



Initial Statement

4 Trade Unions vs APG Asset Management

Date: 20 May 2021

Notification to the Netherlands National Contact Point for the OECD Guidelines for Multinational Organisations from 4 Trade Unions concerning an alleged violation of the OECD Guidelines for Multinational Enterprises by APG Asset Management.

The objective of the initial assessment process under the Procedural Guidance is to determine whether the issues raised in the specific instance merit further examination. If so, the NCP will offer, or facilitate access to, consensual and non-adversarial procedures, such as dialogue, mediation or conciliation (e.g. 'good offices') to the relevant parties. As specific instances are not legal cases and NCPs are not judicial bodies, NCPs cannot impose sanctions, directly provide compensation nor compel parties to participate in a conciliation or mediation process.

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Executive summary

On 18 May, 2020 the Dutch National Contact Point for the OECD Guidelines for Multinational Enterprises (NCP) received a notification of a specific instance from the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF), the European Federation of Food, Agriculture and Tourism Trade Unions (EFFAT-IUF), the Service Employees International Union (SEIU) and the União Geral dos Trabalhadores (UGT) with regard to an alleged violation of the OECD Guidelines for Multinational Enterprises (hereinafter the Guidelines) by **McDonald's, APG Asset Management (hereinafter APG) and Norges Bank**. The Dutch NCP was asked by complainants to handle the complaint and coordinate with the NCP of Norway.

The issues raised are gender-based violence and harassment (GBVH) in the global operations of McDonald's Corporation and related due diligence by two institutional investors: APG Asset

Management (APG) and Norges Bank (NBIM). The issues raised involve conduct at McDonald's operations in, but not limited to:

- Australia
- Brazil
- Chile
- Colombia
- France
- United Kingdom
- United States

The issues raised in this submission and the supplemental submission of 28 January 2021 relate to the OECD Guidelines' Chapter II (General Policies), Chapter IV (Human Rights) and Chapter V (Employment and Industrial Relations).

Coordination

Following coordination meetings in the period between June and October 2020, the Dutch, US and Norwegian NCPs agreed that the US NCP will handle the part of the specific instance concerning McDonald's Corporation, with the support of the Dutch NCP. The Dutch NCP will handle the issues concerning APG. The Norwegian NCP will handle the issues relating to NBIM. The Norwegian and the Dutch NCPs agreed to coordinate closely regarding the issues concerning the two investors.

This Initial Assessment of the Dutch NCP therefore concerns the issues raised against APG.

Brief overview of the timeline concerning APG

The Dutch NCP had a first meeting with APG Asset Management on 1 December 2020. On 13 January 2021 the Dutch and the Norwegian NCP had a joint meeting with complainants on the investors issues. The NCP shared the draft initial assessment with the parties 29 March for comments within 14 days. The Initial Assessment was published on the NCP website on 20 May 2021.

Conclusion

The Dutch NCP concludes that the notification concerning APG **merits further consideration** based on the following criteria:

- The Dutch NCP is the right entity to assess the alleged violation against APG;
- The notifying parties are concerned parties with a legitimate interest in the issues raised in the notification;
- the issues related to APG are material and prima facie substantiated;
- there is a link between the enterprise's activities and the issues raised in the specific instance; the consideration of this specific instance may contribute to the Guidelines' objectives and enhance their effectiveness.

The decision to accept this specific instance for further examination is not based on conclusive research or fact-finding, nor does it represent a conclusion as to whether the enterprise observed the Guidelines or not.

Substance of the submission

This section provides an overview of the issues raised in the submission against APG, how the issues concerning APG relate to the Guidelines, and the enterprise's initial response.

On 18 May 2020, the Dutch NCP received a notification concerning GBVH by McDonald's Corp., a multinational enterprise with headquarters in Chicago, Illinois, USA, and related due diligence obligations by investors APG (Netherlands) and NBIM (Norway).

The submitters are IUF, EFFAT-IUF (Europe), SEIU (USA) and UGT (Brazil).

The International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF) is a global union federation composed of 423 affiliated unions representing more than 10 million workers in 127 countries in multiple food-related sectors, including fast-food restaurants.

The European Federation of Food, Agriculture and Tourism Trade Unions (EFFAT-IUF) is the European regional organization of the IUF that brings together 120 national trade unions in those sectors throughout Europe, including the fast-food industry.

