



OECD GUIDELINES  
FOR MULTINATIONAL  
ENTERPRISES

NATIONAL CONTACT POINT  
FOR RESPONSIBLE BUSINESS  
CONDUCT THE NETHERLANDS

## Initial Statement

### International Alliance of App-Based Transport Workers vs Uber Technologies, Inc.

Date: 15 June 2022

**Notification to the Netherlands National Contact Point for the OECD Guidelines for Multinational Enterprises from the International Alliance of App-Based Transport Workers (IAATW) concerning an alleged violation of the OECD Guidelines for Multinational Enterprises by Uber Technologies, Inc. (Uber).**

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 6 April, 2021 the Dutch National Contact Point for the OECD Guidelines for Multinational Enterprises (NCP) received a notification of a specific instance from the International Alliance of App-Based Transport Workers (IAATW) with regard to an alleged violation of the OECD Guidelines for Multinational Enterprises (hereinafter the Guidelines) by Uber Technologies, Inc. (Uber).

The issues raised in the submission are: an alleged failure of Uber throughout its global operations to carry out adequate due diligence in relation to: drivers' health and safety; drivers' earnings and hours; Uber's deactivation and blocking practices. Furthermore the notifying party alleges that Uber has not meaningfully monitored how the COVID-19 pandemic has impacted drivers across these areas of its operations relative to the scope and size of its business and failed to communicate effectively or transparently with drivers, or drivers' representatives, regarding their business operations in these key areas. The notifying party states that the issues raised occur in operations in multiple OECD member states and key partner states, including: Costa Rica, India, Nigeria, Panama, South Africa, the United Kingdom, and Uruguay.

The issues raised in this submission relate to the OECD Guidelines' chapters on General practices (Chapter II), Human rights (Chapter IV), and Employment and industrial relations (Chapter V).

### Coordination

Coordination between NCPs of the US, Costa Rica, the UK and the Netherlands on the question which NCP should be the lead NCP in this specific instance took place in the autumn and winter of 2021 and in the beginning of 2022. In February 2022, the Dutch NCP decided it can, and will take the lead in handling this specific instance, with a strong supportive role of the US NCP. The US NCP agreed with this approach. The NCPs of the UK and Costa Rica will have an advisory role.

### Brief overview of the timeline

In June 2021, the NCP had its first online meetings with the notifying party, as well as with Uber. In August, the NCP received a first written response from Uber. In the autumn and winter of 2021 the NCP asked additional questions to Uber, as well as to the notifying party.

Coordination took place between the NCPs of the US, the UK and Costa Rica at several occasions in the winter of 2021/2022. In February 2022, the Dutch NCP decided to further handle the specific instance as lead NCP.

The NCP shared the draft initial assessment with the parties on 29 April 2022 for comments within 14 days. The Initial Assessment was published on the NCP website on 15 June 2022.

The NCP acknowledges that in this case the indicative timelines for the Initial Assessment were not met. The substantial delay has various reasons, which are among others internal changes and coordination issues within the organisation of the IAATW, the time needed for gathering additional information of the parties by the NCP, and the time needed to determine which NCP should take the lead, including coordination between the relevant NCPs on this question.

### Conclusion

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

- The Dutch NCP is the right entity to assess the alleged violation against Uber; there will be a strong supportive role of the US NCP; the NCPs of the UK and Costa Rica will have an advisory role;

- The notifying party is a concerned party with a legitimate interest in the issues raised in the notification;
- The alleged issues are material and prima facie substantiated, meaning that they are plausible and related to the application of the OECD Guidelines;
- 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 Uber, how the issues concerning Uber relate to the Guidelines, and the enterprise's initial response.**

On 6 April 2021, the Dutch National Contact Point for the OECD Guidelines for Multinational Enterprises (NCP) received a notification of a specific instance from the IAATW with regard to an alleged violation of the OECD Guidelines for Multinational Enterprises (hereinafter the Guidelines) by Uber.

