OECD GUIDELINES FOR MULTINATIONAL ENTERPRISES | NATIONAL CONTACT POINT FOR RESPONSIBLE BUSINESS CONDUCT THE NETHERLANDS

Final Statement

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

Date: 21 May 2025

Notification to the Dutch National Contact Point (NCP) for Responsible Business Conduct from the International Alliance of App-Based Transport Workers (IAATW) concerning an alleged violation of the OECD Guidelines for Multinational Enterprises on Responsible Business Conduct (hereinafter the Guidelines) by Uber Technologies, Inc. (Uber).

As noted in the Procedural Guidance to the Guidelines, following conclusion of a specific instance and after consultation with the parties involved, the NCP will make the results of the procedures publicly available. 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 recommendations to the enterprise and conclusions based on the further examination made by the NCP on the implementation of the Guidelines, and outlines the reasons why there has been no dialogue facilitated by the NCP with the objective of reaching an agreement between the parties.

As specific instances are not judicial proceedings and NCPs are not judicial bodies, NCPs cannot directly order compensation nor compel parties to participate in a conciliation or mediation process.

Note: During the procedure of this notification the Guidelines have been updated in June 2023. The NCP applied the updated Guidelines in its forward-looking recommendations.

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1. 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 and 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. IAATW requested the NCP to facilitate a resolution between the parties about: a framework agreement between Uber and IAATW committing Uber to carry out due diligence and a commitment from Uber to include the IAATW and its affiliates in its due diligence process.

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 with other NCPs

Coordination between NCPs of Costa Rica, Netherlands, the United Kingdom and the United States 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 could, and would take the lead in handling this specific instance because of a relevant 'nexus' to the Netherlands, as a Dutch Uber affiliate serves as a contracting entity for drivers in at least several countries mentioned in the submission. The Dutch NCP recognized the relevance of the U.S. NCP in this Specific instance, as Uber's Global Headquarters are based in the United States, and requested the U.S. NCP to take a strong supportive role, which the U.S. NCP accepted. Also, given that issues were raised regarding operations in their territory, the Dutch NCP requested the UK and Costa Rican NCPs to have an advisory role; both NCPs were informed and accepted an advisory role.

Initial Assessment

The Dutch NCP concluded that the notification concerning Uber merited further consideration based on the following criteria:

- the Dutch NCP is the right entity to assess the alleged violation.
- the notifying party is a concerned party with a legitimate interest in the issues raised in the notification.
- the issues raised 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 was based on an initial assessment of the information submitted and did not represent a conclusion as to whether the enterprise observed the Guidelines, nor as to whether the statements made by the parties are accurate. The NCP published the Initial Assessment on 15 June 2022.

Following the conclusion that this notification merited further consideration, the NCP offered its good offices to the parties to address the concerns raised by the notifying party and seek a solution through dialogue, in accordance with the Dutch NCP Specific Instance Procedure for handling notifications. Both parties accepted the NCP's good offices.

Good offices

The NCP decided to end its good offices in October 2023 when it observed that the parties couldn't reach an agreement on the Terms of Reference for the mediation. There has been no direct contact between the parties during the good offices phase. The NCP has used 'shuttle diplomacy' to bilaterally assess whether the parties could agree on the Terms of Reference for the mediation.

Further examination

Subsequently, the Dutch NCP conducted a further examination, to assess whether the enterprise concerned observed the OECD Guidelines on the grounds put forward in the notification. For the purpose of the examination, the NCP has studied the information provided by the parties and gathered additional information of both parties in two rounds. The further examination resulted in this final statement with conclusions and recommendations.

Summary of conclusions and recommendations

The NCP notes that a key underlying issue relevant to the issues raised in the submission concerns whether drivers who make use of the Uber app (hereinafter: Uber drivers) should be classified as independent contractors or as employees, which would grant them workers' rights such as minimum wage, holiday pay, and pensions.

The NCP's mandate does not include determining the employment status of Uber drivers. However, it does involve assessing whether the issues raised align with the OECD Guidelines. The Guidelines 2023 as well as the Commentary of the Guidelines 2011 make clear that Uber must follow due diligence recommendations under Chapter II, regardless of the employment classification of Uber drivers. During the further examination, the NCP focused on the due diligence responsibilities of Uber under the OECD Guidelines with regard to issues raised in the Specific Instance. These issues are deactivation, earnings and related issues as holiday pay, pension contributions, and stakeholder engagement by Uber.

Earnings and related issues

Based on the OECD Guidelines 2011 as well as the Guidelines 2023, Uber is expected to act in accordance with the due diligence recommendations regarding the issues covered by the Guidelines, because of its contractual relationship with drivers. Under the OECD Guidelines 2023, Chapter IV on Human Rights, commentary 44 that refers to the Universal Declaration of Human Rights, which includes the right to "just and favourable conditions of work", as well as to the ILO Declaration on Fundamental Principles and Rights at Work, Uber has a responsibility to incorporate earnings-related matters into its due diligence in order to evaluate whether actual or potential serious adverse impacts are being caused on drivers, and if so to address and prioritize those impacts.

An important question in the context of due diligence on earnings is what is needed to satisfy basic needs, in other words how can a living wage or a living income be determined.

The NCP notes that recent legislative and policy efforts worldwide are ranging from providing protection through reclassifying platform workers as employees to providing them protection similar to workers while confirming their status as self-employed workers.

