



An Roinn Fiontar,
Trádála agus Fostaíochta
Department of Enterprise,
Trade and Employment

Final Report - Ireland National Contact Point for the OECD Guidelines for Multinational Enterprises IUF and The Coca-Cola Company



As noted in the Procedural Guidance to the [OECD Guidelines for Multinational Enterprises](#), following conclusion of a Specific Instance and after consultation with the parties involved, the NCP will make the results of the procedures publicly available.

The NCP is issuing the following statement following conclusion of mediation. This statement describes the issues raised, the reasons why the NCP decided that the issues raised merited further examination, the mediation process and conclusion, and next steps.

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The OECD Guidelines for Multinational Enterprises are recommendations on responsible business conduct (RBC), addressed by Governments to multinational enterprises operating in or from adhering countries. They provide non-binding principles and standards for RBC in a global context consistent with applicable laws and internationally recognised standards. As an adhering country, Ireland is required to maintain a National Contact Point (NCP) to promote and raise awareness of the Guidelines and to consider complaints of alleged non-observance of the Guidelines.

The Ireland NCP is a standalone unit in the Department for Enterprise, Trade and Employment.

Executive Summary

- This Final Report concludes the Specific Instance submitted on 21 November 2018, by IUF, a global Union Federation for trade unions representing workers in the food, agricultural, hotel, restaurant, catering, tobacco, and allied sectors (“the Complainant”). The Irish trade Union, SIPTU, is affiliated with the Complainant and is associated with the complaint against the Company.
- The Specific Instance alleged breaches of the OECD Guidelines by The Cola Company (TCCC), specifically its wholly owned concentrate manufacturing operation in Ballina, Co. Mayo - Ballina Beverages, (“the Company”).
- The Ireland NCP examined the complaint and decided that one aspect of the complaint merited further consideration. Both parties accepted the NCP’s offer of mediation on those aspects of the complaint.
- In-person mediation took place on 26-27 May 2022 with the services of an external and professional mediator. The mediation proved to be successful in terms of generating a dialogue between the parties and helped achieve a common understanding of their respective positions. They agreed to adjourn and re-engage either following the publication of a report on the industrial relations landscape in Ireland or by June 2023 at the latest. The report was published in Q4 2022, and the Ireland NCP reengaged with the parties to invite them to continue the mediation process.
- A further day of mediation took place on 5 April 2023 with the same external mediator. It resulted in the parties reaching a confidential agreement. With this publication, the NCP procedure is concluded.
- The Ireland NCP recommends that the parties follow through on the actions identified in the confidential agreement. The NCP will follow up with the parties within the timeframe set out in their agreement to ascertain if the parties have fulfilled their commitments under the agreement and may issue an updated statement on the matter.

Submission and Initial Assessment

The Parties

1. The Specific Instance was submitted by the Complainant, a global Union Federation, in November 2018. The Irish trade Union, SIPTU, is affiliated with the Complainant and was associated with the complaint. It was directed against the Company regarding activities in its wholly owned operation in Ballina, Co. Mayo.

The Complaint

2. The Complainant alleged that management at the Company pressured employees not to support or join the Trade Union, and that the Company failed to accept and act on a Labour Court recommendation which represented a denial of collective bargaining rights of employees who had chosen to join and be represented by the Trade Union through collective bargaining.

3. The Complainant alleged that if employees were Union supporter/members, they would be at a greater risk of having their shift patterns regularly unilaterally changed by management at short notice and that, if a worker was open about their support/membership of the Trade Union and were critical of plant operations or management, their performance ratings would be adversely affected.
4. The Complainant alleged that collective bargaining at another plant was misrepresented, suggesting serious consequences for the future of the Ballina plant including “catastrophic outcomes for the workers at the facility” if the Trade Union were to engage in collective bargaining.
5. It was also alleged that the Company did not provide sufficient whistleblowing protection for reporting of human rights violations.

Relevant Provisions of the Guidelines

6. The Complainant cited the following Chapters and paragraphs of the Guidelines:

Chapter V: Employment and Industrial Relations

Chapter V, A.1: “Enterprises should, within the framework of applicable law, regulations and prevailing labour relations and employment practices and applicable international labour standards:

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

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

Chapter V, A.7: “In the context of bona fide negotiations with workers’ representatives on conditions of employment, or while workers are exercising a right to organise, not threaten to transfer the whole or part of an operating unit from the country concerned nor transfer workers from the enterprises' component entities in other countries in order to influence unfairly those negotiations or to hinder the exercise of a right to organise.”

Chapter IV: Human Rights

Chapter IV, A.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.

