

1. Turkish Metal Workers Union, BİRLEŞİK METAL-İŞ and Systemair AB

Date (23/09/2021)

The objective of the initial assessment process under the Procedural Guidance is to determine whether the issues raised in the specific instance merit further examination. If so, the NCP will offer or facilitate access to consensual and non-adversarial procedures, such as dialogue, mediation or conciliation (e.g. 'good offices') to the relevant parties. As specific instances are not legal cases and NCPs are not judicial bodies, NCPs cannot impose sanctions, directly provide compensation nor compel parties to participate in a conciliation or mediation process.

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1.2 Overview of the NCP and its role

The OECD Guidelines for Multinational Enterprises are recommendations by governments to their companies, regardless of where they operate. These recommendations focus on several areas such as disclosure, human rights, employment and industrial relations, the environment, the fight against corruption, consumer interests, science and technology, competition and taxation. In addition, the concepts of responsible supply chains and due diligence have been introduced. The various National Contact Points (NCP) are responsible for monitoring the implementation of these Guidelines. The NCP:s have a dual role in raising awareness and promoting observance of the Guidelines as well as contributing to the resolution of issues that arise relating to the implementation of the OECD Guidelines. The NCP:s can contribute to the resolution of issues raised by different means such as offering good offices, and where applicable, issuing determinations, recommendations, and carrying out follow up. In Sweden, the National Contact Point is chaired by a representative from the Ministry for Foreign Affairs. It has a tripartite structure composed of social partners, implying that unions and employer organisations are also represented.

Executive Summary

The submission of a Specific Instance by the Turkish Metal Workers Union, BİRLEŞİK METAL-İŞ against the company Systemair AB was received on 11 January 2021 by the Swedish National Contact Point. In the Specific Instance the complainant asked for the Swedish National Contact Point's cooperation with the Turkish National Contact Point as appropriate. The Specific Instance referred to concerned the following chapters of the OECD Guidelines on Multinational Enterprises:

Chapter I (failure to honour the principles and standards to the fullest extent of the law), Chapter II and IV (failure to conduct due diligence) Chapter IV (failure to respect the human rights of workers) and Chapter V (failure to respect the rights of workers to establish or join trade unions and representative organizations of their own choosing). The reception was acknowledged on 15 January 2021 and notified to OECD on 20 January. Systemair AB was notified of the submission on 26 January 2021. The NCP validated the submissions admissibility on 18 February 2021. The submission was, after approval from the complainant, shared with Systemair AB and the Turkish NCP on 3 March 2021. The NCP held meetings with the participation of Systemair AB on 31 March and 17 September, a meeting with the participation of BİRLESİK METAL-İŞ on 29 April 2021 and a joint meeting with the Turkish NCP on 24 May 2021. The complainant, BİRLESİK METAL-İŞ shared additional information on 8 April, which, after approval from the complainant, was forwarded to Systemair AB on 15 April who responded on 21 April. The Swedish NCP sent a list of questions and asked for the support of the Turkish NCP to clarify certain rules, legislation and processes on 19 April and got a reply on 13 May 2021. Systemair HSK contacted the Turkish NCP and submitted a list of codes of conduct, corporate practises which was shared with the Swedish NCP on 1 June 2021. The Swedish NCP decided on 23 September 2021 that the issue merited further examination. It shall remain clear that the initial assessment is not a process to determine whether the respondent has violated the Guidelines, but to determine whether the NCP can help the parties resolve their issues by offering good offices for dialogue or not. Hence, it does not represent a conclusion as to whether the enterprise observed the Guidelines or not.

1.3 Substance of the submission and the enterprise's response

The referral targets Systemair AB with respect to its Turkish subsidiary Systemair HSK's manufacturing activities in Gebze. According to the complaint Systemair HSK does not respect nine recommendations in the OECD Guidelines regarding general principles, human rights and worker's freedom of association and right to collective bargaining.

The complainant trade union, BİRLESİK METAL-İŞ was awarded a majority certificate by the Ministry of Labour and Social Security for having the required threshold to start a collective bargaining process on 9 October 2020. The complainant refers to actions taken by Systemair HSK targeted towards union members, such as reclassification of employees from administrative to manufacturing, putting members of the union on unpaid leave, restricting the movements of workers during protests, and dismissing union members. Systemair HSK has initiated legal proceedings in relation to the certification issued by the Ministry.

The complainant has asked the Swedish NCP to cooperate with the Turkish NCP and to offer its good offices in mediation in order to seek dialogue and remedy.

Systemair AB has responded and informed the Swedish NCP that there is a valid legal process ongoing regarding certification, that internal as well as external reviews have been undertaken, that the enterprise has no means of identifying which workers have union memberships and that employees put on unpaid leave or dismissed are related to other factors such as the effects on sales by the corona pandemic. Furthermore, that employee's movements were not restricted but one of three exits were locked to avoid protesters entering the area. Systemair HSK has provided the Turkish NCP with a list of their codes of conduct and corporate practices.

