



Belgian National Contact Point  
for the OECD Guidelines  
for Multinational Enterprises.

## Statement from the Belgian National Contact Point – 24 June 2019

### Initial assessment of the specific instance IUF / AB-InBev

#### The Belgian NCP offers its good offices

*The OECD Guidelines for Multinational Enterprises are recommendations by governments to their companies, regardless of where they operate.*

*These recommendations focus on several areas such as disclosure, human rights, employment and industrial relations, the environment, the fight against corruption, consumer interests, science and technology, competition and taxation. In addition, the concepts of responsible supply chains and due diligence have been introduced.*

*The various National Contact Points are responsible for monitoring the implementation of these Guidelines.*

*In Belgium, the National Contact Point (NCP) is chaired by a representative of the Federal Public Service Economy. It has a tripartite structure composed of social partners, representatives from the various federal public services and regional governments.*

*The NCP's role is, particularly, to contribute to the resolution of the issues raised in specific instances. The NCP will facilitate access to consensual and non-adversarial means such as mediation or conciliation.*

The Belgian National Contact Point (NCP) for the implementation of the OECD Guidelines for multinational enterprises received a specific instance, by the *International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Worker's Associations* (IUF), declaring to represent the local union in India (HBLMU) targeting the activities of the enterprises *AB InBev* and its beer manufacturing facility in Sonapat (India).

This initial assessment has been carried out in accordance with the rules of procedures of the Belgian national Contact Point.<sup>1</sup>

This initial assessment of the Belgian NCP does not imply *AB InBev* has transgressed the OECD Guidelines or not.

#### 1. Presentation of facts and chronological events according to the notifiers

The following items are taken from the issues raised in the specific instance introduced by the Trade Union (IUF). These items have not been verified by the NCP and do not commit the NCP.

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<sup>1</sup> See Appendix 2 of the Rules of Procedure for the Belgian NCP : <https://economie.fgov.be/en/oeso>

*“The IUF wishes to draw {...} attention to fundamental and ongoing breaches of the Guidelines by AB InBev in its beer manufacturing facility in Sonapat, India since 2016. AB InBev acquired this facility following the acquisition of SABMiller in October 2016. Management has breached the Guidelines through systematic violations of the employment and industrial relations paragraphs enumerated in Chapter V. AB InBev has been continually informed of these breaches by the IUF, in formal communications, but has failed to effectively intervene with local AB InBev India management in Sonapat to facilitate remediation. This failure has allowed local management to continue its policy of systematic rights violations.”*

In addition, UIF declares that attempts of entering into a dialogue with the company management seemed to have failed :

*“The HBLMU sent three letters to AB InBev Sonapat management demanding a meeting to negotiate on their demands between August 17 and September 13, 2018. On September 17, local management wrote a letter in which they refused to recognize the HBLMU president in his capacity as elected union representative. Management refused to take any action in response to the issues raised in the union letters dated August 18 and 31.”*

They also accuse the company to have interfered in trade union activities :

*“In direct contravention of the Guidelines, AB InBev in India has attempted to prevent employees from exercising their rights to freedom of association and collective bargaining by selectively targeting elected union officers and union members for suspension; refused to meet with elected union officials and refused to engage in meaningful negotiations; undermined the role of the democratically elected HBLMU leadership by unilaterally selecting 9 workers to be the members of a management-created committee and signing a collective bargaining agreement with this committee.*

*AB InBev has violated the human rights of employees in its operations in Sonapat, India; its failure to remedy repeated, ongoing abuses constitutes a gross failure of its responsibilities under the Guidelines. AB InBev corporate and national management in India has been informed of these violations repeatedly and urged to take action but has not done so.”*

## **2. Reference to the Guidelines targeted by the referral**

For each specific instance submitted to the NCP the notifiers must cite the OECD Guidelines chapters linked with the alleged breaches.

In this case:

- The notifiers refer to the 2011 Guidelines:
  - *Chapter IV (1) Human Rights :*
    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.*
  - *Commentary on Human Rights, Article 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 laws 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.*
  - *Chapter V (5) Employment and Industrial Relations*
    - 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.*
    - 1.b) *Respect the right of workers employed by the multinational enterprise to have trade unions and representative organizations of their own choosing recognized for the purpose of collective bargaining and engage in constructive negotiations, either individually or through*

*employer's associations, with such representatives with a view to reaching agreements on terms and conditions of employment.*

*8. Enable authorized 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 authorized to take decisions on these matters.*

### **3. Requests for the receiving party of the referral**

The notifiers call the NCP to *"Use its good offices to facilitate a resolution to the multiple adverse human rights impacts arising from AB InBev's failure to address and to remedy violations of the Guidelines at the Sonapat beer production facility in India through direct discussions between the IUF and HBLMU and AB InBev and its management at the Sonapat facility."*

### **4. Position statement of the multinational enterprise – AB InBev**

The Belgian NCP met with three AB InBev officials: Mr John K. Johnson (Vice President, Legal & Corporate Affairs, South Asia), Tanushree Mishra (Director of People for South Asia) and Kristof Geutjens (Public Affairs Manager BeLux) on 3 May 2019.

