

National Contact Point of Switzerland

Initial Assessment

Specific Instance regarding the Fédération Internationale de Football Association (FIFA) submitted by the trade union UNITE HERE Local 11

Berne, June 13 2022

Executive summary

The Swiss NCP received a written submission by the trade union UNITE HERE Local 11 (hereafter “submitting Party”) on 31 March 2022 to consider a specific instance under the OECD Guidelines for Multinational Enterprises (hereafter “OECD Guidelines”) regarding the Fédération Internationale de Football Association (hereafter “FIFA” or “responding Party”), an international sports organisation headquartered in Zurich, Switzerland. The submission is related to alleged violations of the OECD Guidelines by not having properly conducted due diligence and stakeholder involvement related to labour issues in view of a possible selection by FIFA of the Rose Bowl Stadium in Los Angeles, USA as a venue for the Football World Cup 2026 (hereafter “FWC26”).

The Swiss NCP accepts the specific instance and offers its good offices to the Parties for further consideration. The offer for mediation focuses on FIFA’s due diligence process including engagement with relevant stakeholders related to the selection of the Rose Bowl Stadium.

The Swiss NCP considers that by accepting this specific instance and offering a confidential mediation it could contribute to the dialogue between FIFA and UNITE HERE Local 11 (hereafter “the Parties”) and help them to reach a better mutual understanding of the issues raised and a mutually acceptable outcome. This decision is not based on conclusive research or fact-finding, nor does it represent a conclusion as to whether FIFA observed the OECD Guidelines or not.

1 Submission and alleged violations of the OECD Guidelines

The Swiss NCP received a written submission on 31 March 2022 to consider a specific instance under the OECD Guidelines regarding the FIFA, an international sports organisation headquartered in Zurich, Switzerland. This specific instance has been raised by UNITE HERE Local 11, a trade union representing workers employed in hotels, restaurants, airports, sports arenas and convention centres in Southern California and Arizona, USA.

The submission is related to the organisation of the FWC26 in particular regarding the potential selection of the Rose Bowl Stadium in Los Angeles, USA. According to the submitting Party, an employer at this stadium operating the concessions and food service operations, does not uphold workers’ freedom of association. The submitting Party further refers to a study by a university¹ documenting several issues with working conditions including precarious

¹ Study conducted by the University of California in Los Angeles (UCLA)

workforce, routine of scheduling volunteers to operate concession stands, lack of access to an employer-funded pension and enforceable protection against arbitrary termination, health and safety violations as well as discrimination of immigrant workers.

The submitting Party claims that FIFA has not properly conducted an effective human rights due diligence regarding the potential selection of the Rose Bowl Stadium. In particular, according to the submitting Party, FIFA has not engaged in dialogue with key local stakeholder to avoid negative impacts of its activities and has not exercised its influence to ensure that workers at the Rose Bowl Stadium obtain the worker protection according to the OECD Guidelines. In conclusion, the submitting Party claims the violation of the following recommendations of the OECD Guidelines:

- Chapter II (General Policies), para. 10: “Carry out risk-based due diligence”...”To identify and mitigate actual and potential adverse impacts as described in paragraphs 11 and 12, and account for how these impacts are addressed.”
- Chapter II (General Policies), para. 14: “Engage with relevant stakeholders in order to provide meaningful opportunities for their views to be taken into account in relation to planning and decisions making for projects or other activities that may significantly impact local communities.”
- Chapter IV, (Human Rights), para 5: “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.”

The submitting Party expects through a mediation by the Swiss NCP to achieve that FIFA uses its leverage to foster an understanding regarding the procedures by which workers may make a free choice regarding unionization. According the submitting Party, this outcome would ultimately provide a vehicle for resolving the other employment issues identified in the submission.

2 Statement of the responding Party

On 10 May 2022, the responding Party submitted a written statement to the Swiss NCP concerning the issues raised in this specific instance. In its statement, FIFA provides detailed background on its ongoing human rights due diligence process (see below) in relation to the FWC26 with emphasis on stadium labour issues. Furthermore, FIFA reiterates its firm commitment to embedding human rights across the organization of the FWC26 in accordance with the responsibilities outlined in the OECD Guidelines and UN Guiding Principles on Business and Human Rights. According to FIFA, the due diligence process so far implemented to date and planned for the coming phases meet the mentioned standards. But FIFA also signals that in view of continuous institutional learning, it will participate in the specific instance in good faith and looks forward to further engage with the NCP and UNITE HERE Local 11, should the NCP decide to accept the case.

