



National Contact Point

for the OECD Guidelines for Multinational Enterprises

Initial Assessment

U.S. citizen vs G4S and ING

20 January 2021

ArgentinaAustraliaAustriaBelgiumBrazilCanadaChileColombiaCzechRepublicDenmarkEgyptEstoniaFinlandFranceGermanyGreeceHungaryIcelandIrelandIsraelItalyJapan

Notification to the Netherlands National Contact Point by a U.S. citizen concerning an alleged violation of the OECD Guidelines for Multinational Enterprises by G4S and ING (9 September 2019).

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1. Executive summary

On 9 September 2019, a U.S. citizen notified the Dutch National Contact Point of a specific instance concerning an alleged violation of the OECD Guidelines for Multinational Enterprises by G4S and ING.

Complainant refers to several authorities on human rights who have condemned grave and ongoing abuses against immigrant detainees, including children, held in immigration detention centers in the United States. The complainant alleges that G4S, a security contractor that is providing detainee transportation services to a U.S. government agency, U.S. Customs and Border Protection (CBP), plays an integral role in abuses against

immigrants both by enabling the abusive practice of family separations and by transporting immigrants to detention facilities, where they face inhumane and abusive conditions. Complainant states that these violations are directly linked to ING, which has provided loan financing to G4S.

The Dutch NCP concludes that this notification does not merit further consideration and has decided to close the specific instance. This decision does not entail substantive research or fact-finding, nor does it entail a judgement on whether or not G4S and ING have violated the Guidelines. 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 notifications¹. In this initial assessment, the NCP refrains from commenting on the accuracy of complainant’s claims.

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

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

2. Summary of the notification

On 9 September 2019, an individual from the United States notified the Dutch Contact Point of a specific instance concerning an alleged violation of the OECD Guidelines for Multinational Enterprises ('the Guidelines') by G4S, headquartered in the United Kingdom, and ING, headquartered in The Netherlands. The submitter of the complaint did also send a copy to the U.S. NCP, the UK NCP, the OECD, SER² (Social and Economic Council of the Netherlands, stakeholder Dutch Banking Sector Agreement), G4S and ING.

The complainant calls for action by the National Contact point of the Netherlands to address ongoing violations of the OECD Guidelines for Multinational Enterprises by ING³ and G4S⁴. Complainant refers to several authorities on human rights who have condemned grave and ongoing abuses against immigrant detainees, including children, held in immigration detention centers in the United States.

This complainant alleges that G4S, a security contractor that is providing detainee transportation services to a U.S. government agency, U.S. Customs and Border Protection (CBP), plays an integral role in abuses against immigrants both by enabling the abusive practice of family separations and by transporting immigrants to detention facilities, where they face inhumane and abusive conditions. Complainant states that these violations are directly linked to ING, which has provided loan financing to G4S.

The complainant alleges that:

- G4S facilitates the U.S. government's intentional separation of immigrant families through its provision of transport services to CBP;
- G4S transports detainees to U.S. CBP detention facilities that are engaged in widespread and ongoing human rights violations against detainees in their custody; and
- Loan financing from ING is directly linked to these activities.

The notification specifically concerned the alleged non-observance of the chapters of the Guidelines on Human Rights (chapter IV, paragraphs 1, 3, 5 and 6) and referred to the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, as well as sections of other international human rights and humanitarian norms and instruments and the United Nations Convention on the Rights of the Child.

The complainant calls on:

- G4S to immediately terminate its contracts with CBP and other agencies of the U.S. Department of Homeland Security related to the detention or transportation of immigrants in the United States;
- ING to cease all participation in lending or other financing activities involving G4S until G4S terminates the above contracts; and

- Both G4S and ING to, in consultation with appropriate stakeholders, investigate and provide appropriate remedy to individuals negatively impacted by G4S's immigrant transportation activities in the US.
- Complainant requests the voluntary recusal of the U.S. and UK NCPs from this complaint in light of apparent conflicts of interest because it would, according to the complainant, be inappropriate for a federal government agency (i.e. the U.S. State Department) to adjudicate a complaint against another federal government agency (i.e. the U.S. Department of Homeland Security) and alleged government contracts with G4S (UK).

3. 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. In this initial assessment, the NCP refrains from commenting on the accuracy of complainant's claims.