In this respect, it is important to monitor how these developments will affect due diligence expectations under the OECD Guidelines for example in relation to how the notion of "living wage" will be applied to the practice of Uber drivers. The NCP concludes that there is a significant risk of a gap between actual earnings and living wages or a living wage equivalent for Uber drivers. Under the OECD Guidelines' 2023 due diligence recommendations, Uber is expected to exercise due diligence on this issue. The NCP therefore recommends that Uber exercises due diligence by selecting a reliable and recognised methodology, adapting it to the platform work context, setting a roadmap with clear milestones and timelines, in order to take steps to progressively achieve a living wage or living wage equivalent for all Uber drivers and reporting regularly on steps taken and progress made. In line with the expectations under the OECD Guidelines 2023, Uber should meaningfully engage with all relevant stakeholders, including drivers and their representatives, in the development and implementation of this roadmap. The above recommendation to develop a roadmap is needed for every country in which Uber operates, taking into account a methodology to calculate living wage levels in each country or region.

The NCP further recommends that Uber engages in constructive negotiations, with workers organisations or other representatives of Uber drivers, with a view to reaching agreements on terms and conditions of work.

Deactivation and blocking

The NCP recognizes that there are situations where deactivation of an account may be necessary and justified. On the other hand, it is clear that account deactivation may have serious adverse impacts on drivers' incomes and livelihood. The NCP is of the opinion that identified risks related to deactivation should be part of Uber's due diligence process.

The NCP concludes that there is room for improvement in the transparency and completeness of Uber's communications concerning deactivation and blocking policies and recommends that Uber improves its practices based on the results of its due diligence.

The NCP concludes that the use of AI in the process of deactivation by Uber constitutes a significant risk. The NCP recommends that Uber continues to conduct due diligence on adverse impacts related to any use of AI in the process of deactivation, including the possible risk of discrimination, and prioritizes such risks as necessary and appropriate. The NCP is of the opinion that a balanced and controlled use of AI is important, strengthened through robust risk management systems that ensure trustworthiness while minimizing bias and discrimination. The NCP recommends Uber to take the above into account in the improvement of their processes.

The NCP notes that it is part of Uber's due diligence responsibilities to organize access to remedy an/or cooperation with external parties in remediation in a way that meets the core criteria for effective grievance mechanisms. These are: legitimacy, accessibility, predictability, equitability, compatibility with the Guidelines and transparency. Whenever Uber collaborates with an external party in remediation it remains responsible for the quality of the system put in place.

Based on the information the NCP received, the NCP was not able to establish that the way Uber has organized access to remedy and/or cooperates with external parties in remediation fully complies with the Guidelines. The NCP therefore recommends that Uber evaluates whether its systems meet the core criteria for effective grievance mechanisms, and publicly reports on how these criteria are met.

Stakeholder engagement

According to the Guidelines 2023, meaningful stakeholder engagement is part of the due diligence process. It is characterised by two-way-communication, as explained in the OECD Due Diligence Guidance for Responsible Business Conduct (2018). The NCP observes that the parties disagree fundamentally on whether Uber's communication with drivers – not only individually but also as a group – can be seen as two-way communication. The NCP concludes, based on the information shared with the NCP by both parties, that Uber's engagement with Uber drivers does not seem to sufficiently provide for two-way communication and engagement as described by the OECD. The NCP stresses the importance of engagement with Uber drivers and their representatives in all countries where Uber operates.

The NCP recommends that Uber further develops and improves its engagement with a broad range of stakeholders, including proper two-way communication and engagement. This broad range of stakeholders should include independent unions at all relevant levels (local, national, regional and international) as well as workers and their representatives on the ground, to ensure meaningful stakeholder engagement.

With the publication of this final statement the NCP procedure is concluded. One year after the publication of this final statement, the NCP will follow up with an evaluation on the implementation of the recommendations.

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

The parties

The notifying party is the International Alliance of App-Based Transport Workers (IAATW). The IAATW is an international association of twenty-seven unions representing 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.

Uber Technologies Inc. (Uber) is a multinational enterprise headquartered in San Francisco, California, United States. Uber provides a technology platform to connect consumers who are seeking transport services with drivers who are able to provide those services.

The submission

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, reportedly based on numerous interviews conducted with drivers from these countries in the autumn and winter of 2020. However, the IAATW submitted that it believes these violations occur in most, if not all, of the 70 countries in which Uber operates.

The issues mentioned 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: violation of drivers' rights to a safe and healthy workplace; failure to carry out due diligence to investigate the adverse impacts of the COVID-19 pandemic on drivers' health and safety; failure to consult with drivers regarding safety precautions during the COVID-19 pandemic, and has not been transparent when dealing with drivers' associations; failure to develop a uniform, global policy that was responsive to its workers' concerns.
- drivers' earnings and hours: failure 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 received far fewer riders than they did prior to the pandemic, resulting in lower pay. 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. Consequently, drivers have had to work more hours under more dangerous conditions to support themselves. Uber declines to give insight into its business practices by distributing comprehensive data regarding its drivers' earnings or work hours.
- Uber's deactivation and blocking practices: failure to carry out due diligence to investigate the adverse impacts of the COVID-19 pandemic on driver deactivation and blocking; not being transparent with drivers about workplace discipline; not providing drivers with meaningful grievance processes; not publishing any standardized policies, handbooks, statistics, or information regarding how it deactivates or blocks drivers from using its mobile application.

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.

IAATW requested the NCP to facilitate a resolution between the parties about:

1. A framework agreement between Uber and IAATW committing Uber to carry out due diligence
2. A commitment from Uber to include the IAATW and its affiliates in its due diligence process

So firstly, it was important for IAATW that Uber carry out due diligence as expected under the OECD Guidelines and secondly, that IAATW and its affiliates can engage with/ or be included in the due diligence processes of Uber.

