Initial Assessment by the UK National Contact Point for the OECD Guidelines for Multinational Enterprises

<u>Complaint from the International Union of Food, Agricultural, Hotel,</u> <u>Restaurant, Catering, Tobacco and Allied Workers' Associations against</u> <u>Compass Group PLC on Eurest Algerie Spa (Algeria)</u>

SUMMARY OF THE UK NCP DECISION

- The UK National Contact Point (NCP) for the OECD Guidelines for Multinational Enterprises (the Guidelines) has decided that the issues raised in the submission from the "International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations" merit further consideration and has decided to accept the Specific Instance for further consideration. This does not mean that the UK NCP considers Compass Group PLC to have acted inconsistently with the Guidelines.
- The UK NCP is accepting for consideration the alleged breach of Chapter IV(1)(a) (Employment and Industrial Relations) of the Guidelines.
- The UK NCP considers that by accepting this Specific Instance it could help both parties in reaching a conciliated/mediated solution to the complaint in relation to the issue of the establishment of a union branch at Eurest Algerie Spa.
- The UK NCP will formally contact both parties to ask whether they are willing to engage in conciliation/mediation with the aim of reaching a settlement. The UK NCP will then liaise with both parties to arrange the conciliation/mediation meetings.

BACKGROUND

On 14 December 2009, the "International Union of Food, Agricultural, 1. Restaurant. Catering. Tobacco and Allied Workers' Hotel. Associations" (IUF) wrote on behalf of the "Syndicat National Autonome des Personnels de l'Administration Publique" (SNAPAP) to the UK NCP raising a number of concerns which it considered constitute a Specific Instance under the Guidelines in respect of the operations of Eurest Algerie Spa (Eurest)¹, a subsidiary of the UKregistered company Compass Group PLC (Compass). Compass has stated that it was not contacted by the SNAPAP at any time before the complaint was submitted.

THE COMPLAINT AND RESPONSE

2. The concerns raised by the IUF relate to Eurest's operations in Algeria and were specifically related by the IUF to Chapter IV(1)(a) of the Guidelines which states that:

¹ The IUF's complaint refers to "Eurest Support Services" which, according to Compass Group plc, is the trademark used by Eurest Algerie Spa.

"[Enterprises should, within the framework of applicable law, regulations and prevailing labour relations and employment practices] Respect the right of their employees to be represented by trade unions and other bona fide representatives of employees, and engage in constructive negotiations, either individually or through employers' associations, with such representatives with a view to reaching agreements on employment conditions".

- 3. The IUF makes the following allegations in respect of Eurest:
 - a) That Eurest refused to acknowledge the formation of a legally formed union. The IUF contends that the union branch was formed in full compliance with Algerian law.
 - b) That Eurest refused to engage with workers' representatives on workplace issues.
 - c) That Eurest systematically harassed and dismissed union members, activists and officers.
 - d) That Eurest harassed and suspended the elected union general secretary in order to prevent him from exercising his duties as an elected trade union officer. The IUF maintains that pursuing the general secretary through the courts is an example of the continued harassment by Eurest to prevent him exercising his duties as an elected trade union officer. The IUF contends that the defamation charges brought against the general secretary partly referred to the publication of photographs exposing the poor living and working conditions of Eurest workers in Algeria.
- 4. Compass denies these allegations and submits in particular:
 - a) That the 10 dismissed employees named by the IUF in the complaint did bring legal proceedings against Eurest relating to the termination of their employment. However, the termination of their employment was not related to any trade union activity and was on grounds of redundancy following the termination of Eurest's client's site contract and the fact that there were no other Eurest client sites to which to transfer their employment at the time. Compass also submits that at no time before receiving the IUF's complaint had Eurest been made aware of a list of employees allegedly adhering to the alleged Eurest union nor had any of the 10 employees mentioned their adherence to such alleged union at the time of their dismissal on grounds of redundancy.
 - b) That Compass has developed its own "Code of Ethics"², is already a participant to the UN Global Compact, and respects trade unions rights as recommended by Chapter IV of the Guidelines.
 - c) That Eurest complies with Algerian law and would be ready to recognise a union properly established under this law. Eurest's employees are free to create a union which is representative of Eurest's employees. In this instance, Eurest did not recognise the alleged union for the following reasons: 1) at no time was Eurest contacted or informed about the fact that its employees wanted to

