



Dutch National Contact Point (NCP) for the OECD Guidelines for Multinational Enterprises

Initial Assessment

Specific Instance ATUMA – Unilever Plc

16 april 2020

ArgentinaAustraliaAustriaBelgiumBrazilCanadaChileColombiaCzechRepublicDenmarkEgyptEstoniaFinlandFranceGermanyGreeceHungaryIcelandIrelandIsraelItalyJapan

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1. Executive Summary

On 12 April 2018, the Dutch NCP and UK NCP received a specific instance from a group of former workers of Unilever-Marsavco/PHC (ATUMA) in the Democratic Republic of the Congo (DRC) that was filed against Unilever NV (Rotterdam, NL) and Unilever PLC (London, UK). The Dutch NCP (NCP) accepted the specific instance for further considerations and, after consultation with the UK NCP, it was agreed that the Dutch NCP will handle the case.

As part of its initial assessment, the NCP held separate, confidential telephone meetings with the company (5 July 2018 and 27 August 2019) and the notifying party (30 August 2018), about the instance and related matters. Afterwards, both the complainant and the company, were given the opportunity to provide clarification to the NCP on specific questions. Clarifications concerning the notification and respective responses, were analysed by the NCP.

The National Contact Point (NCP) concludes that the notification merits further consideration, on the basis of the following criteria:

- The notifying party seems to be a concerned party with a legitimate interest in the issues raised in the notification.
- Unilever is a multinational enterprise within the meaning of the Guidelines.
- The issues raised by the notifying party seem to be material and prima facie substantiated.
- There seems to be a link between the multinational's activities and the issues raised in the specific instance.
- The relevance of applicable law and procedures, including court rulings.
- The consideration of the specific issue would contribute to the purposes and effectiveness of the *Guidelines*.

The decision to further examine this specific instance is not based on substantive research or fact-finding, nor does it represent any judgment as to whether or not Unilever has violated the Guidelines.

With this initial assessment, the NCP explains its decision to offer parties its 'good offices' to find a solution through dialogue, with reference to the Dutch NCP Specific Instance Procedure for handling notifications.¹

¹ <https://www.oecdguidelines.nl/notifications/documents/publication/2018/12/05/dutch-specific-instance-procedure>

In April 2019, in conformity with the Dutch NCP's procedure, the draft initial assessment was sent to the parties, inviting them to respond to it in writing within two weeks. Following this period, additional information was received from both Atuma and Unilever, and the NCP held a meeting with Unilever in August 2019 allowing it to further explain its position.

The draft initial assessment was revised, taking the parties' comments into account. The revised version was then sent to the parties again in February 2020, inviting them to respond to it in writing within one week. Both parties responded, providing the NCP with further documents. Following this period, the initial assessment was finalised, taking the parties' comments into account. The finalised version was then published on the NCP's [website](#), in accordance with the Dutch NCP Specific Instance Procedure. The appendix describes how the follow-up of the procedure is being designed.

This initial assessment has been published on the website of the NCP: www.oesorichtlijnen.nl.

2. Summary of the notification

On 12 April 2018, the Dutch NCP and UK NCP received a specific instance from a group claiming to consist of and be authorized to represent former workers of Unilever-Marsavco/PHC (ATUMA) in the Democratic Republic of the Congo (DRC) that was filed against Unilever NV (Rotterdam, NL) and Unilever PLC (London, UK).

In this initial assessment the NCP will not express an opinion on the correctness of the statements of ATUMA.

In the specific instance, ATUMA (Association des Ex-Travailleurs Unilever Marsavco/PHC au Congo) alleges that in 2001, Unilever-Marsavco unjustifiably dismissed 802 employees and then failed to provide them a complete legal severance package, including full final salary and bonus as well as allowances for housing, transportation, food, and dependents, and other benefits. In 2002, ATUMA alleges that 686 of the workers raised a complaint with the Congolese General Inspector for Labour to recover their unpaid severance packages. The complaint was brought to the attention of Congolese authorities at various levels (Judiciary, ministries, and the Office of the President of the Republic). Since the early 2000s, ATUMA postulates that several judicial and administrative rulings have supported the workers' claim for compensation.

According to ATUMA, in order to settle the dispute, Unilever PLC has made several financial transfers to Marsavco and its owners over the past decade for the compensation of the group of former workers. According to ATUMA, Unilever has failed to monitor the financial transactions to ensure the monies were actually paid to workers and as a result, none have been received. Atuma further claims that Unilever made payments direct to the owners of Marsavco and alleges misappropriation through corruption. ATUMA postulates that the money owed to workers is estimated

by the DRC Labour Inspectorate and courts to total more than \$45 million USD.

