



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

Note on OECD Guidelines text

This specific instance was submitted to the Ireland NCP prior to the introduction of the updated OECD Guidelines for Multinational Enterprises on Responsible Business Conduct on 8 June 2023, and concerns issues arising prior to that date. The following initial assessment therefore refers to the 2011 OECD Guidelines for Multinational Enterprises in place during the relevant period.

Summary of the Ireland NCP Decision

1. The complaint is made by the Services Industrial Professional and Technical Union (SIPTU, hereinafter “the Complainant”), the largest trade union in Ireland. The complaint is made against Stryker Corporation (“the Company”), a US headquartered multinational enterprise in the medical technologies sector. The Complainant submitted the complaint in its capacity as representative of members employed at three Stryker facilities at Carrigtwohill, Co. Cork.
2. The complaint is made in respect of Chapter V (Employment and Industrial Relations). The Complainant has claimed that the Company has failed:
 - i. To observe the Guidelines’ provisions concerning the right of workers to join trade unions (Para 1(a))
 - ii. The right of workers to have their trade unions recognised for the purposes of collective bargaining, and the obligation to engage in constructive negotiation (Para 1(b))
 - iii. To provide workers’ representatives with the necessary facilities and information (Para 2(a) and (b))
 - iv. To allow workers’ representatives to consult representatives of management on matters of mutual concern (Para 8)
3. In response the Company has argued that it has not breached the Guidelines. The Company has stated that it respects the right of employees to join or not to join a trade union, and that it is in full compliance with all applicable laws, regulations and employment practices. The Company notes the voluntarist nature of the Irish industrial relations system and states that while the Irish Constitution guarantees

workers' freedom of association, it also guarantees its "*attendant right not to engage with trade unions, including for collective bargaining purposes*"¹.

4. In light of information received from both parties, the Ireland NCP has decided that the complaint merits further examination in relation to Points ii – iv referenced in Paragraph 2. The NCP will proceed to the offer of good offices to the parties.
5. The Ireland NCP sets out the reasons for this decision in the interests of transparency and accountability. **The decision to offer good offices does not determine whether the Company has acted consistently or inconsistently with the Guidelines.**

Object of the Complaint

6. The Complainant alleges that the Company has refused to recognise it for the purposes of collective bargaining at the Carrigtwohill facilities, though it enjoys "*positive and progressive I.R. arrangements*"² at Stryker plants in Limerick and Macroom, Co. Cork, engaging in collective bargaining with official recognition.
7. The complaint concerns the responsibility of the Company 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.
8. The Complainant alleges that the Company suspended workers without adequate consultation or information during the Covid-19 emergency and that the Company's management refused to meet with its representatives to discuss health and safety matters.
9. The Complainant seeks the following outcomes:
 - The Complainant to secure the right to represent its members and engage in collective bargaining at the Company's three Carrigtwohill facilities.

¹ Company submission, p.4

² Complainant submission, p.6

- The Company to engage with the Complainant on the terms recommended by the Labour Court (see Paragraphs 27 to 29, below) 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.
10. The Company rejects the allegations made and argues it has not breached the Guidelines as it respects the rights of employees to join or not join a trade union.
11. The Company argues it is in full compliance with all applicable laws, regulations and employment practices, noting the voluntarist nature of the Irish industrial relations system under the Irish Constitution. The Company states the Ireland NCP does not have jurisdiction to make an order for compulsory trade union recognition.

Guidelines provisions cited by the Complainant

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.*

The Initial Assessment Process

12. The purpose of the Initial Assessment is to determine if the issues raised in the complaint merit further examination by the Ireland NCP. Having regard to the [OECD Guide for National Contact Points on the Initial Assessment of Specific Instances](#), the NCP does not intend this document to be a detailed assessment or fact-finding analysis of the complaint, or a detailed assessment of the Company's rebuttal of the complaint. **It does not determine whether the Company has acted consistently or inconsistently with the Guidelines.**

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 alerts 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
11 December 2023	Ireland NCP publishes initial assessment

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

13. The Company is a US-headquartered multinational enterprise with a presence in more than 75 countries worldwide³. It has a substantial presence in Ireland, with more than 4,000 employees across eight locations throughout the island of Ireland. As the specific instance concerns the terms of the relationship between the management of the Company's Irish facilities and the union of which some Irish workers are members, the Ireland NCP determines that it is the appropriate NCP to address the specific instance.

14. As the Company is headquartered in the US, the Ireland NCP has kept the US NCP informed of developments in the specific instance.

Ireland NCP decision

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

15. The Complainant is a major trade union whose members are employed at the Company's facilities. As noted (see paragraphs 27 to 29, below), the Complainant has been a party to multiple hearings before the Labour Court on the substance of the complaint. The Ireland NCP accepts the interest of the Complainant in the matter.

b) Whether the issue is material and substantiated

16. With regard to Chapter V, Paragraph 1(a) of the Guidelines, the NCP notes the Company's statement that "*There has been no failure whatsoever on the part of Stryker to respect the right of employees to join a trade union and we fully respect the individual choices of all of our employees to join or not to join a trade union... all applicable laws, regulations and employment practices with respect to our colleagues have been complied with by Stryker, including laws related to freedom of association*"⁴.

