



TRADE UNION ADVISORY COMMITTEE  
TO THE ORGANISATION FOR ECONOMIC  
COOPERATION AND DEVELOPMENT  
COMMISSION SYNDICALE CONSULTATIVE  
AUPRÈS DE L'ORGANISATION DE COOPÉRATION  
ET DE DÉVELOPPEMENT ÉCONOMIQUES

## **TUAC SUBMISSION TO THE OECD ANNUAL MEETING OF NATIONAL CONTACT POINTS (NCPs)**

**Paris, June 2008**

### **1. Introduction**

Eight years after the revision of the OECD Guidelines for Multinational Enterprises in 2000, nearly 100 cases have been raised by trade unions. The TUAC list of cases includes 91 cases as of May 2008, but the actual number is higher as we have not received detailed information on all the cases. It appears, however, that fewer cases have been raised on the trade union side in 2008 than in recent years.

In order to review the performance of NCPs, this paper examines the cases in terms of length of treatment by NCPs, type of breach, where the issue has arisen, nationality of the involved NCP and outcome. It also discusses factors that can help explain the differences in NCP performance, such as structure, differing interpretations of the Guidelines, lack of accountability and resources.

### **2. Key findings and recommendations**

#### *2.1 Findings*

- Most cases concern breaches in adhering countries. In 2007, however, there was a rapid rise in the number of cases in non-adhering countries, more specifically in the Asian region.
- On average, NCPs need between one and two years to handle a case (15 months if only closed cases are considered and 20 months if all ongoing cases are included). The speed with which cases are being treated, especially in Asia and North America, needs to be improved. The NCPs in France, Japan and the US are responsible for 75 per cent of the cases that have been pending for more than three years.
- The large majority of cases relate to violations of trade union rights. Anti-union behaviour, non-compliance with contractual obligations and no prior notice in case of restructuring are the issues that are most often raised with NCPs.
- Anti-union behaviour is most frequent in Asia and North America, while no prior notice in case of restructuring is more common in Europe than elsewhere.
- There is a growing number of transatlantic cases. Trade unions may prefer to submit cases involving companies headquartered in Europe since, in general, NCPs in Europe are believed to function more effectively than their American and Asian counterparts.

- Over 60 per cent of the cases have been concluded and about 60 per cent of those have had some positive outcome. But only in half of those cases was the intervention of the NCP helpful for the outcome.
- Some NCPs offer mediation to the parties involved, which may be necessary in order to establish a constructive dialogue between the parties.
- The Dutch and British NCPs have been restructured. Other NCPs should take stock of the situation to undertake reforms to improve effectiveness.
- Narrow interpretations of the investment nexus and the ‘non-action’ attitude of some NCPs regarding parallel legal proceedings remain important obstacles to the resolution of cases.

## *2.2 Recommendations*

- Labour ministries should be more frequently involved in the work of NCPs.
- NCPs need credible structures and should avoid excessive turnover of staff. Bilateral structures are for obvious reasons not appropriate and may lead to one-sided evaluations of cases.
- NCPs need to improve consultation and collaboration among themselves and should encourage and call upon each other to deal with cases in a proper way.
- The OECD Investment Committee should strengthen the visibility of the Guidelines by applying a more regional perspective on its promotional activities.
- It should also develop a real peer monitoring process to improve and encourage the functioning of NCPs. This could help shorten the unnecessarily long time with which cases are being dealt with.

