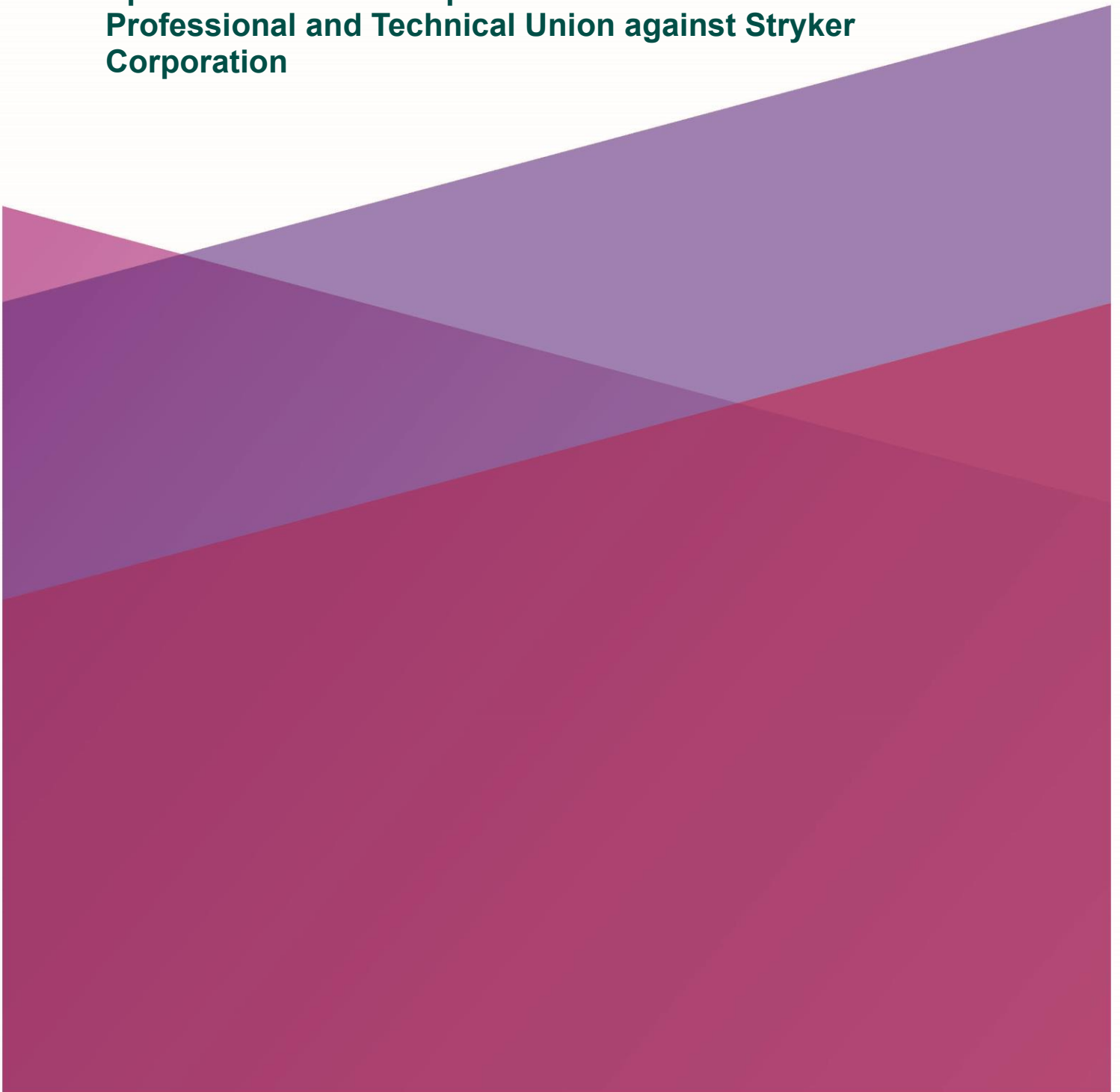




**An Roinn Fiontar,  
Trádála agus Fostaíochta**  
Department of Enterprise,  
Trade and Employment

# **Final Statement of the Ireland National Contact Point for the OECD Guidelines for Multinational Enterprises**

**Specific Instance Complaint from the Services Industrial  
Professional and Technical Union against Stryker  
Corporation**



As noted in the Procedural Guidance to the [OECD Guidelines for Multinational Enterprises](#), following conclusion of a specific instance and after consultation with the parties involved, the NCP will make the results of the procedures publicly available.

As no agreement was reached, the NCP is issuing the following statement. This statement describes the issues raised, the reasons why the NCP decided that the issues raised merited further examination, and the procedures initiated by the NCP to assist the parties. This statement also identifies recommendations made by the NCP to the enterprise on the implementation of the Guidelines.