### **The notifying party is the International Alliance of App-Based Transport Workers**

The IAATW is an international association of twenty-seven unions and organisations stating to represent drivers who work for app-based transportation companies. The IAATW advocates for universal labour guarantees, improved working conditions for drivers, and increased scrutiny on for-hire-vehicle multinational enterprises and their practices. The IAATW states to represent just over 90,000 drivers worldwide. The IAATW's affiliates include, but are not limited to: the Asociación de Conductores de Plataformas Tecnológicas ("ACOPLATEC") in Costa Rica; the Indian Federation of App-based Transportation-workers ("IFAT") in India; the National Union of Professional App-Based Workers ("NUPABW") in Nigeria; the Asociación de Conductores de Plataformas Digitales y Similares ("ACOPLADIS") in Panama; The Movement in South Africa; the App Drivers and Couriers Union ("ADCU") in the United Kingdom; and the Asociación de Conductores Uruguayos de Aplicaciones ("ACUA") in Uruguay.

**The submission** details alleged violation of the OECD Guidelines' Chapters II, IV and V regarding Uber's operations in Costa Rica, India, Nigeria, Panama, South Africa, the United Kingdom and Uruguay, based on numerous interviews conducted with drivers from these countries in the autumn and winter of 2020.

However, the IAATW believes these violations occur in most, if not all, of the countries in which Uber operates. The IAATW alleges that at the basis of these specific violations is Uber's overarching failure to carry out any adequate, public due diligence regarding its business practices throughout the COVID-19 pandemic.

Specifically, the IAATW alleges that Uber has violated the OECD Guidelines across three major areas of its business practices in relation to the impacts of the COVID-19 pandemic: health and safety (I); deactivation and blocking (II); and earnings, hours, and commission rates (III).

On the first issue of health and safety, the IAATW alleges the following:

- That Uber's operations and business practices have violated drivers' rights to a safe and healthy workplace and that Uber has failed to carry out due diligence appropriate to the size and scope of its business operations to investigate the adverse impacts of the COVID-19 pandemic on drivers' health and safety;
- That drivers, who work in a strictly customer-facing environment, have faced unprecedented workplace health hazards throughout the pandemic, which have exacerbated underlying health issues arising from their work for Uber;
- That drivers' experiences, obtained through interviews, show that Uber has failed to consult with drivers regarding safety precautions, and has not been transparent when dealing with drivers' associations;
- That in sum, Uber failed to develop a uniform, global policy that was responsive to its workers' concerns.

On the second issue regarding deactivation and blocking, the IAATW alleges:

- That Uber has failed to carry out due diligence appropriate to the size and scope of its business operations to investigate the adverse impacts of the COVID-19 pandemic on driver deactivation and blocking from the application. Deactivation and blocking are analogous to suspension and termination in a formal employment relationship;
- That Uber is not transparent with its drivers about workplace discipline, and does not provide drivers with meaningful grievance processes;
- That Uber does not publish any standardized policies, handbooks, statistics, or information regarding how it deactivates or blocks drivers from using its mobile application. Thus, drivers have little to no ability to express concerns about their working conditions, and no access to workplace due process.

On the third issue of earnings, hours, and commission rates, the IAATW alleges that Uber has failed to carry out adequate due diligence to address the adverse impacts of the COVID-19 pandemic on Uber's drivers' earnings, hours, and commission rates. Drivers have faced unprecedented economic precarity since the beginning of the Covid-19 crisis. While Uber has a larger potential labour force, drivers themselves have received far fewer riders than they did prior to the pandemic. These factors have resulted in lower pay for workers, in an industry where drivers are already routinely unable to generate earnings that support their families.

The IAATW further asserts that pandemic conditions have compounded with Uber's practice of taking higher commission rates than it advertises or reports to drivers, exacerbating workers' economic precarity. Consequently, drivers have had to work more hours under more dangerous conditions to support themselves. However, despite the urgent need for more insight into its business practices, Uber still declines to distribute comprehensive data regarding its drivers' earnings or work hours. Furthermore, researchers who have obtained limited data from Uber have expressed concerns that Uber has not been forthcoming with data that reflects negatively on the company.

Therefore, the IAATW seeks mediation with Uber to discuss due diligence with union participation, as a remedy to the aforementioned alleged violations of the OECD Guidelines.

The IAATW states that it has chosen the international OECD's state-based grievance mechanism of the NCP to address the issues raised. It indicates that the details in this specific instance require coherent global policy solutions that secure workers' voices in all impacted countries. The notifying party states its allegations do not concern individual bad actors, but rather core decisions made by Uber's leadership in pursuit of a unified global business strategy and that the resulting issues are systemic; they occur in operations in multiple OECD member states and key partner states, including: Costa Rica, India, Nigeria, Panama, South Africa, the United Kingdom, and Uruguay.