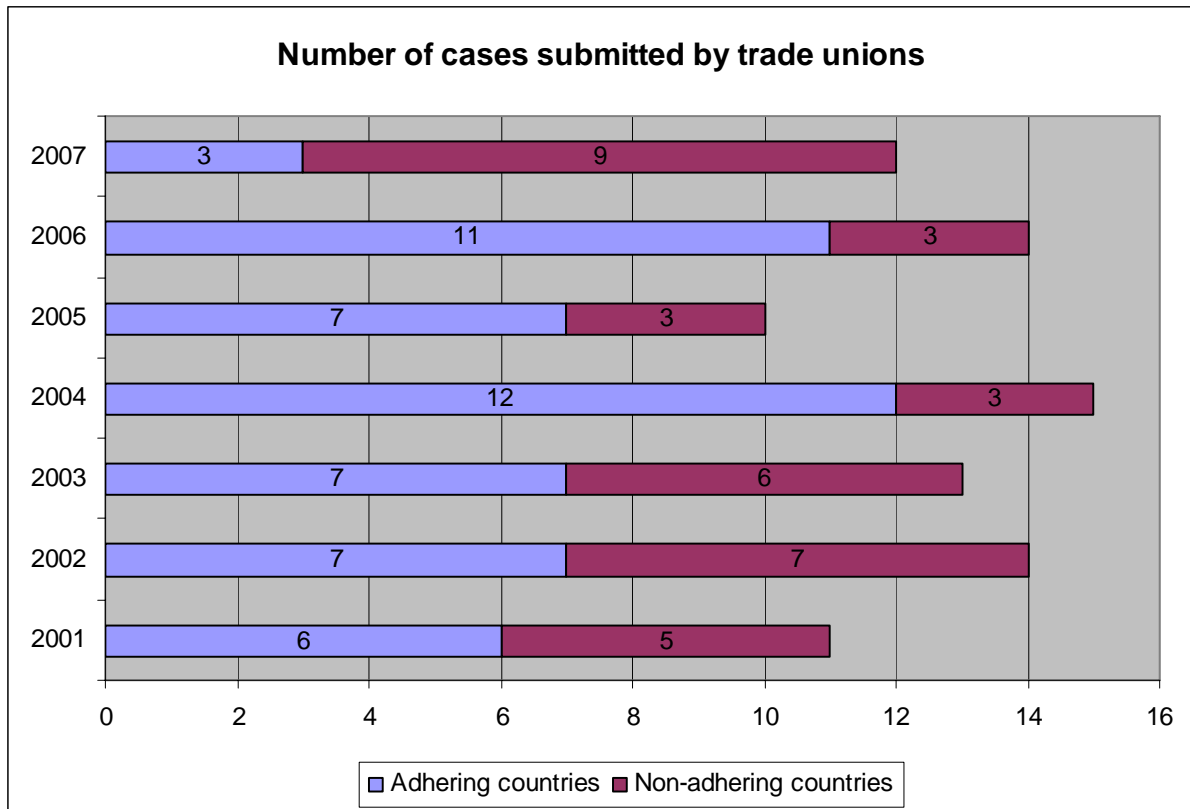
## **3. Cases**

### *3.1 General features*

Trade unions have raised over 90 cases since the 2000 review of the Guidelines. This paper, however, does not include cases submitted during 2008. This analysis is therefore based on the 89 cases registered in the TUAC list of cases by the end of 2007. 65 per cent of them have been closed, while 35 per cent are still pending.

Between 10 to 15 cases are raised yearly. The highest number of submissions was recorded in 2004, while the lowest in 2005 (figure 1). Most cases concern breaches in adhering countries. In 2007, however, there was a significant increase in cases in non-adhering countries, notably in the Asian region.

**Figure 1: Number of cases submitted by trade unions divided by breaches in adhering and non-adhering countries**



The lack of clear time frames for dealing with cases remains an important obstacle to the effective resolution of cases. On average, NCPs take over 15 months to conclude consideration of a case. If all the pending cases are included, the average increases to 20 months. Nevertheless, overly restrictive interpretations of deadlines (as applied by some NCPs) may also hamper the process. It should also be remembered that concluding a case does not mean that the issue is resolved.

The longest lasting case, among the closed ones, is Bayer, which took four years to resolve. If pending cases are also included, there are three cases that have been going on for more than five years. Of the 32 ongoing cases, 16 have been pending for more than two years, of which 12 for more than three years. Nine of those 12 cases have been submitted to the French, Japanese and the US NCPs.

### 3.2 Breaches

Most of the trade union cases relate to labour issues, although some cases have been raised on other grounds. They can be divided into seven categories: anti-union behaviour, non-compliance with contractual obligations, no prior notice in case of restructuring, threat to relocate offshore, disclosure of information, occupational health and safety and other issues. However, several of these categories are closely linked and many cases address several issues. In spite of this, we have tried to identify the main issue in each case. The result can be seen in Table 1, which identifies and ranks the different types of breaches. More than 70 per cent of the cases have been raised because of anti-union behaviour, non-compliance with contractual