Chapter IV, A.2: Within the context of their own activities, avoid causing or contributing to adverse human rights impacts and address such impacts when they occur.

Chapter II: General Policies

Chapter II Commentary Paragraph 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 antibribery and environmental initiatives, such protection is also relevant to other recommendations in the Guidelines”.

Remedy Sought

7. With regards to remedy, the Complainant called on the Ireland NCP to “use its good offices to facilitate a resolution” to the issues raised in the complaint and to remedy the alleged violations of the Guidelines at the Company through direct discussions between the Complainant, the Trade Union, and the Company.

The Company’s Response

8. The Company submitted a considered response outlining its commitment to employee engagement which includes seeking input and feedback from employees on a broad range of issues. The Company also outlined the policies and procedures in place to resolve employee concerns, the mechanisms in place at the Company in line with its Human Rights Policy, and the Company’s commitment to respect employees’ rights regarding union membership. The Company stated that:
 - it has never sought to unfairly influence the employees’ choice in determining whether they wish to be represented by SIPTU,
 - it had communicated to their employees at team and plant meetings that they “have the right to join or to not join a union and are free to choose” and, “would not tolerate any anti-union activity on its behalf by either managers or indeed employees”,
 - it strenuously denies any factual basis exists for the assertion the Company has ever threatened to transfer the whole or any part of its operating unit outside of Ireland or transfer workers,
 - it “respects the wishes of any Associate who seeks to be represented by SIPTU in an employee relations matter” as per the Labour Court Recommendations issued in 2015 and 2018,
 - only once in the past 20 years was it necessary to request employees to change their shift pattern due to the need to back up a sister plant,
 - union membership has no impact on individual ratings as the Company “is not aware of who is in membership”,
 - there are mechanisms for reporting of wrongdoing to local management and that local management also extends to reporting to a Local Ethics and Compliance Officer who is not based in TCCC Ballina but within the same jurisdiction. If such mechanisms are not used, it is the case that the Protected Disclosures Act 2014 provided for under Irish employment law, should provide adequate additional protections, if necessary, as the Company is bound to observe this law.

Initial Assessment by the NCP

9. The purpose of the Initial Assessment was to determine if the issues raised in the complaint merited further examination by the Ireland NCP. It did not determine whether the Company had acted consistently or inconsistently with the Guidelines.
10. The Ireland NCP conducted an initial examination of the information provided by both parties and, on 13 August 2021, the Ireland NCP published its Initial Assessment, available [here](#).
11. On the basis of submissions received, the Ireland NCP decided to proceed to the offer of good offices to assist the parties develop a mutually agreed upon resolution in connection with one aspect of the complaint, the standards expected under Chapter V, Article 1(b) of the Guidelines (right to collective bargaining).

The Proceedings of the NCP

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

<i>Receipt and Initial Assessment of the Specific Instance</i>	
21 November 2018	Complaint received from Ireland NCP from the Complainant
22 November 2018	Ireland NCP confirms receipt and commitment to review
22 November 2018 to 1 March 2019	Review by the Ireland NCP including consultation (internal review, desk-based research, consultation with NCPs and OECD Secretariat)
1 March 2019	Letter issued by Ireland NCP to the Company copying Complaint and Ireland NCP Procedures. Response invited by 18 April 2019
1 March 2019	Letter issued by Ireland NCP to the Complainant with Ireland NCP Procedures and inviting submission of any further information
17 April 2019	Response received from the Company
23 May 2019	Further letter issued by Ireland NCP to the Company requesting consent to share response
25 June 2019	Ireland NCP offers opportunity for further information from the Complainant based on the Company response
11 July 2019	Ireland NCP receives further information from the Complainant
18 July 2019	Ireland NCP provides for further information from the Company based on the Complainant's response
18 September 2019	Ireland NCP receives further information from the Company