The Service Employees International Union (SEIU) is a U.S. and Canadian trade union organizing and representing workers in multiple service sectors of the economy.

The União Geral dos Trabalhadores (UGT) is a Brazilian trade union centre with affiliated unions representing thousands of workers in the fast-food sector.

The submitters allege that McDonald's conduct on GBVH issues is inconsistent with the recommendations in the OECD Guidelines Chapter IV (Human Rights) and Chapter V (Employment and Industrial Relations). (Chapter V 1.e: non-discrimination with respect to employment or occupation; 3. consultation and cooperation between employers and workers; 4.c) take adequate steps to ensure occupational health and safety; 8. [...] consult on matters of mutual concern with representatives of management who are authorised to take decisions on these matters. The submission refers to ILO Conventions 111 on non-discrimination and Convention 190 on gender-based violence and harassment and the OECD Due Diligence Guidance for Responsible Business Conduct.)

In their supplemental submission of 28 January 2021, the submitters allege that APG and NBIM breached Chapter II (General Policies) and Chapter IV (Human Rights) of the OECD Guidelines in failing to exercise due diligence or leverage as it relates to GBVH at McDonald's. They also refer to the OECD guidance "Responsible business conduct for institutional investors" (2017).

The submitters find that the two institutional investors have highly developed Responsible Business Conduct (RBC) programs and policies. However, they find that these investment funds' programs and policies should address the global problem of GBVH at McDonald's under the OECD Guidelines and the investors' social responsibility commitments. The submitters recognise that the investors are investing in thousands of companies and cannot be expected to have intimate, up-to-date knowledge of every company's conduct. Still, complainants find that they fell short in regard to GBVH abuses in McDonald's. They state that "GBVH problems at McDonald's should have come to the investors' attention through their normal due diligence operations." The submitters refer to widespread media attention in 2018-19 to worker protests and class-action sexual harassment lawsuits against McDonald's, and the dismissal of McDonald's CEO in 2019 for a sexual relationship with a subordinate, among other things.

According to the Specific Instance, the submitters request from APG, with a view to advancing the effective implementation of the OECD Guidelines:

- 1) Tailor their due diligence approaches by applying a comprehensive gender-lens to their investment activities in order to better identify, and thus mitigate and prevent adverse impacts, such as those occurring at McDonald's;
- 2) Participation by APG and NBIM in a mediation process with McDonald's and the submitters and

- 3) By the weight of APG's and NBIM's leverage, urge McDonald's to accept the offers of good offices from the Dutch, Norwegian and US NCPs to mediate with the purpose of effectively addressing the mitigation and prevention of adverse impacts against female workers at McDonald's.

First reaction of APG

APG's Asset Management N.V. approach on responsible investment:

"APG is a leading long-term responsible investor for pension funds in the Netherlands. Our aim is to make sure that our clients are able to provide their participants with a good pension. At the same time, we also want to invest the participants' pension premiums in a way that is responsible and contributes to a sustainable world.

APG Asset Management and its clients operate in line with the OECD Guidelines for Multinational Companies. To this end, we have developed policies and management systems to systematically screen our portfolio regarding ESG issues and potential negative impacts, We will also use our influence in case we identify such issues. In our investment decisions, regardless of the asset class, we weigh ESG criteria (environmental impact, social impact, and corporate governance) alongside risk, returns and cost.

We publish resources about our policy as well as reports about the outcome of the policies on our website, including how we have used our influence and which companies we have engaged with. Please see <https://apg.nl/en/about-apg/asset-management/responsible-investment>

We appreciate the recognition by the submitters for recognizing APG as one of "two institutional investors [to] have highly developed Responsible Business Conduct (RBC) programs and policies". We welcome the opportunity to explain our programs and policies in more detail and share how these have been implemented in the context of our investment in McDonalds. To the extent possible, we are also prepared to provide insight into our dialogue findings.

We disagree with the submitters' conclusion that APG "fell short in regard to GBVH abuses in McDonald's". We reiterate that APG has acted in line with OECD Guidelines in performing diligence and using our leverage to discuss labor conditions, including harassment, with the company. In addition, APG works with specialized law firms that inform APG about ESG issues with companies. One of these firms is currently investigating whether Gender Based Violence & Harassment (GBVH) is a systematic pattern that the McDonalds board of directors is responsible for. The law firm is keeping APG informed on the progress of this investigation and we await the results.