17. The Ireland NCP has not been presented with evidence to substantiate a claim that Stryker has failed to respect the right of workers to establish or join trade unions and representative associations of their own choosing. For this reason, the NCP does not propose to consider this aspect of the complaint further.

³ [Stryker: Our company](#)

⁴ Company submission, p. 4

18. With regard to Chapter V, Paragraph 1(b), in its submission to the NCP, the Company emphasises the chapeau included in Chapter V of the Guidelines, which places the Chapter’s recommendations “*within the framework of applicable law, regulations and prevailing labour relations and employment practices*”⁵. The Company notes that the Irish system of industrial relations is based on voluntarism, and states that the Irish Constitution and decisions by the Supreme Court gives employers a “*right not to engage with trade unions, including for collective bargaining purposes*”⁶. The Company states that this right is “*a cornerstone of Stryker’s Direct Engagement model*”⁷.
19. The Ireland NCP notes that the recommendations of the OECD Guidelines, which are not legally binding, can be greater than those of the law: “*While the Guidelines extend beyond the law in many cases, they should not and are not intended to place an enterprise in situations where it faces conflicting requirements. However, in countries where domestic laws and regulations conflict with the principles and standards of the Guidelines, enterprises should seek ways to honour such principles and standards to the fullest extent which does not place them in violation of domestic law*”⁸.
20. The Ireland NCP notes Paragraph 1 of Chapter V “*is designed to echo all four fundamental principles and rights at work which are contained in the [1998 International Labour Organisation Declaration on Fundamental Principles and Rights at Work](#)*”⁹. The Declaration 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*”¹⁰

⁵ OECD Guidelines for Multinational Enterprises, p. 35

⁶ Company submission, p. 4

⁷ Company submission, p. 4

⁸ OECD Guidelines for Multinational Enterprises, p. 17

⁹ OECD Guidelines for Multinational Enterprises, p. 38

¹⁰ International Labour Organisation Declaration on Fundamental Principles and Rights at Work, Paragraph 2

21. In light of the above, the NCP considers the complaint to be worthy of further consideration with regard to Paragraph 1(b).
22. With regard to Chapter V, Paragraph 2(a) and (b), the NCP notes correspondence presented by the Complainant outlining a lack of availability on the Company's part to discuss recent Labour Court Recommendations^{11, 12, 13}; a lack of consultation on or detailed explanation of suspensions of employment¹⁴; and a lack of information on ways in which terms and conditions of employment would be affected by the Covid-19 pandemic¹⁵. Later communications from the Complainant to the Company claim the Company "*point blank refused to meet with SIPTU*" to discuss safety concerns¹⁶. In a response provided to the NCP by the Complainant, the Company declined a further request for a meeting, citing "*our model of direct engagement with our employees*"¹⁷.
23. Having regard to the correspondence outlined in paragraph 22, the NCP considers the complaint to be worthy of further consideration with regard to Paragraph 2(a) and (b) of the Guidelines.
24. Noting the contents of correspondence between the Complainant and the Company (see paragraph 22, above) and the recommendations granted by the Labour Court (see paragraphs 27 to 29, below), the NCP considers the complaint to merit further consideration with regard to Chapter V, Paragraph 8.

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

25. The complaint concerns industrial relations with employees at the Company's facilities. There is therefore a clear link between the Company's activities and the issues raised.