Provisions of the Guidelines 2011 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 enterprise's initial response

In its response to the issues raised in the Specific Instance, Uber stated 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. Uber explained that its global headquarters in San Francisco, California, sets the overarching principles for its global policies, guidelines, and initiatives.
It 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 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. Uber indicates that several of the proceedings involve affiliates, or individual members of affiliates, of the IAATW, and that there is a realistic chance of future litigation by IAATW affiliates. 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. It asserts that 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: flexibility and control over when and where they want to work, earning a decent wage, access to relevant benefits and protections, and meaningful representation. 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.
In response, Uber established a dedicated Global Steering Committee to coordinate its global response. Uber claims the steps it has taken to respond to the health and financial impacts of the pandemic on drivers and other stakeholders 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."

3. Initial assessment by the NCP

The NCP concluded the notification merited further consideration. The full text of the initial assessment including the reasons why the NCP decided it merited further consideration can be found here on the NCP's website.

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 agreeing to resolve the issues in a mutually satisfactory manner.

4. The proceedings of the NCP

The purpose of this section is to provide a concise overview of what the NCP has done since receiving the submission.

Date	**Action that occurred**
2021	**Initial Assessment phase**
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.
24 June	First online meeting with the notifying party.

25 June	First online meeting with representatives of the enterprise.
28 June	The notification was sent for information to the U.S. NCP.
6 August	First written response of Uber.
16 September	After some delays in the handling of the specific instance due to changes in the Board of IAATW between June and September, the IAATW requested the NCP to continue its procedure.
8 December	Uber answers the additional questions of the NCP concerning the role of its Dutch entities in relation to its Headquarters in the United States.
8 December	Coordination call between the NCPs of Costa Rica, the Netherlands, the United Kingdom and the United States.
2022	
17 January 2022	IAATW answers the additional questions of the NCP.
February	The Dutch NCP decided to further handle the specific instance as lead NCP and ask the U.S. NCP to have a strong supportive role and the NCPs of Costa Rica and the UK and to have an advisory role given that issues were raised regarding operations in their respective territories
8 March	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 Costa Rica the United Kingdom and the United States.
29 April	The draft initial assessment was sent to both parties for comments within 14 days.
2 June	Call NCP with Uber on preparation of the ToR
15 June	Publication of the initial assessment on the NCP's website. All documents provided in the submission were shared with Uber.
	Good offices phase
21 June	Call NCP with IAATW on preparation of the ToR
12 July	Draft ToR sent to parties by the NCP.
August – end of October	Exchanges between the NCP and the parties individually on the draft ToR, especially on goal and scope.
8 November	Second draft ToR sent to parties by the NCP.
2 December	Email of Uber to the NCP on publicity by IAATW.
19 December 2022	Call NCP with IAATW.

2023	
January 2023 until August 2023	Stagnation of the procedure due to issues raised by Uber on publicity by IAATW; exchanges between the NCP and the parties individually on the ToR and on conditions for continuing the procedure.
19 September	IAATW can't agree with the conditions Uber set to continue the process.
October-November	NCP informs IAATW and Uber of the end of the good offices.
7 November	Uber's response to the NCP announcing end of good offices.
8 November	IAATW provides a final note to the NCP.
2024	
February 2024	The NCP starts the preparation of the Final Statement.
9 April	Questions of the NCP to Uber.
13 May	Response of Uber to the NCP.
15 May	Questions of the NCP to IAATW.
10 July	Call NCP with IAATW; response of IAATW to the NCP in writing.
26 August	Additional questions of the NCP to Uber and IAATW.
10 September	Response of IAATW.
17 October	Response of Uber.
9 December	Draft of the Final Statement on the agenda of the monthly meeting of the NCP.
2025	
13 January	Draft Final Statement shared with the NCPs of Costa Rica, the United Kingdom and the United States for advice.
29 January	Draft Final Statement shared with the parties for comments
21 May	Publication of the Final Statement

Besides the account given above, the NCP has also corresponded with both parties regularly throughout the procedure in order to give updates on the procedure and explanations for delays.

The NCP has not met the indicative timelines for various reasons, in part due to the parties (long response time, availability for calls), in part due to the NCP (high workload created by an increasing number of new notifications and the complexity of specific instances).

5. The response of the Parties to the offer of good offices

Following the conclusion that the notification merited further consideration, 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, facilitated by the NCP, with the aim of agreeing how the issues raised can be successfully addressed. In response to the NCP's offer of good offices, the notifying party accepted the offer, the enterprise also accepted the good offices and agreed to start by assessing together with the NCP on what issues and under which conditions a productive dialogue facilitated by the NCP could be realized. So, in accordance with its procedure, the NCP facilitated the parties in preparing the Terms of Reference (ToR) for the mediation.

The good offices ended because the parties could not reach an agreement on the ToR for the mediation. Therefore, no mediation took place and no agreement was reached on the matters addressed in the specific instance.

6. Findings and conclusion of the NCP on the procedure

The NCP notes that the parties have not been able to reach an agreement on the ToR, despite a number of efforts made on both sides. The NCP observes that from the start of the procedure there was a lack of trust between the parties. Unfortunately, the level of trust between the parties has not improved during the procedure, mainly due to each party's lack of confidence in the other party's good faith intentions. Other reasons included the challenge of entering into mediation amidst the many (ongoing) court cases in different countries all over the world, disagreement on the scope of the mediation, and disagreement on the level of publicity and advocacy during mediation.

