



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

# **Initial Assessment by the Ireland National Contact Point for the OECD Guidelines for Multinational Enterprises**

## **Specific Instance Complaint against Schweppes Holdings Ltd.**



## Summary of the Ireland NCP Decision

- The complaint was made by spokespersons of the workers of Pharmakina SA, a manufacturer of quinine based in the Democratic Republic of Congo, against Schweppes Holdings Limited, an Irish company alleged to have a business relationship with Pharmakina SA.
- The complaint relates to Chapter II (General Policies); Chapter IV (Human Rights); Chapter V (Employment and Industrial Relations); Chapter VI (Environment); and Chapter VII (Combatting Bribery, Bribe Solicitation and Extortion).
- In communications with the Ireland NCP, representatives of Schweppes Holdings Limited and its parent company, The Coca-Cola Company, stated that Schweppes Holdings Limited has never had a business relationship with Pharmakina SA. These communications were passed to the complainant.
- The complainant made further submissions alleging a business relationship exists.
- The Ireland NCP has decided that there are insufficient grounds to proceed to the offer of good offices in this specific instance.
- The Ireland NCP sets out the reasons for this decision in the interests of transparency and accountability.

## Object of the Complaint

On 9 October 2020 the Ireland NCP received a specific instance complaint from complainants claiming to speak on behalf of workers affected by the operations of Pharmakina SA, a company based in the Democratic Republic of Congo. The complaint concerns Schweppes Holdings Limited, a subsidiary of the Coca-Cola Company headquartered in Ireland, hereinafter referred to as “the company”. The complaint alleges that the company uses quinine manufactured by Pharmakina SA, which it contends is involved in several breaches of the OECD Guidelines pertaining to human rights, industrial relations, the environment and combatting bribery, bribe solicitation and extortion. Through its alleged business relationship with Pharmakina SA, the complainants believe the company is in breach of the guidelines and should take action to remedy the impacts alleged.

The complainants request that the company (summarised below):

- Uses its alleged business relationship to influence Pharmakina SA to “*proceed to the compensation of the victims... and repair the prejudices related to the issues raised in our complaint*”. The complainants seek \$100 million in compensation for harms alleged.
- Ceases activities which generate money contributing to Pharmakina SA’s violations of standards.

## ***Guidelines provisions cited by the Complainant***

### **Chapter II: General Policies**

**Chapter II A.1:** Enterprises should “*Contribute to economic, environmental and social progress with a view to achieving sustainable development.*”

**Chapter II A.2:** Enterprises should “*Respect the internationally recognised human rights of those affected by their activities*”.

**Chapter II A.10:** Enterprises should “*Carry out risk-based due diligence, for example by incorporating it into their enterprise risk management systems, to identify, prevent and mitigate actual and potential adverse impacts as described in paragraphs 11 and 12, and account for how these impacts are addressed. The nature and extent of due diligence depend on the circumstances of a particular situation*”.

**Chapter II A.15:** Enterprises should “*Abstain from any improper involvement in local political activities*”.

### **Chapter IV: Human Rights**

**Chapter IV A.1:** Enterprises should “*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 IV A.2:** Enterprises should “*Within the context of their own activities, avoid causing or contributing to adverse human rights impacts and address such impacts when they occur*”.

**Chapter IV A.5:** Enterprises should “*Carry out human rights due diligence as appropriate to their size, the nature and context of operations and the severity of the risks of adverse human rights impacts*”.

### **Chapter V: Employment and Industrial Relations**

**Chapter V A.1(b):** Enterprises should “*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*”.

### **Chapter VI: Environment**

**Chapter VI A.1:** Enterprises should “*Establish and maintain a system of environmental management appropriate to the enterprise, including... collection and evaluation of adequate and timely information regarding the environmental, health, and safety impacts of their activities [and] ...regular monitoring and verification of progress toward environmental, health, and safety objectives or targets*”.

**Chapter VI A.3:** Enterprises should “*Assess, and address in decision-making, the foreseeable environmental, health, and safety-related impacts associated with the processes, goods and services of the enterprise over their full life cycle with a view to avoiding or, when unavoidable, mitigating them. Where these proposed activities may have significant environmental, health, or safety impacts, and where they are subject to a decision of a competent authority, prepare an appropriate environmental impact assessment*”.

**Chapter VI A.4:** Enterprises should “*Consistent with the scientific and technical understanding of the risks, where there are threats of serious damage to the environment, taking also into account human health and safety, not use the lack of full scientific certainty as a reason for postponing cost-effective measures to prevent or minimise such damage*”.

**Chapter VI A.6:** Enterprises should “*Continually seek to improve corporate environmental performance, at the level of the enterprise and, where appropriate, of its supply chain, by encouraging such activities as... development and provision of products or services that have no undue environmental impacts; are safe in their intended use; reduce greenhouse gas emissions; are efficient in their consumption of energy and natural resources; can be reused, recycled, or disposed of safely... [and] exploring and assessing ways of improving the environmental performance of the enterprise over the longer term, for instance by developing strategies for emission reduction, efficient resource utilisation and recycling, substitution or reduction of use of toxic substances, or strategies on biodiversity*”.

