

Final statement by the German National Contact Point for the OECD Guidelines for Multinational Enterprises relating to a complaint by Industriegewerkschaft Metall (IG Metall) against Hyundai Motor Europe Technical Center GmbH (HMETC) in Rüsselsheim, Germany

In a letter dated 25 March 2014 and received on 8 April 2014, IG Metall (the “complainant”) submitted a complaint to the German National Contact Point for the OECD Guidelines for Multinational Enterprises (the “NCP”) against HMETC, which is associated with the Korean company “Hyundai Motor Company”.

The OECD Guidelines for Multinational Enterprises (hereinafter “the OECD Guidelines”) form part of the OECD Declaration on International Investment and Multinational Enterprises and contain recommendations for responsible corporate conduct for enterprises acting internationally. The governments of the OECD Member Countries and other participating countries have committed themselves to promoting, via their NCPs, the implementation of this voluntary code of conduct and to helping to resolve issues related to the OECD Guidelines raised by complaints in confidential mediation with relevant partners.

I. Content of the complaint

In the complaint pursuant to the OECD Guidelines, the complainant alleges systematic breaches by HMETC of Chapter V of the OECD Guidelines. These allegations refer to violations of employees’ rights to engage freely in works council and trade union activity. Specifically, the following points were raised: Extra work was not documented for the works council; documents like a gatekeeper’s record, in which the presence and absence of staff on the weekend and in the evening are recorded, and other documents were withheld from the works council. Staff were designated as executive employees without justification, so that the works council would not have access to their salary data. The works council was not involved in the establishment of an offsite test centre. Furthermore, there were several violations of the need of a member of the works council to take time out of work for his/her duties, including participation at seminars. The works council was not permitted to issue an information sheet. Also, the codetermination rights of the works council were violated regarding the employment of temporary agency workers, promotions, the introduction of new technical systems, discussions with people returning from a period of sickness, protection of health and the negotiations on a new salary system. Furthermore, HMETC supported a hidden campaign against members of the works council who were trade union members, and against the works council as a whole. This resulted in proceedings to remove the chair of the works council from office.

Trade union rights were violated as pamphlets distributed by the trade union were collected in.

II. Arguments of the respondent

In a letter dated 5 June 2014, HessenMetall responded on behalf of HMETC. HMETC rejected the allegations and asserted that it respected and had not violated the OECD Guidelines. The complaint was inadmissible and, furthermore, unfounded. It said that the complaint was not made in good faith, and was part of an international campaign to put Hyundai in a bad light and to engage in high-profile trade union politics. It asserted that most of the points cited in the complaint were already the subject of legal disputes that were decided in favour of HMETC and therefore could not form part of the NCP procedure. The issues raised in the complaint were without relevance for the implementation of the OECD Guidelines, and this was an abuse of procedure. Also, most of the complaints referred to the works council. However, it had been newly elected on 14 May 2014. HMETC said that the new works council regards the complaints as being unfounded and takes the view that the complaint should not be accepted for consideration. The facts presented were incomplete or inaccurate. According to HMETC, the many legal disputes were the fault of the works council, which had taken a confrontational course in the form of a “flood of litigation” and which had since been voted out of office.

III. Initial evaluation

As part of the initial evaluation in line with the Procedural Guidance for the OECD Guidelines for Multinational Enterprises, the NCP examines whether the questions raised in the context of the complaint justify an in-depth investigation. The examination took place on the basis of the complaint and the comments by HMETC. The relevant NCP in South Korea was also given the opportunity to comment, but did not do so.

This initial evaluation was concluded on 8 July 2014.

The NCP accepted part of the complaint for further consideration and offered the parties its assistance in resolving the following points:

The question of the violation of trade union rights by:

- a lack of provision of information to the works council

- impeding of trusting cooperation between the board of HMETC and the works council
- damaging the image of the works council in the eyes of the staff of HMETC
- impeding the complainant's trade union activity on the company site

The National Contact Point stated clearly in its letter accepting the complaint for consideration that the offer of assistance made by the NCP cannot be interpreted to imply that HMETC is liable pursuant to the OECD Guidelines. The acceptance of the complaint for further consideration does not imply any finding that the Guidelines have been breached. The NCP does however recognise that issues are raised which refer to the implementation of the Guidelines and merit further examination. The NCP sees a possibility that its mediation could make a positive contribution to the resolution of the issues raised and could thus serve the objectives of the OECD Guidelines.

