

SPECIFIC INSTANCE "AIR FRANCE IN THE UNITED STATES"

22 November 2024

Initial assessment statement from the French National Contact Point

Following its initial assessment, the NCP will offer its good offices to Air France and UNITE HERE Local 11

The US union UNITE HERE Local 11 filed a case with the French National Contact Point (NCP) for responsible business conduct on 15 January concerning the French multinational Air France, an airline headquartered in France. The specific instance concerns Air France's exercise of due diligence on one of its suppliers in the United States, Flying Food Group (FFG).

The NCP should endeavour to carry out the initial assessment of a referral within an indicative period of three months after acknowledgement of receipt, but additional time may be granted if necessary to gather the information necessary for an informed decision (Article 29). It then prepares a communiqué on the admissibility of the referral (Article 19). If the initial assessment is positive, it then offers its good offices to the parties to help them resolve their differences and will consider the referral. It shall endeavour to finalise its examination within 12 months of receipt of the referral (Article 31). The NCP publishes a communiqué announcing its decision on the initial assessment of the dossier and then a report or communiqué at the end of the procedure (Article 35). It may decide to follow up on its recommendations (art. 32) and communicate about them.

1. Procedure followed by the NCP according to its rules of procedure

UNITE HERE Local 11, a US trade union of employees of hotels, restaurants, airports, sports centres and convention centres active in Southern California and Arizona, communicated its referral electronically to the French NCP on 15 January 2024. The NCP acknowledged receipt on 18 January 2024 and forwarded it to the NCP members. The NCP Secretariat informed the U.S. NCP of the existence of the referral on 19 January.

On 21 March 2024, the NCP validated the formal admissibility of the specific instance and decided to start the initial assessment. On 22 April, the NCP informed Air France of the referral. Air France acknowledged receipt in a letter sent electronically to the NCP on 6 May 2024 and engaged in a dialogue with the NCP.

On 28 May, the NCP asked its Secretariat to organise separate meetings with the complainant on the one hand and the company on the other. Prior to the organisation of the separate interviews, the NCP invited the complainant to sign the commitment to respect the confidentiality and secrecy of the exchanges, which it did on 29 July 2024. The NCP then heard each party separately and successively on

26 September (the complainant via videoconference from Los Angeles initially, followed by Air France's representatives in person). At these meetings, the NCP offered its good offices to the two parties that accepted them and instructed its Secretariat to prepare an initial assessment communiqué. Additional documents were provided by the complainant on 27 September; these documents were sent on 4 October to the members of the NCP and to Air France (with the prior agreement of the complainant).

The NCP adopted the draft Initial Assessment Communiqué on 30 October 2024 and then consulted the Parties and the U.S. NCP (Support NCP) on the draft. The NCP adopted the Initial Assessment Communiqué on 22 November and published it on its website. The NCP then notified the referral to the OECD Centre for Responsible Business Conduct for inclusion in the database of the specific instances of the NCPs.

2. Presentation of the referral

2.1 Presentation of the complainant

The referral is made by the U.S. union UNITE HERE Local 11, which has 32,000 members in hotels, restaurants, airports, stadiums and convention centers in Southern California and Arizona. It is also affiliated to UNITE HERE, an international trade union representing 270 000 workers in the United States and Canada, as well as to UNI Global Union and the International Union of Food, Agriculture, Hospitality, Catering, Tobacco and Allied Workers ('ITUF').

2.2 Allegations of violations of the Guiding Principles

UNITE HERE's referral concerns the alleged breach of OECD Guidelines by (i) one of Air France's subcontractors/suppliers, Flying Food Group, which provides catering services in the United States (and more specifically in California) on behalf of the French airline, (ii) and Air France for failing to comply with its due diligence obligations vis-à-vis its supplier.

(i) The allegations against the supplier concern:

- Infringement of trade union freedoms: threats of dismissal; dismissals of trade union representatives; supervision of workers; circulation of a 'decertification' petition from the trade union; prohibiting trade union representatives from accessing the company's premises.
- Non-compliance with the minimum wage payment by FFG and some of its sub-contractors, which would contravene the legislation in force in Los Angeles ("Living Wage Ordinance" or LWO).
- Failure to comply with occupational safety and health standards: authorisation given to drivers to drive heavy vehicles without holding the necessary licence; locking of exit doors for workers; obligation on employees to use defective equipment.
- Lack of protection actions for workers who are victims of discrimination in the workplace.
- Breach of workers' COVID-related recall rights.

(ii) According to the complainant, the referral points to Air France's failure to comply with its due diligence vis-à-vis its supplier, the union's lack of involvement as a stakeholder and the insufficient exercise of its power of influence with FFG to limit negative impacts, in particular as regards compliance with the minimum wage payment.

The issues raised by the referral relate to the 2023 version of the OECD CRE Guidelines. The referral deals with:

- (i) Chapter V on employment and industrial relations – provisions 1(a), 1(b), 2(a), 2(b) and 2(c) on freedom of association, 4(b) on pay conditions, 4(c) on safety and health at work, 1(e) on discrimination.
- (ii) Chapter II on general principles – provisions 11 and 12 on due diligence – and Chapter IV on human rights – provision 5 on due diligence.

The NCP notes that the referral also refers, as regards trade union freedoms, to the rights guaranteed by ILO Conventions 87 ("Freedom of Association and Right to Organise") and 98 ("Right to Organise and Collective Bargaining").