Recommendations of the 2011 Guidelines targeted by the referral:

Chapter I. Concepts and Principles

Chapter I.2. Obeying domestic laws is the first obligation of enterprises. The Guidelines are not a substitute for nor should they be considered to override domestic law and regulation. 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.

Chapter II on General Policies

Enterprises should take fully into account established policies in the countries in which they operate and consider the views of other stakeholders. In this regard:

II.A. Enterprises should:

II.A.10. 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.

II.A.11. Avoid causing or contributing to adverse impacts on matters covered by the Guidelines, through their own activities, and address such impacts when they occur.

II.A.14. Engage with relevant stakeholders in order to provide meaningful opportunities for their views to be taken into account in relation to planning and decision making for projects or other activities that may significantly impact local communities.

Chapter IV on Human Rights

States have the duty to protect human rights. Enterprises should, within the framework of internationally recognised human rights, the international human rights obligations of the countries in which they operate as well as relevant domestic laws and regulations:

IV.2. Within the context of their own activities, avoid causing or contributing to adverse human rights impacts and address such impacts when they occur.

IV.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.

IV.6. Provide for or co-operate through legitimate processes in the remediation of adverse human rights impacts where they identify that they have caused or contributed to these impacts.

Chapter V on 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:

V.1a. Respect the right of workers employed by the multinational enterprise to establish or join trade unions and representative organisations of their own choosing.

V.1b. 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.

V.7. In the context of bona fide negotiations with workers' representatives on conditions of employment, or while workers are exercising a right to organise, not threaten to transfer the whole or part of an operating unit from the country concerned nor transfer workers from the enterprises' component entities in other countries in order to influence unfairly those negotiations or to hinder the exercise of a right to organize.

1.4 The proceedings of the NCP to date

Since receipt of the submission, the NCP has carried out the following actions:

The submission of a Specific Instance by the Turkish Metal Workers Union, BİRLESİK METAL-İŞ against Systemair AB was received on 11 January 2021 by the Swedish National Contact Point. In the Specific Instance the complainant asked for the Swedish National Contact Point's cooperation with the Turkish National Contact Point as appropriate. The reception was acknowledged on 15 January 2021 and notified to OECD on 20 January. Systemair AB was notified of the submission on 26 January 2021. The NCP validated the submissions admissibility on 18 February 2021. The submission was, after approval from the complainant, shared with Systemair AB and the Turkish NCP on 3 March 2021. A coordination meeting was held between the Swedish NCP secretariat and the Turkish NCP on 31 March 2021. The Swedish NCP held meetings with the participation of Systemair AB on 31 March and 17 September 2021, a meeting with the participation of BİRLESİK METAL-İŞ on 29 April 2021 and a joint meeting with the Turkish NCP on 24 May 2021. The complainant, BİRLESİK METAL-İŞ shared additional information on 8 April 2021, which, after approval from the complainant, was forwarded to Systemair AB on 15 April 2021 who responded on 21 April 2021. The Swedish NCP sent a list of questions and asked for the support of the Turkish NCP to clarify certain rules, legislation and processes 19 April 2021 and got a reply on 13 May 2021. Systemair HSK contacted the Turkish NCP and submitted a list of codes of conduct, corporate practises which was shared with the Swedish NCP on 1 June 2021. The Swedish NCP decided on 23 September 2021 that the issue merited further examination and offers its good offices to the parties. The initial assessment was shared with the Turkish NCP on 18 June 2021 and the parties for comments on 23 June 2021, and the final version was shared with the Turkish NCP and the parties on 23 September 2021.

1.5 Initial assessment by the NCP

The NCP has decided to accept the submission. This decision has been taken following an assessment by the NCP as to whether the issues raised are i) “bona fide”, i.e. real or authentic and ii) relevant to the implementation of the Guidelines, i.e. within the scope of the Guidelines. To achieve this, the NCP took into account the following six criteria:

1.5.1 What is the identity of the party concerned (e.g. submitter(s)) and its interest in the matter?

Systemair AB is a ventilation equipment producer with operations in 50 countries in Europe, North America, South America, the Middle East, Asia, Australia and Africa. The Company had sales of SEK 8.3 billion in the 2018/19 financial year and employs approximately 6,200 people. Systemair AB owns 90 percent shares of Systemair Hsk Havalandırma Endüstri Sanayii Ve Ticaret Anonim Şirketi. Systemair HSK conducts Systemair AB business activities in Turkey at a factory which according to the company's information employs 282 workers.