In justifying the acceptance of the complaint for further consideration, the NCP stated: In its view, the complaint contains indications of potential failings in the provision of information and the communications between the board and the works council. Also, the NCP regarded the many court cases conducted in the past as being potentially indicative of disruption to the foundations for trusting and constructive cooperation between the board and the works council. The allegations relating to the negotiations on a new salary system might indicate that the board of HMETC was providing the impression to the outside world - whether consciously or unconsciously - that it held the works council and its members or its or their actions in low esteem, which could result in a lasting impairment to the reputation of the works council and its work in the company. Finally, the NCP found indications in the complaint that there is a concern amongst the staff of HMETC - whether justified or not - that association with trade union activity might have negative consequences at work. The mediation procedure could be utilised as an opportunity to clear up any such concerns and to clarify the significance of the exercise of trade union rights between the parties.

Even though the works council which was newly elected in May 2014 regards the allegations made by the complainant as being unjustified and a mediation procedure at the NCP as being unnecessary, the NCP felt that the provision of mediation could be helpful.

In particular, the NCP saw the possibility that a mediation procedure could help to avoid future conflicts (in court) between HMETC and the works council / (former) members of the works council and to foster mutual respect and the reputation of both sides in the company. It perceived an opportunity thereby to improve the foundations for constructive and trusting cooperation to the benefit of the employees.

The remainder of the complaint was not accepted for consideration, since the NCP took the view that the preconditions for more detailed examination were not met. The complaints, i.e. the disregarding of the right to access the lists of gross wages and salaries, the open letter of the “quorum” and the procedure to remove the member or the chair of the works council from office, the introduction of technical systems and the provision of time for members of the works council to carry out their duties, were already the subject of pending procedures at state courts. In the view of the NCP, the complaints procedure would not add any value beyond that of the court procedures. With regard to the works council's information sheet, the NCP was unable to conclude that the board would not in principle be willing or able to assume the costs of a works council information sheet where it is legally obliged to do so. With regard to the meetings with people returning to work from a period of sickness, the NCP felt that the complainant had not sufficiently substantiated the scope and content of the meetings, and why these meetings might involve codetermination rights for the works council. As a result, it was not possible to perceive expected or ongoing violations.

IV. Reactions by the parties to the decision to participate and the offer of a mediation procedure/conclusion of the procedure

Following its decision to participate, the NCP offered the parties the chance to hold joint mediation meetings. This was accepted by the complainant.

In a final letter dated 20 November 2014, HMETC stated that it would not accept the NCP's offer of mediation. In justification of this, HMETC basically reconfirmed its existing positions, i.e. that, following a failure to win in German courts, the complaint should be viewed as part of an international campaign and had thus not been made in

good faith. Furthermore, the complaint was unfounded; the OECD Guidelines had not been violated. The envisaged mediation covered almost exclusively the rights of the works council. However, the current works council regards the complaint as being unfounded. Cooperation with the current works council was constructive and no mediation was required.

V. Conclusion of the procedure

The NCP stresses that pursuant to Chapter V of the OECD Guidelines, companies should respect the right of their employees to set up or join trade unions and representative bodies of their choice within the framework of applicable laws, regulations and prevailing labour relations and employment practices. This includes the right to freedom of expression and trade union activity in the company in line with the OECD Guidelines. On the basis of the submitted complaint, the NCP believes that the Guidelines may be affected in this regard. The NCP stresses its view that its offer of mediation talks provided a contribution towards improving the relations between employee representatives, active trade union members and the management. This would have given the parties a foundation for constructive and trusting cooperation without the need for further court cases.

The NCP therefore greatly regrets the rejection of its offer of mediation by HMETC. In this context, it refers to figure 21 of the Procedural Guidance to the Guidelines: “The effectiveness of the specific instances procedure depends on good faith behaviour of all parties involved in the procedures. Good faith behaviour in this context means [...] refraining from [...] threatening or taking reprisals against parties involved in the procedure, and genuinely engaging in the procedures with a view to finding a solution to the issues raised in accordance with the Guidelines.”

HMETC has refrained from engaging in the proposed mediation in this specific instance.

In this context, the NCP particularly appreciates the fact that the complainant committed to the confidentiality of the procedure and did not engage in any public relations work inside or outside the company for the duration of the procedure.

In view of the large number of court cases which have taken place or are pending, the NCP sees no scope to make further recommendations.

It is suggested that HMETC makes efforts to clear the matters up internally. In this process, account should be taken of the OECD Guidelines. Here, the points proposed

by the NCP for a mediation meeting could serve as a starting point. In the view of the NCP, lasting good and stable cooperation between the employer and the interest groups will only be possible if emerging problems or statements of dissatisfaction (whether justified or not) are discussed openly and joint solutions are elaborated.

This final statement will be published on the website of the NCP, the OECD Secretariat and the NCP in Korea.

The proceedings are thus terminated.

Berlin,

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For the National Contact Point

Dr. Malte Hauschild

Bundesministerium für Wirtschaft und Energie (Federal Ministry for Economic Affairs and Energy)

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