ATUMA alleges that UNILEVER's failed to ensure that the money was correctly paid to the right people and no action was taken from Unilever's side to investigate the alleged misappropriation of funds. To their opinion, it constitutes a grave case of negligence supporting mismanagement and fraud.

ATUMA's specific instance claims that Unilever has violated several provisions of the OECD Guidelines, local laws in the DRC, and its own labor agreement and social charter, in connection with this situation. More specific, ATUMA claims breaches of OECD Guideline's Chapter 1 (Concept and principles), Chapter II (General policies), Chapter III (Disclosure), Chapter IV (Human Rights), Chapter V (Employment and Industrial Relations) and Chapter VII (Combating Bribery, Bribe solicitation and Extortion).

ATUMA calls for Unilever to investigate the situation and pay compensation to workers again, this time ensuring payments actually reach those to whom they are due.

ATUMA calls for the CEO of Unilever to directly engage in the NCP process, as ATUMA asserts he has done so in other disputes with former employees in other countries, to help the parties achieve a fair outcome. ATUMA calls on the NCP to assist, to facilitate, reconcile and mediate between ATUMA and Unilever.

3. Summary of the initial response by Unilever²

Unilever regards this notification as a matter for ATUMA to resolve with Marsavco and its current owners, and not with Unilever. Unilever regards its policy and actions in respect to this matter as fully consistent with the OECD guidelines, specifically the relevant sections in Part I (I. Concepts and Principles, II. General Policies and III. Employment and Industrial relations).

In this initial assessment the NCP will not express an opinion on the correctness of the statements of Unilever.

Unilever does not regard itself as having responsibility for any liability to former employees in the DRC nor in any legal proceedings that may have been brought by those former employees against Marsavco after it had ceased to be a Unilever company. According to Unilever, Marsavco is fully responsible for any liability to former employees. Unilever has no direct liability

² The complaint is addressed to Unilever Plc. The specific instance regards Unilever-Marsavco: at the time of the events addressed in the complaint, Marsavco was a wholly owned subsidiary of Unilever NV. In 2002, Unilever sold all its shares in Marsavco to Beltexco and Unilever claims that full ownership and control was transferred, see further below in paragraph 4.

nor, following the sale, does it have any indirect liability to Marsavco or Beltexco (owners of Marsavco) in this regard.

Since legal proceedings were brought by the former employees in the DRC against Marsavco after it had ceased to be a Unilever company, Unilever is not a party to any proceedings and has had no involvement with these employees, directly or indirectly, neither during those proceedings nor subsequently. Even if a complete and verified set of the relevant legal papers were available, which is far from the case in this instance, Unilever states that it was never and is not now in a position to get involved and nor can Unilever form any view or comment here on the validity, quantum or outcome of those proceedings.

Moreover, according to Unilever, ATUMA's present notification is based on assertions which are simply untrue, in particular:

- ATUMA alleges that Marsavco remained owned by or under the influence or control of Unilever (or implies that there is some other entity called "Unilever Marsavco" or "Marsavco Unilever") which is not correct. Unilever sold all its shares in Marsavco to Beltexco in February 2002. Full ownership and control were transferred. No equity stake or other interest was retained and Unilever has appointed no board member nor had any other involvement with the management or operations of the company since. The only relationship Unilever has with the company is arms-length and contractual. Marsavco sells on its own behalf a limited portfolio of Unilever branded products pursuant to license/distribution contracts. Unilever's trademarks appear on such products just as they do with any distributor or retailer but they are sold by Marsavco. Unilever treats Marsavco as it would any other third-party distributor / licensee.
- ATUMA also alleges that Unilever transferred (notwithstanding the amount claimed) some USD 166m in aggregate to Marsavco for it to pay former employees in settlement of their claims and asserts that this, and/or the failure to exercise control to ensure payment, somehow is a basis for Unilever having assumed responsibility. This is simply not true. No such transfers of any amount were ever made by Unilever for that purpose or otherwise and Unilever has no control over Marsavco.

In Unilever's view, the notification is therefore without basis in substance and is also lacking any credibility. Unilever has also raised due process concerns about the procedure that has been followed in respect of the specific instance.

4. Initial assessment by the NCP

In accordance with the OECD Guidelines and the Procedural Guidance regarding the initial assessment, the NCP is of the opinion that the issue raised is bona fide and relevant to the implementation of the guidelines and therefore merits further

consideration. In this context, the NCP has taken into account the following criteria:

- Is the Dutch NCP the right entity to address the alleged violation?

