



National Contact Point

OECD Guidelines for Multinational Enterprises

Final Statement

Former employees of Bralima vs. Bralima and Heineken

18 August 2017

ArgentinaAustraliaAustriaBelgiumBrazilCanadaChileColombiaCzechRepublicDenmarkEgyptEstoniaFinlandFranceGermanyGreeceHungaryIcelandIrelandIsraelItalyJapan

Final statement by the Dutch National Contact Point ('NCP') for the OECD Guidelines for Multinational Enterprises ('the Guidelines'). This final statement concerns the notification of a specific instance by Mr Namegabe Bugabo, Mr Matabaro Rubanza and Mr Bayongwa Mirimba ('the Representatives'). It relates to an alleged non-observance of the Guidelines by Bralima SA in Bukavu, Democratic Republic of the Congo (DRC), and Heineken N.V.

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1. Introduction

This final statement describes the process and outcomes of the dialogue facilitated by the NCP after receiving the notification. It is based on the information received from the parties and the outcomes of the dialogue meetings. Confidential information disclosed to the NCP in the course of the dialogue has not been used in the preparation of this final statement.

This final statement marks the completion of the procedure by the NCP.

2. The NCP procedure

Details of the party submitting the notification

The Representatives, themselves former employees of Bralima, stated to represent a group of approximately 168 persons formerly employed by Bralima in Bukavu. They arranged for a mandate declaration (*déclaration de mandat*), signed by 148 former employees.

The documents received by the NCP provided sufficient evidence of the existence of this group of former Bralima employees. They were also sufficient for the NCP to formally accept Mr Namegabe Bugabo, Mr Matabaro Rubanza and Mr Bayongwa Mirimba as representatives of the group of approximately 168 former employees during the NCP procedure.

Details of the enterprises

Heineken

Heineken N.V. is a multinational enterprise based in Amsterdam, the Netherlands. It is one of the largest breweries in the world and the companies within the Heineken Group operate in more than 70 countries worldwide.

Bralima

Bralima is a subsidiary of Heineken N.V. Since 1987 Heineken has indirectly held around 95% of Bralima's shares. Bralima has been operating in the Democratic Republic of the Congo for more than 90 years.

The Dutch NCP procedure in this specific instance until the initial assessment

On 14 December 2015, the NCP received the notification.

On 18 December 2015, the NCP acknowledged receipt of this notification and informed Heineken.

The NCP spoke with the Representatives by phone on 21 January 2016. Further questions were asked and answered by email.

On 10 February 2016, the NCP had a separate meeting with Heineken. Heineken asked for and was granted two weeks to determine its position.

Before the end of February, Heineken proposed that, as a first step, the Representatives should hold a meeting with Bralima's management. The NCP supported this proposal. It decided to await the outcome of this meeting before issuing its initial assessment.

On 13 April 2016, a meeting was held between a delegation of the complainants and Bralima's management in Bukavu, DRC, without the NCP's involvement. Both parties informed the NCP that the meeting had not revealed anything new.

On 31 May 2016, the NCP sent the parties a draft version of its initial assessment with a request to submit any comments within two weeks.

On 28 June 2016, the NCP published its initial assessment on its website: www.oecdguidelines.nl. It concluded that the specific instance merited further consideration and offered its good offices to resolve the issue by facilitating a dialogue between the parties.

Both parties accepted the NCP's offer and made agreements concerning confidentiality and transparency, in line with the NCP procedure.

3. Summary of the notification

In the notification of the specific instance under the Guidelines, the former employees stated that a group of 168 employees were dismissed between eighteen and fourteen years ago, namely in the period 1999-2003. The reasons for the dismissals and the conditions varied, according to the notification documents.

The notification from the former employees concerns allegations regarding:

- Violation by Bralima in Bukavu, DRC, of its own workers' human rights in the period 1999-2003
- Cooperation with the rebel movement RDC-Goma in the DRC from 2000 to 2003 and the consequences this had for Bralima's workers at Bukavu and their families
- Unjustified dismissal of 168 Bralima employees in Bukavu between 1999 and 2003
- Irregularities and deliberate omissions in the individual redundancy schemes for the dismissed workers
- Serious errors in the mass dismissals by Bralima in the period 1999-2003, contrary to Congolese law

The allegations are further detailed below.

The notification specifically concerned the alleged non-observance of the 2000 version of the OECD Guidelines for Multinational Enterprises, specifically Chapter I Concepts and Principles, Chapter II General Policies, Chapter IV Employment and Industrial Relations, and Chapter VI Combating Bribery.

