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## Commentary



# Due Diligence and the Solo Self-Employed: a New Frontier in Responsible Business

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### Introduction

Uber has failed to fulfil its due diligence responsibilities regarding the terms and conditions of work in various countries around the world.<sup>1</sup> This constitutes a violation of the *OECD Guidelines for Multinational Enterprises on Responsible Business Conduct* (OECD Guidelines) that extends to all Uber drivers in the countries in question, irrespective of their legal status, i.e., as an employee or as solo self-employed.

On 6 April 2021, the National Contact Point (NCP) for the OECD Guidelines received a notification of a specific instance from the International Alliance of App-Based Transport Workers (IAATW), alleging that Uber had violated the guidelines.<sup>2</sup> The issues concerned its alleged failure throughout its global operations to carry out adequate due diligence in relation to (among other issues) drivers' earnings, deactivation, and blocking practices, as well as effective and

- 1 Dutch NCP, *Specific Instance Procedure—Dutch National Contact Point OECD Guidelines for Multinational Enterprises*, The Hague: Ministry of Foreign Affairs (IAATW/Uber), 21 May 2025 ('Dutch NCP (2025)').
- 2 The NCPs promote the OECD Guidelines, provide a grievance mechanism, and handle enquiries. See *OECD Guidelines for Multinational Enterprises on Responsible Business Conduct* (OECD Publishing, 2023), 56, <https://doi.org/10.1787/81f92357-en>.

transparent communication with drivers, or drivers' representatives, regarding their business operations in these key areas. According to IAATW, those violations occurred in multiple member countries and key partners of the Organisation for Economic Co-operation and Development (OECD), including Costa Rica, India, Nigeria, Panama, South Africa, the United Kingdom, and Uruguay.

IAATW applied to the NCP to facilitate a resolution for a framework agreement between Uber and IAATW committing Uber to carry out due diligence and to secure a commitment from Uber to include IAATW and its affiliates in its due diligence process. Given the lack of trust between the parties, the Specific Instance Procedure was closed without the parties reaching an agreement. However, the NCP published a Final Statement, presenting a series of recommendations for terms and conditions of work and engagement from stakeholders. This is the first time the NCP established, to such a specific degree, a violation of the OECD Guidelines with respect to solo self-employed (self-employed workers, as they are called in the Final Statement).<sup>3</sup>

### Analysis

A key underlying aspect in IAATW's notification concerned the question of whether the drivers should be classified as employees (with the associated protections) or as solo self-employed. Although this classification question did not fall within the NCP's mandate, the NCP could review whether Uber's actions were in accordance with the OECD Guidelines. A relevant issue here is that both the old version (2011) and the current version (2023) of the guidelines state that multinational enterprises should apply specific due diligence with respect to all workers, irrespective of the type of contract that they work under.<sup>4</sup> For example, it goes almost without saying that the scope of Chapter 2 (General Policies) and Chapter 4 (Human Rights) extends beyond employees only. This broader scope is particularly striking with respect to Chapter 5 (Employment and Industrial

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3 In April 2013, a Danish solo self-employed worker alleged that an NGO had breached the human rights provisions of the OECD Guidelines by publishing defamatory information about him on the NGO's website. However, that notification did not merit further review ("not accepted") because the statements on the NGO's website did not breach the OECD Guidelines. See Danish NCP, *Specific Instance Procedure—Danish National Contact Point OECD Guidelines for Multinational Enterprises*, Copenhagen: Ministry of Industry, Business, and Financial Affairs, 23 April 2013.

4 The OECD Guidelines were updated in 2023, during the course of this Specific Instance Procedure. The NCP reviewed Uber's alleged violations against the 2011 version of the OECD Guidelines, but applied the updated 2023 version when formulating its forward-looking recommendations. See Dutch NCP (2025), para. 7.1.

Relations) of the earlier guidelines (2011). That chapter states, “the right of workers employed by the multinational enterprise,”<sup>5</sup> yet in the commentary provides a broader interpretation: “It is recognised that in the absence of an employment relationship, enterprises are nevertheless expected to act in accordance with the risk-based due diligence and supply chain recommendations in paragraphs A.10 to A.13 of Chapter II on General Policies.”<sup>6</sup>

This excerpt is repeated in the updated guidelines of 2023,<sup>7</sup> which also consistently replace “the right of workers employed by the multinational enterprise” by “the right of workers.”<sup>8</sup>

However, the fact that the OECD Guidelines (or at least sections of them) apply to all workers does not have any automatic implication for the actual duty of care that multinationals should observe with respect to those workers. What follows is an analysis of three elements of the NCP’s Final Statement: earnings and related issues, deactivation and blocking, and stakeholder engagement.

