



## SPECIFIC INSTANCE

### “VINCI – VINCI AIRPORTS IN CAMBODIA”

24 November 2017

#### Statement by the French National Contact Point

#### **Following its initial assessment, the NCP proposed its good offices to the VINCI group, the International Trade Union Confederation (ITUC) and the Cambodian Labour Confederation (CLC)**

On 27 July 2017, the French National Contact Point (NCP) for implementation of the OECD Guidelines for Multinational Enterprises received a referral from two labour confederations: the International Trade Union Confederation (ITUC) and the Cambodian Labour Confederation (CLC). The specific instance in this referral involved the VINCI group with respect to the activities of the Cambodian subsidiary of VINCI Airports related to a labour dispute affecting the three airports in Cambodia operated by Cambodia Airports.

The NCP should endeavour to conclude the initial assessment within three months of the acknowledgement of receipt of the specific instance, although additional time may be granted, if need be, in order to collect essential information necessary for an informed decision (Article 29). It then prepares a statement on the admissibility of the referral (Article 19). If the initial assessment is positive, the NCP analyses the referral and offers its good offices to the parties in order to help them resolve their dispute. It endeavours to complete its analysis within 12 months of receipt of the referral (Article 31), and issues a report or a statement at the end of the procedure (Article 35). It may decide to monitor the follow-up to its recommendations (Article 32).

#### **1. Procedure followed by the NCP according to its bylaws**

The NCP received this referral via e-mail on 27 July 2017, and acknowledged receipt on the same day. However, seven appendices were missing; these were received on 21 August 2017. After the referral was complete, a copy was sent to the members of the NCP on 21 August 2017. The NCP formally validated the admissibility of this referral on 30 August 2017, and then began its initial assessment.

On 4 September 2017, the NCP sent copies of the referral to the VINCI group and Cambodia Airports. It informed the VINCI group of the procedure that would be carried out, and invited the group to submit a response as soon as possible. On 5 September 2017, the NCP notified the complainant that the referral was admissible, and informed it of the procedure that would be carried out. As soon as it received the referral, the VINCI group stated that it wished to discuss the issue and cooperate with the NCP in complete transparency.

At its meeting on 11 September 2017, the NCP discussed its initial assessment. It finalised this initial assessment on 19 September 2017, and tasked the Secretariat with preparing a statement announcing its decision. On 21 September 2017, the NCP informed the parties of its decision and proposed its good offices to them. The parties quickly accepted this proposal. The NCP specified that its good offices would begin on 2 October 2017, and that this could also take the form of mediation and conciliation.

The NCP approved a draft statement on the initial assessment on 16 October. This draft statement was sent to the parties on the same day, for consultation in French until 31 October 2017. The NCP took the parties' suggestions into account, then approved the final statement on 24 November 2017. This final statement was sent to the parties prior to publication on the French NCP's website.



On 9 October 2017, the VINCI group submitted a file to the NCP including initial components of its response to the specific instance. This file was analysed during the good offices and was transferred to the complainants following receipt of their commitment to respect the confidentiality of the discussions related to the procedure.

## 2. Overview of the referral

The referral involves the VINCI group with respect to the activity of VINCI Airports' subsidiary Cambodia Airports. The latter holds a concession to operate the three airports located in Cambodia (in Phnom Penh, Siem Reap and Sihanoukville). The complainants allege that Cambodia Airports does not comply with seven recommendations of the OECD Guidelines, in matters of respect for domestic laws, for human rights, for workers' freedom of association and for the right to collective bargaining (see Insert).<sup>1</sup>

(1) The complainants report a labour dispute that began in 2012 at Cambodia Airports following the introduction of a new way of organising work under a “multi-tasking scheme” in Cambodia's three airports. The VINCI group explains that this new work organisation is based on workers' “skills development” to contend with a very significant increase in traffic at the three airports, and in order to ensure compliance with effective international standards for airport traffic. The complainants are challenging this work organisation, which they assert was not the subject of collective bargaining and whose implementation triggered a strike at Siem Reap airport in 2014. The VINCI group states that this new work organisation is being rolled out gradually over time.

