrial Relations (Chapter V, paragraphs 1(a), 1(b), 2(a), 3, 6 and 7).

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

There does seem to be a link between VEON's activities and the issues raised in the specific instance. The notification concerns VEON's responsibility to prevent or mitigate alleged adverse impacts on human and workers' rights.

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

The issues raised are the subject of a parallel procedure in the Labour Court in Bangladesh. Bangladeshi law is relevant. The NCP is of the opinion that despite the parallel procedure, mediation under the OECD Guidelines could still make a positive contribution to the resolution of this case.

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 regarding workers', human and labour rights.

During the preliminary meetings on the initial assessment, the applicability of Bangladeshi law and regulations in relation to the issues raised was mentioned. The NCP notes that, as is stated in the Guidelines (Chapter I, paragraph 2), "*Obeying domestic laws is the first obligation of enterprises. The Guidelines are not a substitute for nor should they be considered to override domestic law and regulation. While the Guidelines extend beyond the law in many cases, they should not and are not intended to place an enterprise in situations where it faces conflicting requirements. However, in countries where domestic laws and regulations conflict with the principles and standards of the Guidelines, enterprises should seek ways to honour such principles and standards to the fullest extent which does not place them in violation of domestic law.*"

² <http://www.uniglobalunion.org/about-us>

³ <https://veon.com/whoweare/understanding-veon/>

⁴ <https://www.banglalink.net/en/about-us/about-banglalink>

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 workers' freedom of association at Banglalink and on mechanisms that would improve the company's due diligence monitoring and response throughout the VEON group.

In the opinion of the NCP this may help clarify the OECD due diligence recommendations for multinational enterprises regarding workers', human and labour rights.

VEON has not accepted the NCP's good offices to facilitate a dialogue. The NCP refers to art. 35 of the OECD Guidelines, Procedural Guidance Part II, *"If the parties involved fail to reach agreement on the issues raised or if the NCP finds that one or more parties to the specific instance is unwilling to engage or to participate in good faith, the NCP will issue a statement, and make recommendations as appropriate, on the implementations of the Guidelines. This procedure makes it clear that an NCP will issue a statement, even when it feels that a specific recommendation is not called for. The statement should identify the parties concerned, the issues involved, the date on which the issues were raised with the NCP, any recommendations by the NCP, and any observations the NCP deems appropriate to include on the reasons why the proceedings did not produce an agreement."* Therefore the NCP will examine the specific instance to assess whether the complaint is justified. The NCP will identify the steps to proceed with the examination on which both parties will be informed. A final statement will be published on www.oecdguidelines.nl after concluding the examination.

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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