### *Earnings and Related Issues*

A worker’s earnings should, wherever possible, provide the worker with a subsistence-level income or *living wage*.<sup>9</sup> Rising costs of living, wide wage inequalities, and widespread poverty among workers are leading to increased calls for a living wage.<sup>10</sup> The NCP found that Uber drivers were at significant risk of a gap between their actual earnings and a living wage, and Uber was expected to exercise due diligence on this issue. This obligation extends to all workers, including the solo self-employed. The reasoning appears to be that every worker should earn (or be capable of earning) a wage that is sufficient, given the overall prosperity situation, to be considered socially acceptable compensation for their work.<sup>11</sup> Drawing on this notion, the NCP recommended that Uber should exercise due diligence on (among other elements) earnings issues by selecting a reliable and recognized methodology, adapting that methodology to the context of platform work, and setting a roadmap with clear milestones and timelines

5 OECD Guidelines (2011), 35.

6 OECD Guidelines (2011), 38.

7 OECD Guidelines (2023), 30.

8 OECD Guidelines (2023), 28.

9 The ILO defines a living wage as “the wage level that is necessary to afford a decent standard of living for workers and their families, taking into account the country’s circumstances and calculated for the work performed during the normal hours of work.” See ILO, “Report of the Meeting of Experts on wage policies, including living wages”, GB.350/POL/I (2024), 6.

10 OECD, “Living wages in practice,” *OECD Policy Insights* 2023, 1–4.

11 A living wage for all workers also serves to prevent a race to the bottom and—considered from a broader perspective—undesirable competition on terms and conditions of work.

in order to gradually work—by country or by region—toward establishing a living wage or a living wage equivalent for all Uber drivers.<sup>12</sup> This implies that the NCP considers a living wage to be an objective standard for the due diligence process, including for the solo self-employed.

### *Deactivation and Blocking*

An Uber driver's account may be deactivated, for example, for criminal offenses, harassment, or fraud. Deactivation can have serious impacts on the driver's income and livelihood. The NCP argued that the risks identified in connection with deactivation should be part of Uber's due diligence process, regardless of whether the driver is an employee or self-employed. The NCP recommended that Uber should be more transparent and complete in its communications concerning its deactivation and blocking policies.<sup>13</sup> This includes use of AI for deactivation, which carries a risk of discrimination.<sup>14</sup> What is interesting here is that the NCP places AI decision-making in a context of international human rights.

### *Stakeholder Engagement*

Enterprises are expected to consult with relevant stakeholders and to consider those stakeholders' views in their plans and decisions for activities that could have a significant impact on local communities.<sup>15</sup> This consultation should be based on two-way communication.<sup>16</sup> According to the NCP, Uber's engagement was not sufficient to provide for two-way communication; the NCP recommended that Uber should develop and improve its engagement with stakeholders (independent unions, workers, and their representative),<sup>17</sup> for example, to develop and implement the roadmap for the earnings issues.<sup>18</sup> In more general terms, the recommendation was to structurally work with independent unions at every level (local, national, regional, and international) on matters such as drivers' terms of work. For solo self-employed drivers, this

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12 Dutch NCP (2025), para. 8.1.

13 Dutch NCP (2025), para. 8.2.

14 This aligns with OECD, "Using AI in the Workplace: Opportunities, Risks, and Policy Responses", *OECD Working paper no. 11* (2024), 5, 9. Similar initiatives are developing in Europe as well, for example the Artificial Intelligence Act (Regulation [EU] 2024/1689) and the EU Directive on Platform Work (Directive [EU] 2024/2831). Both these pieces of legislation apply partly to solo self-employed as well.

15 OECD Guidelines, 20 (2011), 15 (2023).

16 OECD Guidelines, 25 (2011), 19 (2023). See also *OECD Due Diligence Guidance for Responsible Business Conduct* (2018), 49.

17 Dutch NCP (2025), para. 8.3.

18 Dutch NCP (2025), para. 8.1.

raises two questions. First, how does this relate to the “freedom to conduct business” for Uber and for solo self-employed drivers? Second, can the unions in fact properly speak for the solo self-employed in terms of representativeness? These questions reveal that, although certain OECD standards apply to all workers, worker classification (as an employee or as solo self-employed) can add a new dimension to how a given standard is implemented in practice.

### Discussion

In concrete terms, this Specific Instance Procedure shows that Uber has failed in its duty of care with respect to all Uber drivers regarding earnings and related issues, deactivation and blocking, and stakeholder engagement. The Specific Instance Procedure is not the same as legal proceedings, nor are the NCPs judicial authorities.<sup>19</sup> This means that NCPs cannot award damages or order the parties to engage in a conciliation or mediation process. Nevertheless, a Specific Instance Procedure—and more generally violation of the OECD Guidelines—can still have implications for multinational enterprises. Four possible situations where such implications could arise are as follows. First, the publicity when the procedure begins and ends could harm the multinational enterprise’s reputation, particularly with the NCP reviewing, a year on from the Final Statement, what the multinational enterprise has done with the recommendations. Second, the OECD Guidelines could carry over to ESG audits. Third, individuals and interest groups could use the Final Statement to force specific commitments from the multinational enterprise outside legal proceedings. Fourth, individuals and interest groups could use the Final Statement as a basis for their arguments in civil proceedings, for example, to define open standards. This would incorporate the OECD Guidelines into national law, and so a Specific Instance Procedure can have enormous consequences for a multinational enterprise. In more general terms, this Specific Instance Procedure shows that multinational enterprises have various due diligence responsibilities that go beyond labor law. In other words, the OECD Guidelines are, in part, distinct from the worker’s legal status. This means that multinational enterprises also have a duty of care with respect to the solo self-employed, thereby giving the solo self-employed a stronger legal position without changing their formal status. This shifts the discussion from the classification question by itself to the material practice of multinational enterprises’ responsibilities.

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<sup>19</sup> OECD Guidelines (2023), 74.