FIFA describes its human rights due diligence process in three stages:

- The *bidding process* for the FWC26, which took place from 2017 to 2018, included the then newly developed human rights requirements for FIFA tournaments, which reflect FIFA’s statutory human rights commitment and Human Rights Policy. In that respect, bidding member associations had to include in their bids a series of human rights related guarantees (including signed agreements from a.o. the stadiums, regarding the respect of human rights), commitments, assessments and strategies and to show, how they engaged with stakeholders and to take into account the results of a human rights context assessment conducted by an independent entity. This phase of the process allowed FIFA to identify key human rights risks associated with the bid, including the

protection of workers and to promote meaningful engagement with relevant stakeholders as part of the bid preparation process.

- As part of the bidding process for the competition, host cities committed to fully support FIFA and the member associations in their efforts to organize the competition in accordance with internationally recognized human rights. After the selection of the US, Canada and Mexico as the hosts of the FWC26, the candidate host cities participated in *the host city selection process*, as part of which they were required by FIFA to implement a city-level stakeholder process to identify city-specific human rights risks associated with the hosting of the event and how they will be addressed in collaboration with the local stakeholders. Currently FIFA is evaluating the quality of the stakeholder engagement process and the resulting human rights reports based on independent evaluations. Due to the competitive nature of this process, FIFA has refrained from engaging itself directly with local stakeholders in specific cities and has referred them to the candidate host cities. With respect to the rights of workers in stadiums, the host city selection process has allowed FIFA to promote meaningful city-level engagement with local unions and other labour rights organizations, further specify the commitments by the host cities to protect workers involved in tournament delivery, deepen its understanding of potential labour rights risks, identify potential red flags and create a strong basis for further engagement with the host cities after selection.
- *After the selection* of the host cities, foreseen June 16 2022, the human rights due diligence will continue including in-depth engagements with the selected host cities on the implementation and potential strengthening of their human rights plans as well the hiring of human rights experts across the subsidiaries in the host countries FIFA has formed to operationally deliver the FWC26. Following the selection of host cities and stadia, FIFA will also begin negotiations with potential concessionaire's adherence to FIFA's policies on human rights and fair labour practices and define the appropriate monitoring and enforcement measures for these relationships.

3 The proceedings of the Swiss NCP up to date

Since the receipt of the submission on 31 March 2022 the NCP took the following steps:

4.4.2022	Confirmation to acknowledge receipt of the submission to the submitting Party.
6.4.2022	Submission was forwarded to the responding Party.
7.4.2022	Information of the Swiss Embassy in the USA.
13.4.2022	Constitution of an ad hoc Working group including representatives from the State Secretariat for Economic Affairs, the Federal Department of Foreign Affairs according to the Specific Instances Procedure of the Swiss NCP ² .
27.4.2022	Meeting of the ad hoc Working group with the submitting Party to inform them about the procedure of the specific instance.
3.5.2022	Meeting of the ad hoc Working group with the responding Party to inform them about the procedure of the specific instance.
10.5.2022	Receipt of a written statement by the responding Party.
31.5.2022	Draft Report on Initial Assessment was sent to the Parties for comments on possible misrepresentations of factual information.
1./9.6.2022	Receipt of written comments by Parties

² www.seco.admin.ch/ncp

4 Considerations and decision of the Swiss NCP

Based on the Procedural Guidance for the OECD Guidelines and the Specific Instances Procedures of the Swiss NCP, the NCP considers the following points in its initial assessment:

a) Identity of the party concerned and its interest in the matter

The Swiss NCP comes to the conclusion that the submitting Party has provided sufficient information regarding their interest in the issues raised. As a local trade union based in Los Angeles, USA, it represents over 32,000 workers employed in hotels, restaurants, airports, sports arenas, and convention centres throughout Southern California and Arizona. In anticipation of the selection process of the venues, the submitting Party has requested to engage with FIFA and has made efforts to reach a resolution regarding the issues raised through engagement with local actors.

b) Responsibility of the Swiss NCP

According to the OECD Guidelines a specific instance should be raised in the country in which the alleged issues arise. If this country is not a signatory state of the OECD Guidelines and therefore does not have its own NCP, the issue should be raised in the country where the multinational enterprise has its headquarters.