The notification stated that Bralima and Heineken should pay €200 million in compensation to the former employees and their families.

According to the notification, some employees were forced into early retirement in 2000. They were not paid adequate compensation and were deprived of social welfare. They were not given due notice; they were not informed of the reasons for their dismissal; they were not allowed to challenge their dismissal; and as a direct consequence of their early retirement, their state pension was drastically reduced.

The notification also states that some employees were dismissed after signing an amicable separation agreement (*convention de séparation à l'amiable*). These employees were not given due notice of their dismissal, nor were they given any advance information about the intention to release them. They were summoned to attend a meeting at short notice, without being told the purpose of that meeting. During the meeting they were confronted with an agreement already signed by the employer, which they were pressurised into countersigning. They were offered a sum of cash and were told that they would not be entitled to any form of compensation unless they signed the agreement then and there. The amount of compensation, however, was below what is required by law.

In the case of other employees dismissed on the basis of an amicable separation agreement, the notification states that no safeguards or adequate compensation were offered.

The agreements referred to alleged authorisation by rebel movement RCD-Goma. Some employees were dismissed en masse in 2000. The compensation paid to these employees was not calculated in accordance with Congolese law. Moreover, these mass dismissals were not authorised by a competent authority, as required by law, but by RCD-Goma. However, RCD-Goma's approval of the mass dismissals does not give them legitimacy.

The complainants stated that Bralima took advantage of a period of economic and political turmoil in the DRC to dismiss a large number of employees in a brief period of time, without providing basic guarantees required by Congolese and international law, and that the employees thus dismissed were replaced by temporary workers.

4. Summary of Bralima's and Heineken's positions

Bralima and Heineken put in significant efforts to retrieve all relevant information that was still available, given the fact that the case relates to facts and circumstances of more than fourteen years ago.

They emphasised that this case relates to a difficult time of (civil) war within the DRC. During that time, Bralima's revenues plummeted and the continuity of its business was seriously threatened. Bralima was forced to deal with the economic and political situation at hand and, unfortunately, had to cut costs to remain operative. This also entailed the termination of employment agreements. Bralima and Heineken stated that, for all employees who left, the minimum legal requirements for compensation upon departure were upheld and that no deliberate errors were made in calculating them.

Bralima and Heineken elaborated on the complexity involved with operating in volatile and conflict-affected areas. The decision to remain operative in such an area entails its own challenges or dilemmas. However, they stated that a decision to leave such an area has detrimental consequences for the employees of the business and the community as a whole that cannot be ignored. Bralima and Heineken expressed that, during their investigation of this case, they had not found indications of cooperation with RCD-Goma, of human rights violations or of non-observance of the Guidelines by either Bralima or Heineken.

5. The NCP's assessment of the specific instance

Scope of the assessment

The NCP concluded that the specific instance merited further consideration based on the criteria set out in the Commentary on

the Implementation Procedures of the OECD Guidelines for Multinational Enterprises (2000).

In its initial assessment, the NCP stated that the consideration of this specific instance did not entail substantive research or fact-finding on the individual cases of the former employees, who were dismissed more than thirteen years ago (i.e. between 1999 and 2003).

During the preliminary discussions on the initial assessment, it became apparent that the complainants were seeking financial compensation. The NCP made clear to the parties that the NCP procedure is not a judicial procedure but a mediation procedure aimed at reaching an agreement on the issues at stake. The NCP can make recommendations in the light of the Guidelines. It cannot decide on financial compensation.

The NCP took the view that facilitating a dialogue between the parties might help clarify Bralima's responsibility towards its employees under the Guidelines. It might also help clarify Heineken N.V.'s independent responsibility under the Guidelines towards its subsidiary Bralima, in relation to the latter's operations in the DRC in the period 1999-2003.

Both parties accepted the NCP's offer to initiate a dialogue and requested the appointment of a third party mediator. The NCP appointed an expert mediator with a lot of experience and knowledge of the situation in the region.

Applicability of the Guidelines

The NCP observes that all Dutch companies that conduct business abroad are expected to adhere to the Guidelines. The Dutch government regards the Guidelines as the normative framework for responsible business conduct in an international context.

Since the specific instance concerns events that happened in the period 1999-2003, the 2000 version of the Guidelines applies and not the 2011 version of the Guidelines.