**According to the Specific instance, the notifying party requests that the Netherlands' NCP provide its good offices in order to discuss:**

1. a framework agreement between Uber and the IAATW, committing Uber to carrying out due diligence in accordance with the OECD Guidelines and the OECD Due Diligence Guidance for Responsible Business Conduct;
2. a commitment from Uber to include the IAATW and its affiliates in its due diligence processes.

**Provisions of the Guidelines referred to in the specific instance**

Chapter II General Policies: § A.2, A.5, A.6, A.7, A.8, A.10, A.11, A.12, A.14, B.1, and B.2. Relevant comments include cmt. 13 and cmt. 25.

Chapter IV Human Rights: § 1, 2, and 6. Relevant comments include cmt. 50.

Chapter V Employment Industrial Relations: § 1, 2, 3, 4(b), 4(c), 6, and 8. Relevant comments include cmt. 48, cmt. 57, and cmt. 59.

The notification also contains multiple references to the OECD Due Diligence Guidance for Responsible Business Conduct (2018).

The full text of the provisions of the Guidelines mentioned above is in the annex to this statement.

**The enterprises' initial response**

In response to the issues raised in the Specific Instance, Uber has stated the following:

"Uber Technologies Inc. (Uber) is an international technology company headquartered in San Francisco, California, United States. Uber provides a technology platform to connect riders who are seeking transport services with drivers who are able to provide those services ("Drivers"). Uber submits that the Dutch NCP is not the appropriate forum to consider the specific instance because the allegations contained in the specific instance do not have any relevant nexus to the Netherlands and Uber is headquartered in the United States. In particular, Uber's Executive Leadership Team, and nearly all of its global leaders, are based at Uber's global headquarters in San Francisco, California. San Francisco is where Uber sets the overarching principles for its global policies, guidelines, and initiatives, including in relation to the Uber Group's response to the COVID-19 pandemic. Uber has, for example, established global guidelines that apply to all users, with minor nuances to address local regulatory requirements (the "Community Guidelines"). The Community Guidelines set forth Uber's core values and minimum standards of conduct expected of all users of its platforms, including Drivers and riders. The Community Guidelines have served as a basis for, among other things, the articulation of policies related to health and safety and account deactivation. Local Uber Group entities are responsible for applying the global policies and overarching principles set forth in the Community Guidelines through local policies tailored to the various regions and countries in which the Uber Group conducts business.

Uber further submits that the issues raised by the IAATW are not appropriate for an NCP mediation process because of parallel legal proceedings. Uber specifically refers to ongoing litigation proceedings against Uber and its affiliates (collectively, the “Uber Group”) involving the same issues and countries in the scope of the Specific Instance. Several of the proceedings involve affiliates, or individual members of affiliates, of the IAATW, and there is a meaningful threat of future litigation by IAATW affiliates. Indeed, the IAATW’s mission statement indicates that the organization’s “goal is to help drivers around the world with their cases.” Uber states that these parallel proceedings would severely constrain its ability to engage in a meaningful dialogue with the IAATW due to the risk that sharing information with the IAATW may prejudice the company’s position in current or future litigation with IAATW members.

Uber states that parallel legal proceedings and ongoing policy dialogue in a multitude of countries demonstrate that the issues raised in the Specific Instance are matters of national law and policy that require individualized outcomes and are not capable of being resolved in a single forum. As platform work has grown globally, policymakers around the world have grappled with the complex challenge of balancing the flexibility that platform work provides with an appropriate level of protection for platform workers and reconciling the realities of platform work with varied local labor law frameworks. To that end, Uber Group entities actively pursue constructive dialogue with policymakers and a range of other stakeholders, including in the countries referenced in the specific instance, to help develop locally relevant and appropriate solutions to that challenge.

In August 2020, Uber published a white paper titled “Working Together: Priorities to enhance the quality and security of independent work in the United States.” In February 2021, Uber published a related white paper focused on Europe. This initiative called on policymakers, platform companies, and social representatives to come together to create a new standard for platform work, built upon the principles most important to Drivers: flexibility and control over when and where they want to work, earning a decent wage, access to relevant benefits and protections, and meaningful representation. These white papers and other publications reflect Uber’s desire to partner with national policymakers, other platform companies, social representatives, and other stakeholders to agree on local legal frameworks that improve conditions for Drivers while enabling them to maintain flexibility and control. Uber is participating in various initiatives around the world that reflect that goal. By way of example, Uber has partnered with trade unions in several countries, including with the GMB in the United Kingdom and with UFCW in Canada.