According to the expectations of the submitting party (see para 1), the issue to be discussed concerns FIFA's due diligence process including engagement with relevant actors related to the selection of the stadiums in the host country. Those processes are carried out and decisions are taken by FIFA, headquartered in Zürich, Switzerland. Consequently, the Swiss NCP considers itself responsible for offering a platform to discuss those issues.

However, the Swiss NCP would not be competent to offer mediation related to any negotiations on local working conditions (e.g. collective bargaining agreement, pension funds, health and safety standards) on site in Los Angeles, e.g. between the local trade unions and the concessionaires in the Rose Bowl Stadium.

According to the Procedural Guidance for the OECD Guidelines, when a specific instance relates to business activities that take place in several adhering countries, the NCPs involved consult each other and agree on which NCP will take the lead in assisting the Parties. For this reason, the Swiss and US NCP have consulted and agreed that the Swiss NCP will take the lead in assisting the Parties. The US NCP will support the Swiss NCP, as appropriate. Any potential US related matter (see above) would fall within the competence of the US NCP and would have to be dealt with by the US NCP.

c) Scope of application of the OECD Guidelines and materiality of the specific instance

Applicability of the OECD Guidelines to FIFA

The OECD Guidelines establish legally non-binding principles and standards of responsible business conduct for "multinational enterprises". The OECD Guidelines do not provide a precise definition of the term "multinational enterprises". However, they state that these include enterprises in all sectors of the economy and that ownership may be private, State or mixed. In addition, they usually comprise companies or other entities established in more than one country and so linked that they may coordinate their operations in various ways³.

Responsible business conduct is generally understood as the responsibility of entities involved in business or commercial activities. Thus, even though the OECD Guidelines do not explicitly refer to the "commercial nature" of the operations of multinational enterprises, the key question

³ OECD Guidelines (2011), Chapter I. Paragraph 4.

should be whether the activities in question are of commercial nature. This should be decided by the competent NCP through a case-by-case analysis based on the concrete circumstances, independently of the legal form of the entity. Against this background, the Swiss NCP makes the following considerations on whether FIFA has a multinational scope and if its activity is commercial in the case at question.

FIFA is an association registered in the Commercial Register of the Canton of Zurich⁴. Separate companies e.g. the “FIFA development Zürich Ltd⁵” or the “FIFA Ticketing Ltd⁶” are registered as public limited companies as well in the Commercial Register of the Canton of Zurich. Furthermore, according to its Annual Report 2021, FIFA is owner of a number of foreign subsidiaries (Service companies) e.g. in the countries where tournaments take place (including the USA and Canada)⁷. FIFA’s administration is headquartered in Zurich, Switzerland. Under the leadership of the Secretary General, FIFA employs some 850 specialists from 60 countries⁸.

In the case at question the Swiss NCP makes the following considerations based on the OECD Guidelines:

- FIFA consists of different entities including subsidiaries in the United States active in more than one country and closely linked in order to coordinate their global activities. Therefore, FIFA has international operations and a multinational scope.
- The bid Book “Unity.”⁹ to host the FWC26 is very comprehensive and covers various topics of commercial nature a.o. media and marketing, event promotion, advertising. Therefore, FIFA’s involvement in the organization of the FWC26 can be considered as activities of commercial nature, to which the OECD Guidelines are applicable.

Based on these considerations, the Swiss NCP concludes that in the particular case of the present submission the OECD Guidelines apply to FIFA. However, the application of the OECD Guidelines in this specific case does not allow the general conclusion that sports federations are multinational companies. Despite certain commercial activities according to the OECD Guidelines, FIFA and the sport federations remain non-profit organizations whose main purpose is the promotion of sport worldwide, which distinguishes it from most other multinational companies.