The Turkish Metal Workers Union, BİRLESİK METAL-İŞ is recognized by the Turkish Ministry of Labour and Social Security as a competent trade Union in metal sector in Turkey. The Union is affiliated to DİSK Confederation in Turkey and also affiliated to IndustriALL Global and IndustriALL Europe on the international level. The Union acts as a representative of its affiliated workers in Systemair HSK, Turkey, although the Union's competence to represent members in collective bargaining has been challenged in a parallel court proceeding.

1.5.2 Are the issues raised material and substantiated?

The NCP interprets 'material and substantiated' to mean that, based on the information submitted, the issues raised are plausible and related to the application of the OECD Guidelines. The submission is material as it relates to alleged non-observance of several provisions in the OECD guidelines, specifically in Chapter I (Concepts and Principles), Chapter II (General policies), Chapter IV (Human Rights) and Chapter V (Employment and industrial relations). The notification refers to relevant provisions in the OECD guidelines and there has been sufficient information from the complainant and enterprise to merit further consideration by the NCP.

1.5.3 Is there a link between the activities of the enterprise(s) and the issues raised?

The issues raised against Systemair AB concerns their responsibility to conduct due diligence in one of their Systemair group companies, Systemair HSK, and to prevent or mitigate negative impacts in accordance with the OECD guidelines.

1.5.4 What is the relevance of applicable law and procedures, including court rulings?

There are two parallel legal proceedings, one relating to the majority certificate issued by the Ministry of Labour and Social Security for having the required threshold to start a collective bargaining process, initiated by Systemair HSK. The other parallel legal proceeding refers to worker's dismissal.

An inspection has been conducted by Ministry of Labour and Social Security, which has produced a report on the matter, that is observed in the process of the specific instance.

The Commentary on the Procedural Guidance for NCPs (para 26) states:

When assessing the significance for the specific instance procedure of other domestic or international proceedings addressing similar issues in parallel, NCPs should not decide that issues do not merit further consideration solely because parallel proceedings have been conducted, are under way or are available to the parties concerned. NCPs should evaluate whether an offer of good offices could make a positive contribution to the resolution of the issues raised and would not create serious prejudice for either of the parties involved in these other proceedings or cause a contempt of court situation. In making such an evaluation, NCPs could take into account practice among other NCPs and, where appropriate, consult with the institutions in which the parallel proceeding is being or could be conducted. Parties should also assist NCPs in their consideration of these matters by providing relevant information on the parallel proceedings.

1.5.5 How have similar issues been, or are being, treated in other domestic or international proceedings?

The Swedish NCP is continuously considering the risk of seriously prejudicing the parallel proceedings. After due deliberation and consultation with the Turkish NCP, the Swedish NCP considers that ongoing parallel proceedings do not preclude the Swedish NCP from handling the issues raised in relation to due diligence in Systemair AB and that offering its good offices could make a positive contribution to the resolution of the issues raised. Parties have been informed that the NCP uses the recommendations of the Guidelines as a framework for discussion.

1.5.6 Would considering this submission contribute to the purposes and effectiveness of the Guidelines’?

The issue of whether the Swedish or the Turkish NCP should handle the Specific Instance has been raised within the Swedish NCP as well as from the enterprise. The Procedural Guidance of the Guidelines (Commentary, para 23) states that:

“Generally, issues will be dealt with by the NCP of the country in which the issues have arisen.” (emphasis added)

However, the *Guide for National Contact Points on Coordination when handling Specific Instances*, clarifies the issue in the following manner:

(page 7) *“....Thus, while the Procedural Guidance provides broad direction on which NCP should handle a specific instance as outlined above, this should not override the implementation of the mandate of NCPs which is to contribute to the resolution of issues and offer a forum for discussion to deal with the issues raised in an efficient and timely matter. Where the issue(s) raised in a specific instance concern several NCPs care should be taken to ensure that decisions made with respect to designation of a lead NCP or to have multiple NCPs handle related issue(s) separately (see below), maximize the potential for the NCPs to contribute to the resolution of issues.”*

The Swedish NCP concluded that it is best situated to provide a forum for discussion but that close cooperation with the Turkish NCP is essential.

Thus, the Swedish NCP considers that handling this notification could positively contribute to the resolution of the issues raised. An offer of good offices could facilitate an exchange between the parties and on the issue of expectations on due diligence.

1.6 Conclusion

The Swedish NCP concludes that this submission merits further consideration on the basis of the criteria in para 25 of the commentary on the procedural guidance. The conclusion is based on information received from both parties, as well as clarifications received from the Turkish NCP. The Swedish NCP does not express an opinion on the correctness of the statements and acknowledges that the complications related to restrictions due to the covid pandemic makes it difficult to validate information received. Neither does the NCP express an opinion on the validity of the documentation provided by the parties.

1.7 Next steps

The Swedish NCP accepts this case as lead NCP for further examination and offers its good offices to the parties, in cooperation with the Turkish NCP. The parties have expressed an interest to engage in a dialogue. The NCP will contact them about the next step.