Finally, Uber disputes the factual allegations that the IAATW has raised—including the allegations that it has not been transparent with Drivers (e.g. regarding service fees and deactivation policies) and has not taken steps to respond responsibly to the COVID-19 pandemic. COVID-19 presented an unprecedented challenge to all businesses, including Uber’s business. In response, Uber established a dedicated Global Steering Committee to coordinate its global response. At a high level, the steps Uber states it has taken to respond to the health and financial impacts of the pandemic on Drivers and other stakeholders have included:

- Conducting focus groups with Drivers, riders, and other stakeholders to better understand how the pandemic has impacted them;
- Implementing a “no mask, no ride” policy;
- Distributing or providing reimbursements for personal protective equipment and cleaning supplies for individual Drivers;
- Partnering with large commercial partners to distribute hygiene kits to Drivers;
- Launching initiatives such as the #Masks4all campaign to offer free masks to Drivers;

- Creating “cleaning hubs” where Drivers can have their vehicles sanitized at a discounted rate;
- Facilitating contactless payment options through the Uber Cash prepay program and an initiative with an online payment processing service;
- Developing additional in-app safety notifications to verify Driver and rider adherence to COVID-19 safety measures and provide Drivers and riders the ability to provide feedback on Uber’s online platform regarding safety and hygiene;
- Leading and/or supporting various financial assistance initiatives;
- Helping Drivers connect to alternative earning opportunities such as food delivery work; and
- Enhancing payment and cash-out options for Drivers.”

## The proceedings of the NCP to date

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

On 6 April 2021, the NCP has sent a confirmation of receipt to the notifying party and on 13 April the NCP has informed the enterprise of the notification. Both parties also received a description of the NCP procedure.

On 24 June 2021, the first online meeting with the notifying party took place.

On 25 June 2021, the first online meeting with representatives of the enterprise took place.

On 28 June 2021, the notification was sent for information to the NCP of the US.

On 6 August 2021, the NCP received a first written response of Uber.

Due to changes in the Board of the IAATW, the handling of the specific instance has experienced some delay between June and September. On 16 September 2021, the IAATW requested the NCP to continue its procedure.

In October the NCP decided to ask additional questions to Uber concerning the role of its Dutch entities in relation to its Headquarters in the US. On 8 December the NCP received Uber’s answers.

On 8 December 2021 a coordination call took place between the NCPs of the US, the UK, Costa Rica and the Netherlands.

On 23 December 2021 the NCP asked additional questions to the IAATW. The NCP received the answers on 17 January 2022.

In February 2022, the Dutch NCP decided to further handle the specific instance as lead NCP and ask the US NCP to have a strong supportive role and the NCPs of the UK and Costa Rica to have an advisory role, given that issues were raised regarding operations in their territory.

On 1 March 2022 another coordination call with US NCP took place; the US NCP accepted a strong supportive role in this specific instance; the NCPs of the UK and Costa Rica were informed and accepted an advisory role.

On 8 March 2022 the notifying party and the enterprise were informed on the handling of the specific instance by the Dutch NCP and the roles of the NCPs of the US, the UK and Costa Rica.

On 29 April 2022, the draft initial assessment was sent to both parties for comments within 14 days.

On 15 June 2022, the initial assessment was published.

All documents provided in the submission were shared with Uber.

## 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 violations against Uber?***

The Dutch NCP is the right entity to assess the alleged violations against Uber as the lead NCP. The Dutch NCP has asked the US NCP to fulfill a strong supportive role in the process. The US NCP agreed with the lead role of the Dutch NCP as well as with taking up a strong supportive role. The NCPs of the UK and Costa Rica have an advisory role.