The NCP also notes that the referral targets what the complainant considers to be a breach of due diligence by relying on two provisions of the OECD Guidance on Responsible Business Conduct advocating that companies should:

- 2.2 (h) 'for impacts on human rights, exchange and consult with rights holders affected or likely to be affected, including workers, workers' representatives and trade unions, in order to gather information on such negative impacts';
- 2.3 b) "consult affected stakeholders and rights holders or their legitimate representatives".

The complainant requests the good offices of the French NCP to initiate a dialogue process with the company Air France in order to contribute to the resolution of the issues raised in the context of this specific instance.

2.3 Response of the company

Air France refutes the allegations concerning the breach of its due diligence. During the initial assessment, Air France presented to the French NCP its preventive approach to due diligence applied to its subcontractors (including FFG) and detailed its verification and evaluation procedures with its supplier since it became aware of the allegations. Air France informed the NCP on 26 September 2024 that it accepted its good offices.

3. Summary of the initial assessment of the specific instance

3.1. Territorial competence of the French NCP and coordination with foreign NCPs

The referral concerns Air France's activities in the United States through its business relationships. The Guiding Principles apply on and from the territory of each acceding State, including France. Therefore, French multinational companies operating abroad must comply with the Guiding Principles. The referral was addressed to the French NCP because Air France's registered office is located in France. The French NCP is therefore competent to deal with this referral. However, this case will be dealt with in close cooperation with the U.S. NCP which, after discussion with the General Secretariat of the French NCP, has confirmed that it will act as a supporting NCP.

The French NCP will also coordinate with the German and Japanese NCPs that have received a comparable referral from UNITE HERE regarding their national airline (Lufthansa and Japan Airlines respectively).

3.2. Analysis of formal admissibility

The referral fulfils the formal admissibility criteria laid down in Article 16 of the Rules of Procedure of the French NCP. It shall include the identity of the undertaking concerned, the identity and contact details of one of the two complainants, details of the facts alleged by the complainant and the elements of the OECD Guidelines for Multinational Enterprises on behalf of which the NCP is seized.

3.3. Analysis of the initial assessment

The referral is sufficiently precise and documented for the NCP to begin its review. Documents supporting the allegations were provided by the complainant at the time of submission of the referral, complemented by a new submission to the NCP Secretariat on 27 September 2024. The referral appears to be made in good faith (art. 22). The complainant, an American trade union known to the French NCP in the context of a specific instance previously submitted,^[1] is correctly identified and has an interest in bringing proceedings (Art. 23).

The French NCP wished to ensure that the confidentiality of the procedure was respected (Articles 38, 39 and 40). The complainant signed the undertaking of confidentiality and secrecy of the exchanges related to the proceedings on 29 July 2024. This is an important element in building trust that creates favourable conditions for dialogue between the Parties and with the NCP.

The referral raises significant questions about the effectiveness of the Guiding Principles (Articles 18 and 23). It asked: (i) about employment and labour relations in terms of respect for trade union freedoms, decent wage conditions, occupational health and safety standards and non-discriminatory practices towards employees; (ii) about the relationship between Air France's due diligence and the allegations made against its supplier. The Air France Group provided elements of a response during the initial assessment. The referral is therefore fully in line with the OECD Guidelines.

The NCP notes that local legal proceedings were also brought by the complainant (notably for non-compliance with the LWO) and by the supplier (against the City of Los Angeles). However, the NCP noted during the initial assessment that progress would have been made in resolving disputes related to working conditions. The NCP will take into account, in its analysis of the file and its exchanges with the Parties, all the elements supporting these procedures and the ongoing developments that the Parties may wish to submit to the NCP.

The referral creates an opportunity to contribute positively to the resolution of the questions raised by the referral (Article 25). The complainant requests the NCP to establish a dialogue channel with Air France with the aim of resolving the issues and finding solutions to the issues raised in the referral. Air France, while refuting the allegations made against it, accepts the dialogue. The NCP therefore offers its good offices to the parties to contribute positively to the resolution of the issues raised.

4. Conclusion of the initial assessment of the specific instance

The initial assessment of the referral is positive. Pursuant to Rule 18 of the Rules of Procedure, the NCP considers that the issues raised by the referral on the effectiveness of the Guiding Principles merit further consideration. The NCP can help the parties resolve their dispute. The NCP recalls that the acceptance of the referral does not determine whether or not the company has acted in compliance with the OECD Guidelines.

The NCP decided to offer its good offices to the parties that accepted them. In accordance with its rules of procedure, the NCP starts its good offices and referral phase. In particular, the NCP may instruct the parties to bring them together at a later stage in a format to be defined in order to examine the outlines and feasibility of mediation. The NCP may seek the opinion of competent authorities, including in particular the ILO and the OECD.

The NCP procedure is confidential. In accordance with its Rules of Procedure and the OECD Procedural Guidelines and in order to build trust with the Parties, the NCP will take appropriate measures to protect sensitive commercial or other information, as well as the interests of other stakeholders involved in this

specific instance. Finally, certain elements brought to the attention of the NCP may be subject to confidentiality.

To find out more about the NCP referral procedure

Rules of procedure of the NCP

- 🔗 In French [Règlement intérieur du PCN français pour la CRE](#)
- 🔗 In English [French NCP by laws](#)

“How to refer a case to the French NCP ?”, dedicated page on the website with a diagram and explanatory sheets on the procedure

- 🔗 http://www.tresor.economie.gouv.fr/6373_Que-signifie-la-recevabilite-dune-circonstance-specifique-

Site internet: <http://www.pcn-france.fr>

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