



Swedish National Contact Point

SPECIFIC INSTANCE BİRLESİK METAL-İŞ and Systemair AB

Final Statement from the Swedish NCP

Date 27/09/2022

As noted in the Procedural Guidance to the OECD Guidelines for Multinational Enterprises, following conclusion of a specific instance and after consultation with the parties involved, the NCP will make the results of the procedures publicly available.

As no agreement was reached, in this specific instance, the NCP is issuing the following statement. This statement describes the issues raised, the reasons why the NCP decided that the issues raised merited further examination, and the procedures initiated by the NCP to assist the parties. This statement also identifies recommendations made by the NCP to the enterprise on the implementation of the Guidelines. This statement also includes the reasons why an agreement could not be reached.

As specific instances are not legal cases and NCPs are not judicial bodies, NCPs cannot directly order compensation nor compel parties to participate in a conciliation or mediation process.

1. 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.

2. Executive summary

The submission of a specific instance by the Turkish Metal Workers Union, BİRLESİK METAL-İŞ against the enterprise Systemair AB was received on 11 January 2021 by the Swedish National Contact Point (NCP hereafter). In the Specific Instance the complainant asked for the NCP's cooperation with the Turkish National Contact Point as appropriate. The specific instance referred to concern 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. During the initial assessment process, the NCP held separate meetings with Systemair AB and with BİRLESİK METAL-İŞ. Furthermore, there were meetings and several other contacts with the Turkish NCP, which all along the process has been very helpful and has provided its Swedish colleagues with valuable information.

In this context, it should also be mentioned that the French NCP has handled a case – BİRLESİK METAL-İŞ and DIAM – which has some similarities with the current one. The French NCP released a final statement on 15 May 2019 and follow-up statement on 9 September 2021.

The Swedish NCP decided in its initial assessment on 23 September 2021 that the issue merited further examination. The reasoning for that decision was according to the following:

The Swedish NCP found the submission material as it related 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).

Furthermore, the Swedish NCP considered that there was a link between the activities of the enterprise and the issues raised against the enterprise since these concerned the enterprise's responsibility to conduct due diligence in one of their Systemair AB companies, Systemair HSK, and to prevent or mitigate negative impacts in accordance with the OECD Guidelines.

There was also information about two parallel legal proceedings, one related to the majority certificate issued by the Turkish Ministry of Labour and Social Security for having the required threshold to start a collective bargaining process, initiated by Systemair HK. The other parallel proceeding referred to workers' dismissal. It should also be added that the Turkish Ministry of Labour and Social Security also conducted an inspection which produced a report.

In the initial assessment the NCP furthermore considered that handling the submission 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.

It was stressed that the initial assessment was not a process to determine whether the respondent had violated the Guidelines or not, but to determine whether the NCP could help the parties to resolve their issues by offering good offices for dialogue or not.

NCP-assistance consisted of engaging the parties together in a discussion that, however, did not result in resolving the issues raised. The NCP then closed the good offices and issued recommendations and a follow-up plan.

3. Substance of the submission and the enterprise's response to the issues raised in the submission

The referral has targeted Systemair AB with respect to its Turkish subsidiary Systemair HSK's manufacturing activities in Gebze. According to the complaint Systemair HSK has not respected 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 Turkish Ministry of Labour and Social Security for having the required threshold to start a collective bargaining process on 9 October 2020. The complainant has referred to actions taken by Systemair HSK targeted towards union members, such as reclassification of employees from the administrative to the manufacturing area, putting members of the union on unpaid leave, restricting the movements of workers during protests, and dismissing union members. Systemair HSK initiated legal proceedings in relation to the certification issued by the Turkish Ministry. The complainants request for remedy included reinstatement of and compensation to dismissed workers and workers sent on unpaid leave, recognition of government certificate of BİRLESİK METAL-İŞ as the competent union to represent workers at Systemair HSK, initiate collective bargaining, the establishment of a credible Due Diligence process with the union and that the NCP request evidence that management has obtained the Unions consent.

The complainant 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 responded and informed the Swedish NCP about their view on the issues in the Specific Instance, the legal process that Systemair HSK initiated regarding certification was valid, and 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 the fact that employees were put on unpaid leave or dismissed was related to other matters such as the effects on sales by the corona pandemic. Furthermore, the enterprise stated that employee's movements were not restricted but one of three exits was locked to avoid protesters entering the area. Systemair HSK also 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.

4. Initial assessment by the NCP

On the 23rd of September 2021 the NCP finalised the initial assessment, which is published on the NCP:s webpage:

[National Contact Points – Government.se](https://www.government.se/press-releases/2021/09/initial-assessment-by-the-ncp)

In brief, in the initial assessment the NCP concluded that the specific instance merited further consideration based on information received from both parties, as well clarifications received from the Turkish NCP. The NCP accepted the case as lead NCP for further examination and offered its good offices to the parties, in cooperation with the Turkish NCP. The parties expressed an interest to accept the NCP offer of good offices to assist the parties.