Material scope of the OECD Guidelines with regard to the issues raised

The submission is material in the sense that it refers to alleged breaches (including human rights due diligence) of specific provisions of Chapters II and IV of the OECD Guidelines. The submitting Parties have substantiated their submission by providing information for the NCP to consider the issues raised.

d) Legal context and parallel proceedings

The Swiss NCP will take into consideration ongoing parallel proceedings, including court rulings. According to the Specific Instances Procedures of the Swiss NCP, already concluded or ongoing parallel proceedings will not necessarily prevent the Swiss NCP from pursuing a specific instance. However, in each individual case the Swiss NCP assesses whether or not an offer to mediate would make a positive contribution to the resolution of the issues raised or

⁴ <https://zh.chregister.ch/cr-portal/auszug/auszug.xhtml?uid=CHE-107.301.064>

⁵ <https://zh.chregister.ch/cr-portal/auszug/auszug.xhtml?uid=CHE-358.412.344#>

⁶ <https://zh.chregister.ch/cr-portal/auszug/auszug.xhtml?uid=CHE-109.260.424>

⁷ <https://digitalhub.fifa.com/m/7b8f2f002eb69403/original/FIFA-Annual-Report-21.pdf> (p. 239); e.g. FWC26 US Inc. incorporated in Wilmington, USA

⁸ www.fifa.com/about-fifa/careers/work-with-us

⁹ <https://digitalhub.fifa.com/m/3c077448dcd5c0ab/original/w3yjeu7dadt5erw26wmu-pdf.pdf> (Chapter 15)

if it would prejudice either of the Parties involved in other proceedings. The NCP is not aware of parallel proceedings in relation with the issues raised in this submission.

e) Contribution to the purpose and effectiveness of the OECD Guidelines

The role of the NCP is to offer a forum for discussion and to assist the Parties concerned to address the issues raised. The submitting Party has tried to engage with FIFA since October 2021. The Swiss NCP considers that by accepting this specific instance and offering a confidential mediation it could contribute to the dialogue between the Parties and help them to reach a better mutual understanding of the issues raised and a mutually acceptable outcome.

A mediation by the Swiss NCP could offer the Parties to discuss issues of FIFA's due diligence process including engagement with relevant actors related to the selection of the Rose Bowl Stadium in the host country of the FWC26. However, a possible dialogue would not cover any possible negotiations on working conditions onsite in Los Angeles e.g. between the local trade unions and operators of the stadium.

d) Conclusion

The Swiss NCP accepts the specific instance and offers its good offices to the Parties for further consideration. The offer for mediation focuses on FIFA's due diligence process including engagement with relevant actors related to the selection of the Rose Bowl Stadium.

5 Next steps

The Swiss NCP will offer its good offices to the Parties and ask them for confirmation whether they are willing to accept this offer with the aim of reaching a mutually acceptable outcome. If the Parties reach an agreement and find a solution for the raised questions, the Swiss NCP will make publicly available a final statement with the results of the proceedings. Information regarding the contents of the discussions and the agreement will only be published with the express consent of the Parties involved. If no agreement is reached or one of the Parties is not willing to take part in the proceedings, the Swiss NCP will also make this information publicly available in a final statement. The latter will include a summary of the reasons why no agreement was reached.

The Swiss NCP may draw up recommendations for implementation of the OECD Guidelines, which will also be included in the final statement. In addition, the NCP can envisage specific follow-up activities, for which the NCP will provide support following completion of the specific instance procedure. Final statements are published on the Swiss NCP website and are referenced in the OECD Database on Specific Instances for the OECD Guidelines. Before the statement is issued, the Swiss NCP gives the Parties the opportunity to comment on a draft statement. If there is no agreement between the Swiss NCP and the Parties about the wording of the statement, the Swiss NCP makes the final decision.

The Swiss NCP requests that the Parties agree to maintain confidentiality during the further proceedings. In order to establish an atmosphere of trust, the OECD Guidelines foresee that no information regarding the content of the proceedings may be shared with third parties or supporters of the submission. If sensitive business information is provided or discussed during the meetings of the Swiss NCP, special requirements concerning the treatment of confidential information can be agreed upon by the Parties involved in this specific instance. The NCP informs the Parties that it reserves the right to stop the proceedings if one or the other of the Parties does not respect this confidentiality. Even after the proceedings have been concluded, Parties concerned remain committed to treat information received during the proceedings in a confidential way unless the other party agrees to their disclosure.

The Swiss NCP will publish its report on the initial assessment on the Swiss NCP website.