**Chapter VI A.8:** Enterprises should “*Contribute to the development of environmentally meaningful and economically efficient public policy, for example, by means of partnerships or initiatives that will enhance environmental awareness and protection*”.

## **Chapter VII: Combatting Bribery, Bribe Solicitation and Extortion**

**Chapter VII:** “*Enterprises should not, directly or indirectly, offer, promise, give, or demand a bribe or other undue advantage to obtain or retain business or other improper advantage*”.

**Chapter VII A.5:** Enterprises should: “*Enhance the transparency of their activities in the fight against bribery, bribe solicitation and extortion. Measures could include making public commitments against bribery, bribe solicitation and extortion, and disclosing the management systems and the internal controls, ethics and compliance programmes or*

*measures adopted by enterprises in order to honour these commitments. Enterprises should also foster openness and dialogue with the public so as to promote its awareness of and cooperation with the fight against bribery, bribe solicitation and extortion”.*

**Chapter VII A.7:** Enterprises should: “*Not make illegal contributions to candidates for public office or to political parties or to other political organisations. Political contributions should fully comply with public disclosure requirements and should be reported to senior management”.*

### **The Initial Assessment (IA) Process**

The purpose of the initial assessment is to determine if the issues raised in the complaint merit further examination by the Ireland NCP. **It does not determine whether the company has acted consistently or inconsistently with the Guidelines.**

### ***Handling Process***

14 July 2020	Joint specific instance submission made to 36 NCPs, including Ireland NCP
9 September 2020	WPBRC Chair writes to complainants advising on the formally correct submission of complaints
5 October 2020	Chair of WPBRC speaks to the complainants to provide clarity on the SI process
7 October 2020	WPBRC Chair writes to NCPs expressing concern about undue pressure placed on complainants under the NCP process
9 October 2020	Complaint received by Ireland NCP
14 April 2021	Schweppes Holdings Limited notified of complaint
5 May 2021	Ireland NCP holds a meeting with representatives of European Refreshments and the Coca-Cola Company regarding the complaint against Schweppes Holdings Limited, their subsidiary
10 May 2021	Ireland NCP receives a formal written response to the complaint from legal counsel for European Refreshments

24 May 2021	Response from the company is shared with the complainant
26 May 2021	Further submissions received from the complainant regarding an alleged business relationship between the company and Pharmakina SA
26 May 2021	The complainants request the Ireland NCP to act as an intermediary in meetings with lawyers for Pharmakina SA
1 June 2021	The Ireland NCP advises the complainant that it cannot diverge from its stated procedures to act as an intermediary in dealings with the respondent company
30 June 2021	The Ireland NCP requests the submission of evidence concerning a business relationship between Pharmakina SA and the company. The NCP issues a letter to the company seeking comment on the complainants' submission of 26 May
2 & 7 July 2021	The Ireland NCP receives two further submissions from the complainant alleging a business relationship
9 July 2021	The Ireland NCP receives a further submission from the company concerning the allegations of a business relationship with Pharmakina SA
5 August 2021	Ireland NCP completes initial assessment and issues to both parties
6 August 2021	The complainant submits comments on the Ireland NCP's draft initial assessment
12 August 2021	Schweppes Holdings Limited submits comments on the Ireland NCP's draft initial assessment
24 August 2021	Initial assessment published

***Is the Ireland NCP the right entity to assess the Specific Instance Complaint?***

The commentary on the implementation procedures of the OECD Guidelines notes that “Generally, issues will be dealt with by the NCP of the country in which the issues have arisen”. While the complaint concerns alleged impacts in the Democratic Republic of

Congo, it has been lodged against the company, which is registered to an address in Ireland. As the complaint concerns a business relationship the company is alleged to have, the Ireland NCP is the most appropriate entity to assess the specific instance.

It should be noted that the Ireland NCP's jurisdiction is limited to operations taking place in Ireland or headquarters-level decisions taken in Ireland with impacts in other jurisdictions. The NCP is not in a position to review the operations of companies in the DRC except insofar as these impacts arise from actions taken in Ireland.

### **Ireland NCP Decision**

#### ***a) Identity of the Complainants and their interest in the matter***

The complaint was lodged by Emery Mulumeoderhwa Ruhamyia on behalf of Léonce Safari Kajangu, Anicet Tambwe Byadunia and Francois Zababe Zabene, who stated they are former workers and union delegates who represented the workers within the company. The OECD *Guide for National Contacts Points on the Initial Assessment of Specific Instances* notes: “*In instances where third party organisations are acting as representatives of individuals, or communities, it will be important to ensure that such representation has been requested or authorised by the relevant individuals or communities*”. Wishing to be accessible, the Ireland NCP's open policy does not rule out such a complaint and its handling through a representative, whatever the stature, in this case Mr. Emery Mulumeoderhwa Ruhamyia.