As specific instances are not legal cases and NCPs are not judicial bodies, NCPs cannot directly order compensation nor compel parties to participate in a conciliation or mediation process.

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## Executive Summary

- The Ireland NCP received a specific instance complaint lodged by a trade union (hereinafter “the Complainant”) concerning industrial relations at facilities operated by Stryker Corporation, a multinational enterprise in the medical technology sector (hereinafter “the Company”). The Complainant argued that the Company had refused to engage in collective bargaining and provide appropriate facilities and information to the Complainant, thereby breaching Chapter V (“Employment and Industrial Relations”).
- The Ireland NCP notified the Company of the specific instance and then held a meeting to explain the specific instance process and the role of the NCP. The Company made a submission rejecting the claims that it had been in breach of the Guidelines and outlined arguments for the dismissal of the complaint.
- On the basis of submissions made by both parties, the Ireland NCP issued an initial assessment which held that the complaint merited further consideration except for one aspect related to Paragraph 1(a) of Chapter V of the Guidelines. The Ireland NCP offered its good offices to assist the parties in arriving at an agreed solution through mediation.
- The Complainant accepted the Ireland NCP’s offer of good offices. However, the Company declined, stating that it did not believe the complaint should proceed beyond the initial assessment stage and that mediation would not be appropriate or useful.
- The NCP requested the Parties to submit additional information for its consideration in order to conduct an examination of the complaint and issue a final statement. Following a meeting with the Company to explain this stage in the process, it made a further submission.
- The final statement includes two recommendations. The first recommendation is that the Company or any multinational enterprise seeking to ensure it operates responsibly in line with the recommendations of Chapter V of the Guidelines should be prepared to engage in collective bargaining with workers’ chosen representatives. The second recommendation is for the Company to consider how pre-existing arrangements at two acquired facilities can be replicated at its other facilities, so its entire Irish workforce has the same representational arrangements in place.
- The Ireland NCP will follow up with the Company in one year to assess the recommendations.

## A. Submission and initial assessment

### The parties

1. The Complainant is the Services Industrial Professional and Technical Union (SIPTU), the largest trade union in Ireland. The Complainant submitted the specific instance in its capacity as representative of members employed at three of the Company’s facilities at Carrigtwohill, Co. Cork.
2. The specific instance was directed against Stryker Corporation (“the Company”), a US-headquartered multinational enterprise in the medical technologies sector. The Company has a number of facilities located in Ireland.

## The complaint

3. The complaint concerns issues of worker representation at the Company's Carrigtwohill facilities. The Complainant argues that the Company's refusal to recognise it as the representative of workers at these facilities represents a breach of Chapter V of the Guidelines.
4. Adducing correspondence between the Complainant and representatives of the Company, the Complainant also argues that the Company suspended workers without adequate consultation or information during the Covid-19 emergency and refused to meet the Complainant to discuss health and safety matters.
5. The Complainant argues that the Company failed to meet its obligations under the Guidelines to respect the right of workers to join a trade union of their choosing; to allow trade unions to be recognised for the purpose of collective bargaining and to engage in constructive negotiations; to provide workers' representatives with the facilities required to form effective collective agreements; to provide the information required to enable meaningful negotiations on conditions of employment; and to enable representatives of their workers to negotiate on collective bargaining or labour-management relations and allow the parties to consult with decision-makers within management.
6. In support of its argument, the Complainant cited three Labour Court Recommendations, [LCR22112](#), [LCR22113](#) and [LCR22732](#).

## Relevant provisions of the Guidelines

7. The Complainant cited the following Chapters and Paragraphs of the OECD Guidelines:

### **Chapter V: 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:*

#### **A.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.*

*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.*

#### **A.2:**

*a) Provide such facilities to workers' representatives as may be necessary to assist in the development of effective collective agreements.*

*b) Provide information to workers' representatives which is needed for meaningful negotiations on conditions of employment.*

#### **A.8:**

*Enable authorised representatives of the workers in their employment 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.*

## Remedy sought

8. With regards to remedy, the Complainant seeks the following outcomes:
  - i. The Complainant to secure the right to represent its members and engage in collective bargaining with the Company with regard to the Company's Carrigtwohill facilities, and
  - ii. The Company to engage with the Complainant on the terms recommended by the Labour Court and to amend its policies to accord with the [Code of Practice on Grievance and Disciplinary Procedures](#) outlined in SI 146/2000 of the Industrial Relations Act 1990.

