



SPECIFIC INSTANCE “DIAM INTERNATIONAL IN TURKEY”

14 December 2017

Statement from the French National Contact Point

After its initial assessment, the French NCP offers its good offices to DIAM International SAS Group and to the Turkish trade union Birlesik Metal-Is

1. The French National Contact Point (“NCP” hereafter) for the OECD Guidelines for Multinational Enterprises was asked on 2 August 2017 to handle a specific instance submitted by the Turkish trade union Birlesik Metal-Is targeting the DIAM INTERNATIONAL SAS Group (hereinafter “DIAM Group”) with respect to the activities of its Turkish subsidiary Diam Vitrin Tasarim Hizmetleri Ambalaj San (hereinafter “DIAM Vitrin”) in relation with a social conflict that reportedly broke out there in May 2017.

2. In conformity with its Bylaws,¹ the NCP shall endeavour to conduct a specific instance initial assessment within an indicative deadline of three months after acknowledging receipt of the referral although additional time may be granted if need be to collect essential information necessary for an informed decision (Art. 29). The NCP then prepares a statement (“communiqué”) dealing with the submission’s admissibility (Art. 19). If the initial assessment is positive, the NCP thus offers its good offices to the parties in order to help them resolve their dispute. It shall endeavour to complete its examination within 12 months after confirming reception of the referral (Art. 31), and shall publish a report or a statement at the end of the procedure (Art 35). It can decide to follow up its recommendations (Art. 32).

1. Coordination with the Turkish NCP

3. Turkey is an OECD Member, it adheres to the OECD Guidelines for Multinational Enterprises, and it has a NCP. The referral concerns a group headquartered in France and is about its Turkish subsidiary’s activities. As both NCPs are potentially concerned by the specific instance, the French NCP’s secretariat contacted its Turkish counterpart on 30 August 2017 to agree to the terms for coordination between the two NCPs.

4. The NCPs noted that the complainant seeks the French NCP’s good offices to question the due diligence of the Turkish subsidiary’s parent company, and they noted that the complainant submitted the specific instance to both NCPs. After consultation on 11 September 2017, the NCPs decided that the French NCP would lead the referral, with support from the Turkish NCP (“*supportive NCP*”). The parties were informed of this decision.

2. Procedure followed by the French NCP according to its Bylaws

5. The NCP received this referral by e-mail on 2 August 2017. It acknowledged reception on 21 August 2017. The NCP secretariat forwarded the referral to the NCP members on 21 August 2017. The NCP validated the submission’s formal admissibility on 30 August 2017, informed the Turkish NCP and began the initial assessment.

6. As this referral was formally admissible, on 4 September 2017, the NCP informed DIAM Group about the specific instance and shared a copy of the file; it sent information about the French NCP’s procedure; and it also invited DIAM Group to respond to the specific instance. As soon as it received this information, DIAM Group expressed its willingness to dialogue with the NCP, while underlining the necessity to ensure confidentiality of

¹ Bylaws in English <http://www.tresor.economie.gouv.fr/File/404282>



the discussions. In September, the enterprise sent confidential first elements of response, which were restricted to the French NCP at the enterprise's request.

7. On 5 September 2017, the NCP informed the complainant about the referral's formal admissibility and about the next procedure steps. The NCP asked the complainant to submit additional information in order to carry its initial assessment. Additional elements were addressed to the NCP on 5 and 7 September 2017, which were forwarded to the enterprise and to the Turkish NCP. In October, the complainant addressed confidential information that was restricted to the French NCP at the complainant's request.

8. At its meeting on 11 September 2017, the NCP reviewed the issues raised by this referral and discussed its initial assessment. On 3 October 2017, it sent several questions to its Turkish counterpart about legal aspects of the case. At its meeting on 10 October 2017, the French NCP formally took on leadership for this specific instance, and decided to accept it. It finalised its initial assessment on 13 October 2017. It thus decided to examine questions raised by the specific instance, to offer its good offices to the parties (which would begin on 2 November 2017) and to prepare an initial assessment statement by the beginning of November 2017.

9. On 16 October 2017, the parties were informed of these decisions. The NCP offered its good offices while recalling its remit of problem-solving by offering parties a platform for dialogue. Birlesik Metal-Is and DIAM Group accepted the NCP's good offices during the allotted period, which expired on 20 October 2017. The Turkish NCP was informed of these outcomes on 23 October 2017.

10. On 24 November 2017, the French NCP adopted a draft initial assessment statement. A consultation of both parties and of the Turkish NCP took place between 26 November and 11 December 2017. The complainant and the Turkish NCP received a non-official English translation of the draft on 3 December 2017. As both parties and the Turkish NCP validated the draft, the initial assessment statement was adopted by the French NCP on 14 December 2017 and was forwarded to both parties and to the Turkish NCP before its publication on the French NCP's website.