#### ***b) Whether the issue is material and substantiated***

The OECD guidance notes that this criterion examines “*refers to the significance of an issue raised in a submission as well as the extent to which it has been authenticated*”.

The complaint alleges extensive violations of the OECD Guidelines on the part of Pharmakina SA, including the dumping of dangerous and untreated chemicals into Lake Kivu; the mistreatment of workers, including underpayment and excessive working hours; the intimidation and persecution of trade union officials; and improper influence on politics through collaboration with the RCD-Goma during the Second Congo War.

The OECD “*Guide for National Contact Points on the Initial Assessment of Specific Instances*” notes that the standard of substantiation of complaints should not be “unnecessarily onerous”. However, the Ireland NCP was not presented with sufficient evidence substantiating either involvement of the company in these alleged impacts, or

leverage over the operations of Pharmakina SA which might create responsibility to prevent, mitigate or remedy them.

The Ireland NCP provided the complainant with the opportunity to provide additional information to substantiate the claim. The additional information received on 26 May 2021 from the complainant, along with further submissions on 2 and 7 July 2021, did not adequately establish the existence of a business relationship linking the company to Pharmakina SA.

The company affirmed in their correspondence on 10 May 2021 and 9 July 2021 that there is no business relation between themselves and Pharmakina SA.

Based on the insufficient evidence provided by the complainant and correspondence from the company that there is no business relationship, it is therefore the view of the Ireland NCP that the issues raised by the complainant are not material and have not been adequately substantiated.

***c) Link between the enterprise's activities and the issues raised in the specific interest***

The complainant claims that the company purchases quinine from Pharmakina SA and bases the complaint on this relationship. However, sufficient evidence to support the existence of such a relationship has not been provided in the complaint. The complainants have submitted photographs showing the ingredients listed on products produced by the company, which include quinine. This does not suffice to establish a link between the issues raised in the complaint and the activities of the company. As mentioned in 'point (b) above, the Ireland NCP invited the complainants to make further submissions to support their claim of a link between the company and the alleged adverse impacts in the DRC.

In response to this invitation, the complainants made further submissions, including media reports referring to the use of quinine harvested by Pharmakina SA in tonic water and passing references to the company brand. In response to these submissions, the company issued a further letter reiterating its earlier claim that no Coca-Cola Company entity had ever had a relationship with Pharmakina SA. This communication also noted that when The Coca-Cola Company acquired the rights to the "Schweppes" brand from Cadbury-Schweppes in 1999, it did not do so in all jurisdictions, leaving some 43 countries in which the brand is owned by other concerns.

Considering the submissions of both parties, the Ireland NCP deems that there is not sufficient evidence to link the company to the impacts alleged by the complainants.

***d) Relevance of applicable law and procedures, including court rulings***



As the complaint does not contain a sufficient basis for the existence of a business relationship between the company and the impacts which are alleged to take place, the Ireland NCP has concluded that questions of the applicability of laws, procedures and court rulings do not arise in this case.

***e) How similar issues have been, or are being, treated in other domestic or international Complaints***

The complainants have submitted complaints about Pharmakina SA's operations to other NCPs. In November 2019, the NCP of Luxembourg issued its final statement on a complaint against Pharmeg SA, Pharmakina SA's holding domiciled in that jurisdiction. In its [final statement](#), the NCP accepted that it would have jurisdiction over a complaint concerning impacts felt in the DRC "*if a Luxembourg established legal entity – thus at least actively operating from there and entrusted with some decision-making power, and of multinational scope – is at the root of the alleged troubles*". However, the Luxembourg NCP concluded that the firm operating in its jurisdiction had no real operations and employed no staff and existed purely as a "*non-operative legal construct*". The Luxembourg NCP therefore did not accept the complaint at initial assessment stage, concluding that as the premises, decision-making and operational capacity of the target company were not in its jurisdiction: "*It is quite obviously in the DRC where the troubles have not only occurred but also arisen, and therefore they cannot be solved in Luxembourg by its national authorities or through its NCP.*"

The complainants also approached the German NCP with a claim that a German company entered into a partnership with Pharmakina SA for the production of antiretroviral drugs. The German NCP produced an [initial assessment](#) which did not accept the complaint, "*because the allegations against the company are not substantiated and there is no link between the company's activities and the issues raised*".

The U.S. NCP has also received a specific instance that raises similar issues from the same complainant which is currently under review.

***f) Whether the consideration of the Specific Instance contributes to the purpose and effectiveness of the Guidelines***

The objectives of the OECD Guidelines for Multinational Enterprises are pertinent to the impacts alleged by the complainants. However, in light of the considerations set out under heads (b) and (c) above the Ireland NCP concludes that consideration of this Specific Instance does not contribute to the effectiveness of the Guidelines.

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