## Company's response

9. The Company rejected the claim that it had breached the Guidelines. The Company provided background on its profile in Ireland and the scale of its investment and employment footprint.
10. The Company stated that it engaged with employees through its "Direct Engagement" model, which it linked to its "award-winning culture with highly engaged employees and high employee retention rates"<sup>1</sup>.
11. The submission further noted that where the Company had acquired facilities through mergers and acquisitions it respected workers' rights by honouring pre-existing representational arrangements. For this reason, at the Company's Limerick and Macroom facilities "*a trade union is recognised and collective bargaining arrangements are in place*"<sup>2</sup>.
12. The Company stated that there had been "*no failure whatsoever*" to respect the right of workers to join a trade union of their choice<sup>3</sup>. It further stated that it had complied with "*all applicable laws, regulations, and employment practices... including laws related to freedom of association*"<sup>4</sup>.
13. With respect to arguments concerning collective bargaining, the Company stated that the Irish industrial relations system is "*based on the principle of voluntarism*"<sup>5</sup> and it had a right under the Irish Constitution to decline to engage with trade unions for the purposes of collective bargaining. The Company stated that this principle had been upheld by Irish case law and was consistent with ILO conventions on freedom of association.

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<sup>1</sup> Company submission to the Ireland NCP, 8 August 2023, p. 2

<sup>2</sup> Company submission to the Ireland NCP, 8 August 2023, p. 2

<sup>3</sup> Company submission to the Ireland NCP, 8 August 2023, p. 4

<sup>4</sup> Company submission to the Ireland NCP, 8 August 2023, p. 4

<sup>5</sup> Company submission to the Ireland NCP, 8 August 2023, p. 4

14. The Company further noted that the three Labour Court Recommendations cited by the Complainant were not legally binding. It noted that the NCP does not have the power to award the remedies sought by the Complainant.
15. With respect to the Complainant's claims that the Company suspended employees without adequate information or consultation, the Company argued that this was an incorrect characterisation of furlough/mandatory leave. The Company claimed that in fact it did not suspend any employees<sup>6</sup>.

### Initial assessment by the NCP

16. The Ireland NCP issued its initial assessment to the parties and subsequently published it on the Ireland NCP website on 11 December 2023, available [here](#).
17. The Ireland NCP's initial assessment noted that it had not been presented with evidence that the Company had failed to respect the right of workers to join trade unions of their choosing. It therefore declined to consider the complaint further with respect to Chapter V, Paragraph 1(a).
18. On the basis of submissions received the Ireland NCP decided that the other grounds of complaint were worthy of further consideration and proceeded to offer its good offices.

### B. The proceedings of the NCP

19. Since receipt of the submission, the NCP has carried out the following actions:

<b><i>Receipt and initial assessment of the specific instance</i></b>	
11 May 2023	NCP receives complaint
19 May 2023	NCP forwards complaint to the Company's Director of Human Resources
15 June 2023	NCP meets with Company representatives to discuss the specific instance process
11 August 2023	NCP receives submission from the Company responding to the complaint
15 August 2023	NCP forwards submission from the Company to the Complainant
11 September 2023	Complainant clarifies Guidelines provisions under which complaint is made
18 September 2023	NCP informs Company of clarification to complaint and offers Company the chance to issue further comment
4 October 2023	Company informs the Ireland NCP that it does not intend to issue a further submission
6 November 2023	NCP issues draft initial assessment to the parties for comment
8 December 2023	Company submits comments on the draft initial assessment
11 December 2023	Ireland NCP publishes initial assessment
<b><i>Good offices</i></b>	
15 December 2023	NCP offers its good offices to the parties
15 December 2023	Complainant accepts the offer of good offices

<sup>6</sup> Company submission to the Ireland NCP, 8 December 2023, P.1

10 January 2024	Company refuses the offer of good offices
11 January 2024	NCP notifies Complainant that the Company has refused the offer of good offices, notifies both parties of its intention to carry out an examination, and requests further submissions pending a final statement
<b><i>Conclusion of the specific instance</i></b>	
18 January 2024	Company affirms its intention to assist with the NCP's examination process and requests meeting with NCP officials
23 January 2024	Ireland NCP meet with representatives of the Company to explain the examination process
2 February 2024	Company makes a submission to the NCP prior to the examination process
12 February 2024	NCP forwards Company's submission to the Complainant
5 April 2024	NCP shares the draft final statement with the parties
19 April 2024	Company submits comments on the draft final statement
3 May 2024	Final statement published

### **C. Offer to initiate the good offices process**

20. Following publication of the initial assessment, the Ireland NCP wrote to the parties formally offering its good offices to arrive at an agreed solution to the issues raised. The NCP's letter noted that this process would take the form of a small number of mediation sessions between the parties led by an external professional mediator contracted by the NCP. It further advised that the identity of the mediator and the terms of reference of mediation would be subject to the agreement of both parties.
21. The Complainant accepted the offer of good offices. The Company declined the offer of good offices, restating its view that it had not breached any of the Guidelines and that mediation would not be appropriate or useful but would assist with the examination process.