(2) According to the referral, three local offices of two Cambodian trade unions (Cambodia Tourism Industry Worker Trade Union and Independence Employees Union) have denounced practices that they deem to be anti-union, committed by the management of Cambodia Airports against workers opposed to this new work organisation. As such, the specific instance mentions the dismissal of eight workers (one union leader and several union activists). According to the referral, these workers were dismissed following their protest actions. These cases are said to have been subject to proceedings before the courts with jurisdiction, notably the Arbitration Council, which has reportedly already handed down several rulings. According to the complainants, some of these rulings are in the workers' favour.

(3) The complainants report that there has been no collective bargaining to renew the collective bargaining agreement (“CBA”) for Cambodia Airports, which expired in 2016. They state that the collective bargaining for a new agreement has been at a standstill for several months. The VINCI group states that in August 2016, the trade unions had denounced the CBA for 2014-2016, which had expired on 31 December 2016, as planned. The complainants informed the NCP of specific national circumstances after the Trade Union Law was passed. This law, which took effect on 5 May 2016, calls for the creation of “Most Representative Status” (MRS) to designate the sole trade union that is authorised to take part in collective bargaining. They state that the implementing legislation for this law has not been fully adopted. In their view, this has resulted in a legal vacuum with regard to the terms for collective bargaining. The NCP notes that the absence of implementing decrees for this new law, notably for specifying the conditions for awarding MRS, has an impact on the collective bargaining process. It notes that the current standstill on the collective bargaining for a new CBA for Cambodia Airports has arisen in these circumstances, and furthermore, the trade unions for the three airports have not yet received MRS. The complainants inform the NCP that Cambodia was mentioned in June 2017 during the 106<sup>th</sup> Session of the ILO's Committee on the Application of Standards, with some recommendations being issued.<sup>2</sup>

(4) In an addendum submitted on 4 October 2017, the complainants also report Cambodia Airports resorting to temporary staff via temping agencies. The complainants deem this to be abusive, along with overtime hours reportedly made compulsory within the enterprise.

<sup>1</sup>Article I.2 “Concepts and Principles”, Article IV.1 “Human Rights”, Articles V.1a, V.1b, V.1e, V.3 and V.8 “Employment and Industrial Relations”.

<sup>2</sup> pages 100-111: [http://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---relconf/documents/meetingdocument/wcms\\_558658.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_558658.pdf)



The ITUC and the CLC have requested the French NCP's good offices to “enter into mediation with the VINCI group in order to resume collective bargaining for the specific agreement”, “to cease and desist from unfair practices during strikes and in the hiring of temp staff”, and “to rectify the specific situation of seven workers of Cambodia Airports”.

***Recommendations of the 2011 Guidelines targeted by the referral:***

***Chapter I on Concepts and Principles***

*2. Obeying domestic laws is the first obligation of enterprises. (...).*

***Chapter IV on Human Rights***

*States have the duty to protect human rights. Enterprises should, within the framework of internationally recognised human rights, the international human rights obligations of the countries in which they operate as well as relevant domestic laws and regulations:*

*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 V on Employment and Industrial Relations***

*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.*

*1.e) Be guided throughout their operations by the principle of equality of opportunity and treatment in employment and not discriminate against their workers with respect to employment or occupation on such grounds as race, colour, sex, religion, political opinion, national extraction or social origin, or other status, unless selectivity concerning worker characteristics furthers established governmental policies which specifically promote greater equality of employment opportunity or relates to the inherent requirements of a job.*

*3. Promote consultation and co-operation between employers and employees and their representatives on matters of mutual concern.*

*8. Enable authorised representatives of their employees to negotiate on collective bargaining or labour-management relations issues and allow the parties to consult on matters of mutual concern with representatives of management who are authorised to take decisions on these matters.*

*The specific instance also refers to Commentary 54 on Chapter V.*

### 3. Initial assessment of the specific instance

Cambodia does not adhere to the OECD Guidelines. Cambodia Airports is a subsidiary of VINCI Airports, which is part of the VINCI group; Cambodia Airports has a business relationship with the VINCI group, within the meaning of the Guidelines. As the VINCI group is registered in France, its Cambodian subsidiary should follow the OECD's recommendations in Cambodia. The French NCP is competent to deal with this referral.