The following items are taken from the statement made by AB InBev. These items have not been verified by the NCP and do not commit the NCP.

On 12 May, AB Inbev clarified its position in a written document sent to the NCP sharing the company's understanding of facts and its points of disagreement with the IUF's allegations. Among other things, the company shared its view that it negotiated a collective bargaining agreement in good faith with the current elected leadership of the HBLMU union and its disagreement with the allegation that the company used discipline to prevent employees from taking part in union activities

The identity of the current official leadership of the HBLMU is a point of difference of understanding between the IUF and the company. The company has shared its understanding that the IUF is bringing this dispute on behalf of a group of employees who lost their leadership positions during the HBLMU's general body union election held in November, 2017.

The company provided annexed documents to support its position, including translations for documents that were originally in local language.

They also refer to their internal policies :

- Global Human Rights Policy<sup>2</sup>
- Code of Business Conduct<sup>3</sup>

*"We respect the right of all our workers to form and join lawful trade unions and other organizations of their choice, and to bargain collectively in support of their mutual interests. We do not discriminate in any way against workers that choose to form or join trade unions, or against those that choose not to form or join trade unions."*

<sup>2</sup> [https://www.ab-inbev.com/content/dam/universaltemplate/ab-inbev/BetterWorld2/how\\_we\\_manage\\_sustainability/policies/AB%20InBev%20Global%20Human%20Rights%20Policy\\_2016.pdf](https://www.ab-inbev.com/content/dam/universaltemplate/ab-inbev/BetterWorld2/how_we_manage_sustainability/policies/AB%20InBev%20Global%20Human%20Rights%20Policy_2016.pdf)

<sup>3</sup> <https://www.ab-inbev.com/content/dam/universaltemplate/ab-inbev/Better%20World/Our%20Policies/AB%20InBev%20Code%20Of%20Business%20Conduct%20Feb%202017.pdf>

The company wants to mention that there are ongoing parallel proceedings :

*“Notably, the key issues raised in the IUF Submission have been and are currently subject to Indian judicial proceedings initiated by members of the Contesting Group. These proceedings affirmed the validity of the collective bargaining agreement with the Registered Union and are affording an additional review of the fairness of disciplinary action taken by ABI India.”*

In opposition to statements made by IUF the company tried pro-actively to engage with local stakeholders : *“ABI India’s President/CEO, Mr. Ben Verhaert has welcomed an in-person meeting with IUF’s regional leader for the Asia Pacific region and we were disappointed that the offer was not entertained. As this invitation was extended at the end of last year, ABI India is also disappointed that IUF opted to make its submission, requesting direct discussions, instead of following up to schedule such a meeting. Nevertheless, we will once again invite IUF for an in-person meeting, in parallel to providing this response.”*

In addition, the company also refers to further actions taken to facilitate potential conflict resolution including : *“meaningful engagement with all workers as detailed below:*

- *creation of a Grievance Register at the brewery for workers to submit any query or complaint that they might have and a commitment from management for these complaints to be responded to within 24 hours;*
- *maintenance of a “whistleblower hotline” available for reporting suspected compliance concerns (including human rights violations);*
- *hosting breakfast meetings with brewery management and workers to enable more direct interaction on topics of concern;*
- *formation of a Rewards and Recognition platform to positively recognize the achievements of workers in the brewery; and*
- *circulation of notices affirming workers’ rights and obligations, including reference to ABI India’s support of “the right of all its workers to form and join lawful trade unions and other organizations of their choice, and to bargain collectively in support of their mutual interests.*

*On February 12 2019, ABI India’s senior management had talks with the Contesting Group to explore amicable resolution, however there were no demands of union or benefits raised by them except for reinstatement of workers’ termination currently under judicial review.”*

## **5. Procedure followed by the Belgian NCP**

The specific instance was expressed by an email received by the Belgian NCP secretariat on 2 April 2019. The NCP secretariat acknowledge reception on 3 April 2019 and asked to get the attachments missing in the email sent by IUF. On 10 April, IUF sent the 14 appendixes as mentioned in the specific instance, on 15 April, these documents were also received by post.

On 12 April, the Belgian NCP invited representatives of AB InBev to a meeting for an initial contact in order to explain the role and function of the NCP.

On 26 April, the Belgian NCP sent a series of questions to IUF to clarify several points of the specific instance.

On 3 May the NCP secretariat and presidency met with representatives of AB InBev.

On 7 May, the NCP secretariat addressed more questions to IUF.

On 12 May, AB Inbev sent its position in writing

On 13 May, the NCP came together for the first time to discuss the specific instance.

On 24 May, IUF sent an email to the NCP clarifying the link with the local Union, declaring having the mandate from HBLMU to act for them in this case and to submit the formal complaint under the OECD Guidelines.

On 3 June, the NCP came together again and decided to go further by offering its good offices

After the completion of the initial assessment, stakeholders were allowed a period of 10 working days to become familiar with this document and propose factual amendments. The Belgian NCP will publish this initial assessment on its website,<sup>4</sup> and it will be sent to the OECD to be included in the global database of specific instances<sup>5</sup>. Except when requested by stakeholders, the Belgian NCP does not release anonymous statements.