4.1 The proceedings of the NCP

In the handling of the specific instance the NCP has carried out several actions, some of which are listed below.

Date	Action that occurred
2021-01-11	Receipt of the specific instance
2021-01-15	The reception was acknowledged
2021-01-20	OECD was notified
2021-01-26	Systemair was notified
2021-03-31	Meeting between the NCP and Systemair
2021-04-29	Meeting between the NCP and BİRLEŞİK METAL-İŞ
2021-05-24	Meeting between the Swedish and Turkish NCP:s
2021-06-18	Draft initial assessment was shared with the Turkish NCP
2021-06-23	Draft initial assessment was shared with the parties
2021-09-06	Meeting between the NCP (chair and secretariat) and Systemair AB
2021-09-17	Meeting between the NCP and Systemair AB together with their Turkish external partner
2021-09-23	The initial assessment was finalised and good offices offered
2021-10-19	Meeting between NCP (chair and secretariat) and Systemair AB and Systemair HSK
2021-11-23	Pre-facilitation meeting between NCP and BİRLEŞİK METAL-İŞ
2021-12-01	Pre-facilitation meeting between NCP and Systemair AB

2022-01-10	Terms of reference for the facilitation process were signed
2022-01-20	First facilitation meeting
2022-01-24	Second facilitation meeting
2022-01-31	Third facilitation meeting
2022-05-13	Draft shared with the Turkish NCP
2022-06-15	Draft shared with the parties
2022-09-27	Conclusion of the specific instance

Due to various factors the process of the handling of this specific instance has taken a longer time than anticipated. Contributing issues have been the complexity of the case, the impact of the pandemic preventing physical meetings and access to information in situ as well as issues of principles requiring in-depth discussions in the NCP. The parties have been informed about delays and timelines throughout the process.

5. Outcome of the good offices

The good offices process that the NCP offered took place according to the following:

To start with, the chair/secretariat of the NCP held separate pre-facilitation meetings with the parties in November/December 2021 in order to discuss ensuing process. On 13 January 2022, both parties signed an agreement to engage in good faith, identify issues to address including areas of possible agreement and disagreement as well as establishing limits of confidentiality of proceedings. The parties were offered the assistance of the NCP as facilitators or a mediator depending on the availability of funds. The parties communicated a preference for the Swedish NCP to participate and facilitate the dialogue rather than a separate dialogue or with the assistance of a mediator. However, during the good offices the parties relied to a great deal on the facilitation team to find themes and questions to discuss.

The NCP then established an ad hoc team for the facilitation process consisting of the NCP chair and three NCP members. The facilitation team invited the parties to meetings and assisted during these. BİRLESİK METAL-İŞ and Systemair AB appointed representatives for the facilitation process.

The good offices began with a first virtual meeting, hosted by the facilitation team of the NCP, on 20 January 2022, followed by virtual meetings on the 24 and 31 January 2022. The facilitation team proposed an agenda, with questions and themes for discussion for the parties on their request. There was no agreement as an outcome of the good offices. One reason being that the central issue of union certification and the right to collective bargaining was not discussed due to the enterprise not being prepared to engage in the issue referring to the ongoing parallel proceedings. The parties also had different views on the facts relating to other issues in the Specific Instance relating to dismissals, protests, and threats. Other attempts to reach an agreement on improved social dialogue also failed as the proposal put forward by the enterprise to enter a joint dialogue with all union representatives, including the complainant, was deemed insufficient by the complainant who did not see it meaningful to continue the discussions. The NCP then decided to close its good offices.

The NCP notes that the process has led to a first meeting between the parties, albeit virtual which is something which has not taken place before. Even though the process did not reach an agreement it

served to clarify the positions of the parties and increase understanding of the divergence of views on events and processes up to date. The NCP regrets that the parties did not use this process to strengthen their bilateral dialogue and that the enterprise did not more proactively try to resolve some of the issues. The NCP still hopes that it may act as a starting point for a separate dialogue which can prove constructive and improve relations between parties.

During the Specific Instance proceedings, the enterprise has expressed a clear commitment to respect the outcome of the legal proceedings on union certification.

The Swedish NCP informed the Turkish NCP that it was closing its good offices. The Turkish NCP and the parties received a draft final statement for fact checking and the final version before publication. The Swedish NCP adopted the final statement 27-09-2022.

6. Examination and recommendations, including follow up

During the whole specific instance process the NCP has held several meetings and had other contacts with both parties and has also received information from the Turkish NCP. From the information obtained there are some observations and considerations that the NCP would like to highlight below. Stemming from these observations and considerations the NCP will give some recommendations.