The submission shows that there is a relevant “nexus” to the Netherlands, because Uber B.V., one of the Dutch Uber Group companies, serves as a contracting entity for drivers in certain countries, including (at least) several of the countries (Costa Rica, Nigeria, Panama, South Africa, Uruguay) mentioned in the submission. In addition to that, Uber has chosen the Netherlands as the locus for arbitration concerning these contracts. The NCP Guide on coordination (p.8) states that an NCP of the country where the Headquarters of a company are based can handle the specific instance if “the issues in question relate to actions or decisions made at headquarters level of a company”. The NCP of the country of the subsidiary can handle the “issues related to actions or decisions of the subsidiary”. The actions of the subsidiary Uber B.V., the contracting entity for the drivers in the aforementioned countries, relate to the allegations of the notifying party against Uber. The fact that the employees of Uber B.V. Netherlands operate under the supervision of Uber’s Global Headquarters in the US, does not change this.

The Dutch NCP recognizes the relevance of the US NCP in this Specific instance, and acknowledges that the US NCP could also have been the appropriate entity to handle the specific instance if it would have been filed with the US NCP, as Uber’s Global Headquarters are based in the US. For this reason, the Dutch NCP requested the US NCP to take a strong supportive role, which the US NCP accepted.

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

The submitter, the IAATW, is an international association of twenty-seven unions and workers’ organisations stating to represent drivers who work for app-based transportation companies. The IAATW advocates for universal labour guarantees, improved working conditions for drivers, and increased scrutiny on for hire vehicle multinational enterprises and their practices.

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

Since the specific instance concerns the alleged violations of the human rights of the drivers that have contractual relations with Uber and relates to relevant articles in the OECD Guidelines, and since the notifying party is a global trade union organization that is acting in the broader interest of trade unions and the rights of drivers who have contractual relations with app-based platform companies, the Dutch NCP is of the opinion that it has a legitimate interest in the issues raised in the submission.

***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 in the sense that it refers to alleged non-observance of provisions of Chapter II (General Policies) and Chapter IV (Human Rights) and to alleged breaches of Chapter V (Employment and Industrial Relations) of the OECD Guidelines.

The notification and the additional information provided by submitters contain extensive information relating to the issues raised. 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 concern the due diligence responsibilities of Uber, an international technology platform company that provides a platform to connect drivers with riders who are seeking transport services, in relation to alleged adverse impacts on drivers. The content of the submission, along with the positions of the parties presented in the course of the NCP’s initial assessment, indicates there is a link between the activities of the company and the issues raised.

The NCP notes that the Guidelines’ provisions apply across all sectors, including platform companies supporting the gig economy, like Uber. The OECD paper “Platform companies and responsible business conduct” (2019) [RBC-and-platform-companies.pdf \(oecd.org\)](#), defines an online platform as “a digital service that facilitates interactions between two or more distinct but interdependent sets of users (whether firms or individuals) who interact through the service via the Internet. (..) Online platforms include a range of services available via the internet – including (..) platforms supporting the gig economy (e.g. Uber)”.

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

***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.

With regard to the issues raised in the submission, in principle, the local law of the countries where the adverse impact occurs, is applicable. For this specific instance, the domestic (or local) laws of Costa Rica, India, Nigeria, Panama, South Africa, the United Kingdom and Uruguay are relevant. The NCP notes that it will not assess whether domestic law requirements were met by the company or the notifying party.

The NCP is aware of the fact that domestic legislation concerning platform companies differs from country to country. The OECD paper “Platform companies and responsible business conduct” (2019) notes that “given the speed at which platform companies have emerged, they have operated within a limited regulatory framework and oversight. Existing regulation has mainly been developed with older business models in mind, leading to questions about the applicability and suitability of existing regulations for platform companies.” As a consequence, local labour laws and case law related to platform companies are not yet well established. The NCP notes that this also applies to national labour laws relevant to the question whether drivers that have contractual relations with Uber should be classified as employees or as independent contractors.

Although the Guidelines expect companies to act in line with domestic law, the NCP recalls that they “extend beyond the law in many cases” (OECD Guidelines 2011, Chapter 1, para 2). As noted in the Guide for NCPs on Initial Assessments of Specific Instances (OECD, 2019): “A situation where an enterprise has met domestic law requirements is not necessarily equivalent to a situation in which an enterprise observed the Guidelines. Similarly, if an enterprise has followed domestic law, this does not necessarily mean it has met the expectations of the Guidelines. In certain contexts, legal obligations may not be adequately enforced, and furthermore, the expectations of the Guidelines can exceed domestic obligations with respect to the questions at issue.”