² <u>http://www.compass-group.com/cr-code-of-ethics.htm</u>

create a union; 2) the alleged union was created without proper due process and with complete disregard of the requirements of Algerian law; 3) the alleged union consisted of 7 members and could not be said to be representative of its 1,800 employees; and 4) Eurest did justify its refusal to recognise the union to the Local Labour authority and the "Union Générale de Travailleurs Algériens" (UGTA), which did not take any further action. Compass also submits that Eurest did agree to meet the union but was unavailable to attend the scheduled meeting at the time requested. Despite Eurest providing an alternative time for such meeting, the meeting went ahead without Eurest.

d) That the alleged general secretary of the newly formed union branch (whose election to this position is disputed by Eurest) has been suspended because of death threats to Eurest's management (and not because of his trade union activity). Compass stated that, because of the seriousness of the matter, it did submit the issue to the police and the courts, and did file claims for defamation of Compass and of a Eurest manager and that the individual was subsequently found guilty of criminal offences. Compass also stated that none of the remaining 6 employees who were allegedly elected to represent the newly formed union branch were dismissed by the company: three of them resigned (for non trade union related reasons) and three are still employed by Eurest.

THE UK NCP PROCESS SO FAR

- 5. The UK NCP received the IUF's complaint against Compass on 14 December 2009 (the supporting annexes were received on 22 December). The UK NCP forwarded the complaint and the supporting annexes to Compass on 22 December 2009. The company submitted its response to the allegations on 22 January 2010.
- 6. Compass met with the UK NCP on 7 April 2010. As the IUF was already familiar with the UK NCP process, it did not think it necessary to meet the UK NCP for an explanation of the complaints' handling process.

UK NCP DECISION

7. The UK NCP has decided that the issues raised in IUF's complaint merit further consideration and has decided to accept the Specific Instance. The UK NCP is accepting for consideration the alleged breach of Chapter IV(1)(a) (Employment and Industrial Relations) of the Guidelines. The reasons for this decision are explained below. This does not mean that the UK NCP considers Compass to have acted inconsistently with the Guidelines.

- 8. As set out in paragraph 14 of the Commentary on the Guidelines on "Implementation in Specific Instances"³, the UK NCP took the following points into account when considering whether IUF's complaint merited further consideration:
 - a) Identity of the IUF and its interest in the matter:

The UK NCP is satisfied that the IUF is a legitimate and credible body to make this complaint. The IUF is a trade union representing workers in the hotel, restaurant and catering sectors and has brought the complaint on behalf of the SNAPAP in Algeria. The SNAPAP mainly represents public sector workers but its mission statement⁴ includes the defence of trade union rights and their promotion in co-operation with national and international trade unions. The UK NCP understands from the IUF that the SNAPAP has taken over the role previously performed by the UGTA as sponsor of the union branch at Eurest and is representing the relevant individuals in Algeria affected by the alleged breach of the Guidelines (although Compass has stated that the SNAPAP has not informed Eurest of their role and that the UGTA ceased to support the alleged union at Eurest). The UK NCP therefore considers that the IUF is directly interested in the issues raised in the complaint.

b) Whether the issue is material and substantiated:

Within the scope of the Initial Assessment, the IUF and Compass have provided sufficient information for the UK NCP to conclude that the issues identified by the IUF are material and substantiated. The IUF has provided various documents in support of the complaint including a list of some of the employees allegedly adhering to the newly formed Eurest union branch (which Compass disputes the authenticity of), a copy of minutes regarding the alleged establishment of a new union branch by the UGTA, copies of the judgments of the Algerian courts relating to the dismissal of 10 Eurest employees, and minutes from local authorities relating to the establishment of a union branch at Eurest (which Compass disputes the authenticity of). Compass also submitted various supporting documents including the judgment of the Algerian court convicting the alleged general secretary of the offences of insult and threatening violence; the judgment of the Algerian court rejecting the claim brought by the alleged general secretary against Eurest, to reinstate him; the judgments of the Algerian court convicting the alleged general secretary of the offence of defamation against Compass; the judgments of the Algerian court convicting the alleged general secretary of the offences of insult and defamation against Eurest's management (all judgments were upheld on appeal); Eurest's response to local authorities on the

³ See page 58 of the Guidelines – available at: www.oecd.org/dataoecd/56/36/1922428.pdf

⁴ <u>http://www.maisondessyndicats-dz.com/snapap.php</u>

creation of a union branch; and a letter from the UGTA freezing the activity of the alleged union branch.

c) Relevance of applicable law and procedures:

According to the IUF, Compass has breached aspects of Algerian law in that it has allegedly failed to recognise the right to union representation to Eurest's employees. Compass submits that Eurest's practices are in compliance with Algerian law and that the union branch was formed in contravention of this law.

The Guidelines represent supplementary principles and standards of behaviour of a non-legal character and are not a substitute for (nor should they be considered to override) local law and regulation. If a conciliated/mediated settlement is not possible (or the parties do not wish to engage in conciliation/mediation), the UK NCP will not examine whether there has been any breach of Algerian law. The UK NCP will only consider whether the company has acted inconsistently with Chapter IV(1)(a) of the Guidelines.

d) <u>How similar issues have been, or are being, treated in other</u> <u>domestic or international proceedings</u>:

The UK NCP notes that the issues of the reinstatement of the general secretary of the allegedly newly formed union branch and the defamation of Compass and Eurest by the same person have already been subject to court proceedings in the Algerian courts and iudqments have been given. The UK NCP will offer the parties conciliation/mediation but if a conciliated/mediated settlement is not parties do possible (or the not wish to endade in conciliation/mediation), the UK NCP will take into account as appropriate the outcome of the relevant legal proceedings before the Algerian courts as part of its examination of the complaint. In doing so, the UK NCP will consider whether its conclusions in relation to the complaint may conflict with the decisions of the Algerian courts, applying the general principle that while the Guidelines are supplementary principles and standards of behaviour which extend beyond domestic law in many cases, they should not and are not intended to place an enterprise in a situation where it faces conflicting requirements.

As far as the UK NCP is aware (on the basis of information received from the IUF and Compass), no legal proceedings are ongoing in Algeria in relation to the issues submitted in the complaint.

e) <u>Whether the consideration of the specific issue would contribute to</u> <u>the purposes and effectiveness of the Guidelines</u>:

One of the stated aims of the Guidelines, specifically the role of the NCPs, is for the NCP to *"offer a forum for discussion and assist the*

business community, employee organisations and other parties concerned to deal with the issues raised in an efficient and timely manner and in accordance with applicable law"⁵. To this effect, the UK NCP considers that by accepting this Specific Instance, it could help both parties in reaching a conciliated/mediated solution to the complaint in relation to the issue of the establishment of a union branch at Eurest.

NEXT STEPS

- 9. The UK NCP will formally contact both parties to ask whether they are willing to engage in conciliation/mediation with the aim of reaching a settlement. The UK NCP will then liaise with both parties to arrange the conciliation/mediation meetings.
- 10. If a conciliated/mediated solution is possible, the UK NCP will reflect the successful outcome of this process in its Final Statement without making a determination as to whether the company has acted inconsistently with the Guidelines.
- 11. If a conciliated/mediated settlement is not possible (or the parties do not wish to engage in conciliation/mediation), the UK NCP will conduct a separate examination into the complaint and will reflect in its Final Statement the outcome of this examination, and a determination of whether the company has acted inconsistently with the Guidelines.

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UK National Contact Point for the OECD Guidelines for Multinational Enterprises

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⁵ See paragraph I(C) of the "Procedural Guidance" of the Guidelines.