



SPECIFIC INSTANCE RELATING TO EIFFAGE ENERGIE IN FRANCE

11 June 2014

Statement by the French National Contact Point

On 11 October 2013, the French National Contact Point (NCP) for the implementation of OECD Guidelines for Multinational Enterprises received a specific instance from three French trade unions: the CGT's *Fédération Nationale des Salariés de la Construction et du Bois*, the CFDT's *Fédération Nationale Construction Bois* and the CFE-CGC BTP. The referral concerned the application of the OECD's Guidelines in France by the Eiffage Energie Group.

The referral mainly has to do with Chapter V Employment and Industrial Relations of the revised 2011 Guidelines.

"Enterprises should, within the framework of applicable law, regulations and prevailing labour relations and employment practices and applicable international labour standards:

1b) 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;

2b) Provide information to employee representatives which is needed for meaningful negotiations on conditions of employment.

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

4c) Take adequate steps to ensure occupational health and safety in their operations.

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 referral also mentions several recommendations from Chapters I related to Concepts and Principles and II related to General Policies.

1. Presentation of the facts set out in the referral and parallel legal proceedings:

The Eiffage Energie Group consists of the Eiffage Energie firm and 53 subsidiaries based in France. Since 12 October 1993¹, the Group has been set up as an Economic and Social Unit (*Unité Economique et Sociale* – UES). The UES defines the scope of worker representative bodies for both works council (“comité d’entreprise”) and the European Works Council (EWC,

¹ Date the UES was recognised by the Aulnay District Court.

“comité d’entreprise européen”). The worker representative bodies have more than 900 elected members in all.

In recent years, the Group has experienced vigorous growth both in France and abroad. On the basis of this growth, on 5 March 2012, the works councils for Eiffage Energie Rhône Alpes and Eiffage Energie Telecom (formerly Forclum Sud Est), along with two trade unions (CGT Eiffage Energie Telecom and Sud Eiffage IDF) petitioned the Saint-Denis *Tribunal d'Instance* (district court), seeking the elimination of the UES and the annulment of all agreements concerning the UES or executed under UES framework agreements in each of the subsidiaries.

On 1 February 2013, the Saint-Denis court put an end to the Eiffage Energie UES, noting that it no longer met the criteria for being recognised as such. In the wake of this decision, which the court qualified as a final ruling, the Group suspended the mandates of every elected member of every worker representative body and of the European Works Council, and then proceeded to organise a new round of elections in every one of the Group's enterprises. Some trade unions were opposed to these elections.

With regard to the issue raised by the referral, there is a lack of jurisprudence relating to the effect of the elimination of a UES on the mandates of the workers representatives within it. The NCP took this aspect into consideration.

On 12 February 2013, the GCT, joined by the CFE-CGC BTP, appealed the decision and challenged its final nature. The suspension of the worker representative bodies and the new elections were strongly challenged by the worker representatives. A number of cases were filed in district courts and labour tribunals concerning the Group's various subsidiaries. Referrals were also made to the Labour Inspectorate and the General Directorate for Labour. Finally, three trade unions filed a referral with the NCP in October 2013.

In its findings issued on 6 May 2013, the General Directorate for Labour recommended that, subject to the appraisal of the judicial authorities, the mandates of the worker representative bodies whose scope was separate from that of the UES be maintained until their expiry (2015 in this case).

On 5 July 2013, the Paris Court of Appel ruled that the decision of 1 February 2013 had been unduly qualified as final, and acknowledged the admissibility of the appeal, which led to the suspension of the decision's binding nature. On 9 July 2013, the executive management of Eiffage Energie requested that regional managements of its subsidiaries restore workers representative bodies. On 28 August 2013, Eiffage Energie Board of Directors replaced both the Group's CEO and its director of human resources.

The appellate court's ruling on the merits was expected in May 2014.

2. Eiffage Energie specific instance process

In accordance with its bylaw, the NCP should carry out the initial assessment of a referral within three months after having acknowledged receipt. It then has twelve months following reception of the referral to examine it.

The NCP acknowledged receipt of the referral on 18 December 2013, and submitted it to the enterprise. It asked the complainants to complete it in order to meet the formal admissibility criteria. At its meeting on 27 January 2014, the NCP decided that the formal admissibility criteria as defined in Articles 16 and 24 of its bylaws had been met. It thus decided to continue its initial assessment of the referral. To determine its ability to resolve the issues raised in the referral, the NCP asked to meet separately with the parties in early March 2014, to which they

agreed, and to consult experts at the Ministry of Labour. On 7 March 2014, the NCP finalised its initial assessment. It decided to close the examination of the case and to draft a statement. This statement was the subject of discussions with the parties.

The parties were regularly informed of the various stages and time-frames of the process. They received the information provided to the NCP by each party, in accordance with the NCP's good offices.

3. NCP Decision

As part of its initial assessment of the referral, the NCP examined the admissibility criteria set out in Articles 16, 22, 23, 24 and 25 of its bylaw. To do so, it examined additional information provided by the complainants on 8 January 2014 and on 6 March 2014 in response to its questions, along with documents provided by the parties concerning the parallel legal and administrative proceedings (decision of the Saint-Denis district court on 1 February 2013, order of the Paris Court of Appeal on 5 July 2013, decisions by the Labour Inspectorate and the head of the General Directorate for Labour). It examined the enterprise's response to the referral, which was submitted on 28 January 2014. All of this information was shared with the parties.

- **As part of its initial assessment, the NCP met with the parties.**

On 7 March 2014, to determine whether the issues raised merited further examination by the NCP, and whether it would be able to make a positive contribution to resolving them, the NCP met with the parties separately.