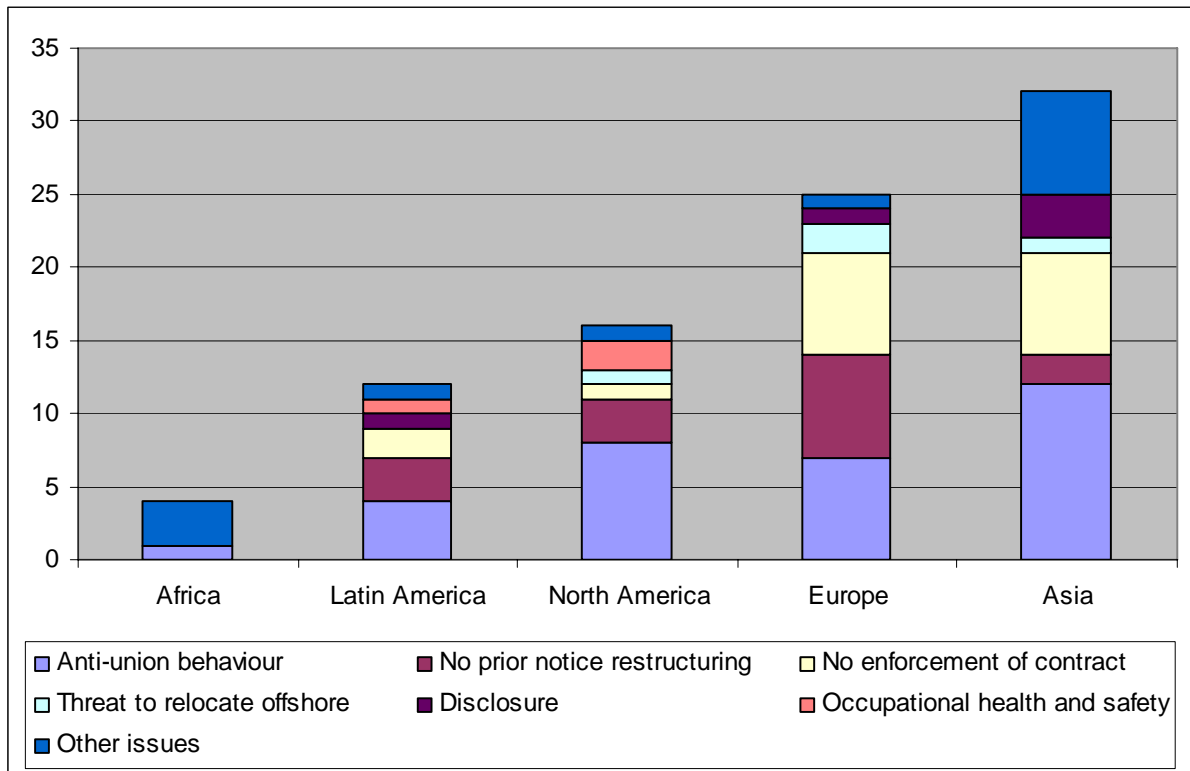
obligations and no prior notice in case of restructuring. There are also a few cases on disclosure and occupational health and safety. Other cases include forced labour, corruption and the DRC cases among other things.

**Table 1: Cases divided by breach**

<b>Types of breaches</b>	<b>Chapter of the Guidelines</b>	<b>In %</b>
<b>Anti-union behaviour</b> No respect for trade union rights – workers are not allowed to organise, efforts to erode union presence and capacity, intimidation/threats, establishment of management-controlled unions etc	Ch. IV §1	36%
<b>Non-compliance with contractual obligations</b> Collective bargaining agreements are violated/not negotiated/not renewed, wages are not paid, cuts in wages or other benefits (e.g. pensions and healthcare), illegal dismissal or no reinstatement of workers	Ch. IV §2, §4a, §8	19%
<b>No prior notice in case of restructuring</b> Lack of information or consultation with workers in case of restructuring or closure of business operations	Ch. IV §6	17%
<b>Threat to relocate offshore</b>	Ch. IV §7	6%
<b>Disclosure of information</b> No transparency and no disclosure of financial information of the company	Ch. III, IV §3	4%
<b>Occupational health and safety</b>	Ch. IV §4, V	3%
<b>Other issues</b> Forced labour, supply chain, broader human resource issues, bribery and corruption	Ch. II, IV§1, VI	15%

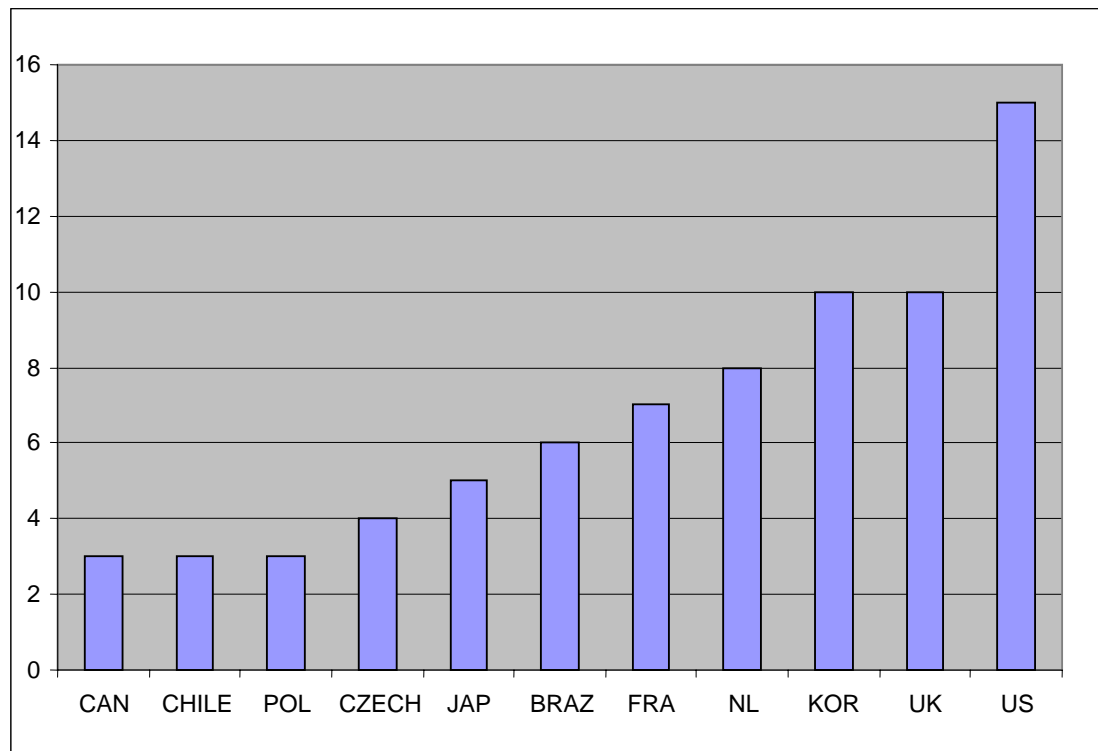
Figure 2 shows the different breaches divided by region. Anti-union behaviour is most frequent in Asia, while restructuring cases are occurring mostly in Europe. Non-compliance with contractual obligations is common both in Europe and Asia. The relative high share of other breaches in Asia can be explained by the number of cases regarding Burma. Most of the cases in North America relate to anti-union behaviour.