7. General findings

For the purpose of the further examination, the NCP has studied the information provided by the parties during the procedure and it has gathered additional information of both parties in two rounds on the issues covered in this Final Statement.

7.1 The timeline and the applicable version of the Guidelines

The NCP notes that when the submission was filed in 2021, the Guidelines 2011 applied. Since June 2023, the updated Guidelines 2023 apply. The OECD has given guidance to NCPs on how to work with these different versions of the Guidelines when drafting a Final Statement and making recommendations or determinations on the issues raised.

When the NCP decides to make a determination on whether the company complied with the Guidelines, the rule for NCPs is that companies' observance can only be assessed against the version of the Guidelines that was in force at the time when the conduct of the company took place.

The company must have had the possibility to know these guidelines at the time. For this Specific instance this means that the Guidelines 2011 apply.

Recommendations of the NCP in a Final Statement have a forward looking character, they recommend the company to improve or change their policies or practices in relation to Responsible Business Conduct (RBC) in their international business activities. When making recommendations, the NCP applies the latest edition of the Guidelines, in this case the updated Guidelines of June 2023.

The NCP notes that there are updated provisions in the 2023 Guidelines that are relevant for the issues in this specific instance.

7.2 The focus of the Final Statement

In its Initial Assessment, the NCP stated that dealing with this notification 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**.**

The submission was filed approximately four years ago and part of it focused on the serious consequences the COVID-19 period had for Uber drivers. The NCP, in its further examination, has chosen to have a forward-looking approach and assess the due diligence expectations of Uber regarding to the issues raised in the Specific Instance—particularly deactivation, earnings and related issues as holiday pay, pension contributions, and stakeholder engagement. For the purpose of the examination, the NCP has studied the information provided by the parties and gathered additional information from both parties in two rounds.

7.3 Underlying issue and mandate of the NCP

The NCP notes that a key issue relevant to the points raised in the submission of IAATW relates to the question whether drivers that have contractual relations with Uber should be classified as independent contractors or employees, with the associated workers' rights like minimum wages, holiday pay and pension.

As the NCP noted in its Initial Assessment, local labour laws and case law related to platform companies are not yet well established throughout the world, as existing regulation has mainly been developed with older business and employment models in mind, leading to questions about the applicability and suitability of existing regulations for platform companies. The same goes for ongoing and concluded parallel proceedings concerning the relationships between Uber Group companies and drivers and issues flowing from those relationships. In many of the court cases, the claimants are drivers and their representatives 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.

While it is not within the mandate of the NCP to decide whether Uber drivers should be classified as employees or as independent contractors, it is within the NCP's mandate to assess whether Uber complied with the OECD Guidelines 2011 in relation to the issues raised in the Specific Instance.
In making forward-looking recommendations the NCP exercises its mandate with reference to the current version of the OECD Guidelines as revised in 2023. For that assessment it is important to know if and how the Guidelines apply to the platform economy and platform work.

7.4 The Guidelines on due diligence and new forms of work/platform work

The Guidelines 2011 Chapter V refer to the rights of workers "employed by the multinational enterprise". In the commentary para 50 it is stated, however:
"It is recognised that *in the absence of an employment relationship*, enterprises are nevertheless expected to act in accordance with the risk-based due diligence and supply chain recommendations in para A.10 to A.13 of Chapter II on General Policies."
The first sentences of the updated OECD Guidelines 2023 Chapter V mention the responsibility of enterprises to act in line with the due diligence expectations described in Chapter II and Chapter IV. The NCP notes that in the Guidelines 2023 the words "employed by a multinational enterprise" have been replaced by "workers" consistently throughout Chapter V and understands this to mean that the notion of worker needs to be understood as a broader concept in the Guidelines. This is strengthened by the explicit reference in the commentary para 54 to new forms of work in the digital world: "It is recognised that in the absence of an employment relationship, enterprises are nevertheless expected to act in accordance with the risk-based due diligence and supply chain recommendations in para A.11 to A.14 of Chapter II on General Policies. *This is especially relevant in sectors where informality, short-term working arrangements, decent work deficits and digital transformation may be more common*."

The Guidelines 2011, as well as the Guidelines 2023,make clear that in both situations Uber is expected to act in accordance with due diligence recommendations of Chapter II regarding the issues covered by the Guidelines. This means that Uber should identify actual and potential adverse impacts on the drivers with which it has a contractual relationship, regardless of the precise legal status of that relationship, regarding matters covered by the Guidelines, by conducting due diligence that is risk-based, commensurate to the severity and likelihood of the adverse impact and appropriate and proportionate to its context. Uber should then prioritize adverse impacts based on the results of its due diligence, and seek to avoid causing or contributing to these adverse impacts.

7.5 Developments in the field of platform work

Since the case was filed, there have been a number of political and regulatory developments relating to platform work and platform companies in several countries and international institutions that are relevant to this case. Some of these developments are described below. The NCP notes that these developments occurred after the Specific Instance was filed. The NCP has taken these developments into account in order to provide context as to current recommendations regarding due diligence.

OECD

Living wages in practice | OECD **Policy paper, April 2023**

This OECD paper highlights that at a time of rising cost of living, wide wage inequalities and widespread in-work poverty, the demand for a living wage has heightened. The paper introduces and contextualizes the concept of a living wage.