In principle, a notification should be filed with the NCP of the country where the alleged problems caused by a company occur. The alleged problems occur in the U.S. G4S and ING are multinational enterprises according to Chapter I (Concepts and Principles) of the Guidelines. G4S is headquartered in the UK, ING in the Netherlands. Complainant requests the voluntary recusal of the U.S. and UK NCPs from this complaint in light of apparent conflicts of interest because it would, according to the complainant, be inappropriate for a federal government agency (i.e. the U.S. State Department) to adjudicate a complaint against another federal government agency (i.e. the U.S. Department of Homeland Security) and alleged government contracts with G4S (UK). In line with the Procedural Guidance, the Dutch NCP has coordinated this specific instance with the U.S. NCP and UK NCP and consulted them on the outcome of the initial assessment.

The complainant states that abuses at U.S. Custom and Border Protection (CBP) facilities and separation of immigrant families are carried out in his name as a U.S. citizen and are paid for in part by his taxes and he therefore has an interest in the case. The complainant, who has a professional background in human rights, further claimed that due to the egregious and ongoing nature of the alleged rights abuses outlined in this complaint, U.S. citizens have a heightened claim to be interested parties in the context of the complaint. Complainant seeks the immediate termination of G4S's involvement in immigrant detention-related abuses by CBP, the cessation of all financing relationships between ING and G4S until G4S terminates such involvement with CBP, and the provision of appropriate remedy to affected individuals.

² <https://www.imvoconvenanten.nl/en/banking>

³ <https://www.ing.com/About-us/Profile/ING-at-a-glance.htm>

⁴ <https://www.g4s.com/who-we-are/where-we-operate>

The NCP assessed the identity of the party and its interest in the matter:

Complainant is an individual party who does not represent other individual stakeholders or organizations with an interest in this matter.

The mere fact that a citizen claims that he is an interested party on the grounds that he is a taxpayer with concerns about circumstances at CBP facilities and therefore could appeal to the good offices of the NCP to enter into a mediation process with companies that are in some way linked to these facilities does not, according to the NCP, lead to admissibility under the OECD Guidelines.

Now that, based on the above reasoning, it has been established that complainant's interest in the matter is not covered by the OECD Guidelines, the NCP considers that an important criterion for admissibility of the complaint is not fulfilled. Therefore, the NCP decides not to handle this case according to the regular specific instance procedure, which would include holding meetings with parties involved and publishing a full initial assessment. Instead, the NCP herewith declares that this case does not merit further consideration.

4. Further considerations

The NCP stresses the importance for enterprises to carry out due diligence. The OECD Guidelines for MNEs acknowledge and encourage the positive contributions that businesses can make to economic, environmental and social progress, but also recognize that business activities may result in adverse impacts related to corporate governance, workers, human rights, the environment, bribery and consumers. Due diligence is the process enterprises should carry out to identify prevent, mitigate and account for how they address these actual and potential adverse impacts in their own operations, their supply chain and other business relationships, as recommended in the OECD Guidelines for MNEs. Effective due diligence should be supported by efforts to embed RBC into policies and management systems and aims to enable enterprises to remediate adverse impacts that they cause or to which they contribute⁵.

In addition to this, the NCP underlines the importance of having internal complaint mechanisms incorporated at enterprises to promote engagement with stakeholders. These internal complaint mechanisms should be accessible and transparent to ensure an efficient and correct handling of complaints.

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

⁵ <http://mneguidelines.oecd.org/guidelines/>

in their day-to-day conduct, NCPs can help improve the effectiveness of the implementation procedures. Therefore, the NCP is always willing to advise companies where necessary.

5. Conclusion

The Dutch NCP is of the opinion that this specific instance does not merit further consideration and closes the specific instance with this initial assessment. It concludes that while the complainant may reasonably have grievances about the issues at stake, the OECD specific instance procedure does not cover complainants' interest in the matter.

In addition to this, the NCP underlines the importance of having internal complaint mechanisms incorporated at enterprises to promote engagement with stakeholders.

The NCP also notes the importance of government engagement with civil society and other stakeholders regarding any concerns with government policies or contracts, including issues as raised in this specific instance.

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.

Published by:

National Contact Point OECD Guidelines for Multinational Enterprises

Ministry of Foreign Affairs

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www.oecdguidelines.nl

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