**Figure 2: Types of breaches per region**



### 3.3 Most demanded/solicited NCPs

Only 22 of the NCPs have been formally requested by trade unions to contribute to the resolution of cases. Thus, nearly half of the NCPs have little or no experience with considering labour issues (although some cases concerning labour issues have been raised by other parties). 11 NCPs have each received three or more cases submitted by trade unions. The US has received the highest number of cases. It is followed by Korea, the UK, Netherlands and France.

**Figure 3: Number of cases submitted to NCPs**

The NCPs of Brazil, France, Japan, Korea, the Netherlands, the UK and the US have received almost 70 per cent of the cases submitted by trade unions. Table 2 shows the number of cases that these NCPs are responsible for, how many have been pending for one year or more, how many have been pending for two years or more, how many are still ongoing and how many of these that were filed before 2006. Cases pending for two years or more are particularly frequent with the French, Japanese and US NCPs. This can partly be explained by parallel legal proceedings. The NCP of Japan, for example, does not handle cases while there is an ongoing proceeding elsewhere.

**Table 2: The NCPs with the highest number of cases**

	N° cases	≥ 1 year	≥ 2 years	Ongoing	Ongoing: raised before 2006
<b>US</b>	15	6	4	6	3
<b>UK</b>	10	4	1	7	1
<b>Korea</b>	10	2	1	2	0
<b>Netherlands</b>	8	4	2	0	0
<b>France</b>	7	3	3	3	3
<b>Brazil</b>	6	0	1	3	1
<b>Japan</b>	5	0	4	4	4
<b>Others</b>	28	5	9	8	2

### 3.4 Regional location of MNE

Figure 4 shows the regional location of the headquarters of the companies that are subject to cases. The bulk of the companies are headquartered in Europe.