It also highlights the key measurement assumptions and criteria that underlie the calculations of a living wage and calls for greater clarity and consistency in existing methodologies.

The paper signals that implementing a living wage in the workplace requires a number of operational decisions by businesses, as well as a careful assessment of the costs and benefits that the implementation of a living wage will entail.

Using AI in the Workplace: Opportunities, Risks, and Policy Responses | OECD **Working paper, March 2024**

This paper highlights that AI is a fast-moving technology and that while policy makers should be lauded for the many initiatives they have taken so far, it is clear that many gaps remain. In order to assist policy makers in the daunting task of regulating the risks of AI, there is a need to keep monitoring those risks as they emerge and play out in the labour market.

The paper signals potential gaps and risks due to a lack of transparency, lack of explainability, lack of accountability and challenges to social dialogue.

AI systems may increase inequality between workers by exposure to risk of bias and discrimination. (p. 5);

"The ability of workers to exercise specific rights, detect risks, and/or effectively question outcomes, hinges on their awareness of their interactions with AI systems and how that system reaches its outcomes. However, AI use can be difficult to detect without explicit disclosure. . . . Even if individuals are aware of their interactions with AI, gaining insight into its decision making process can be difficult, for instance due to developers' reluctance to disclose information, or to the complexity of the system." (p. 11)

"AI systems, particularly those using complex technologies like deep neural networks, yield outcomes that can be difficult or even impossible to explain. The lack of explainability of AI systems can undermine the trust and confidence that people place in AI systems and the decisions that are informed by them. It also makes it difficult for individuals to provide informed consent to the use of such systems, or to identify and seek redress for adverse effects caused by AI systems in the workplace."

On the other hand, the paper acknowledges that there is potential for "significant benefits" and opportunities associated with AI, and that "[t]rustworthy AI can help identify and reduce human discrimination and bias in the workplace by supporting decisions with quantitative evidence." (pp. 3, 9)

European Union (EU)

EU Directive on Platform Work

In October 2024, the EU adopted a Directive on Platform Work, aiming at clarifying the employment status of platform workers and correcting false self-employment. To this end, the Directive introduces a presumption of an employment relationship (as opposed to self-employment) that is triggered when facts indicating control and direction by the platform are present, and requires EU-countries to establish a rebuttable legal presumption of employment at national level, aiming to correct the imbalance of power between the platform and the person performing platform work. The burden of proof will lie with the platform, i.e. it will be up to them to prove that the contractual relationship is not an employment relationship.

The Directive also introduces rules on algorithmic management and the use of artificial intelligence in the workplace for enterprises operating in the EU. The Directive must be implemented by EU Member States by December 2026.

In the Directive, algorithmic management is a key issue, and the Directive will provide individuals with certain rights to information on the logic of algorithms where automated decision-making is used.

International Labour Organization (ILO)

ILO - Meeting of experts on wage policies, including living wages

In February 2024, the ILO organized a tripartite expert meeting to discuss wage policies including living wages. In this meeting, agreement was reached on the issue of living wages.

The experts agreed that "the ILO denotes that the concept of a living wage is: the wage level that is necessary to afford a decent standard of living for workers and their families, taking into account the country's circumstances and calculated for the work performed during the normal hours of work". This agreement was endorsed by the Governing Body of the ILO in March 2024 ILO reaches agreement on the issue of living wages | International Labour Organization; Decision concerning the report of the Meeting of Experts on wage policies, including living wages | International Labour Organization (ilo.org)**)**.

ILO – discussion on standard-setting regarding platform work

In 2025 and 2026, the International Labour Conference will discuss a draft Standard (Convention and/or Recommendation) on decent work in the platform economy. See link to the preparatory report: Realizing decent work in the platform economy | International Labour Organization).

8. Findings, conclusions and recommendations on the issues raised

8.1 Earnings and related issues

Parties' positions and findings

Uber indicates that it calculates driver fares based on factors such as estimated time and distance to pick up, current and forecasted demand, and location. Drivers' earnings are also influenced by where and when they work, as well as their mode of transportation. Uber pays drivers per task, offering flexibility in terms of when and where they work. The company states it is committed to collaborating with labor advocates and governments to establish industry-wide minimum earnings standards.

In the UK, Uber drivers are classified as "workers," ensuring they earn at least the National Living Wage for active work time, receive holiday pay, and are enrolled in a pension plan. However, IAATW argues that Uber's definition of "engaged time" (time spent driving between pick-up and drop-off) results in lower-than-expected wages, excluding costs like vehicle maintenance.

IAATW highlights that Uber's calculation of minimum wage only includes the time spent driving passengers, excluding time spent waiting or driving to pick up a passenger. According to IAATW, this results in drivers earning less than the minimum wage, and their gross earnings do not cover vehicle operation costs. The same issue applies to pension contributions, which are based on active driving time and thus are lower than if the driver's total time on the road were considered.

There are recent rulings in the UK with different judgements on the question if drivers should be paid for all time spent working, including waiting time, as opposed to just active driving. This is part of the broader issue of how "active time" is defined. In the United States, several court settlements

have addressed drivers' wages, sick leave, and unemployment benefits, with pending legislation in some states aiming to establish a minimum pay standard for drivers.

IAATW mentions a positive example of New York City's 2018 legislation that set a per-mile-per-minute payment model, including waiting time and a "utilization rate" (active time). This model, created in collaboration with a drivers' union, ensures drivers receive a fair minimum wage, and regulators have access to detailed data to monitor company practices.

The OECD Guidelines on earnings and related issues.