3. Overview of the referral

11. The referral targets DIAM Group with respect to its Turkish subsidiary's manufacturing activities in Istanbul. According to the complainant, DIAM Group does not respect nine recommendations in the OECD Guidelines regarding due diligence, human rights, workers' freedom of association and collective bargaining.²

12. The complainant trade union mentions a social conflict that allegedly broke out in May 2017 and resulted in the dismissal of a large number of workers. Several legal proceedings are said to have been launched with the competent Turkish jurisdictions by some workers and as well by the Turkish enterprise. The complainant seeks the French NCP's assistance to enter into mediation with DIAM Group in order to remedy the situation and to engage in a constructive negotiation locally.

Recommendations of the 2011 Guidelines targeted by the referral:

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

² "General Principals" (Art. II A10, A11, A14), "Human Rights" (Art. IV 2, 5, 6), and "Employment and Industrial Relations" (Art. V 1a, 1b, 7).



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. Summary of the initial assessment of the specific instance

13. Turkey adheres to the OECD Guidelines. DIAM International SAS Group is headquartered in France and specialised in the manufacture of point-of-sale displays for the luxury goods sector. The referral challenges the Group's due diligence regarding its Turkish subsidiary and a social conflict in Turkey that allegedly involved the Group. After consultation between the French and Turkish NCPs, the French NCP was designated as the lead to examine this referral, and to interact with DIAM Group and with the complainant. The French NCP will act in coordination and with the support of the Turkish NCP, to which it may refer, for example, for matters related to the course of legal proceedings or the Turkish legal framework ("*supportive NCP*").

14. The specific instance meets the formal admissibility criteria set out in Article 16 of the French NCP's Bylaws. The specific instance, which was supplemented during the initial assessment, is sufficiently precise and detailed to initiate the NCP action. The referral includes the targeted enterprise's identity, the complainant's identity and contact details, and also elements of the OECD's Guidelines by virtue of which the specific instance is referred to the NCP. Nonetheless, the exact sequencing of underlying events in the referral will benefit from being clarified by the parties during the good offices.

15. The referral fulfils other admissibility criteria set out in Articles 21, 22, 23 and 25 of the French NCP's Bylaws. The referral seems to be raised in good faith. The complainant is identified and has an interest in the case. The referral questions whether the OECD's Guidelines are actually implemented within the manufacturing sector for a middle-sized group.

16. Legal proceedings have been launched in Turkey concerning certain aspects of the alleged social conflict. In compliance with Article 30 of the Bylaws, "*the NCP shall take care to avoid all interference*" with these legal proceedings and "*the NCP shall pursue its examination only if its intervention provides real added value relative to those other procedures, arising in particular from the international dimension of the case*". Moreover, in compliance with Article 39 of the Bylaws, this referral will require confidentiality to be maintained for the information which each party brings to the NCP's knowledge within the framework of its good offices.



5. Conclusion of the initial assessment and next steps

17. The French NCP considers that the referral merits further examination with regard to the actual implementation of the OECD's Guidelines and that it can contribute to helping the parties problem-solve through the use of dialogue. The NCP welcomes that the parties have accepted its good offices and welcomes DIAM Group's high-level commitment to participate in this process of dialogue. It notes that DIAM Group, a middle-sized enterprise, mentions its policy of being a responsible enterprise and its special attention to social dialogue, and that it denies the referral's allegations.

18. The NCP's good offices and its examination of the specific instance began in November 2017. In the first stage, the NCP will interview each party separately; and later, it will be able to assess the feasibility of mediation. The NCP will have the possibility of seeking advice from competent authorities, such as the Turkish NCP or the France Embassy, for some specific issues raised by the referral with regard to responsible business conduct in Turkey.

19. In conformity with its Bylaws and with the OECD Procedural Guidelines, in order to facilitate the resolution of the issues raised, the NCP takes and will take appropriate measures to protect sensitive information, commercial or other, and to protect the interest of other parties concerned by this specific instance. Hence, certain elements brought to the NCP's knowledge could be subject to confidentiality.

20. The acceptance of the specific instance by the NCP and the acceptance of its good offices by DIAM Group and by the complainant union do not determine whether or not the enterprises acted in compliance with the OECD's Guidelines.

For further information about the NCP referral procedure:

NCP Bylaws

🔗 In French: <http://www.tresor.economie.gouv.fr/File/404283>

🔗 In English: <http://www.tresor.economie.gouv.fr/File/404282>

“**How to submit a case to the French NCP**”, a dedicated page on the DG Trésor website that presents a diagram of the specific instance process, as well as factsheets that explain the specific instance processing procedure. The page is in French, but includes links to English versions of several documents.

🔗 http://www.tresor.economie.gouv.fr/6373_Que-signifie-la-recevabilite-dune-circonstance-specifique-

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