The referral fulfils the formal admissibility criteria as set out in Article 16 of the NCP bylaws. It is precise and detailed. It includes the identity of the enterprises in question; the identity and contact details of one of the two complainants (ITUC); details of the facts of which the complainants accuse Cambodia Airports; along with the elements of the OECD Guidelines for Multinational Enterprises in respect of which the referral to the NCP is being made. The referral fulfils the other admissibility criteria as set out in Articles 21, 22, 23 and 25 of the NCP bylaws. The referral is bona fide. The complainants are identified and have an interest in this affair. The NCP nevertheless asked them to provide details on the activity of CLC and the Cambodian trade unions concerned by the referral. Moreover, it asked them to submit information on the various decisions handed down by the Arbitration Council. The referral calls into question the effectiveness of the Guidelines in terms of employment and human rights in the Cambodian airport sector. It indirectly questions the VINCI group's due diligence in its business relationships (VINCI Airports and Cambodia Airports). The French NCP may, if it considers this to be relevant, contact the International Labour Organization regarding the legal framework for social dialogue in Cambodia.



The NCP notes that the VINCI group has accepted its good offices and has indicated that it is available to shed the necessary light on the referral and has reiterated the fact that social dialogue is central to its model.

#### 4. Conclusion of the initial assessment and next steps

The referral merits an in-depth analysis with respect to the effectiveness of the OECD Guidelines. The NCP can assist the parties in resolving their conflict. The NCP welcomes the fact that the VINCI group is highly committed to participating in the talks.

The NCP's good offices and the analysis of this referral began on 1 October 2017.<sup>3</sup> On 9 October 2017, the VINCI group submitted a detailed file to the NCP including initial components of its response to the specific instance. This file was analysed by the NCP and was transferred to the complainants following receipt of their formal commitment to respect the confidentiality of the discussions related to the procedure. In an initial stage, the NCP heard the parties separately and offered to bring them together at a later date in Paris or via conference call to examine the scope and feasibility of mediation. The PCN could ask for advice from competent authorities, including the ILO, for certain questions raised by the referral with respect to the application of Cambodian legislation for responsible business conduct in Cambodia.

The fact that the NCP accepted the referral and the VINCI group and the complainants accepted its good offices does not indicate whether or not the enterprises acted in compliance with the Guidelines.

In accordance with its bylaws and the Procedural Guidance defined by the OECD, to facilitate resolution of the issues raised and comply with applicable laws, the NCP shall take appropriate measures to protect sensitive business and other information and the interests of other stakeholders involved in the specific instance. Some elements brought to the NCP's attention may be kept confidential.

#### For further information about the NCP referral procedure:

🔗 **NCP bylaws**

<http://www.tresor.economie.gouv.fr/File/404283> (in FR)

<http://www.tresor.economie.gouv.fr/File/404282> (in EN)

🔗 **“How to submit a referral to the French NCP?”**, a dedicated page on the DG Trésor website that presents a diagram of the specific instance process, as well as factsheets that explain the specific instance processing procedure. The page is in French, but includes links to English versions of several documents.

[http://www.tresor.economie.gouv.fr/6373\\_Que-signifie-la-recevabilite-dune-circonstance-specifique-](http://www.tresor.economie.gouv.fr/6373_Que-signifie-la-recevabilite-dune-circonstance-specifique-)

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<sup>3</sup> See Articles 27-40 of the French NCP bylaws.