6.1 Background/starting point

To start with, in several aspects of this case, it has been difficult to establish facts as the parties have had different interpretations of events. The ongoing pandemic has also made it difficult to establish facts and the virtual format is not conducive to establishing trust between parties.

During the process, the enterprise has mainly focussed on its responsibilities in relation to Turkish National law. While the enterprise has provided the NCP with information on its employee policies, including the appointment of a worker's representative, efforts on health and safety at the workplace and organizing team-building activities it is not made clear how the enterprise is working towards honouring the principles and standards of the Guidelines, in particular II.A.10 and V 1a. and 1b, as well as complying with domestic legislation.

During the good office the NCP also noted that some of the matters have been investigated by Turkish authorities and handled by Turkish courts or are still being processed legally, and the NCP makes reference to the fact that the Guidelines are not a substitute for, nor should they be considered to override, domestic law and regulation (ref. to Guidelines 1.2). However, the following recommendations also reflect the important fact that the Guidelines go beyond simply following local legislation as in many cases the Guidelines extend beyond the law. Therefore, simply complying with the law or using legal recourses does not necessarily place a company in compliance with the Guidelines.

6.2 Good practice in accordance with the Guidelines and Due Diligence

The Guidelines states that obeying domestic laws is the first obligation of enterprises and the Guidelines provide principles and standards of good practice consistent with applicable laws and internationally recognized standards (I.1). Enterprises are encouraged to observe the Guidelines wherever they operate, while taking into account the particular circumstances of each host country (I.3). Companies are thus encouraged to i.a support and uphold good corporate governance principles and develop and apply good corporate practices, including throughout enterprise groups (II.A.6), and handle risks through carrying out risk-based due diligence to identify, prevent and mitigate actual and potential adverse impacts (II.A.10).

The enterprise informed the NCP that they had started a process to review and assess whether improvements are needed to strengthen their Due Diligence practices in the Systemair group companies.

RECOMMENDATION: In order to make sure that the enterprise's actions are in compliance with the Guidelines, the enterprise should strengthen its due diligence in the Turkish branch and clarify how it intends to further the use of the principles and standards of good practice of the Guidelines in the context of national law and circumstances. (ref to OECD Guidelines I.2 II.A.10, II.A.11, and to the OECD Due Diligence Guidance for Responsible Business Conduct.) Whereas the NCP welcomes the review process initiated in the company to assess whether improvements in Due Diligence is required it encourages the enterprise to ascertain that the whole company group is aware of the code of conduct as well as the expectations headquarter places in its subsidiaries in relation to the OECD guidelines on multinational enterprises. The NCP also recommends that the enterprise also uses the clarification from the OECD Investment Committee on "Engagement with Trade Unions in Due Diligence Processes Conducted by Industry-led or Multi-Stakeholder Initiatives" which was shared with the parties during the good offices.

6.3 Respecting the right to establish or join trade unions, engage in collective bargaining and constructive negotiations

In chapter V of the Guidelines, it is clear that enterprises should, within the framework of applicable law, regulations and prevailing labour relations and employment practices and international labour standards respect the rights of workers to establish and join trade unions and representative organisations of their own choosing (V.1.a) as well as having their chosen trade unions or representative organisations recognised for the purpose of collective bargaining (V.1.b). It is also stated that the enterprise should promote consultation and co-operation between the employers and workers or their representatives in matters of usual concern (V.3).

According to Turkish national legislation a union with a certain number of members at a workplace can apply for and be issued a certificate to represent workers in collective bargaining. The enterprise concerned has a right to appeal the certification within a certain time limit if it deems it incorrect. The complainant has stated that the Turkish unions are familiar with companies using lengthy legal processes as a tactic where appeals are made to the highest judicial level while dismissing unionized workers.

The enterprise refutes this standing.

The NCP also notes that, on request from BİRLEŞİK METAL-İŞ, the Turkish Ministry of Labour and Social Security have inspected the workplace and has subjected the company to administrative sanctions both due to termination restrictions (see also section 6.4) and resistance to unionist rights and freedoms with regard to Turkish legislation on Trade Unions and Collective Bargaining. The enterprise claims to have reason to question the validity of the inspection report.

The Swedish NCP also notes that there have been similar cases handled in other NCPs, i. e the French NCP specific instance of DIAM International in Turkey.

While the issue of union certification is subject to parallel proceedings, the workers are not represented by a union for collective bargaining and hence, the expectations of the Guidelines cannot be met. However, there is nothing which prevents that a social dialogue is held with workers who are affiliated to a union, according to information requested from the Turkish NCP. Such a dialogue would be founded upon the good faith between the parties. The NCP notes there seems to have been little or no dialogue between parties prior to the NCP Specific Instance process and that the enterprise during good offices suggested to initiate social dialogue with all unions represented in the workplace. This offer was deemed insufficient by the complainant as they considered that it didn't respect their right as the only recognized union at the workplace.