With respect to the three submitters' requests to APG listed on page 3, we would like to comment the following:

1. Under our *Inclusion Policy*, safe working conditions are a standard part of our review process in which we assess corporate policies and screen for potential controversies. In addition to this systematic approach under our inclusion methodology, we continuously reassess on the basis of additional research as it comes to our attention, such as news items, reports shared with us by social stakeholders (e.g. labor unions) and/or company disclosures. In the case of McDonalds, we reviewed news reports on gender-based violence and discussed this issue with the company, also within the context of the CEO's departure. As mentioned above, APG is currently waiting on the results of a law firm's investigation into this issue. We are always receptive to learning from stakeholders, we welcome an open discussion and suggestions to help us strengthen our approach.
2. As always, we are open to continued engagement with our stakeholders, including the submitters, either directly or through the Dutch National Contact Point. As an investor we

already engage the company directly on this and other issues. We support the submitters also engaging directly with McDonalds with or without the help of the NCP, however it would not be appropriate for APG to participate in a mediated process between McDonalds and the submitters.

3. In our engagements with McDonalds, we have encouraged the company to engage with the National Contact Point. On several occasions, McDonalds has confirmed that it is fully committed to doing so.

The proceedings of the NCP to date

Since receipt of the submission, the NCP has carried out the following actions:

In their submission of 18 May 2020, the submitters requested the Dutch NCP to take a lead role in the specific instance, working in conjunction with NCPs in other countries where GBVH issues have arisen, and with respect to NBIM, with the Norwegian NCP.

Between June and the end of October 2020 the NCPs of the Netherlands, the US and Norway, i.e. the NCP's of the 3 countries where the issues of the Specific Instance have arisen, coordinated closely on handling the specific instance.

The *Guide for National Contact Points on Coordination when handling Specific Instances* stipulates that where the issues raised in a specific instance concern several NCPs, care should be taken to ensure that decisions made on coordination should maximize the potential for the NCPs to contribute to the resolution of issues ([Guide for National Contact Points on Coordination when handling Specific Instances \(oecd.org\)](#) (2019), p. 7.). The Guide addresses situations where the conduct of various corporate entities related to the same impact is at issue:

“In these cases appointment of a lead NCP may not be necessary and the separate (but related) specific instances may be considered by several NCPs in parallel in order to correctly address the different issues raised (e.g. the activity of an enterprise causing a negative impact and the question of remediation on the one hand, and, on the other hand, the question of due diligence measures or RBC policy at a higher level in the value chain where an enterprise might be directly linked to an adverse impact)”. (*Ibid.* The Guide refers to a specific instance in 2011, where a consortium of NGOs filed a specific instance related to alleged human rights impacts by the Pohang Iron and Steel Enterprise (POSCO), and its joint venture POSCO India Private Limited with three separate NCPs (Korea, Norway and the Netherlands). Although stemming from the same underlying impact the submission dealt with the activities of three separate enterprises, POSCO, NBIM and APG, and therefore raised three separate sets of issues (i.e. the activities of POSCO resulting in human rights impacts, and the due diligence approaches of NBIM and APG respectively). As such the NCPs of Korea, Norway and the Netherlands each handled the specific instance with respect to the issues raised involving the enterprise from their jurisdiction.)

On this basis, the Dutch NCP presented a proposal for coordination between the three NCPs. On 27 October 2020, the Dutch, US and Norwegian NCPs agreed to handle the separate, yet related issues concerning on the one hand GBVH in McDonald's Corp., and on the other, related due diligence by APG and NBIM. It was decided that the US NCP will handle the part of the specific instance concerning McDonald's Corp., with a strong supportive role of the Dutch NCP. The NCP's think that in order to make a difference and have a real solution, McDonald's HQ should be included in the process and a meaningful role for the US NCP is necessary. The Dutch NCP will handle the issues concerning APG. The Norwegian NCP will handle the issues relating to NBIM. The Norwegian and the Dutch NCP agreed to coordinate closely regarding the issues concerning the two investors. In

November 2020 the Dutch NCP first informed the complainants of the outcome of the coordination. After that the companies involved were informed.

The NCP's are of the opinion that handling the specific instance in this manner is the best way forward in this specific instance and creates the highest chances of successful outcomes and allows for correctly addressing the different issues raised.

The six other NCP's that have a link with the submission because the submitters state there is impact in their countries (Australia, Brazil, Chile, Colombia, France, United Kingdom) were informed by the NCP's of the Netherlands, Norway and the US by e-mail on the issues raised and the outcomes of the coordination process on 10 March 2021.