The Guidelines are applicable to Heineken as it is a Dutch multinational enterprise. The Guidelines (2000) do not mention enterprise groups. However, they do refer to 'business partners, including suppliers and sub-contractors', and state that the enterprise should encourage them, where practicable, to apply principles of corporate conduct compatible with the Guidelines (Chapter II, paragraph 10). The NCP therefore concluded that the Guidelines apply equally to Bralima, as it is a 95% subsidiary of Heineken, which implies a very strong business partner relationship.

While the assessment on the specific instance is based on the 2000 version of the Guidelines, the forward-looking section of this final statement and the NCP's recommendations are based on the current (2011) version of the Guidelines.

6. The NCP's good offices

Course of the procedure

The table below provides an overview of the timeline of the steps relating to the specific instance and the dialogue.

Date	Report/milestone
28 June 2016	NCP publishes its initial assessment
August 2016	Parties ask the NCP for an external mediator
September 2016	Parties approve the mediator proposed by the NCP
Autumn 2016	Preliminary work performed by the mediator Organisation of the dialogue meetings
December 2016	Discussions and confidence-building meetings of the mediator with the individual parties, including confidence-building meetings of the mediator with the Representatives, over 60 former employees and Bralima officials, including a visit to the brewery, in Bukavu
January 2017	Parties agree on the framework surrounding the dialogue
23-27 January 2017	Roundtable dialogue meetings between the parties and the mediator in Kampala, Uganda, in the Dutch Embassy. The NCP was present as well. Parties reached an agreement on next steps. End of mediation phase.
29 January 2017	General meeting of the former employees in Bukavu, organised by the Representatives. Over 120 former employees were present
13-15 February 2017	NCP has a call with the external expert in Congolese labour law, proposed by Bralima and Heineken, and the NCP and the Representatives approve the external expert in Congolese labour law
9-11 March 2017	Visit of expert and Heineken to Bukavu Meetings of the expert, Bralima and Heineken with the Representatives and with approximately 150 former employees
April-June 2017	Review of all the information available by the external expert
30 June 2017	Meeting between Heineken/Bralima and the Representatives in Paris, France in the Dutch embassy. The NCP was present as well in a monitoring capacity
3 July 2017	General assembly of the Representatives and former employees, organised by the Representatives.
6 July 2017	Draft final statement
18 July 2017	Visit of Heineken to Bukavu, meetings of Bralima and Heineken with the Representatives and with approximately 140 former employees
August 2017	NCP publishes its final statement

Goal and scope of the dialogue

The mediation should first benefit the parties towards resolving the issues raised in this specific instance by providing a neutral platform for dialogue, facilitated by a neutral mediator. Second, the mediation should also formulate forward looking recommendations to improve the implementation of the current Guidelines while taking into consideration the relevant policies currently applicable within the Heineken Group and paying special attention to the situation of Heineken Group companies operating in conflict affected and fragile environments.

The NCP was the owner of the process and was responsible for the procedure as a whole from the filing of the notification until the issuing of this final statement. It appointed an expert mediator upon the parties' request. It assisted and contributed to the meetings in Kampala and Paris. The NCP monitored the full procedure, provided neutral support and advice, and was available for further discussion with the parties.

The parties also agreed that the dialogue roundtables should be hosted in neutral territory outside the DRC. These meetings were held in Kampala, Uganda, from 23 to 26 January 2017 and were hosted by the Dutch embassy.

Facilitated by the NCP and the mediator, the parties jointly set the agenda and the terms for the dialogue. They also agreed on confidentiality and transparency matters, in line with the NCP procedure.

The NCP's observations

Nowadays, the Heineken global business conduct framework aims to ensure that all companies within the Heineken Group, operating in over 70 countries worldwide, conduct business in a responsible way in accordance with the letter and the spirit of the law and the Heineken Code of Business Conduct. This Code sets out the basic principles and core values that all employees worldwide need to observe. Further guidance and explanations on specific topics are given in the Code's underlying policies. Through its 'speak up' policy, Heineken encourages and enables employees to confidentially raise concerns about any misconduct in the company so that appropriate action can be taken.

The Heineken business conduct framework has been implemented worldwide at all companies within the Heineken Group, including Bralima. Bralima has disseminated the Heineken Code of Business Conduct and its underlying policies through various forms of communication and training courses at all levels within the company. Heineken's representatives have also paid several visits to Bralima's breweries to further increase awareness and understanding of the Code.