RECOMMENDATION: While there is no doubt that the enterprise has the legal right to make appeals or engage in other legal processes regarding any case or matter which concerns its activities (in accordance with the Guidelines I.2) the NCP recommends the enterprise to be vigilant in order not to risk being accused of using legal measure as a tactic.

RECOMMENDATION: When the court issues its final decision, the NCP requests that Systemair promptly complies with the decision, in accordance with the commitment made during this Specific Instance process. The NCP recommends that Systemair Sweden uses its leverage on its subsidiary in Turkey in order to ensure that it will respect its employees decisions on trade union membership and ascertains that parallel proceedings on certification of a representative to conduct collective bargaining is not unnecessarily delayed to fulfil expectations in OECD Guidelines V.1.b which is based on the fundamental rights of workers as recognized by the 1998 ILO Declaration, i.e freedom of association and right to collective bargaining.

RECOMMENDATION: The NCP recommends that social dialogue should improve in order to better comply with the Guidelines. The NCP recommends that both parties should seek ways to engage in meaningful dialogue, with a view to address the issues raised in the specific instance and other issues related to conditions of employment for the affiliated members in accordance with the Guidelines V.2b, 2c, 3 and 6.

6.4 The issue of unpaid leave, dismissals and alleged threats to employees

The complainant claims that unpaid leave was used as a tool to eliminate union workers from the factory. The enterprise has informed that most workers on unpaid leave now are reinstated as the measures were taken due to corona restrictions. The union claims that several workers have been dismissed or forced to leave.

The claim that unionized employees on unpaid leave have been replaced by contract workers and that recruitment has been ongoing while having workers on unpaid leave has not been possible to confirm or refute due to conflicting information.

Two workers that have been dismissed have appealed the enterprises decision. According to information provided by the Turkish NCP, the court has stated that the plaintiffs' contracts in these cases were terminated for union reasons, and it was decided that the plaintiffs should be reinstated to work. The court also ruled for union compensation regardless of whether the plaintiffs were reinstated or not. Furthermore, the Turkish NCP informed that the court decisions on the two employees' complaints refer

to reports by the Turkish Ministry Labour and Social Security stating that “as a result of the investigation carried out by the General Directorate of Labour upon the application of Union, it was concluded that there was pressure in the workplace within the scope of Article 25 of the Law No. 6356.”. The Turkish NCP has also informed that the enterprise has lodged appeals concerning these cases and that no hearing has taken place so far.

During the good offices the complainant raised a new legal case and asked it to be added to this Specific Instance. According to information provided by the Turkish NCP there is a criminal file regarding insults and threats based on ethnicity by a manager at the enterprise against a worker and the manager was imposed fine by the court. The complainant claims that the action was motivated by anti-unionist motives whereas the enterprise has stated that it is not a manager involved and that the conflict was personal. As the case is finalized in court the NCP will not issue a recommendation.

RECOMMENDATION: When the courts will issue their final decisions on the dismissals, the NCP recommends that the enterprise should act promptly to comply with these decisions. For these purposes, the NCP recommends that the enterprise establishes and contributes to remediation schemes that could be used, should the Turkish courts confirm that the dismissals were anti-union in their nature (ref. to Guidelines II.A.11).

6.5 Human rights issues related to the matter of restrictions of movements of workers in the canteen during protests.

The Guidelines states that an enterprise should respect human rights within the context of their own activities (IV.2) which can include freedom of expression, freedom of movement and where a potential impact occurs within the companies’ own activities take the necessary steps to cease or prevent that impact.

The complainant claims that, during protests outside the production site, employees were locked in a dining hall. To substantiate the claim a report was attached to the complaint, which was written in Turkish by the police responsible for rural areas. The company confirms that one of three doors were locked.

RECOMMENDATION: Although it is not possible to establish to what extent employees were locked in or not, the NCP recommends the enterprise to make sure that all staff is informed of measures taken in emergency situations and that they do not unnecessarily restrict the freedom of movement of employees.

6.6 Follow-up

Finally, the NCP is of the opinion that the development needs to be monitored in the foreseeable future. As for timeline and actions for follow up the NCP welcomes reports by the complainant and the enterprise after 6 months from the day when this final statement is published. Depending on the outcome of the follow-up, the NCP may decide to have further follow-ups.

The NCP will also follow up on the outcome of legal processes and may give a further statement later on. Should the NCP be presented with evidence of an agreement between the parties before that, it would consider the issues being fully resolved and no further follow-up would be carried out.