



## Initial Assessment

### FNV vs Just Eat Takeaway.com

Date: 22 July 2021

**Notification to the Netherlands National Contact Point 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).**

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 or compel parties to participate in a conciliation or mediation process.

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### 1. Executive summary

On February 22, 2021, the Dutch National Contact Point for the OECD Guidelines for Multinational Enterprises (NCP) 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 complainant asked the Dutch NCP to handle the complaint. As an identical complaint has been submitted by the Israeli trade union Histadrut to the NCP of Israel, the Dutch NCP coordinates the handling of the complaint with the NCP of Israel.

The issues raised in this submission and the supplemental submission of April 28, 2021 are in relation to the right 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).

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 to be recognised as the legitimate trade union to represent 10bis workers. Despite this, FNV alleges that 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' article 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.

### **Coordination**

Following coordination meetings in the period between March and June 2021, the Dutch and Israeli NCP agreed that the Dutch NCP would handle this specific instance, in close coordination with the Israeli NCP.

### **Brief overview of the timeline concerning Just Eat Takeaway.com**

The Dutch NCP had meetings with FNV on March 12, 2021 and on April 8, 2021. It also had a meeting with Just Eat Takeaway.com on March 17, 2021 and meetings with the Israeli NCP on March 3, 2021 and on April 6, 2021. The Dutch NCP shared the draft initial assessment with the parties on June 28, 2021 for comments within 14 days. The Initial Assessment was published on the NCP website on July 22, 2021.

### **Conclusion**

The Dutch NCP concludes that the notification concerning Just Eat Takeaway.com **merits further consideration** based on the following criteria:

- 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 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.

## **2. Summary of the notification**

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

On February 22, 2021, the Dutch NCP received a notification concerning the right to freedom of association of 10bis workers in Israel.

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 the activities by 10bis in Israel are inconsistent with the recommendations in the OECD Guidelines in Chapter V. (Employment and Industrial Relations). More specifically, the submitter alleges that the company, for example 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 their supplemental submission of April 28, 2021, the submitter further alleges that the company 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), 20. 'Meeting the expectation in paragraph A12 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.'*
- Referring once more to Chapter V (Employment and Industrial Relations), FNV states that 10bis breaches articles 1a and 1b as substantiated in the already filed notification. According to FNV, the Israeli trade union Histadrut has the number of members the Israeli law demands. Furthermore, according to FNV, 10bis does not want to engage into a meaningful, constructive dialogue as the Guidelines prescribe. FNV 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.
- *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.'*

The submitter requests from Just Eat Takeaway.com to acknowledge its responsibility to the situation created by its subsidiary and exercise its full power over 10bis Ltd. to resolve the issue, with a view to advancing the effective implementation of the OECD Guidelines.

#### *Reaction by Just Eat Takeaway.com*

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

- (i) the question whether Histadrut is the legit representative of Scoober workers 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 in front of Israeli courts and no final judgement has been passed by the Israeli court.

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 contribute to 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. According to Just Eat Takeaway.com, Scoober is exercising their right in line with Israeli law to question Histadrut's claim as the legal union representative of the workers and furthermore, that there is no breach of the OECD Guidelines.

Just Eat Takeaway.com argues that, based on the Commentary on the Implementation Procedures of the OECD Guidelines for Multinational Enterprises, para 26 (on parallel proceedings), the Dutch NCP should evaluate whether an offer of good offices by the NCP could make a positive contribution to the issues raised and 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. The Proceedings of the NCP to date**

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

The Dutch NCP had two meetings with the Israeli NCP to discuss this specific instance (SI) and the similar SI, submitted to the Israeli NCP. Both NCPs decided that the Dutch NCP would take a lead role in this SI, mainly because of the responsibility of the parent company Just Eat Takeaway.com, based in the Netherlands, for the activities of its subsidiaries, in this case 10bis, based in Israel.

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 (2019), p. 7).

#### 4. Initial Assessment by the NCP

**The NCP has decided to accept the submission. This decision had been taken following an assessment 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 Just Eat Takeaway.com?***

The notification by FNV was submitted to the Dutch NCP. A similar notification by Histadrut was submitted to the Israeli NCP. The outcome of the coordination process between the Dutch and the Israeli NCP is, that the Dutch NCP is the right entity to assess the alleged breach by Just Eat Takeaway.com, as the parent company, headquartered in the Netherlands, is also responsible for activities of its subsidiaries (in this case 10bis), and the issues raised concern the due diligence responsibilities of Just Eat Takeaway.com.

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

FNV, the submitter of the notification in the Netherlands, is the largest trade union in the Netherlands, the country where the headquarters of Just Eat Takeaway.com are based. FNV acts also on behalf of Histadrut, the submitter of the similar notification in Israel.

The General Federation of Labour in Israel (Histadrut) is the largest workers' organization in Israel. Since its foundation in 1920, Histadrut engages in assisting workers, including their unionization and signing collective bargaining agreements (CBAs) to benefit them. Resulting from a unionizing of 10bis Ltd. in October 2020, Histadrut is, according to FNV and Histadrut, the representative workers' organization of its workers. According to Just Eat Takeaway.com, the question whether the Histadrut's unionization attempt of Scoober Tel Aviv in October 2020 resulted in it being the legitimate representative of the Scoober workers is still subject of litigation in Israeli courts.

