



OECD GUIDELINES
FOR MULTINATIONAL
ENTERPRISES

NATIONAL CONTACT POINT
FOR RESPONSIBLE BUSINESS
CONDUCT THE NETHERLANDS

Final Statement

FNV vs Just Eat Takeaway.com

Date: March 22, 2023

Notification to the Netherlands National Contact Point (NCP) for the OECD Guidelines for Multinational Enterprises by the Dutch trade union FNV concerning an alleged violation of the OECD Guidelines for Multinational Enterprises by Just Eat Takeaway.com (February 22, 2021).

As noted in the Procedural Guidance to the OECD Guidelines for Multinational Enterprises, following conclusion of a specific instance and after consultation with the parties involved, the NCP will make the results of the procedures publicly available.

As one party was unwilling to participate in the good offices offered by the NCP, the NCP is issuing the following final statement. This statement describes the issues raised, the reasons why the NCP decided that the issues raised merited further examination, and the procedures initiated by the NCP to assist the parties.

This statement also includes an assessment by the NCP of the extent to which the enterprise has adhered to the OECD Guidelines with respect to the underlying notification, recommendations made by the NCP to the enterprise on the implementation of the Guidelines, and the reasons that an agreement between the parties could not be facilitated by the NCP.

As specific instances are not legal cases and NCPs are not judicial bodies, NCPs cannot compel parties to participate in a conciliation or mediation process, nor can they directly order compensation in cases where it can be determined that a breach of the OECD Guidelines has occurred and that this has resulted in damage to the notifying parties or others.

Table of Contents

1. Executive Summary.....	3
2. Substance of the submission, relevant provisions and the enterprise's response.....	4
3. Initial assessment by the NCP.....	6
4. The proceedings of the NCP.....	7
5. Parties' responses to the offer of good offices.....	9
6. Examinations and conclusions	9
Overall.....	9
7. Recommendations	11
8. Follow Up	11

1. Executive Summary

On February 22, 2021, the Dutch National Contact Point (NCP) for the OECD Guidelines for Multinational Enterprises received a notification of a specific instance from the Dutch trade union FNV with regard to an alleged violation of the OECD Guidelines for Multinational Enterprises (hereinafter the Guidelines) by Just Eat Takeaway.com N.V., based in the Netherlands, and 10bis Ltd., based in Israel. The notifying party requested the Dutch NCP to handle the notification. As a notification based on the same alleged breaches of the OECD Guidelines had been submitted to the Israeli NCP by the Israeli trade union Histadrut regarding Just Eat Takeaway's subsidiary 10bis's observance of the OECD Guidelines, the Dutch NCP coordinated the handling of the complaint with the Israeli NCP.

The issues raised in this notification and the supplemental submission by the notifying party of April 28, 2021, relate to the right to freedom of association of 10bis (or Scoober, according to Just Eat Takeaway.com) workers in Israel. They relate to the OECD Guidelines' Chapter II (General Policies), Chapter IV (Human Rights) and Chapter V (Employment and Industrial Relations).

In its initial assessment, published on 22 July 2021, the Dutch NCP concluded that this notification merited further consideration (see: [Initial Assessment of the notification of FNV vs Just Eat Takeaway.com | Publication | National Contact Point OECD Guidelines](#)). The NCP offered its good offices to the parties to address the concerns raised by the notifying party and seek a resolution through dialogue, in accordance with the [Dutch NCP Specific Instance Procedure for handling notifications](#).

The good offices were accepted by FNV, but not by Just Eat Takeaway.com. The enterprise informed the NCP that it did not see a role for the Dutch NCP because, according to the enterprise, the relevant questions whether or not Histadrut is the legitimate representative of Scoober workers and whether or not Scoober employees have been intimidated, are local Israeli matters that should be evaluated based on Israeli law and not (also) based on the OECD Guidelines. Furthermore, the enterprise pointed out that the disputed issues were subject to legal proceedings before Israeli courts.