The parties involved are Unilever Plc /NV (UK/Netherlands), Marsavco (DRC) and ATUMA (DRC). The specific instance will in principle be reviewed by the NCP of the country in which the issues have arisen, or, when the country in which they have arisen does not have an NCP, in the country in which the multinational involved in the notification is headquartered. The notification / specific instance is addressed to two NCPs: the NL and UK NCP. Both the UK and the NL NCP are competent to deal with the specific instance regarding the alleged violations by Unilever, as the addressed company has its headquarters both in the UK and the NL. In consultation with the UK NCP, it was agreed that the NL NCP will handle the case.

- What is the identity of the party concerned and its interest in the matter?

ATUMA (Association des Ex-Travailleurs Unilever Marsavco/PHC au Congo) claims it is an association of 686 former workers of Unilever in the Democratic Republic of Congo/ D.R.C., representing the interests of these former workers who claim to have been unjustifiably dismissed and not provided with a complete legal severance package.

- Is Unilever a multinational enterprise according to the Guidelines?

Unilever is a global company selling fast-moving consumer goods. Unilever is a British Dutch transnational consumer goods company co-headquartered in London, United Kingdom and Rotterdam, Netherlands. Its products include food and beverages, household cleaning agents, beauty products, and personal care products. Unilever is one of the oldest multinational companies; its products are available in around 190 countries. Unilever plc has a primary listing on the London Stock Exchange and is a constituent of the FTSE 100 Index. Unilever N.V. has a primary listing on Euronext Amsterdam and is a constituent of the AEX index. The company is also a component of the Euro Stoxx 50 stock market index.

- Is Marsavco a multinational enterprise according to the Guidelines?

At the time of the events addressed in the complaint, in 2001, Marsavco was a wholly owned subsidiary of Unilever NV. In 2002, Unilever sold all its shares in Marsavco to Beltexco, and Unilever claims that full ownership and control was transferred. Currently, Marsavco S.A.R.L. manufactures and markets cosmetic and household cleaning products in DRC. It offers cooking oils, soups, tea, cleaning liquids, and detergents. Additionally, the company provides toothpastes, soap bars, face creams, and

medicated body soaps. The company markets its products under its own brands including Mongana, Bona, Simba. It also sells the Unilever Omo brand under licence and sold the spreads brand, Blue Band, which Unilever claims to have sold to a third party in 2018. According to Atuma, however, this spreads brand is still sold in DRC with the name Unilever on it. Marsavco is based in Kinshasa, DRC. Marsavco S.A.R.L. is a subsidiary of Beltexco, a DRC based company that manufactures and distributes consumer goods within the DRC.

Marsavco itself cannot be considered a multinational enterprise (MNE) for the purpose of the Guidelines. However, the Guidelines are addressed to all the entities within the multinational enterprise (parent companies and/or local entities). Until 2002, Marsavco was a wholly owned subsidiary of Unilever NV. From 2002, since the transfer, Marsavco can be considered to be a 'business relation' of Unilever. According to the actual distribution of responsibilities among them, the different entities are expected to co-operate and to assist one another to facilitate observance of the Guidelines.

- Are the issues raised by ATUMA material and substantiated?

The issues raised in the notification date back as far as 2001. This is well before the current Guidelines were adopted, which was done May 2011 at the annual OECD Ministerial Council Meeting. In their notification, the notifying parties held the issues they raise against the 2011 Guidelines. In principle, however, the NCP can only consider the issues raised in light of the 2000 Guidelines, taking into account that the events addressed in the specific instance took place in 2001 and 2002.

ATUMA sees a responsibility for Unilever regarding the – in their view - unjustified dismissal and responsibility to co-operate with worker's representatives to mitigate adverse effects of a large-scale dismissal. They claim damage has been done to the former employees and their families by not following up on Unilever's own social charter regarding a humane treatment of employees.

For the NCP, this raises two questions: 1) how Unilever's responsibility should be viewed at the time of the dismissal of the workers and in the framework of the transfer of Marsavco to Beltexco (2001). And (2) if and to what extent Unilever should be considered to be responsible for doings of Marsavco, after that company had been sold to Beltexco, as its contracting party and business relation in the supply chain, according to the principles of due diligence as described in the Guidelines.

With regard to the first question, the NCP will in principle apply the 2000 Guidelines. With regard to the second question, the NCP draws attention to the fact that Article 10 of Chapter 2 of the OECD Guidelines 2000 mentions that an MNE should encourage, where practicable, business partners, including suppliers and sub-contractors, to apply principles or corporate conduct compatible with the Guidelines. This principle has been further elaborated in

articles 10 and 13 of Chapter 2 of the 2011 edition of the Guidelines, regarding due diligence.