Since 1999-2003, the Heineken business conduct framework has evolved and improved. Heineken continues to review and further improve the framework and its implementation.

Periodic monitoring, assessment and auditing of its implementation are carried out and have led to further improvements over the years.

Prior to the launch and implementation of the new global Heineken Code in 2013, Bralima had its own Code of Conduct reflecting its own key values and principles and those of Heineken's 2005 Code of Conduct.

Bralima is one of the largest producers of beer and soft drinks in the DRC and, as such, has significant economic and social impact. It has operated clinics in the DRC almost from the very beginning, including in Bukavu. Medical care is available to current employees and retired employees, as well as their dependants (children and spouses). Bralima also provides for the education of the children of its employees and retirees.

The specific instance concerns a period of four years (1999-2003) during which the DRC was hit by wars. The country's entire economy went into freefall. Bralima decided to stay in the country despite its deteriorating economy. However, the NCP notes that operating in volatile and conflict-affected countries like the DRC – which has consistently lacked political stability since its independence – is complex, and may lead to difficult situations and choices. Enterprises have to decide whether to continue operating in such challenging environments. This entails very difficult choices, and operating in conflict-affected countries can create dilemmas. A company needs to be attentive in dealing with countries like the DRC.

As also pointed out by the UN, the OECD and the World Bank, leaving conflict-affected countries reduces economic opportunities and contributes to a 'poverty-conflict trap'. Any decisions about a company's long-term presence in a country need to take into account the safety of its employees, the protection of its assets, its economic viability, the direct and indirect jobs it creates and its social impact, for example through local sourcing.

Outcomes of the dialogue/points of agreement

The meetings described in the timetable above were held in a free and cordial setting. The dialogue meetings between the parties and the mediator in January 2017 were hosted by and at the Dutch embassy in Kampala, and the meeting between the parties of 30 June 2017 was hosted by and at the Dutch embassy in Paris. The parties expressed their appreciation to the embassies for hosting the meetings and providing the necessary facilities. They also expressed their appreciation to the NCP for launching and facilitating the mediation process as a whole and the roundtables in particular.

The dialogue meetings in January 2017 ended with an agreement between the parties on next steps. The NCP was asked by the parties to monitor these next steps to ensure an objective, neutral and due process. The NCP decided not to publish its final

statement yet, in the interests of supporting the commitment of all parties to the process. Bralima and Heineken, with a view to handling the notification as responsible enterprises and in a spirit of open dialogue, performed a review of all information that was still available from that time. Heineken engaged an expert in the field of Congolese labour law, who was approved by the NCP and the Representatives to assist Bralima and Heineken in the examination of the relevant facts. Bralima and Heineken also met the former employees concerned by the notification twice in Bukavu, DRC, to listen to what they had to say and take into consideration all information they wanted to share.

This enabled the parties, under the facilitating and monitoring role of the NCP, to discuss the allegations laid down in the notification in a setting of openness and trust to reach a resolution to the notification.

The parties indicated having had constructive discussions about the circumstances surrounding the departure of employees from the brewery in Bukavu during the period 1999-2003.

The discussions, monitored and facilitated by the NCP were not easy; nevertheless, the parties found a satisfactory outcome.

The Procedural Guidance for NCPs of the OECD Guidelines for Multinational Enterprises, section I, C.3, under b) says: "Information on the content of the agreement will only be included [in the final statement] insofar as the parties involved agree thereto". In this specific instance, the parties wished to maintain confidentiality on the agreement/outcome. The NCP remarks that maintaining confidentiality can demonstrate to other enterprises that open discussions, under protection of confidentiality, can be held during the NCP process. It also implicates that not all lessons learned from this case can be shared with other NCPs and relevant stakeholders. The NCP regrets this.

Forward looking position of Bralima and Heineken

Heineken has indicated that it will draw up a policy, including guidelines, on how to conduct business and operate in volatile and conflict-affected countries. The NCP encourages Heineken to do so and believes that this will facilitate decision-making and have a positive impact.

The NCP also encourages Heineken's commitment to continue working on an internal analysis of Heineken's existing policies and processes in the light of the Guidelines and the UN Guiding Principles on Business and Human Rights. This specific instance highlights the need to ensure that this analysis considers policies and processes intended to address specific issues on the ground at Heineken's operating companies. This includes the employment process, from recruitment to termination, and operating in a conflict-affected environment, as well as procedural issues in the relations between operating companies and headquarters,

including the existence of feedback loops to ensure that issues receive the attention they deserve.