Subsequently, the NCP conducted an independent further examination, resulting in this final statement. In June 2022, the NCP was notified by both the enterprise and by the Israeli NCP that a ruling by the Israeli court in the highest instance had been issued, in which it held that the trade union Histadrut did not meet the requirement of one third of the workers as set by Israeli law for a union to be deemed a representative workers' organization that can enter negotiations with a company on behalf of that company's (in this case: Scoober) workers for collective bargaining purposes.

The NCP makes the following assessment regarding the issues raised in the specific instance:

Taking into account the examination by the NCP and the information provided by the parties, it is the assessment of the NCP that Just Eat Takeaway.com has acted in a manner that is not consistent with the OECD Guidelines. More specifically, Just Eat Takeaway.com should have engaged, directly and/or through its Israeli subsidiary, with local stakeholders, including Histadrut, regarding the alleged violations of labour and union rights as stipulated in the Employment Chapter.

Based on its assessment, the NCP recommends to Just Eat Takeaway.com that:

- Just Eat Takeaway.com ensures that 10bis/Scoober enters into meaningful social dialogue with Histadrut, in accordance with the expectations under the OECD Guidelines to engage

with all relevant stakeholders, with the aim of preventing and mitigating adverse impacts in relation to freedom of association.

- Just Eat Takeaway.com, together with 10bis/Scoober, communicates to all workers of 10bis/Scoober that they can join a trade union of their own choosing and furthermore guarantees that joining a trade union will not have any negative consequences regarding their job or position.
- Just Eat Takeaway.com continuously reviews its policies and procedures as expected under the OECD Guidelines, in particular as they relate to risk-based due diligence responsibilities throughout the corporate group, to ensure full alignment with the Guidelines, and communicates its policies throughout its global operations.
- Just Eat Takeaway.com to this end also enters into a dialogue with FNV regarding its due diligence responsibilities as the parent company.

With the publication of this final statement on March 22, 2023, the NCP procedure is concluded. The NCP will follow up on this specific instance by conducting an evaluation of the implementation of the recommendations one year after publication of the final statement.

2. Substance of the submission, relevant provisions and the enterprise's response

Submission by FNV

On February 22, 2021, the Dutch NCP received a notification concerning the right to freedom of association of 10bis workers in Israel and the due diligence responsibilities of 10bis parent company Just Eat Takeaway.com in the Netherlands.

The submitter is FNV, a Dutch trade union. The Israeli NCP received an identical notification, submitted by the General Federation of Labour in Israel (hereinafter: Histadrut).

The submitter alleges that 10bis conducts its activities in Israel in a manner that is inconsistent with the recommendations in the OECD Guidelines in Chapter V. (Employment and Industrial Relations), for example by interrupting the unionizing process and intervening in the unionizing campaign.

More specifically, according to FNV, the Israeli trade union Histadrut has the required number of members amongst the 10bis workers that the Israeli law demands in order for it to be recognised as the legitimate trade union to represent 10bis workers. FNV alleges that despite this, 10bis does not want to engage into a meaningful, constructive dialogue and negotiations with Histadrut. Furthermore, FNV alleges that 10bis management has engaged in efforts to interrupt the unionising process.

FNV argues that, because 10bis is the local subsidiary of Just Eat Takeaway.com and is allegedly violating the Guidelines' articles 1a and 1b of Chapter V, Just Eat Takeaway.com can be expected to exercise its leverage to prevent and mitigate the (potential) adverse impact. According to FNV, however, Just Eat Takeaway.com has failed to live up to its due diligence responsibilities in this respect.

Relevant provisions

The notifying party alleges that the activities by 10bis in Israel are inconsistent with the recommendations in the OECD Guidelines in Chapter V. (Employment and Industrial Relations). More specifically, FNV alleges that 10bis, by interrupting the unionizing process and intervening in the unionizing campaign, is in breach of the following Chapter V provisions:

- 1. a) Respect the right of the workers employed by the multinational enterprise to establish or join trade unions and representative organisations of their own choosing.*
- 1. b) Respect the right of workers employed by the multinational enterprise to have trade unions and representative organisations of their own choosing recognized for the purpose of collective bargaining and engage in constructive negotiations, either individually or through employers' associations, with representatives with a view to reaching agreements on terms and conditions of employment.*
- 2. a) Provide such facilities to workers' representatives as may be necessary to assist in the development of effective collective agreements.*
- 7. In the context of bona fide negotiations with workers' representatives on conditions of employment, or while workers are exercising a right to organize, not threaten to transfer the whole or part of an operating unit from the country concerned nor transfer workers from the enterprises' component entities in other countries in order to influence unfairly those negotiations or to hinder the exercise of a right to organize.*

In its supplemental submission of April 28, 2021, the notifying party requests from Just Eat Takeaway.com that it acknowledges its responsibility to the situation created by its subsidiary and that it exercises its full power over 10bis to resolve the issue, with a view to advancing the effective implementation of the OECD Guidelines.

In this supplemental submission, FNV further alleges that Just Eat Takeaway.com is in breach of:

- *Chapter I, para 4. (Concepts and Principles), 'The Guidelines are addressed to all entities within the multinational enterprise (parent companies and/or local entities). According to the actual distribution of responsibilities amongst them, the different entities are expected to co-operate and to assist one another to facilitate observance of the Guidelines.'*
- *Chapter II (Commentary on General Policies), para 20. 'Meeting the expectation in paragraph A12 [on business relationships, NCP] would entail an enterprise, acting alone or in co-operation with other entities, as appropriate, to use its leverage to influence the entity causing the adverse impact to prevent or mitigate that impact.'*

With respect to 10bis, FNV reiterates in its supplemental submission, with reference to Chapter V (Employment and Industrial Relations), that 10bis breaches articles 1a and 1b. According to FNV, the Israeli trade union Histadrut has the number of members the Israeli law requires. Furthermore, according to FNV, 10bis does not want to engage in a meaningful, constructive dialogue as the Guidelines prescribe.

FNV further argues that, because 10bis is the local subsidiary of Just Eat Takeaway.com and is violating the Guidelines' article 1a and 1b of Chapter V, Just Eat Takeaway.com is expected to use its leverage to prevent and mitigate the adverse impact. In this respect, it also refers to:

- *Chapter IV (Commentary on Human Rights), para 38. 'A State's failure either to enforce relevant domestic laws, or to implement international human rights obligations or the fact*

that it may act contrary to such laws or international obligations does not diminish the expectation that enterprises respect human rights. In countries where domestic law and regulations conflict with internationally recognized human rights, enterprises should seek ways to honour them to the fullest extent which does not place them in violation of domestic law, consistent with paragraph 2 of the Chapter on Concepts and Principles.'

Reaction by Just Eat Takeaway.com

In a meeting with Just Eat Takeaway.com on March 17, 2021, and in subsequent contacts, Just Eat Takeaway.com stated that it does not see a role for the Dutch NCP, because

- (i) the questions whether Histadrut is the legitimate representative of workers of Scoober (which is the relevant subsidiary according to Just Eat Takeaway.com) and whether employees have been intimidated, are local Israeli matters to be evaluated on the basis of Israeli law;
- (ii) the disputed issues are subject to legal proceedings before Israeli courts and no final judgement has been passed by them.

Just Eat Takeaway.com also stated that it did not consider the Dutch trade union FNV an interested party in this local Israeli matter and did not see how FNV's involvement would constitute a positive contribution to the resolution of the issues raised. In further correspondence of the NCP with Just Eat Takeaway.com, the company repeated this position and stated that it expects the Israeli court to decide also on the issue whether the management of Scoober has intimidated workers.

Also, according to Just Eat Takeaway.com there has been just one reported incident in December 2021. Just Eat Takeaway.com stated that both Just Eat Takeaway.com and Scoober have taken that incident seriously and have taken immediate steps in response. It further stated that Scoober Israel further trained its staff on how to deal with unions and their members to ensure its workers would not be discouraged from joining a union.