The NCP acknowledges that in this case the indicative timelines for the Initial Assessment were not met, mainly because of the necessary coordination activities with the other relevant NCPs.

All documents provided in the submission, as well as the additional documents provided by the submitters were shared with APG.

Initial assessment by the NCP

The NCP has decided to accept the submission. This decision has been taken following an elaboration of the criteria below, as outlined in the commentary to the Procedural Guidance, para 25.

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

The initial notification was submitted to the Dutch NCP. The outcome of the coordination process between the NCP's of the Netherlands, the United States and Norway is that the Dutch NCP is the right entity to assess the alleged breach by APG, as it is an enterprise headquartered in the Netherlands and the issues raise concern the due diligence of APG.

What is the identity of the submitter(s) and what is the nature of their interest in the submission?

The submitters, the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF), the European Federation of Food, Agriculture and Tourism Trade Unions (EFFAT-IUF), the Service Employees International Union (SEIU) and the União Geral dos Trabalhadores (UGT), state that their interest in the specific instance lies in their mandate to represent workers in the fast-food sector, and their commitment to making elimination of sexual harassment one of their priority areas of work. The submitters are not acting as representatives of specific individual workers or a specific group of workers and are not authorised as such. The specific instance against APG concerns the related due diligence of the investor in McDonald's.

It is common that the NCP accepts a submission filed by an NGO or other organisation that touches on causes they defend (Guide for NCPs on the Initial Assessment of Specific Instances, p. 6.).

Since the specific instance concerns the due diligence of APG as an investor related to alleged violations of the (human) rights of workers and since the notifying parties are on the one hand a local union and on the other hand global and European trade union organizations that are acting in the broader interest of trade unions and workers' rights, the Dutch NCP is of the opinion that they have a legitimate interest in the issues raised in the notification. Based on the above, the Dutch NCP is of the opinion that the notifying parties have a legitimate interest in the issues raised.

Are the issues raised by the submitter(s) material and substantiated?

The NCP interprets ‘material and substantiated’ to mean that, based on the information submitted, the issues raised are plausible and related to the application of the OECD Guidelines.

The submission is material when it comes to APG in the sense that it refers to alleged non-observance of provisions of Chapter II (General Policies) and Chapter IV (Human Rights) of the OECD Guidelines. The submission also refers to “Responsible Business Conduct for Institutional Investors” (2017) (The issues raised related directly to McDonald’s Corp. when it comes to alleged breaches of Chapters IV and V of the OECD Guidelines are not addressed here).

The notification and the additional information provided by submitters contain extensive information relating to GBVH at McDonald’s Corp. With respect to APG, the notification is substantiated by references to APG’s expectation documents and the alleged lack of policy and engagement with investees when it comes to GBVH.

The Dutch NCP finds that the notification refers to relevant provisions in the OECD guidelines text and commentary and is substantiated with documentation.

Is there a link between the activities of the enterprise and the issues raised?

The issues raised against APG concern their responsibility to prevent or mitigate negative impacts related to their activity through their business relation with McDonald’s. APG is an investor for pension funds in the Netherlands. As of Q4 2020, APG Asset management had a holding of approximately € 600 mln in McDonald’s, corresponding to share of 0,46 % in the total market capitalization of McDonald’s. In APG’s investment portfolio, McDonald’s is approximately the 100th largest holding.

The Guideline provisions apply across all sectors, including the financial sector and commercial investment enterprises (“Responsible business conduct for institutional investors” (2017), p. 7). The Guidance “Responsible business conduct for institutional investors” (2017) notes that in the context of adverse impacts arising from investee companies, investors will in most instances not cause or contribute to, “but only be directly linked to the adverse impact” (“Responsible business conduct for institutional investors” (2017), p. 49). Investors, even those with minority shareholdings, may be directly linked to adverse impacts caused or contributed to by investee companies as a result of their ownership in, or management of, shares in the company causing or contributing to certain social or environmental impacts.