The NCP is also aware of a number of ongoing legal proceedings worldwide, including in the countries mentioned in the submission, as well as some court rulings concerning the position of Uber drivers. These cases are being brought against Uber Group companies under labour laws that differ from country to country.

Finally, other international standards and guidelines could be relevant in reviewing the submission.

The NCP notes the work of the OECD on the future of work: [OECD Future of Work - OECD](#)

Relevant Recent policy work of the ILO on the role of digital labour platforms in transforming the world of work that could be relevant in reviewing the submission is [World Employment and Social Outlook 2021: The role of digital labour platforms in transforming the world of work \(ilo.org\)](#) and the ILO report (2019) [Policy responses to new forms of work: International governance of digital labour platforms \(ilo.org\)](#)

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

As noted in the Commentary to the Procedural Guidance for NCPs, paragraph 26, already concluded or ongoing domestic or international parallel proceedings do not necessarily prevent the NCP from handling the specific instance by offering its good offices to the parties. However, in each individual case the NCP assesses whether or not the offer of good offices would make a **positive contribution to the resolution of the issues raised** or if it **would prejudice either of the parties involved in other proceedings**.

The NCP is aware of a number of ongoing and concluded parallel proceedings concerning the relationships between Uber Group companies and drivers and issues flowing from those relationships. Uber, in its initial response of August 2021, mentions that classification related proceedings against Uber Group entities are underway in Costa Rica, Nigeria, South Africa, the United Kingdom and Uruguay, among others.

In most of the cases, the claimants are drivers requesting courts to rule that they are employees of the relevant Uber Group entities, the so-called “classification of drivers”, and that they are, as a result, entitled to certain benefits and protections, including those raised in the submission—for example, additional compensation, payment for overtime work, health benefits, or procedural rights related to account deactivation. There are also a number of ongoing legal proceedings underway against Uber Group entities that relate to the particular issues raised in the submission—health and safety, account deactivation, and earnings, hours, and service fees—including in the countries referenced in the specific instance.

The NCP takes note of the complex global litigation landscape and the ongoing policy discussions around the status and nature of the relationships between the company and drivers in their value chain, as well as representatives of those drivers, and takes note of the fact that the local laws in many countries concerning platform work are not (yet) well established. Notwithstanding this, the NCP is of the opinion that the NCP-procedure may contribute to the resolution of the issues raised by providing for a non-judicial, non-adversarial way of exchange between the parties in the framework of the OECD Guidelines, in a strictly confidential setting.

The NCP therefore considers that facilitating an exchange between the notifying party and Uber on the expectations and scope of Uber's due diligence responsibilities at a global policy level and throughout their operations according to the OECD Guidelines, may positively contribute to the resolution of the issues raised.

The NCP acknowledges Uber's concerns about potential prejudice that sharing information with the IAATW would cause in ongoing litigation proceedings-particularly proceedings brought by IAATW members. To address this, the NCP, together with the parties, when defining the goal and scope of the good offices will consider carefully the elements of the submission that can be taken into consideration, including confidentiality arrangements when drawing up a Terms of Reference together with the parties.

Concluding, the NCP considers that past and ongoing parallel proceedings against Uber Group companies and potential prejudice with respect to the by parties do not preclude the Dutch NCP from offering its good offices to the parties.

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

The Dutch NCP believes that dealing with this notification may contribute to achieving the Guidelines' objectives and enhancing their effectiveness in the sense that it could help clarify the due diligence responsibilities under the OECD Guidelines for companies in the platform economy, including what can be expected of a platform company regarding meaningful engagement with stakeholders.

## 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 to be taken into consideration can be successfully addressed.

The notifying party and the enterprise, Uber, **have accepted** the NCP's good offices and will start by assessing together with the NCP on what issues and under which conditions a productive dialogue facilitated by the NCP can be realized. In accordance with the NCP procedure, further activities relating to the specific instance procedure will be confidential while good offices are ongoing. The NCP will, together with the parties, take the necessary steps to guarantee a careful and confidential 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.

## Annex

The text of the provisions of the OECD Guidelines referred to in the submission is included in this Annex.