According to Just Eat Takeaway.com, Scoober is in line with Israeli law exercising its right to question Histadrut's claim as the lawful union representative of the workers, and there is no breach of the OECD Guidelines. Just Eat Takeaway.com furthermore argued that, based on para 26 of the Commentary on the Implementation Procedures of the OECD Guidelines for Multinational Enterprises (on parallel proceedings), the Dutch NCP should evaluate whether:

- i) an offer of good offices by the NCP could make a positive contribution to the issues raised; and
- ii) would not create serious prejudice for either of the parties involved in the ongoing legal proceedings in Israeli court or cause a contempt of court situation.

3. Initial assessment by the NCP

In its initial assessment, dated 22 July 2021, the NCP concluded the notification merited further consideration, based on the following considerations:

- The Dutch NCP is the right entity to assess the alleged violation against Just Eat Takeaway.com;
- The notifying party is a concerned party with a legitimate interest in the issues raised in the notification;
- The issues related to Just Eat Takeaway.com are material and *prima facie* substantiated;
- There is a link between the enterprises' activities and the issues raised in the specific instance;
- The consideration of this specific instance may contribute to the Guidelines' objectives and effectiveness.

The full text of the initial assessment including a further explanation why the NCP decided the notification merited further consideration can be found on the NCP's website ([Initial Assessment of the notification of FNV vs Just Eat Takeaway.com | Publication | National Contact Point OECD Guidelines](#)).

4. The proceedings of the NCP

After receipt of the submission, the NCP, in accordance with its procedure, held separate meetings with the parties involved.

The NCP drafted the Initial Assessment in which it found the issues raised merited further consideration, with that accepting the submission and offering its good offices. In line with the NCP procedure both parties were given the opportunity to comment on the draft Initial Assessment.

Subsequently, the NCP has offered its good offices to the parties. The NCP has asked both parties whether they are willing to engage in a mediation process with the aim of jointly addressing the issues raised. The NCP believed that both parties would bring valuable perspectives to the dialogue that could contribute to the Guidelines' objectives and effectiveness, and that both parties would benefit from such a dialogue.

As the good offices were not accepted by Just Eat Takeaway.com it became clear that there was no scope for a dialogue under the auspices of the NCP, at which stage the NCP initiated the examination of the issues raised in order to draft the final statement. In this phase, the NCP contacted both parties and the Israeli NCP. It received information from both parties as well as from the Israeli NCP.

In its Initial Assessment, published on 21 September 2022, the Israeli NCP referred to a (final) decision on appeal by the National Labour Court, published on June 19, 2022, in which it was decided that the manner in which the telephone registration for Histadrut membership was done, did not meet the relevant requirements of Israeli law and that therefore the Scoober employees who 'joined' by telephone should not be considered as members of Histadrut. As a result, and taking into account the numerical data, the court found that Histadrut did not meet the requirement of one third of the workers as set by Israeli law for a union to be deemed a representative workers' organization that can enter negotiations with a company on behalf of that company's (in this case: Scoober) workers for collective bargaining purposes.

In its decision of June 19, 2022, the National Labour Court found that the acts for which Scoober had been ordered by a lower court to pay compensation did not amount to damage to Histadrut, as they did not indicate regular and systemic action to prevent workers from unionizing on the part of Scoober and its managers. With respect to one incident by a senior manager, the court did find that the incident justified Scoober's liability for the manager's violation of labour rights and upheld the lower court's decision that compensation should be paid to Histadrut to the amount of NIS 80,000.

The draft final statement of the Dutch NCP, prepared after the publication of the Israeli Initial Assessment, was sent to both parties as well as to the Israeli NCP for comments and factual corrections. With the publication of the final statement the NCP concludes the Specific Instance Procedure.

Below is a chronological overview of what the NCP has done since receiving the submission.