**Figure 4: Number of breaches by MNEs headquartered in Asia, Europe, Latin America and North America**

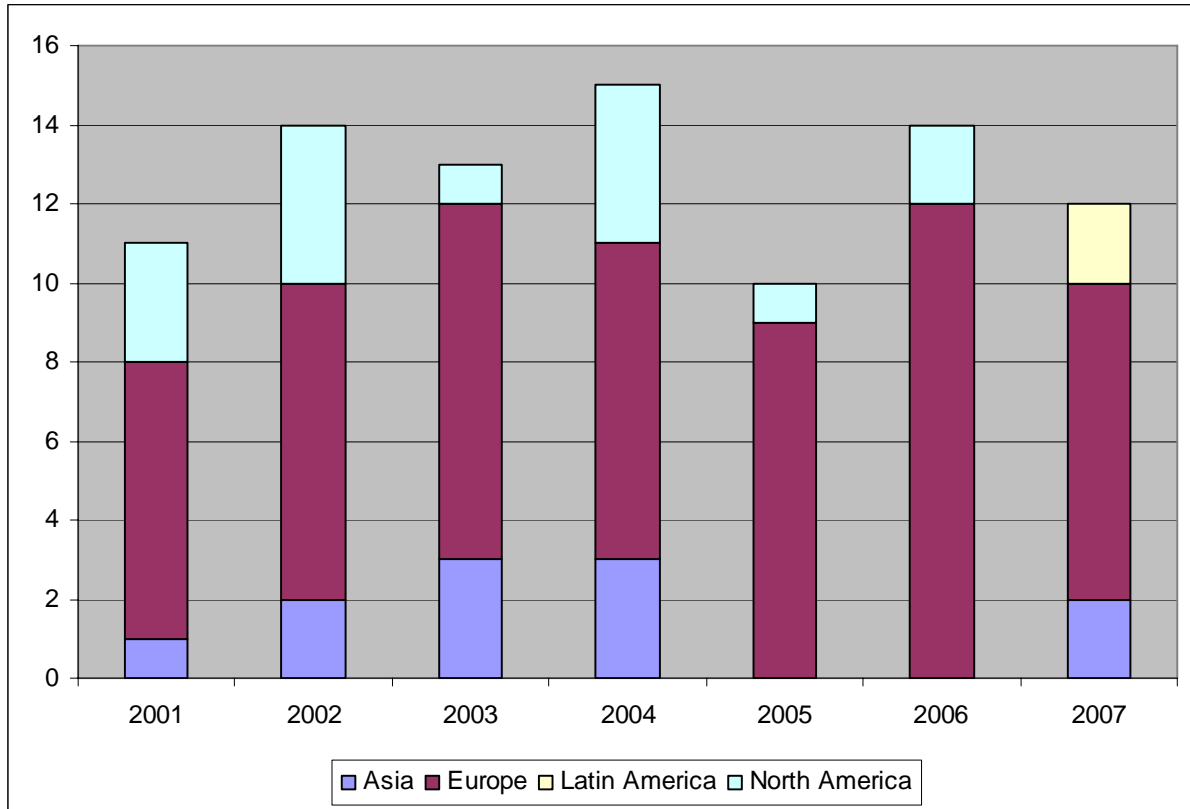
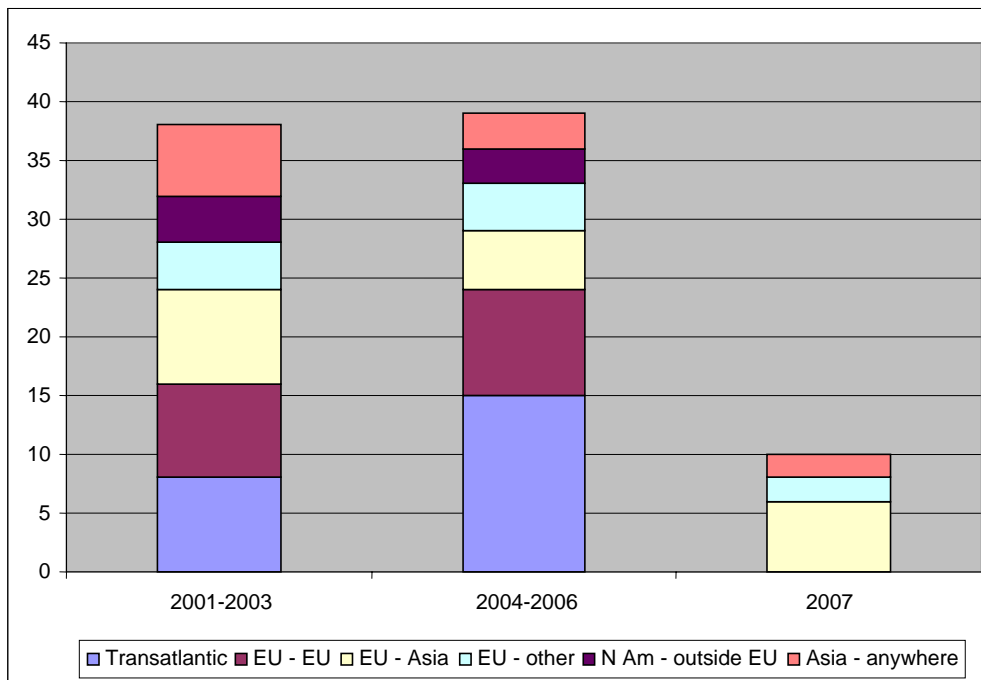


Figure 5 shows a growing number of transatlantic cases over the years with the exception of 2007. Transatlantic cases are defined as cases where European-headquartered companies are involved in breaches that take place in North America and vice versa. In 2007, there were an increasing number of cases concerning breaches in Asia involving companies headquartered in Europe. Some trade unions have intentionally raised cases involving companies headquartered in Europe since European NCPs generally are considered more effective than others.

**Figure 5: Cases divided by region of the MNE and the region of the breach**

Transatlantic case: European MNE involved in a breach taking place in North America and vice versa  
 EU-EU: European MNE involved in a breach taking place in Europe  
 EU-other: European MNE involved in a breach taking place outside Europe and North America  
 N Am-outside EU: North American MNE involved in a breach taking place outside Europe  
 Asia-anywhere: Asian MNE involved in a breach

It is also interesting to note that a number of companies are recurring in several cases. Violations of the Guidelines by Unilever have been raised five times, Nestlé four times, British American Tobacco three times and Bata and Imerys twice. This does not necessarily mean that these companies are worse than others, but it does give reasons for concern. In the case of Unilever and Nestlé, unions observe that the responsible management at headquarters do not want to get involved with corporate conduct at the local level, even if this means that the Guidelines are being violated.