## **6. NCP considerations on initial assessment**

From the OECD Procedural Guidance and Guidelines as well as its Rules of Procedure, the Belgian NCP has considered following items in its initial assessment:

### **a) Identity of concerned party and interest in the case**

IUF have disclosed their name and their interest in the matter at hand. IUF also declared having the mandate from HBLMU to act for them in this case and to submit the formal complaint under the OECD Guidelines. The IUF is the global union federation for trade unions representing workers in the food, agricultural, hotel, restaurant, catering, tobacco and allied sectors. The federation is composed of 421 affiliated trade unions from 128 countries around the world, many of which represent AB InBev workers.

### **b) Responsibility of the Belgian NCP.**

According to the OECD Guidelines, the specific instance must be raised in the country in which the alleged breach occurred. If this country does not have an NCP, the issue should be raised in the country where the multinational company has its head office.

The Republic of India is not a member of the OECD nor a signatory of the declaration on investment, neither does it have a National Contact Point. However, the targeted company has established their head offices in Belgium. The Belgian NCP is thus appropriate for the specific instance formulated.

Nevertheless, the primary role of the NCP is to offer a serene environment for dialogue as part of mediation and conciliation between parties. It should be underlined that the NCP is not able nor competent to act as a judicial or quasi-judicial body.

### **c) Scope of application fields of OECD Guidelines and material content of the specific instance for assessment**

The application fields of OECD Guidelines is clearly referred with the chapters mentioned in a coherent approach with the narrative of the case.

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<sup>4</sup>Belgian NCP web page providing all of its statements: <https://economie.fgov.be/fr/themes/entreprises/developper-et-gerer-une/responsabilite-societale-de/principes-directeurs-ocde-pour/point-de-contact-national-en/communiques-du-point-de>

<sup>5</sup>Database of specific instances: <http://mneguidelines.oecd.org/database/>

The submission is detailed with relevant documents attached, giving more clarity to the explanation and its context. The company provided a different set of documents, and accompanying translation to support its different understanding of the facts relevant to the IUF's concerns.

#### **d) Legal framework and parallel proceedings**

Article 26 of the comments on the implementation procedures of the OECD Guidelines clearly stipulate that '*NCPs must not decide that questions do not justify further assessment simply because parallel actions have existed, are in progress or could be carried out by the parties concerned*'. The NCP evaluates, however, in each particular case when its mediation activity could contribute to resolving the questions raised without negative consequences for the parties involved in these other proceedings.

In this particular case, it's important to mention two types of ongoing parallel proceedings subject to Indian judicial proceedings which might have an impact in a near future regarding the local situation :

- About the validity of the collective bargaining agreement with the Registered Union;
- About the fairness of disciplinary action taken by AB Inbev India.

According to the company, the next hearing in an ongoing parallel proceeding is expected to be held in septembre 2019.

#### **e) Contribution to the effectiveness of OECD Guidelines**

During processing of specific instances, the Belgian NCP, when necessary and when it believes able to contribute to the effectiveness of OECD Guidelines, may offer a platform for dialogue and conversation between involved parties, for the purpose of resolving their conflict.

The Belgian NCP previously contributed to the effectiveness of the OECD Guidelines, in a similar case with the same parties about trade union relations in 2006 in Montenegro<sup>6</sup>. IUF raised a specific instance on behalf of the Autonomous Union of Trebejesa A.D. Bresery (SDSPT) about a breaches of the Guidelines at InBev SA's subsidiary in Montenegro. The Belgian NCP first invited the parties separately to a meeting to discuss the handling of the case and the NCP procedures. On December 4, 2006, the NCP held a tripartite meeting with the IUF and InBev in order to mediate between the parties.

According to IUF perspectives at that time : *"the meeting provided a catalyst for a constructive dialogue between the two parties. Further meetings between IUF and local union representatives and both corporate and local management then took place in Dubrovnik and a mutually satisfactory resolution was found and confirmed in a signed confidential agreement in June 2007 and the IUF withdrew the complaint."*

In the context of the current specific instance, the Belgian NCP considers itself able to fulfil a certain role to offer its good offices by gathering parties together. Both parties have expressed to the NCP their readiness to engage in a process of dialogue and to meet the other party in an approach of serenity.

## **7. Conclusion**

After considering the different criteria explained above (6.), the NCP decided to offer its good offices to the parties to open a dialogue in a constructive, serene and positive atmosphere in order to find ways for a better understanding of the views of each party in the objective to reinforce the social dialogue at Sonapat.

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<sup>6</sup> Description of the case by the Trade Union Advisory Committee :  
<http://www.tuacoecdmn guidelines.org/CaseDescription.asp?id=116>

The NCP wants to kindly thank the parties for their fruitful and positive cooperation in the preparation of its initial assessment and hopes to continue the work in the same conditions.

After the summer, the NCP will invite the parties to a meeting at its premises to set up the context of such dialogue.