¹¹ SIPTU letter to Director Human Resources, Stryker, 26th March 2020

¹² SIPTU letter to Manufacturing Vice President, Stryker, 28th May 2021

¹³ SIPTU letter to Director Human Resources, Stryker, 27th April 2023

¹⁴ SIPTU letter to Director Human Resources, Stryker, 26th March 2020

¹⁵ SIPTU letter to Director Human Resources, Stryker, 7th April 2020

¹⁶ SIPTU letter to Director Human Resources, Stryker, 19th April 2023

¹⁷ Stryker letter to PCMD Sector Organiser, SIPTU, 26th April 2023

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

26. As noted by the Ireland NCP in the specific instance [IUF & Coca Cola Company](#), the “*Irish Constitution guarantees the right for citizens to join associations and trade unions. It does not however establish a concomitant obligation of compulsory recognition of associations/trade unions on employers for the purpose of collective bargaining. This principle has been firmly established in jurisprudence before the Superior Courts in Ireland. While the constitutional and legal position in Ireland does not oblige enterprises to engage in collective bargaining, neither does it prevent them from engaging in collective bargaining.*”¹⁸. The Ireland NCP noted in that specific instance that “*in countries where domestic laws and regulations conflict with the principles and standards of the Guidelines, enterprises should seek ways to honour such principles and standards to the fullest extent which does not place them in violation of domestic law*”¹⁹.
27. The Ireland NCP notes that under [Section 20\(1\) of the Industrial Relations Act 1969](#), the Complainant has been granted three recommendations by the Labour Court. These are not legally binding but the parties to disputes “*are expected to give serious consideration to the Court’s recommendation*”²⁰.
28. Recommendations Nos. [LCR22112](#) and [LCR22113](#) were issued on 11 October 2019, in respect of the Company’s Springhill and Tullagreen operations respectively. In similar text, the recommendations called for the Company to “*recognise the Union as the chosen representative of those employees who join the Union for all industrial relations purposes including individual representation in line with SI 146 of 2000*”. The Court also called for the parties to “*enter into negotiations with a view to concluding a collective agreement dealing with, amongst other things, the procedural arrangements within which the normal industrial relations business will be conducted between them*”²¹.
29. Recommendation No. [LCR22732](#) was issued on 18 April 2023 in respect of the Company’s Anngrove operation. The Court called for the Company to amend its

¹⁸ Initial Assessment by the Ireland National Contact Point for the OECD Guidelines for Multinational Enterprises: Specific Instance Complaint from IUF against the Coca Cola Company/Ballina Beverages, p. 12

¹⁹ OECD Guidelines for Multinational Enterprises, p. 17

²⁰ [The Labour Court: User’s Guide](#), p. 2

²¹LCR 22112 and LCR22113.

procedures to comply with the Code of Practice on Grievance and Disciplinary Procedures outlined in SI 146/2000 of the Industrial Relations Act 1990. It also recommended that the Company should “*recognise the Union as the representative of those employees who are in membership... and should engage with them in dealing with employment related matters arising within the employment affecting those members*”²².

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

30. The Company has argued that an outcome ordered by the Ireland NCP “*would create a new alternative mechanism for seeking trade union recognition and would set a new precedent which would run counter to both the well-established voluntarist system of industrial relations that applies in this State as well as legally binding decisions of the High Court and Supreme Court*”²³.
31. The NCP notes that the OECD Guide for National Contacts Points on the Initial Assessment of Specific Instances, which states: “*specific instance process may provide forms of remedy that are not available or were not achieved during proceedings of a different nature*”²⁴. The NCP acknowledges it does not have the authority to order any remedy measure and that participation in the specific instance is voluntary. Dispute resolution through the NCP process is intended to be consensual and focused on identifying constructive solutions that are mutual agreement between the parties.
32. The Ireland NCP addressed issues of collective bargaining in the specific instance [IUF & Coca Cola Company](#). In its [initial assessment](#) of this complaint, the Ireland NCP noted that the Irish industrial relations system “*is essentially of a voluntarist nature, within a statutory industrial relations framework that recognises and facilitates collective bargaining*”²⁵, with no legal requirement for enterprises to engage in collective bargaining. However, the assessment noted the Guidelines’ expectations can exceed legal requirements (see paragraph 19, above). It also noted

²² LRC22732

²³Company submission, p. 5

²⁴Guide for National Contacts Points on the Initial Assessment of Specific Instances, p. 9

²⁵Initial Assessment by the Ireland National Contact Point for the OECD Guidelines for Multinational Enterprises: Specific Instance Complaint from IUF against the Coca Cola Company/Ballina Beverages, p. 12

provisions of the ILO Declaration on Fundamental Principles and Rights at Work²⁶ (see paragraph 20, above). The assessment concluded that the complaint merited further consideration.

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

33. The issues raised in this complaint are relevant to the purposes of the Guidelines as outlined in the Foreword, namely, “*to promote positive contributions by enterprises to economic, environmental and social progress worldwide*”²⁷. As noted above, the right to representation and collective bargaining are directly relevant to the provisions of Chapter V of the Guidelines.
34. Given the difference of views outlined by the parties to the complaint and the relevance of the NCP’s mandate, the NCP considers that further examination of the complaint could contribute to a resolution of the issues raised, thereby furthering the effectiveness of the Guidelines.

Next Steps

35. Following the issuing of the initial assessment to the parties to the complaint and its subsequent publication, the Ireland NCP will formally ask the parties whether they are willing to engage in mediation on Points ii-iv in paragraph 2 with the aim of reaching a resolution to the issues raised.
36. The offer of good offices is voluntary to all parties. Subject to their response, the Ireland NCP will liaise with the parties to arrange mediation meetings. If these meetings achieve a resolution, the Ireland NCP will reflect this in a final statement without making a determination about the merits of the claim on whether the Company acted consistently or inconsistently with the Guidelines.
37. If mediated solutions are not possible, the Ireland NCP will conduct an examination of the complaint and will reflect the outcome in a final statement that may include recommendations.

²⁶ Initial Assessment by the Ireland National Contact Point for the OECD Guidelines for Multinational Enterprises: Specific Instance Complaint from IUF against the Coca Cola Company/Ballina Beverages, p. 13

²⁷ OECD Guidelines for Multinational Enterprises, p. 3

ENDS

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Trade Division

Department of Enterprise, Trade and Employment