As explained earlier in this Final Statement, under the Guidelines 2011 as well as the Guidelines 2023, enterprises having a *contractual* relationship with those working for them, like Uber with its drivers, are expected to conduct due diligence regarding the issues covered by the Guidelines.

Earnings, pensions, holiday pay and related working conditions are covered by the OECD Guidelines 2023, Chapter IV on Human Rights, commentary 44 that refers to the Universal Declaration of Human Rights, which includes the right to “just and favourable conditions of work”, as well as to the ILO Declaration on Fundamental Principles and Rights at Work.

Based on the above, Uber has a responsibility to incorporate earnings-related matters into its due diligence in order to evaluate whether actual or potential serious adverse impacts are being caused on drivers, and if so to address and prioritize those impacts.

An important question in the context of due diligence on earnings is what is needed to satisfy basic needs, in other words how can a living wage or a living income be determined. The April 2023 OECD policy paper Living wages in practice shows there are many different factors that need to be taken into account to define what is a “living wage”. A wide range of approaches to calculating living wage estimates exist. The OECD paper, on page 5, summarizes recommendations for enterprises when implementing a living wage.

They should, among others:

- Publicize their commitment towards paying a living wage externally, by indicating on their website and/or in their reporting tools the selected living wage benchmark and underlying criteria, as well as the categories of workers covered by the commitment, e.g. the company’s own employees, core contractors, workers in the first-tier supply chain, etc.
- Hold themselves accountable for closing the gap between actual wages and living wages, by selecting a reliable and recognised methodology, setting a roadmap with clear milestones and timelines, and reporting regularly on how far they are on the journey to a living wage.

In October 2024, the OECD published a Handbook on due diligence for enabling living incomes and living wages for specific sectors, by that developing its concepts and guidance regarding living wages and living income. The Handbook says: “Living income and living wage gaps are used widely as an indicator of the extent of the risk for workers that their remuneration falls below the amount that is needed by them and their families for a decent standard of living, per the ILO living wage concept. The existence of a gap indicates a higher risk for wage and income-related harms, poverty and depriving workers of their economic and social rights, as well as other interlinked risks.

It also presents for companies a crucial metric to measure and monitor progress as part of their living income and living wage strategies.” In view of the recent developments in the ILO it can be expected that further guidance will be developed.

Conclusions and recommendations

The NCP notes that there are multiple recent legislative and policy efforts worldwide ranging from providing protection through reclassifying platform workers as employees to providing them protection similar to workers while confirming their status as self-employed workers.

In this respect, it is important to monitor how these developments will affect the due diligence expectations under the OECD Guidelines, for example in relation to how the notion of "living wage" will be applied to the practice of Uber drivers. The NCP concludes that there is a significant risk of a gap between actual earnings and living wages or a living wage equivalent for Uber drivers. Under the OECD Guidelines' 2023 due diligence recommendations, Uber is expected to exercise due diligence on this issue.

The NCP therefore recommends that Uber exercises due diligence by selecting a reliable and recognised methodology, adapting it to the platform work context, setting a roadmap with clear milestones and timelines in order to take steps to progressively achieve a living wage or living wage equivalent for all Uber drivers and reporting regularly on steps taken and progress made. In line with the expectations under the OECD Guidelines 2023, Uber should meaningfully engage with all relevant stakeholders including its drivers and their representatives in the development and implementation of this roadmap. The above recommendation to develop a roadmap should be developed for every country in which Uber operates, taking into account a methodology to calculate living wage levels in each country and/or region.

The NCP further recommends that Uber engages in constructive negotiations, ~~either individually or~~ with workers organisations or other representatives of its drivers, with a view to reaching agreements on terms and conditions of work.

8.2 Deactivation and blocking

Parties' positions and findings

Uber states that it publishes information about behaviors that may lead to deactivation on its website. Drivers are generally notified if their account is at risk and given the chance to correct issues. However, in cases of serious safety risks (e.g., violence or sexual assault), Uber deactivates accounts immediately without warning in order to protect the safety of users.

Uber states that it provides drivers with information about the actions that can lead to deactivations. For non-severe violations, Uber sends drivers educational materials and alerts to help them correct issues before facing deactivation. Uber states to use a hybrid approach of AI and human review when making deactivation decisions. Human agents review all the relevant personal and non-personal data, and where appropriate contact the driver to hear their position and obtain relevant information or evidence. An agent may also trigger an escalation process that initiates a secondary review. Reports made against drivers undergo human review by trained support agents, who assess multiple factors, including the driver history on the platform, whether the reporting party has a pattern of false claims, and additional verification signals.

If a driver is deactivated, they receive an in-app notice explaining why, along with a record of previous alerts. Uber's website also offers a Review Center, allowing drivers to request a review of a deactivation decision and provide evidence.

Through the Review Center, drivers are able to provide Uber with their perspective and share any relevant information or media (images, documents, videos, audio recordings, dashcam footage, etc.) that will help Uber's agents determine if the deactivation should be upheld or overturned. Uber claims most cases are resolved within 72 hours.

However, IAATW alleges that many drivers are deactivated without clear reasons or the ability to appeal, especially citing alleged algorithmic deactivations and alleged racial bias. They also argue that Uber's Community Guidelines are too vague, and that the company lacks transparent and meaningful grievance procedures.

IAATW criticizes Uber's deactivation process, stating that drivers are given limited opportunities to advocate for themselves. They also question the independence of union-run deactivation centers, which are funded by Uber. Furthermore, IAATW points out legislative efforts in the United States, particularly in New York, Chicago, Minnesota, and Colorado, aimed at protecting drivers from unfair deactivation and ensuring due process, as well as establishing minimum pay standards.