- Does there seem to be a link between Unilever's activities and the issues raised in the specific instance?

ATUMA alleges that there is a responsibility for Unilever regarding non-compliance with the 2001 redundancy agreement that was signed with more than 800 employees.

Unilever sold the shares it owned in Marsavco to another DRC company Beltexco in 2002. It does not believe any evidence has been presented to support the allegations made by ATUMA and does not regard itself as having responsibility for any liability to former employees in the DRC nor in any legal proceedings that may have been brought by former employees against Marsavco after it had ceased to be a Unilever company.

On the basis of the information provided by the parties, however, the NCP is of the opinion that there seems to be a link between Unilever's activities and the issues raised.

- the relevance of applicable law and procedures, including court rulings

ATUMA provided documentation on court rulings, administrative decisions and other (local) procedures in June 2019, claiming them to have been in their favour, that would not have been followed up by Marsavco / Unilever. Unilever, however, claims that all local remedies have been exhausted and the DRC courts have ruled in favor of Marsavco³, and, after receiving the revised draft initial assessment, provided documentation on February 24th 2020, in the form of court rulings to the NCP which in their view supports their position.

To the best of the NCP's knowledge, there are currently no parallel proceedings concerning (parts of) the same case against the company in question that would stand in the way of the handling of the notification by the NCP.

- how similar issues have been, or are being, treated in other domestic or international proceedings

ATUMA refers to the Heineken-case that was dealt with by the Netherlands NCP (Specific instance former employees of Bralima and Heineken). For the NCP these are not inter alia comparable cases.

³ In this initial assessment, different terminology is used for the reference to the notified party: Marsavco-Unilever, Unilever and Marsavco. In their notification Atuma refers to Marsavco-Unilever as the notified party. Unilever, in their response, refers to Marsavco, as the notified party. In this Initial Assessment, the NCP applies the terminology used respectively by the notifying party and the notified party.

- Would the consideration of this specific problem contribute to Guideline objectives and effectiveness?

On the basis of the information provided by both parties in the initial phase of the process, the NCP cannot determine yet whether or not, or to what extent, there is possibly a responsibility under the OECD Guidelines for Unilever in or after 2001 for the issues raised by ATUMA.

The questions that arise in this specific instance for the NCP, and that will have to be clarified in the next stage of the case, regard 1) clarity on the question if and to what extent there is a responsibility of Unilever regarding the dismissal process and possible unsatisfactory outcomes for the workers concerned when Marsavco was still fully owned by Unilever, 2) the question if there exists, since the transfer in 2002, a supply-chain responsibility for Unilever which requires, according to the 2000 Guidelines, that Unilever should have encouraged Marsavco to apply principles of corporate conduct compatible with the Guidelines, and/or – in the terms of the 2011 Guidelines - due diligence, taking into account that to date, there is a business relationship between Marsavco and Unilever.

The Netherlands NCP believes that dealing with this notification will contribute to the purpose and effectiveness of the Guidelines in the sense that it may help clarify the scope of the responsibilities of Unilever under the Guidelines.

5. Conclusion

In this initial assessment the NCP will not express an opinion on the correctness of the statements of the parties or the validity of the documentation provided by them, nor on their possible impact on the issues raised in the specific instance.

Also, the consideration of this specific instance does not entail substantive research or fact finding in the individual cases of the 802 former employees.

The Dutch NCP is of the opinion that this specific instance merits further consideration on the basis of the criteria for further examination of the Commentary on the implementation procedure of the OECD Guidelines for multinational enterprises (2000 and 2011).

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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 www.oecdguidelines.nl.

The NCP has therefore, in accordance with its specific instance procedure, offered its good offices to facilitate a dialogue between the representatives of Atuma and Unilever. The NCP is of the opinion that a dialogue between the parties facilitated by the NCP may help clarify the responsibilities under the Guidelines of Unilever towards its former employees. It may also help clarify the scope and responsibility of Unilever and its business relations under the Guidelines. This should contribute to resolving the outstanding matters, raised in this specific instance, between them.

Atuma has accepted the NCP's offer of its good offices. Without prejudice to Unilever's position, which is that according to its own investigations and due diligence ATUMA's claims against it are without merit and that all local remedies were exhausted by ATUMA, Unilever has expressed a willingness to engage in discussions facilitated by the NCP to seek agreement on the terms of reference for a dialogue between the representatives of ATUMA and Unilever.

In accordance with the NCP procedure, further discussions between the parties will be confidential while dialogue is in progress. The NCP will take the necessary steps to guarantee a careful process. It will complete the procedure by issuing a final statement, which it will publish on its website, www.oecdguidelines.nl.