The Guidance indicates that investors are expected to consider RBC risks throughout their investment process and use their leverage with companies they invest in to influence those investee companies to prevent or mitigate adverse impacts. It underlines that investors are not responsible for addressing those adverse impacts themselves (“Responsible business conduct for institutional investors” (2017), p. 13). The approaches investors can employ to use their leverage to influence companies they invest in are “broad in scope”, and what is appropriate will vary according to the characteristics of an investor, the investment strategy and relevant regulatory obligations. The Guidance underlines the importance of exercising such leverage within the framework of good corporate governance (“Responsible business conduct for institutional investors” (2017), p. 14 – 15. See also the [G20/OECD Principles of Corporate Governance - OECD](#)).

The issues raised in this specific instance concern the due diligence and leverage of an investor, APG, in relation to adverse impact by a minority shareholding, McDonald’s Corp.

On the basis of the above, the NCP is of the opinion that there is a link between the investor and the issues.

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

Existing domestic legislation and past and ongoing procedures, including court rulings, may provide useful orientations for the NCP in reviewing the submission.

The documentation from the submitters includes newspaper clippings relating to GBVH and McDonald's in various jurisdictions since 2008 and ongoing lawsuits. Since 2016, workers have filed dozens of complaints against McDonald's in state and federal courts and administrative agencies in the United States. In 2017, a French tribunal found a McDonald's manager liable for sexual and moral harassment against five female workers at a McDonald's store. In Brazil, the public prosecutor found "serious indications of practice of moral harassment, sexual harassment and discrimination" in 2019 in complaints by McDonald's workers. In the UK, McDonald's refuses to recognize or deal with the main union that represents workers in the fast-food sector.

Finally, also other international standards could be relevant in reviewing the submission. In June 2019, the ILO adopted a convention on gender-based violence and harassment, which is to be read in conjunction with core Convention no. 111. The NCP recalls that the OECD Guidelines reflect the ILO conventions that are recognized as fundamental. ILO Convention no. 111 on non-discrimination is among these conventions. GBVH constitutes discrimination on the basis of sex.

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

The NCP has identified that the submission involves similar issues concerning investors that have been treated at the Dutch NCP in the POSCO/APG specific instance ([Final Statement ABP/APG – SOMO/Bothends](#)). The conclusion in the Final Statement of the Dutch NCP in this case was: "the size of a share that an investor holds in a company does not determine whether there is a business relationship for the purpose of the Guidelines, but it rather is a factor to determine whether or not the investor in question disposes of sufficient leverage to effectuate change in the wrongful practices of the entity that causes the harm. The Dutch NCP concluded in the Posco specific instance that the (large total) size of its (APG's) fund, its stated prominent role in international sustainable finance and its cooperation (including coalitions) with other similar funds in this case outweighs its small shareholding in the perspective of possible leverage with Posco."

The NCP considers that parallel proceedings when it comes to GBVH in McDonald's Corp. do not preclude the Dutch NCP from handling the issues raised in relation to due diligence in APG and that an offer of good offices could make a positive contribution to the resolution of the issues raised. The Dutch NCP will coordinate closely with the Norwegian NCP, which is handling the separate but related specific instance concerning Norges bank/ NIBM and with the US NCP in handling the specific instance concerning McDonald's Corp.

Would considering this submission contribute to achieving the Guidelines' objectives and enhancing their effectiveness?

The Dutch NCP finds that handling this notification would positively contribute to the resolution of the issues raised. An offer of good offices could facilitate an exchange the complainants and APG on the expectations/scope of due diligence for institutional investors and may further clarify the recommendations of the Guidance "Responsible business conduct for institutional investors" (2017) in practice.

Conclusion

The NCP is of the opinion that this submission **merits further consideration** on the basis of the criteria laid out in the commentary to the Procedural Guidance, para 25.

The conclusions reached by the NCP in this initial assessment are based on the information received from both parties. The NCP does not express an opinion on the correctness of the statements of the parties or the validity of the documentation provided by them, nor on their possible impact on the issues raised in the specific instance.

Next steps

In accordance with the Dutch NCP Specific Instance Procedure, the NCP accepts this case for further examination and offers its good offices to the parties. The NCP will ask both parties whether they are willing to engage in a mediation/conciliation process, with the aim of agreeing how the issues can be successfully addressed.

The notifying parties and the enterprise, APG, **have both accepted the NCP's good offices**. In accordance with the NCP procedure, further activities will be confidential while dialogue is in progress. The NCP will take the necessary steps to guarantee a careful process. If the parties cannot reach agreement as a result of the good offices, the NCP will examine the issues and provide recommendations concerning the observance of the Guidelines. It 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 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 the [NCP Website](#)

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