Date	Action that occurred
	Initial Assessment phase
February 22, 2021	Receipt of the specific instance
February 24, 2021	Confirmation of receipt sent to notifying party
February 24, 2021	Notification of the submission including the submission sent to enterprise
March 3, 2021, and on April 6, 2021	Meetings with Israeli NCP
March 12, 2021, and on April 8, 2021	Meetings between NCP and FNV
March 17, 2021	Meeting between NCP and Just Eat Takeaway.com
April 22, 2021	Written response by Just Eat Takeaway.com received by NCP
April 28, 2021	Additional information received from FNV, forwarded to Just Eat Takeaway.com on May 4, 2021
May 25, 2021	Response received from Just Eat Takeaway.com
June 28, 2021	Draft initial assessment (IA) shared with parties for comments and good offices offered
July 2021	Notifying parties and Israeli NCP responded to draft IA
July 22, 2021	NCP published the initial assessment on its website
	Further examination phase
August 17, 2021	Information received from FNV, referring to a decision by the Regional Labour Court
September 2, 2021	Reaction received from Just Eat Takeaway.com
November 5, 2021	Information received from FNV, referring to a court decision dated September 19, 2021
December 7, 2021	Reaction received from Just Eat Takeaway.com, stating that it was awaiting a final decision in court
February 17, 2022	Letter by the Chair of the NCP to the CEO of Just Eat Takeaway.com
March 16, 2022	Reply to the letter by the CEO of Just Eat Takeaway.com
April 13, 2022	Message by the NCP Secretariat, stating that it will conduct 'further examination'

June 22 and 30, 2022	Meetings with Israeli NCP
July 7, 2022	Message by Just Eat Takeaway.com, referring to a Labour Court decision of June 19, 2022
September 12, 2022	Meeting with NCP of Israel, FNV and Histadrut
September 21, 2022	Publication of its Initial Assessment by the Israeli NCP
February 14, 2023	Draft final statement shared with notifying party, enterprise and Israeli NCP for comments
Early March, 2023	NCP received responses from both parties and from the Israeli NCP
March 22, 2023	Publication of final statement and closure of specific instance procedure

The NCP regrets it has not been able to meet the indicative timelines due to, among others, the (length of the) parallel proceedings in Israel.

5. Parties' responses to the offer of good offices

In response to the NCP's offer of good offices, the notifying party accepted the offer, whereas the enterprise did not.

During the Initial assessment procedure, Just Eat Takeaway.com expressed concerns as mentioned in para 2. under the heading *Reaction by Just Eat Takeaway.com*. During the phase of preparation of the Final Statement, Just Eat Takeaway.com repeated these concerns and continued to reject the NCP's offer of good offices.

As the NCP's good offices were only accepted by the notifying party, the NCP, in accordance with its procedure, initiated the examination of the issues raised in preparation of a final statement.

6. Examinations and conclusions

For the purpose of the examination the NCP has studied the information provided by the parties and has gathered further information with respect to the issues raised in relation to Just Eat Takeaway.com.

Overall

Taking into account the examination by the NCP and the information provided by the parties, it is the assessment of the NCP that Just Eat Takeaway.com has acted in a manner that is not consistent with the OECD Guidelines. More specifically, Just Eat Takeaway.com should have engaged, directly and/or through its Israeli subsidiary, with local stakeholders, including Histadrut, regarding the alleged violations of labour and union rights as stipulated in the Employment Chapter that are at issue in this notification.

First, the parent entity of a corporate group is expected to carry out risk-based due diligence throughout its corporate group as well as its supply chain to identify, prevent and mitigate actual and

potential adverse impacts, and account for how these impacts are addressed. The expectation is that it takes action, where appropriate, towards group entities as well as business partners, with the aim to ensure alignment with the Guidelines by these actors. (See paragraphs 10-13 and commentaries 14-22, chapter General Policies).

Second, one of the characteristics of due diligence is that it should be informed by engagement with stakeholders, including international or local unions representing the interests of local workers. Just Eat Takeaway.com's arguments against engaging with Histadrut, such as its reference to this issue being a local issue not relevant for the parent company and to the existence of ongoing local legal proceedings, are not considered valid reasons to refuse such engagement. (See OECD Due Diligence Guidance for Responsible Business Conduct, p. 18, 48-50).