### Chapter II General Policies:

#### *A. Enterprises should:*

2. Respect the internationally recognised human rights of those affected by their activities.
5. Refrain from seeking or accepting exemptions not contemplated in the statutory or regulatory framework related to human rights, environmental, health, safety, labour, taxation, financial incentives, or other issues.
6. Support and uphold good corporate governance principles and develop and apply good corporate governance practices, including throughout enterprise groups.
7. Develop and apply effective self-regulatory practices and management systems that foster a relationship of confidence and mutual trust between enterprises and the societies in which they operate.
8. Promote awareness of and compliance by workers employed by multinational enterprises with respect to company policies through appropriate dissemination of these policies, including through training programmes.
10. Carry out risk-based due diligence, for example by incorporating it into their enterprise risk management systems, to identify, prevent and mitigate actual and potential adverse impacts as described in paragraphs 11 and 12, and account for how these impacts are addressed. The nature and extent of due diligence depend on the circumstances of a particular situation.
11. Avoid causing or contributing to adverse impacts on matters covered by the Guidelines, through their own activities, and address such impacts when they occur.
12. Seek to prevent or mitigate an adverse impact where they have not contributed to that impact, when the impact is nevertheless directly linked to their operations, products or services by a business relationship. This is not intended to shift responsibility from the entity causing an adverse impact to the enterprise with which it has a business relationship.
14. Engage with relevant stakeholders in order to provide meaningful opportunities for their views to be taken into account in relation to planning and decision making for projects or other activities that may significantly impact local communities.

*B. Enterprises are encouraged to:*

1. Support, as appropriate to their circumstances, cooperative efforts in the appropriate fora to promote Internet Freedom through respect of freedom of expression, assembly and association online.
2. Engage in or support, where appropriate, private or multi-stakeholder initiatives and social dialogue on responsible supply chain management while ensuring that these initiatives take due account of their social and economic effects on developing countries and of existing internationally recognised standards.

Commentary on General Policies

13. Following from effective self-regulatory practices, as a matter of course, enterprises are expected to promote employee awareness of company policies. Safeguards to protect bona fide “whistle-blowing” activities are also recommended, including protection of employees who, in the absence of timely remedial action or in the face of reasonable risk of negative employment action, report practices that contravene the law to the competent public authorities. While of particular relevance to anti-bribery and environmental initiatives, such protection is also relevant to other recommendations in the Guidelines.

25. Stakeholder engagement involves interactive processes of engagement with relevant stakeholders, through, for example, meetings, hearings or consultation proceedings. Effective stakeholder engagement is characterised by two-way communication and depends on the good faith of the participants on both sides. This engagement can be particularly helpful in the planning and decision-making concerning projects or other activities involving, for example, the intensive use of land or water, which could significantly affect local communities.

Chapter IV Human Rights:

States have the duty to protect human rights. Enterprises should, within the framework of internationally recognised human rights, the international human rights obligations of the countries in which they operate as well as relevant domestic laws and regulations:

1. Respect human rights, which means they should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved.
2. Within the context of their own activities, avoid causing or contributing to adverse human rights impacts and address such impacts when they occur.
6. Provide for or co-operate through legitimate processes in the remediation of adverse human rights impacts where they identify that they have caused or contributed to these impacts.

Chapter V Employment and Industrial Relations:

Enterprises should, within the framework of applicable law, regulations and prevailing labour relations and employment practices and applicable international labour standards:

1. a) Respect the right of workers employed by the multinational enterprise to establish or join trade unions and representative organisations of their own choosing.

b) Respect the right of workers employed by the multinational enterprise to have trade unions and representative organisations of their own choosing recognised for the purpose of collective bargaining, and engage in constructive negotiations, either individually or through employers' associations, with such representatives with a view to reaching agreements on terms and conditions of employment.

c) Contribute to the effective abolition of child labour, and take immediate and effective measures to secure the prohibition and elimination of the worst forms of child labour as a matter of urgency.

d) Contribute to the elimination of all forms of forced or compulsory labour and take adequate steps to ensure that forced or compulsory labour does not exist in their operations.

e) Be guided throughout their operations by the principle of equality of opportunity and treatment in employment and not discriminate against their workers with respect to employment or occupation on such grounds as race, colour, sex, religion, political opinion, national extraction or social origin, or other status, unless selectivity concerning worker characteristics furthers established governmental policies which specifically promote greater equality of employment opportunity or relates to the inherent requirements of a job.