### 3.5 Outcome of cases

About 60 per cent of the closed cases have, in the opinion of the union concerned, resulted in a loosely defined positive outcome. We have, however, also included cases which have not been resolved, but where the NCP has followed the procedure correctly and published a public statement accordingly. In 53 per cent of “positive outcome cases”, the intervention of the NCP contributed to the result. In 38 per cent, pressure on the company through different means, but without any help of the NCP, led to some kind of positive outcome. Three per cent of the cases were resolved through legal procedures.

Only in 23 per cent of the cases, NCPs issued a public statement.

One way to enter into a dialogue with a company to resolve a problem, without the assistance of NCPs, is through International Framework Agreements (IFAs). These are worldwide agreements between Global Union Federations and multinational enterprises covering, as a

minimum, basic trade union rights. But they may also cover other issues such as the supply chain and occupational health and safety. The number of IFAs has grown rapidly in recent years. About 60 such agreements had been signed by the beginning of 2008. A number of IFAs refer not only to the ILO core labour standards but the OECD Guidelines. An example of such an agreement between the Union Network International (UNI) and ISS is attached in Annex 1.

Some companies have signed IFAs after having been the subject of a Guidelines case, while others have been more willing to negotiate with the union raising a Guidelines case because there was also an IFA.

The Guidelines influence corporate conduct and investment flows also in other ways. The Norwegian pension fund KLP recently excluded G4S from its investment portfolio referring among other things to the case brought to the UK NCP by UNI.

#### **4. NCP performance**

Several factors can help explain the difference of performance between NCPs.

##### *4.1 Structure of NCPs*

The outcome of a case largely depends on the effectiveness of the NCP. This is partly linked to the structure of the NCP.

According to the OECD, 26 of the NCPs consist only of (single or multiple) representatives of government departments. One NCP is bipartite, 9 are tripartite and 2 are quadripartite.

Of the 26 NCPs that are made up of government departments, 11 have a labour or social department, 6 have no labour/social department but have some involvement with both social partners, while 10 have no labour/social department and no formal involvement with both social partners. Naturally, these 10 NCPs do not have the adequate knowledge and experience to deal with cases concerning chapter four on employment and industrial relations. NCPs should ensure that labour ministries are properly involved in their work.

The Romanian NCP is the only NCP with a bipartite structure. It includes different government departments and employers' representatives, but not trade unions. Such a structure is unacceptable, and obviously, poses questions as to the NCP's objectivity. The structure may explain why the NCP refused a case regarding Mittal Steel Group in 2006/2007.

It is important to have a credible NCP structure which is respected by all the parties concerned. Trade unions prefer tri- or quadripartite structures as this makes it easier to enter into constructive dialogue with NCPs. Consequently, such NCPs are usually regarded as more effective.

The Dutch and British NCPs have been restructured. This may lead to a more effective treatment of cases. It would be very important to see similar developments in other NCPs as well.

#### *4.2 Different interpretations of the Guidelines*

NCPs do not interpret the Guidelines in the same way. While some NCPs are willing to deal with cases despite parallel proceedings, others, such as the NCP of Japan, refuse to take any action while there are other ongoing procedures. This is particularly problematic for cases in non-adhering countries, since legal remedy is often sought before raising a case with the relevant NCP. Moreover, there are frequent shortcomings in the legal systems in some non-adhering countries, especially regarding law enforcement. While some NCPs argue that they do not want to interfere with host countries' legal systems, their task is to uphold the implementation of the Guidelines and not to make judgements over whether national law has been violated.

Some NCPs have also limited the receivability of cases by interpreting the so called "investment nexus" extremely narrowly.

#### *4.3 Lack of accountability of NCPs*

One of the initial principles of NCP functioning is accountability. One way of improving this is to develop the NCPs' annual reports into an instrument for accountability. Each NCP should provide an annual account of its activities including its efforts to resolve cases. So far, annual reports provide at best a summary note on cases and a description of promotional activities by NCPs. The OECD Investment Committee should evaluate the effectiveness of the NCPs by identifying the weaknesses and problems as well as the successes. A recommendation should follow to improve the performance of each NCP – as set out by the procedural guidance.

The OECD Investment Committee should also introduce a peer review process. This should take place in cooperation with TUAC, BIAC and OECD Watch. The formal peer reviews should lead to separate reports in which the functioning of each NCP is evaluated. Shortcomings and successes should be noted so that appropriate recommendations to the concerned governments can be made.