10 February 2020	Ireland NCP completes draft Initial Assessment and issues to the parties
24 February 2020	Ireland NCP receives letter from the Complainant in relation to the draft Initial Assessment
6 July 2021	Letter issued by Ireland NCP to both parties informing them the draft Initial Assessment is being reviewed
30 July 2021	Ireland NCP issues Initial Assessment Statement to both parties
13 August 2021	Ireland NCP publishes Initial Assessment
September-October 2021	Correspondence between Ireland NCP and the Company regarding the Initial Assessment
<i>Good Offices and Mediation Action</i>	
11 November 2021	Ireland NCP offers good offices to parties
2 December 2021	The Company accept NCP's offer of good offices
17 December 2021 – 14 January 2022	Ireland NCP conducts competitive procurement process to appoint external mediator
20 January 2022	Ireland NCP contacts parties proposing mediator
27 January 2022	The Company declines the proposed mediator
7 February 2022	Ireland NCP contacts parties proposing alternate mediator
11 February 2022	Appointment of mediator approved by both parties
1 March 2022	Ireland NCP shares draft Terms of Reference with parties
16 March 2022	Ireland NCP proposes mediation dates
20 April 2022	Mediation dates agreed by the parties
24-25 May 2022	Terms of Reference signed by parties
26-27 May 2022	Mediation meetings held
27 May 2022	Joint Memorandum signed by both parties agreeing to adjourn and re-engage following the publication of a report on the industrial relations landscape in Ireland or by June 2023 at the latest
22 June 2022	Ireland NCP issues draft Intermediary Statement to both parties
15 July 2022	Ireland NCP publishes Intermediary Statement
18 January 2023	Ireland NCP offers good offices to parties following publication of report
25 January 2023	The Company confirm they will re-engage with NCP process
26 January 2023	Mediator confirms availability

2 February 2023	Mediation date agreed by both parties
30 March 2023	Parties agree to use existing Terms of Reference with updated signatures page to reflect changes in personnel on both sides
5 April 2023	Mediation held
<i>Conclusion of the specific instance</i>	
29 May 2023	Ireland NCP completes Final Statement and shares draft with parties
27 June 2023	Final statement published

Outcome of the Good Offices Process

13. Following publication of the Ireland NCP’s Initial Assessment in August 2021, the Ireland NCP, in agreement with the parties, arranged for mediation to take place. The Ireland NCP procured the services of an external, professional mediator that was agreed by both parties to conduct the mediation sessions, and terms of reference drafted by the Ireland NCP were agreed by the parties and the mediator.
14. Offering mediation in this specific instance was not a determination on the merits of the claims presented. It was an offer to provide a platform for dialogue in a voluntary, confidential, and good faith manner to help parties find a resolution to the issues meriting further examination.
15. Two days of mediation took place on 26-27 May 2022, at the end of which the external mediator informed the Ireland NCP that “the parties engaged in good faith in the mediation process and have further agreed to re-engage in the process at a later date.”

The parties noted the ongoing work of the Labour Employer Economic Forum (LEEF) review of Collective Bargaining and Industrial Relations Landscape in Ireland which was at the public consultation phase. Whilst the mediation proved to be successful in terms of generating a dialogue between the parties and helped achieve a common understanding of their respective positions, the parties agreed to adjourn the mediation pending the publication of the LEEF report or, in the event the report was not published, by 1 June 2023 at the latest.
16. Following publication of the report of the [LEEF High Level Group on Collective Bargaining](#) in Q4 2022, the Ireland NCP contacted the parties to encourage them to continue their dialogue. Both parties agreed to reengage, and a further mediation session was facilitated on 5 April 2023 using the services of the same external, professional mediator.

17. At the end of the final mediation session on 5 April 2023, the parties concluded a confidential agreement. With the publication of this Final Report, the NCP procedure is concluded. While the OECD procedural guidance favours transparency, it also recognises the countervailing principle that confidentiality may promote the purposes of the Guidelines in certain situations, specifically recognising that NCPs should disclose information on the content of an agreement “only . . . insofar as the parties involved agree thereto”¹. As noted above, the parties’ agreement in this case is confidential.
18. The Ireland NCP thanks the parties for their active and constructive engagement with the NCP process at every stage and encourages the parties to build on the positive relationship that they developed during mediation.

Recommendations and Follow Up

19. The Ireland NCP recommends that the parties follow through on the actions identified in the confidential agreement. The Ireland NCP will follow up with the parties to ascertain if they have fulfilled their commitments per the confidential agreement and may issue a follow up statement on the matter.
20. The Ireland NCP recommends that the IUF and The Coca-Cola Company continue to work together outside the NCP process, maintaining and building on their long-standing relationship.
21. Because the parties accepted its offer of mediation and the mediation has concluded, the Ireland NCP brings this Specific Instance to a close with this Final Report.

ENDS

**Ireland National Contact Point
OECD Guidelines for Multinational Enterprises
Department of Enterprise, Trade and Employment**

¹ Commentary on the Implementation Procedures of the OECD Guidelines for Multinational Enterprises, para. 9, available in OECD Guidelines, supra note 1, at p.79; Procedural Guidance, I.C.3(b), available in OECD Guidelines, supra note 1, at p.73; see also OECD, Guide for National Contact Points on Confidentiality and Campaigning when handling Specific Instances (2019), <https://mneguidelines.oecd.org/Guide-for-NCPs-on-Confidentiality-and-campaigning-when-handling-specific-instances.pdf>