The OECD Guidelines and due diligence regarding deactivation and blocking of driver accounts

Under the OECD Guidelines enterprises are expected to exercise due diligence with respect to their own operations and throughout their supply chains. Uber drivers have a contractual relationship with Uber and are as such part of Uber's business relationships. Therefore, in the view of the NCP, regardless of the classification of drivers as employees or as independent contractors, Uber has a number of due diligence obligations towards its drivers under the Guidelines.

In the view of the NCP, of the six steps of due diligence, notably step 2, 3, 5 and 6 (OECD Guidelines 2023, Ch II, Commentary para 15) are relevant for the issue of account deactivation.

1. Embed responsible business conduct into policies and management systems;
2. Identify and assess actual and potential adverse impacts associated with the enterprise's operations, products or services;
3. Cease, prevent and mitigate adverse impacts;
4. Track implementation and results;
5. Communicate how impacts are addressed;
6. Provide for or cooperate in remediation when appropriate.

The OECD Due Diligence Guidance outlines how enterprises can collaborate with others, such as industry partners, trade unions or workers' organisations, or multistakeholder initiatives, to carry out due diligence. For instance, companies may work with trade unions to involve workers in developing and implementing due diligence processes, standards on workers' rights, and grievance procedures. However, the Guidance emphasizes that the company remains responsible for ensuring that due diligence is effectively carried out, as highlighted in Section I and Box 2 of the Guidance.

The Guidelines 2011, Chapter IV, commentary 46 recommend that when enterprises identify they have caused or contributed to adverse impacts, they should provide or cooperate in remediation through legitimate processes. Operational-level grievance mechanisms should meet the core criteria of legitimacy, accessibility, predictability, equitability, compatibility with the Guidelines, transparency and be based on dialogue and engagement with a view to seeking agreed solutions. They can be run by the enterprise alone or with other stakeholders and can be a source of continuous learning. However, they should not be used to undermine the role of trade unions in labour-related disputes or prevent access to judicial or non-judicial grievance mechanisms. In the Guidelines 2023, Chapter IV, commentary 51 the criterium "rights-compatibility" has been added.

Conclusions and recommendations

The NCP recognizes that there are situations where deactivation of an account may be necessary and justified, for example in case of criminal offences, harassment or fraud, which can include adverse impacts on customers. On the other hand, it is clear that account deactivation may have serious adverse impacts on a drivers' income and livelihood. Therefore the NCP is of the opinion that Uber, as part of its due diligence under the Guidelines, should address the identified risks related to deactivation, prioritize these risks because of the seriousness of the adverse impacts and the likelihood of these risks to occur, and seek to prevent, mitigate and remediate these risks and regularly repeat the due diligence process of identifying, preventing and mitigating these risks.

As part of its due diligence Uber should communicate clearly what it expects from drivers in terms of behaviour, what are reasons for deactivation, and other rules for staying on the Platform. These may vary per country, for example when it comes to formal documents needed. Uber's policies on deactivation and blocking should be transparent for drivers, and drivers should have access to a legitimate grievance mechanism where they can appeal against the deactivation decision. These policies should communicate about Uber's expectations and this information should be easily accessible for Uber drivers.

The NCP remarks that at this moment, Uber's deactivation policies are publicly available, including in its Community Guidelines and elsewhere on its website (e.g., the deactivation page for South Africa), with various reasons for deactivation listed. As far as the NCP can assess, not all detailed information for each country that a driver needs to know seems to be available on Uber's website. For example, information on required documents for some cities where Uber operates seems to be missing. The NCP also remarks that the Community Guidelines mention "unforeseen events" as a possible reason for deactivation, which is a very vague term that allows for a very broad interpretation by Uber.

The NCP therefore concludes that there is room for improvement in the transparency and completeness of Uber's communications concerning deactivation and blocking policies and recommends that Uber improves its practices based on the results of its due diligence.

The NCP concludes that the use of AI in the process of deactivation by Uber constitutes a significant risk, as highlighted in the OECD Working Paper on using AI in the workplace. While Uber indicated to have conducted due diligence on its AI Governance program, the results of which are available in the report by an independent third party assessor, the NCP recommends that Uber continues to conduct due diligence on adverse impacts related to any use of AI in the process of deactivation, including the possible risk of discrimination, and prioritize such risks as necessary and appropriate. Any lack of transparency or justification of decisions may undermine trust and confidence of drivers in the system.

The NCP also remarks that the process of deactivation, having a potential serious impact on drivers, includes some automated processes, though Uber submits that its deactivation process also includes human review.

The NCP is of the opinion that a balanced and controlled use of AI is important, strengthened through robust risk management systems that ensure trustworthiness while minimizing bias and discrimination. This can enhance trust and confidence of drivers in the system and diminish the risk of unjust deactivation and bias. The NCP therefore recommends Uber to take the above into account in the improvement of their processes. The review and improvement of deactivation processes should be conducted with close involvement of those potentially adversely impacted: the drivers and representatives of their own choice.

Regarding the provision of access to or cooperation in remediation, the NCP notes that Uber has an in-app system, called a Review Center, in place for review of a deactivation decision and Uber states that the decision is communicated within 7 business days.