The NCP appreciates Heineken's intention to implement lessons learned from this matter in its business conduct framework.

The NCP's recommendations

Under Chapter IV of the Guidelines (2000), enterprises should provide employees and their representatives with information that enables them to obtain a true and fair view of the performance of the entity or, where appropriate, the enterprise as a whole. Enterprises should also provide reasonable notice of changes in their operations that would have major effects on the livelihood of their employees.

The NCP is of the opinion that operating in a conflict area enhances the need for enterprises to act according to the Guidelines. Enterprises should provide transparent and clear information to employees on their performance and on any changes that could have a major impact on their employees' livelihood. This way, enterprises can further clarify their position should a discussion on their actions/decisions arise. The NCP recommends that transparency and communication to employees be part of enterprises' policies for dealing with conflict settings.

The specific instance also shows the need for multinational enterprises to thoroughly examine complaints from current or former employees at an early stage. With its Speak Up Policy, Heineken has put in place a grievance mechanism for quickly and appropriately resolving any complaints that may arise within the company.

The NCP also recommends that the handling of complaints by current or former employees should be monitored and evaluated within company groups. This is part of applying corporate governance principles and practices throughout the group, and has been recognised in Heineken's Speak Up Policy.

The NCP encourages Heineken to continue to actively monitor, evaluate and improve its business conduct code, and actively disseminate the principles throughout the Heineken Group.

Monitoring role of the NCP after the mediation

The NCP facilitated and monitored the process between the parties after the mediation dialogues ended in January 2017.

The choice of the Congolese labour law expert was also monitored by the NCP. The NCP received information from Heineken on the legal expert and spoke to the expert by phone.

The Representatives approved the engagement of the expert, in accordance with the NCP's recommendation.

The NCP advised on the process and on the meeting between Heineken and the Representatives of the former employees in Paris. It attended the meeting as part of its monitoring role.

The NCP's monitoring role did not cover any arrangements between the three Representatives and former employees about the representation of those former employees by the Representatives.

The NCP's conclusion

The parties agreed to have had a constructive dialogue and resolved the issue at hand. The NCP appreciates the willingness of both Heineken and Bralima and the former employees to enter into an open dialogue, even though the events happened long ago.

The parties are happy to be able to close the issue that lasted for so many years.

The NCP, as part of its monitoring role, concludes that all parties have participated to the process in a proper and fair way. The NCP appreciates this.

Lessons learned by the NCP

The NCP notes that several lessons have been learned from handling this specific instance.

The expert mediator highlighted the following aspects of the dialogue process.

The hosting and support provided by the Dutch embassy in Kampala demonstrated the NCP's strength as a highly valued grievance mechanism, created and supported by the Dutch government. The personal participation of the NCP members further demonstrated the government's commitment to helping multinational companies to adhere to the Guidelines.

The participation of NCP members gave the former employees and Bralima/Heineken the confidence to talk to each other since each side already had a good relationship with the NCP. There is good reason to believe that the political and diplomatic environment within the embassy, including the positive interaction with senior embassy staff, inspired the parties to work towards a solution.

The mediator's role and the information provided or shared by the parties helped to crystallise the allegations into a larger picture for the mediation process to focus on. The mediator bridged the gap between the complaints and generated additional relevant information. By accessing and responding to the mediator before the roundtable meetings, the parties were prepared for the dialogue. In addition, the dialogue did not introduce new information that could have undermined the trust and confidence built before the roundtable meetings.

The parties invited the NCP to continue its involvement throughout the procedure. The NCP's neutral support and advice during the process proved to be valuable.

Monitoring

The NCP recommends that an evaluation be conducted in the summer of 2018 of the NCP's forward looking recommendations.

Both parties accepted the NCP's good offices for a dialogue on an evaluation regarding the implementation of the recommendations in paragraph 6 of this final statement. The evaluation will be published on the NCP's website.

Closing remarks

The NCP thanks the Government of the Netherlands for their support, enabling the NCP to handle this specific instance as described above and the NCP thanks the Embassies of the Kingdom of the Netherlands in Uganda and in France for their hospitality.

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 decision making, in accordance with the Procedural Guidelines section of the Guidelines. In line with this, the Netherlands 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 www.oecdguidelines.nl

Published by:

National Contact Point OECD Guidelines for
Multinational Enterprises

Ministry of Foreign Affairs

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www.oecdguidelines.nl

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