The meeting with the trade union complainants revealed the hardships suffered by workers as a result of the abrupt suspension of more than 900 mandates at Eiffage Energie's worker representative bodies. The lack of workers representation for six months seriously undermined labour relations and social dialogue at the enterprise. The health and safety committees ceased to operate, although certain manufacturing sites were subject to specific health and safety procedures. The European Works Council did not meet on the originally scheduled dates. Decisions were made without consultation. The mandates suspensions led to financial losses for those concerned (salary arrears, unpaid hour for union delegated work, erroneous payslips). Halting the work of the worker representative bodies had negative consequences for many employees, due to the poor functioning of the works council with respect to planning the summer 2013 holidays, and created doubt about the future of the enterprise's mutual insurance scheme and the inability of the works council to play its economic role with respect to employment.

The NCP observed that, in the absence of jurisprudence, the enterprise acted in a forceful manner starting in February 2013, and that it did not follow the recommendations of the General Directorate for Labour, which would have eased tensions while waiting for the decision of the court of appeals. The NCP regrets this behaviour.

The meeting with the enterprise allowed the NCP to verify that, following the suspension of the judgement of 1 February 2013, the Group proceeded to reinstate the worker representative bodies. The replacement in the top management of the Group was specifically explained, signalling a change of approach. The NCP observed that, since its arrival in Q4 2014, the new management team acknowledged that there were still tensions, committed to restoring social dialogue and agreed to apply the courts' rulings that would restore the worker's rights. The NCP observes that the Group structured itself in anticipation of the court of appeal upholding the elimination of the UES. To this end, it observes that the Group decided to at least follow the General Directorate for Labour's recommendations.

- **Following its initial assessment, the NCP finds that:**

- The Group's February 2013 decision to suspend the mandates of the worker representative bodies and the mandates of those workers elected to the European Works Council was forceful, particularly given the size of the Group, the number of mandates suspended and the size of the Group's European Works Council. The NCP responded to the hardships suffered by the workers. It believes that Eiffage Energie's interpretation and implementation of the court's ruling were debatable, and that, given the legal uncertainty created by the elimination of the UES, another approach – such as the one recommended in May 2013 by the General Directorate for Labour shortly before the ruling of the civil procedure judge on the admissibility of the appeal filed against the ruling of 1 February 2013 by the Saint-Denis district court– would have been preferable. The enterprise did not adequately take into account the negative incidences that its actions could give rise to. **In February 2013, the OECD's recommendations in terms of due diligence, as set out in Articles A10 and A11 of Chapter II (General Policies), were not respected.**
- The Group's initial refusal to reinstate the worker representative bodies and the difficulties around the organisation of new elections led to a lack of workers representation within Eiffage Energie between February and July of 2013. The NCP regrets this deeply. **This situation ran counter to the OECD's Guidelines concerning worker representation, collective bargaining, consultation and cooperation within the enterprise, measures ensuring health and safety, and information of workers' representatives as stipulated in Articles 1b, 2b, 3, 4c and 8 of Chapter V related to Employment and Industrial Relations. The Group's actions were not in compliance with the Guidelines.**
- After several months of extreme tension, the NCP observes that the enterprise has complied with the Court of Appeal's order of 5 July 2013, and that it has changed its approach by reinstating the worker representative bodies and social dialogue, even though this remains complex. **The current situation does not appear to present any difficulties with respect to the OECD's Guidelines.**

- **Conclusion**

In October 2013, at the time the referral was submitted, the worker representative bodies of the Eiffage Energie Group were once again operating normally. The Group is working to restore social dialogue and is seeking to lessen tensions in every one of the Group's entities. It has made commitments in anticipation of the ruling on the future of the UES.

Moreover, paragraph 25 of Section IV of the NCP's bylaw states that *“The NCP shall strive to ascertain whether, in making an offer of good offices, it could make a positive contribution to the resolution of the issues raised and if this would not create serious prejudice for either of the parties involved in other proceedings, or cause a contempt-of-court situation. It may then decide either to pursue or to renounce its consideration of the specific instance”*.

Today, the dispute that was the subject of the referral no longer exists.

The NCP believes that it is up to the Paris Court of Appeal to rule on the elimination of the UES and its impact on the worker representative bodies. It also believes that the legal proceedings underway before the various district courts will serve to settle the disputes related to the referral seeking to reinstate the individuals deprived of their rights.

Thus, following the initial assessment, the NCP considers that there are no grounds to continue with this specific instance procedure.

The PCN would like to make the following recommendations to the Eiffage Energie Group:

- Recommends that the Group continue its due diligence measures to prepare for the implementation of the Court of Appeal's decision concerning the future of the UES.
- It recommends to the Group to implement measures of due diligence so that, should the court's ruling recognise prejudices suffered by the employee representatives in the absence of the employee representative bodies, these decisions shall be carried out in a rapid and efficient manner in order to compensate the prejudices suffered.

After having finalized its decision and consulted with the parties, the PCN learned of the ruling by the Paris Court of Appeal of 22 May 2014, which decided to maintain the Eiffage Energie UES.

The NCP believes it necessary to monitor the follow-up given to these recommendations in the coming year, pursuant to Article 32 of its bylaws.

Lastly, the NCP believes that this referral allowed it to make the enterprise aware of the seriousness of the decisions made between February and July 2013, to draw its attention to the OECD's Guidelines, and to take note of its commitment to restore social dialogue within the worker representative bodies and the European Works Council. The NCP also provided a space for dialogue and listening for the complainants.

The NCP would like this decision to serve as a reference, in a bid to prevent similar situations from occurring in other enterprises.

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