#### *4.4 Other factors*

Other factors that affect the performance of NCPs are the availability of sufficient resources, the level of staff turnover and the willingness of the involved parties to reconcile. Although an NCP cannot force a party to reconcile, it can play an active role by encouraging both parties to engage and be constructive. However, many NCPs appear to be reluctant to make use of the influence that they actually have and prefer a "hands off" approach.

Some NCPs have offered mediation in order to resolve a case. This can initiate and strengthen dialogue between the social partners.

NCPs also need to strengthen the collaboration among themselves on the treatment of cases. The NCP in the country where the company is headquartered should assist the NCP in the country where the breach has occurred (that is if it is not the same country). Too often this is not the case.

Finally, the OECD Investment Committee should strengthen the visibility of the Guidelines by adopting a more regional focus. This could be done through regional OECD Round Table

Programmes to promote the Guidelines such as the OECD Round Table programmes on Corporate Governance and Governance of State-Owned Enterprises.

The Guidelines have yet to realise their full potential as an effective instrument to influence corporate conduct. The G8 mandate for 2007 raises the visibility and the expectations on the instrument and on NCPs. Governments have to rise to this challenge. The lack of trade union cases in 2008 is a source of concern.



## **ISS – UNI GLOBAL AGREEMENT**

### **Purpose**

**ISS and UNI have enjoyed a positive relationship for many years, having first signed a global agreement in 2003.**

As ISS expands, however, and as union organising activities among service staff increase, it has become clear that the original global agreement needs additional clarity and specificity in order to provide meaningful guidance to ISS managers and UNI unions.

Therefore the parties agree to take an important step to revise the global agreement in order to provide concrete commitments in the area of organising rights, and specific commitments on UNI's part to actively monitor standards in markets where ISS is operating.

Both parties are committed to a market for service employment in which workers receive decent work, and a decent wage. Both parties recognize the important role that unions play in raising and maintaining standards for these typically low wage service workers. Finally, both parties recognise that because of obstacles to the creation of unions in this industry, the employer must agree to facilitate the process of union access to workers in order to ensure that the promise of freedom of association may be fulfilled.

### **1. Scope**

1.1 This global agreement is between UNI Global Union and ISS.

1.2 "Union" refers to UNI Global Union and its affiliated unions and "ISS" refers to ISS A/S and its subsidiaries.

### **2. Framework of Rights**

2.1 ISS recognizes its obligation to respect the applicable laws and public regulations concerning the treatment of its employees in the various countries in which it operates. This commitment includes, but is not limited to, a commitment to pay the legally required minimum wages and to respect limitations on the hours of work and overtime obligations.



2.2 ISS further recognizes its obligation to respect the rights set forth in the ILO Conventions, including those comprising the Declaration of Fundamental Rights at Work (1), and ILO Convention 135. As such ISS agrees that it will not use child labour or forced labour (as those terms are understood within the meaning of the ILO Conventions) and that there shall be no discrimination in employment.

2.3 Finally, ISS agrees to adhere to the commitment to engage in constructive negotiations with trade unions as outlined in the OECD Guidelines for Multinational Enterprises.

2.4 In particular ISS agrees that ISS workers and workers providing services to ISS facilities are able to exercise rights to union membership and collective bargaining. All workers shall have the right to form and join trade unions (ILO Convention 87).

Subject to the terms and conditions set out in this global agreement ISS recognises the right of unions to represent union members in:

- a) Collective bargaining (ILO Convention 98);
- b) Dispute settlement procedures;
- c) Negotiations and consultations in those matters affecting jobs and training, where unions have a stake.

2.5 ISS and the Union jointly affirm that these union membership and collective bargaining rights can be exercised within the ISS without fear of retaliation, repression or any other form of action or discrimination.

### **3. Union Rights and Union Recognition**

3.1 In order to make it practicable for ISS employees to exercise the rights described above, when a UNI affiliated union notifies ISS of its intention to organise and provided, however, that there is no existing recognition of a (non-UNI affiliated) union, the parties will designate representatives to negotiate a recognition and recruitment policy based upon the following basic principles:

- 3.1.1 Representatives of the Union will be allowed unaccompanied access to meet with workers and outline the benefits of union membership (including the right to distribute union recruitment material); Meetings with workers shall be allowed at a mutually agreed time, in agreed upon areas and shall be conducted in a non-disruptive manner. The parties agree that meetings shall be arranged either in breaks or after/before hours of work and, whenever possible, not within hours of work. The Union recognizes and agrees that any Union access to the premises of an ISS customer is conditional on the prior consent of the customer in question. Consequently, the parties agree that in the event UNI or its affiliated unions want to meet with workers at the premises of an ISS customer, UNI or, as the case may be, its affiliated union shall ask ISS to obtain the requisite consent from the customer. In the event that the customer will not agree to such access, the parties will make alternate arrangements.