2. a) Provide such facilities to workers' representatives as may be necessary to assist in the development of effective collective agreements.

b) Provide information to workers' representatives which is needed for meaningful negotiations on conditions of employment.

c) Provide information to workers and their representatives which enables them to obtain a true and fair view of the performance of the entity or, where appropriate, the enterprise as a whole.

3. Promote consultation and co-operation between employers and workers and their representatives on matters of mutual concern.

4.b) When multinational enterprises operate in developing countries, where comparable employers may not exist, provide the best possible wages, benefits and conditions of work, within the framework of government policies. These should be related to the economic position of the enterprise, but should be at least adequate to satisfy the basic needs of the workers and their families.

c) Take adequate steps to ensure occupational health and safety in their operations.

6. In considering changes in their operations which would have major employment effects, in particular in the case of the closure of an entity involving collective lay-offs or dismissals, provide reasonable notice of such changes to representatives of the workers in their employment and their organisations, and, where appropriate, to the relevant governmental authorities, and co-operate with the worker representatives and appropriate governmental authorities so as to mitigate to the maximum extent practicable adverse effects. In light of the specific circumstances of each case, it would be appropriate if management were able to give such notice prior to the final decision being taken. Other means may also be employed to provide meaningful co-operation to mitigate the effects of such decisions.

8. Enable authorised representatives of the workers in their employment to negotiate on collective bargaining or labour-management relations issues and allow the parties to consult on matters of mutual concern with representatives of management who are authorised to take decisions on these matters.

## Commentary on Employment and Industrial Relations

48. The International Labour Organisation (ILO) is the competent body to set and deal with international labour standards, and to promote fundamental rights at work as recognised in its 1998 Declaration on Fundamental Principles and Rights at Work. The Guidelines, as a non-binding instrument, have a role to play in promoting observance of these standards and principles among multinational enterprises. The provisions of the Guidelines chapter echo relevant provisions of the 1998 Declaration, as well as the 1977 ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy, last revised in 2006 (the ILO MNE Declaration). The ILO MNE Declaration sets out principles in the fields of employment, training, working conditions, and industrial relations, while the OECD Guidelines cover all major aspects of corporate behaviour. The OECD Guidelines and the ILO MNE Declaration refer to the behaviour expected from enterprises and are intended to parallel and not conflict with each other. The ILO MNE Declaration can therefore be of use in understanding the Guidelines to the extent that it is of a greater degree of elaboration. However, the responsibilities for the follow-up procedures under the ILO MNE Declaration and the Guidelines are institutionally separate.

57. In paragraph 4, employment and industrial relations standards are understood to include compensation and working-time arrangements. The reference to occupational health and safety implies that multinational enterprises are expected to follow prevailing regulatory standards and industry norms to minimise the risk of accidents and injury to health arising out of, linked with, or occurring in, the course of employment. This encourages enterprises to work to raise the level of performance with respect to occupational health and safety in all parts of their operation even where this may not be formally required by existing regulations in countries in which they operate. It also encourages enterprises to respect workers' ability to remove themselves from a work situation when there is reasonable justification to believe that it presents an imminent and serious risk to health or safety. Reflecting their importance and complementarities among related recommendations, health and safety concerns are echoed elsewhere in the Guidelines, most notably in chapters on Consumer Interests and the Environment. The ILO Recommendation No. 194 of 2002 provides an indicative list of occupational diseases as well as codes of practice and guides which can be taken into account by enterprises for implementing this recommendation of the Guidelines.

59. Paragraph 6 recommends that enterprises provide reasonable notice to the representatives of workers and relevant government authorities, of changes in their operations which would have major effects upon the livelihood of their workers, in particular the closure of an entity involving collective layoffs or dismissals. As stated therein, the purpose of this provision is to afford an opportunity for co-operation to mitigate the effects of such changes. This is an important principle that is widely reflected in the industrial relations laws and practices of adhering countries, although the approaches taken to ensuring an opportunity for meaningful co-operation are not identical in all adhering countries. The paragraph also notes that it would be appropriate if, in light of specific circumstances, management were able to give such notice prior to the final decision. Indeed, notice prior to the final decision is a feature of industrial relations laws and practices in a number of adhering countries. However, it is not the only means to ensure an opportunity for meaningful co-operation to mitigate the effects of such decisions, and the laws and practices of other adhering countries provide for other means such as defined periods during which consultations must be undertaken before decisions may be implemented.

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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