In that respect, the NCP underlines that whenever Uber collaborates with an external party, a union or a drivers' organization for the reviews, Uber remains responsible for the quality of this review center as it is part of its due diligence responsibilities. These review centers should be legitimate, accessible, predictable, equitable, compatible with the Guidelines and transparent. These criteria are further elaborated in the UNGP's. According to the Principle 31a, a legitimate grievance mechanism is one that enables trust from stakeholder groups for whose use they are intended; and is accountable for the fair conduct of grievance processes. Therefore, they should seek the views of relevant stakeholders about the initiative and assess regularly whether the initiative and its processes are credible.

Based on the information the NCP received, the NCP was not able to establish that the way Uber has organized access to remedy and/or cooperates with external parties in remediation fully complies with the Guidelines. Therefore the NCP recommends that Uber evaluate whether its systems meet the core criteria for effective grievance mechanisms, and publicly reports on how these criteria are met.

The NCP remarks that, in case of any cooperation for grievances with a union or drivers' organization for the reviews, it is important that this party can exercise its different roles, as a union exercising workers' rights and as review center for drivers, independently and impartially, free from interference by Uber, and with an independent governance structure involving relevant stakeholders. It is also important that Uber assures itself that relevant stakeholders have confidence in the procedures.

8.3 Stakeholder engagement

Parties' positions and findings

According to the EU White paper of 2018, 'A Better deal' (p. 5), Uber has stated that "Platform workers should be able to exercise their right to make their voices heard, and should know that their feedback will be acted upon."

Uber indicates that it engages with drivers *individually* by asking them for feedback in order to understand their perspectives, to improve their experience and to address areas of concern and support needs. Uber indicates that in all countries where it operates, it carries out meetings, roundtable discussions and surveys with drivers active on the Uber app. Uber provided examples of two-way communication, such as union agreements, meetings with driver associations and unions, roundtable discussions, and other feedback mechanisms such as the Tune Up website for the United States, on which drivers can share their thoughts and feedback. Drivers can select crew members who represent them in discussions with Uber products and operational teams. The process of selection and pay for these crew members is publicly available. Uber indicates it informs drivers of actions taken as a result of the feedback with regular communications, drivers' newsletters and the Tune up website.

Uber states that its *engagement with unions* varies from country to country. In some countries there is formal engagement with unions, in other countries there is an informal engagement or there is no engagement (yet). The topics covered also vary from country to country.

At the global level Uber has signed a Memorandum of Understanding with the International Transport Federation (ITF). The agreement was renewed in 2024. A Charter on Courier safety and Health of April 2024, with 12 principles was developed in partnership with ITF. Uber and ITF Launch Global Safety Charter for Couriers | Uber Newsroom. Uber has agreements with unions in France, the U.K., Canada, Australia, Belgium, and the U.S. (New York).

IAATW states that Uber does offer to listen to drivers individually and asks for feedback, but in the end decides for themselves what actions to take or how to proceed, informing drivers of the outcomes by newsletters.

They state that by making use of focus groups and DAC (Advisory Committees) they bypass trade unions as the collective voice and representative of drivers, avoiding negotiation with them on a more equal footing.

The OECD Guidelines on stakeholder engagement

According to the OECD Guidelines 2011, Chapter II, art 14, enterprises are expected to 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. Commentary 25 specifies that effective stakeholder engagement is characterised by two-way communication.

It involves the timely sharing of the relevant information needed for stakeholders to make informed decisions in a format that they can understand and access. The OECD Due Diligence Guidance (2018) mentions engagement with stakeholders as a characteristic of due diligence and explains what is "meaningful stakeholder engagement" and "two-way engagement". This engagement means that the enterprise and stakeholders freely express opinions, share perspectives and listen to alternative viewpoints to reach mutual understanding. It also means that relevant stakeholders have the opportunity to help design and carry out engagement activities themselves. According to the 2023 Guidelines, meaningful engagement with relevant stakeholders is important throughout the due diligence process. In particular, when the enterprise may cause or contribute to, or has caused or contributed to an adverse impact, engagement with impacted or potentially impacted stakeholders and rightsholders will be important. For example, depending on the nature of the adverse impact being addressed, this could include participating in and sharing results of on-site assessments, developing risk mitigation measures, ongoing monitoring and designing of grievance mechanisms." The above also applies to a platform company like Uber in its engagement with drivers.

Conclusions and recommendations

The NCP finds that Ubers' engagement with individual drivers focuses on soliciting their feedback, whereby drivers can "share their thoughts". Uber informs all drivers in general of actions taken following the given feedback. It has not been made clear to the NCP what happens after the feedback is provided, what the procedure for processing the feedback is, whether drivers have access to the procedure and what timelines are followed. The NCP observes that the parties disagree fundamentally on whether Uber's communications with drivers individually, but also as a group, can be seen as two-way communication. The NCP concludes based on the information shared with the NCP by both parties, that Uber's engagement with its drivers does not seem to sufficiently provide for two-way communication and engagement as described by the OECD. Uber engages with unions and drivers' organizations in several countries, but not in all countries where it operates. The NCP stresses the importance of engagement with drivers and their representatives in all countries where Uber operates.

The NCP recommends that Uber further develops and improves its engagement with a broad range of stakeholders, including proper two-way communication and engagement. This broad range of stakeholders should include independent unions at all relevant levels (local, national, regional and international) as well as workers and their representatives on the ground, to ensure meaningful stakeholder engagement.

9. 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 implementation of 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

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Annex

The text of the provisions of the OECD Guidelines 2011 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 organizations of their own choosing.

b) Respect the right of workers employed by the multinational enterprise to have trade unions and representative organizations 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 organizations, 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 Organization (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.