Both FNV and Histadrut are affiliated to the International Trade Union Confederation (ITUC).

Since this specific instance concerns the due diligence responsibilities under the OECD Guidelines of Just Eat Takeaway.com as the parent company, and since the trade unions in both the Netherlands and in Israel are acting on behalf of the broader interest of trade unions and workers' rights, the Dutch NCP is of the opinion that FNV has 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 in both the Netherlands and in Israel 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 in the sense that it refers to alleged non-observance of provisions of Chapter II (General Policies), Chapter IV (Human Rights) and Chapter V (Employment and Industrial Relations).

The notification and the additional information provided by the submitter contains extensive information relating to the rights 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.

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

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

The issues raised against Just Eat Takeaway.com concern the due diligence responsibilities of Just Eat Takeaway.com as a parent company for the actions of their subsidiaries, in this case 10bis and Scoober, in Israel concerning the right of workers to organize themselves in a trade union of their choosing.

Based on the Guidelines, II General Policies, para 13, due diligence is understood as the process through which enterprises can identify, prevent, mitigate and account for how they address their actual and potential adverse impacts as an integral part of business decision-making and risk management systems.

In the meeting with the NCP on 17 March 2021, Just Eat Takeaway.com further confirmed that they are a centrally managed company and the management at the headquarters is in close contact with the local management at their subsidiary in Israel.

Based on the above, the NCP is of the opinion that there is a link between Just Eat Takeaway.com as the parent company and the issues raised by FNV and (in Israel) by Histadrut.

***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 reviewing the submission.

The additional documentation provided by the submitter (FNV) on April 28, 2021 includes the English translation of two provisional court rulings by the Tel Aviv Regional Labour Court on November 11, 2020 and on December 13, 2020. Both cases were submitted by Histadrut against Scoober Ltd (connected to 10bis and part of Just Eat Takeaway.com).

In the court ruling of December 13, 2020, the majority of the judges found support for the fact that a senior manager in Scoober expressed interest in the activities of employees to prevent additional employees from joining Histadrut. Furthermore, the judges found that said senior manager encouraged the employee who opposes joining the organization, and who does not belong to his area at all, to continue to oppose such.

In light of the above, the Labour Court partially acceded Histadrut's application as follows:

- The judges instructed Scoober not to convene the Scoober Forum until a judgment has been rendered in the main proceedings.
- The judges instructed Scoober to refrain from involving its managers in preventing joining the union.
- Scoober is required to clarify its instructions to managers in order to ensure that no undue influence is exercised on the employees regarding the organizing, directly or indirectly.

However, the court rejected the claim that undue pressure was exercised on employees of Scoober Tel Aviv.

Until now, a final decision by the Israeli court on the contested issues has not been taken. This is one of the reasons for Just Eat Takeaway.com to state that they do not see a role for the NCP as long as the contested issues are still 'sub judice'.

Not only domestic legislation and past and ongoing procedures, but also other international standards could be relevant in reviewing the submission. The NCP recalls that the OECD Guidelines reflect the ILO conventions that are recognized as fundamental. In addition, the ILO MNE Declaration, revised in 2006, is relevant in this respect. The NCP further notes there is no legal impediment for Just Eat Takeaway.com and its subsidiary 10bis to uphold the OECD Guidelines and engage with Histadrut, notwithstanding 10bis' right to challenge Histadrut as the union representative of their workers.

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

As mentioned above, there have been Israeli (temporary) court rulings concerning the contested issues. A final court decision has not been taken yet. The Dutch NCP considers that parallel proceedings when it comes to workers' rights in 10bis and Scoober, part of Just Eat Takeaway.com, do not preclude the Dutch NCP from handling the issues raised in relation to the due diligence responsibilities of Just Eat Takeaway.com. The issue before the Dutch NCP is not whether Histadrut is the legal worker representative of 10bis' workers (the matter before the Israeli court), but whether Just Eat Takeaway.com has exercised its due diligence responsibilities under the OECD Guidelines. Furthermore, the Dutch NCP believes 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 Israeli NCP, which is handling the separate but related specific instance concerning 10bis.

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

The Dutch NCP finds that handling this notification could positively contribute to the resolution of the issues raised, in line with the Guidelines' objectives. An offer of good offices could facilitate an exchange between the complainant and Just Eat Takeaway.com on the expectations and scope of due diligence for a parent company and might further clarify the responsibilities of a parent company in this respect.

## 5. 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 conclusion reached by the NCP in this initial assessment is 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 the possible impact on the issues raised in the specific instance.

## 6. 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 party has accepted the NCP's good offices. The enterprise, Just Eat Takeaway.com, has not accepted the NCP's good offices as of yet. In accordance with the NCP procedure, further activities will be confidential in case the good offices will be accepted and a dialogue will be in process. The NCP will take the necessary steps to guarantee a careful process. If the good offices are not accepted or 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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