### **D. Examination and conclusions**

22. As the Company declined the good offices, the Ireland NCP moved to the examination process outlined in its rules of procedure, resulting in the publication of a final statement.
23. The Ireland NCP provided the opportunity for parties to provide further submissions to be considered at this stage in the process. The Complainant did not make any further submissions.
24. The Company sought a further meeting with the Ireland NCP to better understand the examination process and the expectations on parties therein. The NCP outlined their approach to examination and the preparation of final statements. Following this, the Company made an additional submission to the NCP for consideration.

## Company's additional submission

25. With regard to Chapter V, Paragraph 1. (b), the Company reiterated its argument that while the Irish Constitution protects the right of freedom of association, this does not place any obligation on employers to recognise trade unions for the purposes of collective bargaining. The Company further stated that this principle of voluntarism is in accordance with ILO Conventions 87 and 98, which were referenced in the Complainant's original submission. The Company stated that its direct engagement model enjoys the support of "*the overwhelming majority of our employees*"<sup>7</sup> and is the practice of most private sector employers in Ireland.
26. The Company reiterated its argument that the Labour Court Recommendations cited by the Complainant are not legally binding. It further stated that trade unions, including the Complainant, had decided to reject such Recommendations on other occasions.
27. Regarding Chapter V, Paragraph 2. (a) and (b), the Company argued that the Guidelines' requirement for enterprises to provide workers' representatives with certain facilities and information applies in the context of the negotiation of collective agreements. Absent such negotiations, which are voluntary in Ireland, the Company argued that these requirements do not apply.
28. Regarding Chapter V, Paragraph 8, the Company argued that the Guidelines' requirement for enterprises to enable workers to negotiate on collective bargaining and management issues and, to consult with representatives of management who are authorised to make decisions, applies in the context of voluntary engagement with collective bargaining, and not in the present case as the Complainant is not the employees' authorised representative. The Company also highlighted the chapeau to Chapter V, which states that the Guidelines apply "*within the framework of applicable law, regulations and prevailing labour relations and employment practices and applicable international labour standards*"<sup>8</sup>. The Company also noted its various channels for engagement, consultation and information-sharing with its employees.

## Recommendations

29. The Ireland NCP regrets the Company's decision to decline the offer of good offices. The good offices would have provided an opportunity for the parties to constructively engage in dialogue to potentially assist the parties arrive at a mutually agreed solution.
30. The Ireland NCP notes the Company's arguments that it complies with Irish employment law. The NCP acknowledges this as there is no constitutional or legal requirement under Irish law for enterprises to engage in collective bargaining, but enterprises can engage in collective bargaining if they so wish to. However, the NCP wishes to reaffirm that the recommendations of the Guidelines can in some instances go beyond national law and enterprises are expected to "*seek ways to honour such principles and standards to the fullest extent which does not place them in violation of domestic law*"<sup>9</sup>.
31. Furthermore, the language used in Chapter V aligns with the ILO standards and the NCP would like to point out that the ILO Declaration on Fundamental Principles and

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<sup>7</sup>Company submission to the Ireland NCP, 2 February 2024, p. 2

<sup>8</sup>OECD Guidelines for Multinational Enterprises, p. 35

<sup>9</sup>OECD Guidelines for Multinational Enterprises, p. 17



Rights at Work declares that all ILO members:

*“...have an obligation, arising from the very fact of membership in the Organization, to respect, to promote and to realize, in good faith and in accordance with the Constitution, the principles concerning the fundamental rights which are the subject of those Conventions, namely:*

*a. freedom of association and the effective recognition of the right to collective bargaining”<sup>10</sup>.*

32. In light of the language noted above and the alignment with ILO standards, the NCP recommends that the Company or any multinational enterprise seeking to ensure it operates responsibly in line with the recommendations of Chapter V of the Guidelines should be prepared to engage in collective bargaining with workers’ chosen representatives.
33. The Ireland NCP notes that the Company honours pre-existing collective bargaining arrangements at two other acquired facilities. It recommends that the Company consider how these arrangements can be replicated at its other facilities, so its entire Irish workforce has the same representational arrangements in place.

## **Follow-up**

34. The Ireland NCP will conduct a follow-up exercise one year after the publication of this final statement in light of the recommendations above, as envisaged by the *Implementation Procedures of the OECD Guidelines for Multinational Enterprises*<sup>11</sup>.
35. The Ireland NCP may issue a follow-up statement to take account of the situation and will conclude the specific instance.

**ENDS**

**Ireland National Contact Point  
OECD Guidelines for Multinational Enterprises  
Department of Enterprise, Trade and Employment**

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<sup>10</sup> International Labour Organisation Declaration on Fundamental Principles and Rights at Work, Paragraph 2

<sup>11</sup> OECD Guidelines for Multinational Enterprises, p.85.