- 3.1.2 ISS will agree to an ongoing mechanism for informing new employees about the possibility of union memberships, such as distributing union recruitment material in connection with induction meetings and/or training of new employees.
- 3.1.3 ISS will remain positive in the face of union organizing activities. Local ISS management will issue a written statement, which says that (within the terms and conditions of this global agreement) workers are free to meet the Union's representative(s), attend meetings and freely determine their own decision to join or not to join a union without fear of any form of reprimand;
- 3.1.4 The union will be recognised as the representative of employees so long as it satisfies the minimum legal requirements for recognition under applicable law and/or collective bargaining agreements, using the most expeditious process permitted under law and/or collective bargaining agreements.

#### **4. Union commitments**

The Union recognises that the company operates in a highly competitive environment. In many markets, there are hundreds of small firm competitors, many of which do not honour wage and hour laws, let alone commitments to a union. The Union agrees to seek to raise and monitor standards among all of the companies in the markets in order to reduce the pressure on wages and conditions for ISS and to create an environment in which ISS will be able to raise standards and not compromise its competitive position.

#### **5. Resources**

In support of this effort described in Section 4 above the parties agree to create of a jointly managed fund which will aim to monitor and raise standards in specific markets. The parties will make good faith efforts to determine the basic principles for the purpose, decision-making, activities and financing of the fund within 3 (three) months of the signing of this global agreement. ISS intends to donate an annual amount of Euro 100,000 to the fund.

#### **6. Implementation and Procedures.**

6.1 The Union and ISS commit to publicize this global agreement throughout its membership and corporate structures respectively. Such a process shall stress the requirement that all levels of both organizations fully respect the terms of the global agreement.

6.2 In the event that either party shows clear evidence of failure so to publicize this global agreement at any level both parties commit themselves to ensure that remedial action is put speedily in place.



6.3 In order to assess implementation and address any disputes which may arise concerning the application of this global agreement, senior corporate representatives will meet a team of representatives from the Union twice yearly. Senior labour relations management will maintain ongoing communications with the Union between those meetings. This meeting will amongst other things review mutual respect for and implementation of this global agreement.

6.4 In the event that the parties are unable to resolve a dispute arising out of this global agreement after discussion at the bi-annual meeting as set out in Section 6.3 above, the matter shall be referred to a mutually agreed independent mediator/arbitrator, who shall seek initially a mediated resolution. In the event of failure to reach a mediated resolution the independent party shall propose an arbitrated resolution which shall be binding on both parties. It shall be left for the independent mediator/arbitrator to decide, which party shall pay the costs associated with such mediation or arbitration.

6.5 For the avoidance of doubt, the dispute resolution procedure set out in Section 6.4 above shall not apply to disputes, which – directly or indirectly - relates to, affects or involves any collective bargaining agreement and/or any other local agreement. Such disputes shall be settled in accordance with the dispute resolution procedures set out in the relevant collective bargaining agreements and/or local agreements. However, the parties agree that the local ISS management and Union officials should first attempt to resolve the matter at the local or, as the case may be, national level.

6.6 UNI agrees that it will not take any public or legal action against or affecting ISS without a fair prior notice to ISS leaving ISS a reasonable period of time to resolve the dispute before any such public or legal actions are taken against the company. UNI will honour the same commitment as regards any dispute arising at a local or national level, and UNI will encourage its affiliated unions to honour the same commitment towards ISS.

## **7. Term**

7.1 This global agreement is for an indefinite period, but it may be terminated or renegotiated by either party upon giving the other party at least three months' written notice of termination.

7.2 Nothing in this global agreement shall in any way reduce or undermine existing labour relations practices or agreements relating to union rights or facilities already established by any Union members or any other union within ISS.

7.3 The parties agree that this global agreement shall replace the Global Agreement signed by the parties in 2003.



Dated: 2008

For UNI Global Union:

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For ISS A/S:

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### **Explanatory notes.**

The ILO Conventions are:

- Freedom of Association and Protection of the Right to Organise Convention, 1948 (Convention No. 87);
- Right to Organise and Collective Bargaining Convention, 1949 (Convention No. 98);
- Workers' Representatives Convention, 1971 (Convention No. 135);
- Forced Labour Convention, 1930 (Convention No. 29);
- Abolition of Forced Labour Convention, 1957 (Convention No. 105);
- Minimum Age Convention, 1973 (Convention No. 138);
- Worst Forms of Child Labour Convention, 1999 (Convention No. 182);
- Equal Remuneration Convention, 1951 (Convention No. 100);
- Discrimination (Employment and Occupation) Convention, 1958 (Convention No. 111).

For the avoidance of doubt UNI and ISS agree that the term “union” as used in Section 3.1 to describe previously recognised unions will also include unions, which are limited to a single site or a single employer, as well as unions with a broader recognition.