What is expected of companies under the OECD Guidelines may go beyond what is required of them under domestic law and regulations. Where these conflict with the Guidelines, enterprises are expected to seek ways to honour the Guidelines to the fullest extent possible (Concepts and Principles art. 1.2). Moreover, the local legal proceedings related to Histadrut's right to collective bargaining and not to its more general right as a trade union to engage with labour issues pertaining to employees of Scoober/10bis that they represent. Therefore, the outcome of the proceedings was not relevant for the question whether Histadrut is a legitimate stakeholder for Just Eat Takeaway.com to engage with as part of its due diligence.

According to Israeli law, there indeed exists a relatively high threshold in terms of the requirement that at least one third of a company's workforce should be organized in a trade union in order for that union to be recognized as a representative union *for collective bargaining purposes*. It should be noted in this respect that according to the Committee of Experts of the International Labour Organisation (ILO), commenting in 2017 on the case of Bangladesh, a threshold of one third of the workers is relatively high and could impair the development of free and voluntary collective bargaining (see Observation of the CEACR, adopted in 2017, published at the 107th session of the ILC in 2018, on the Right to Organise and Collective Bargaining Convention (C98) and Bangladesh ([wcms_617065.pdf \(ilo.org\)](#)). In that case, the Committee also stated that, where in a company there is no other union active which has the required minimum number of members to qualify as a collective bargaining agent (30% according to Bangladesh law at the time), unions should be able to bargain collectively, at least on behalf of their own members.

However, this threshold does not in any way prevent an enterprise from engaging with any relevant union for other purposes, like in the context of stakeholder engagement as expected under the OECD Guidelines. The question whether or not Histadrut had met the relatively high threshold of one third of the workers as set by Israeli law, should therefore not have been a determining factor for Just Eat Takeaway.com to consider engaging in meaningful dialogue with Histadrut, directly or through its Israeli subsidiaries, in particular given the indications that there may have been attempts by 10bis/Scoober to prevent workers from joining Histadrut.

Third, as part of their risk-based due diligence, Just Eat Takeaway.com would be expected to provide for or cooperate with legitimate remediation mechanisms. These include state-based or non-state-based mechanisms through which impacted stakeholders can raise grievances concerning adverse impacts and seek to have them addressed with the enterprise, such as NCP procedures or operational level grievance mechanisms. An outright refusal by the enterprise to acknowledge relevant domestic stakeholders and/or their grievances falls short of what is expected of it in this respect under the OECD Guidelines.

7. Recommendations

To support observance of the Guidelines going forward, the NCP makes the following recommendations:

The NCP recommends to Just Eat Takeaway.com to align its conduct with the Guidelines. More specifically, it recommends to Just Eat Takeaway.com that:

- Just Eat Takeaway.com ensures that 10bis and/or Scoober enter into meaningful social dialogue with Histadrut, in accordance with the expectations under the OECD Guidelines to engage with all relevant stakeholders, with the aim of preventing and mitigating adverse impacts in relation to freedom of association.
- Just Eat Takeaway.com, together with 10bis/Scoober, communicates to all workers of 10bis/Scoober that they can join a trade union of their own choosing and furthermore guarantees that joining a trade union will not have any negative consequences regarding their job or position.
- Just Eat Takeaway.com continuously reviews its policies and procedures, as expected under the OECD Guidelines, in particular as they relate to risk-based due diligence responsibilities throughout the corporate group, to ensure full alignment with the Guidelines, and communicates its policies throughout its global operations.
- Just Eat Takeaway.com to this end also enters into a dialogue with FNV regarding its due diligence responsibilities as the parent company.

8. Follow Up

As an important part of the NCP's non-judicial role, follow up on agreements and recommendations supports the effectiveness of the specific instance process. In particular, follow up can further the Guidelines' effectiveness by encouraging parties to remain engaged with the issues and companies to implement the recommendations and agreements adopted in accordance with the Guidelines.

The NCP will follow up the specific instance one year after the date of publication of the underlying final statement. The NCP will follow up with the parties in writing in order to evaluate the recommendations made. The outcomes of the follow-up proceedings will be shared via a publication on the NCP's website.

With this Final Statement, the NCP closes the specific instance procedure.

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](#)

Published by:
National Contact Point OECD Guidelines
For Multinational Enterprises

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