

## SPECIFIC INSTANCE

### “DIAM International in Turkey”

14 May 2019

#### Final statement from the French National Contact Point

**Following dialogue led by the NCP, the DIAM International Group has improved its due diligence policy although the NCP did note shortcomings in respect of a number of the OECD Guidelines’ recommendations. The Group must strengthen its due diligence vis-à-vis its Turkish subsidiary to achieve full compliance with the Guidelines.**

**The NCP calls on DIAM International to step up its efforts. It will monitor its recommendations in coordination with the Turkish NCP.**

On 2 August 2017, the French National Contact Point (NCP) for implementation of the OECD Guidelines for Multinational Enterprises received a referral of a specific instance submitted by the Turkish trade union, Birlesik Metal Is. It targeted the DIAM International Group with respect to the activities of its Turkish subsidiary, DIAM Vitrin, concerning an industrial dispute that broke out there in May 2017.

*The French NCP is a tripartite body for the non-jurisdictional settlement of disputes related to the implementation of the Guidelines for Multinational Enterprises. Its purpose is to contribute to the resolution of the questions referred to it through its good offices, mediation and conciliation. It endeavours to examine the issues raised as soon as possible, within 12 months of receipt of the specific instance if this is feasible. It publishes its decisions on its website.*

## 1. Presentation of the specific instance

The specific instance targets the DIAM International Group which has its headquarters in France and a number of fully-owned subsidiaries worldwide. It is a mid-size multinational enterprise that manufactures counter displays for luxury goods and cosmetics brands. The referral questions the effectiveness of the actual implementation of the OECD Guidelines regarding due diligence at the headquarters and in the Turkish subsidiary, and in respect of human rights, workers' freedom of association, representation and collective bargaining at the Group's Turkish subsidiary.<sup>1</sup>

An industrial dispute broke out on 12 May 2017 in DIAM's Turkish subsidiary during a unionisation drive led by the trade union, Birlesik Metal Is, in the plant. The dispute involved a protest movement by the workers and work stoppages over several days in May and June 2017. Tension ran high in the plant following the dismissals decided on in early May 2017 then after the enterprise challenged said union's application for certification at the end of that month. The enterprise considered that the unrest represented an illegal eight-day strike and decided to dismiss a large number of workers. On 2 August 2017, Birlesik Metal Is referred the matter of the dismissals to the French NCP as it considered them to be anti-union. The union also raised the issues of its recognition and the commitment to talks on a collective labour agreement with DIAM Vitrin. During the procedure, the parties provided the NCP with evidence enabling it to better understand how this crisis developed and the measures taken by the Group in light of the referral. The Turkish NCP duly informed the French NCP of Turkish legislation on union recognition and the conditions for authorising collective bargaining.

- **Overview of Turkish legislation on unions and the negotiation of collective labour agreements**

The Turkish Act on Trade Unions and Collective Labour Agreements<sup>2</sup> of 7 November 2012 stipulates that a union's competence to conclude a collective labour agreement must be determined by the Ministry of Labour and Social Security.<sup>3</sup> In order to be recognised as competent for a given enterprise, the union must represent at least 1%

<sup>1</sup> "General Policies" (Art. II A10, A11, A12, A14), "Human Rights" (Art. IV 2, 5, 6), "Employment and Industrial Relations" (Art. V 1a, 1b, 7, 8).

<sup>2</sup> See Part VIII on the Conclusion of Collective Labour Agreements, Articles 41 to 48.

<sup>3</sup> Excerpts from the Turkish Act on Trade Unions and Collective Labour Agreements of 7 November 2012: Article 42.1 to 42.5 "Application for determining competence" provides that "A workers' trade union that considers itself competent to conclude a collective labour agreement shall make an application to the Ministry, requesting the Ministry to determine that it is competent. An employers' trade union or an employer not belonging to any union may make an application to the Ministry, requesting the Ministry to determine the competent trade union" (42.1) and that "Upon determining that the workers' trade union is competent according to its records, the Ministry shall communicate the application, within six working days, together with the number of workers employed and the number of union members in the workplace or enterprise concerned, to other workers' trade unions constituted in the same branch of activity and to the employers' trade union or the employers who shall be a party to the agreement" (42.2). Article 43.1 to 43.5 "Disputes as to competence" provides that if the enterprise or other unions dispute the competence, they may apply to the competent court within six working days after the receipt of communication of the application of competence (43.1) and that "the procedure to determine competence shall be suspended until the final decision is given on the objection" (43.5). Article 44.1 "Certification of competence" provides that "The Ministry shall issue a certificate of competence to the union concerned within six working days after the expiry of the time limit allowed for an appeal if no objection has been made, or within six working days of receiving notice of the decision that determines that the union has competence as a result of the union's objection or if the courts rejects the objection." Source ILO: [http://www.ilo.org/dyn/natlex/natlex4.detail?p\\_lang=en&p\\_isn=91814&p\\_country=TUR&p\\_count=781&p\\_classification=02&p\\_classcount=44](http://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=91814&p_country=TUR&p_count=781&p_classification=02&p_classcount=44)

of workers engaged in the branch of activity, more than half the workers employed in the workplace and 40% of the enterprise's workers to be covered by the collective labour agreement. If it considers that it meets these conditions, the union must make an application to the Ministry. If, in turn, the Ministry judges that the necessary criteria have been met according to its records on workers' union membership, the Ministry must communicate the application to the enterprise within six working days together with the number of workers employed and the number of union members in the workplace. The enterprise may challenge the application for certification within six working days. The Ministry issues a certificate of competence to the union within six working days if no objection has been made or within six working days of receiving the court's decision if it rejects the objection to the union's competence.

The Act also list 20 branches of activity for enterprises and unions. The Turkish NCP explained to the French NCP that the branch of activity of a workplace is decided on by the Ministry of Family, Labour and Social Services which publishes its decision in the Official Gazette. The parties concerned may challenge this decision before the local court with jurisdiction for labour matters within 15 days of its publication. The court has to hand down its decision within two months. If this ruling is appealed against, a final ruling shall be made by the Supreme Court within two months. During the conclusion phase of the referral, the complainant union informed the NCP that "the Act also stipulates that when a competency process for a new collective bargaining agreement has begun, the determination of the branch of activity shall prevail".<sup>4</sup> On this basis, the complainant considered that the enterprise was using this procedure to delay the collective bargaining process. This was refuted by the enterprise.

- **Development of the industrial dispute at DIAM Vitrin in May – June 2017**

Birlesik Metal Is, the complainant union, is one of the metalworking sector's unions which is recognised in Turkey. It is affiliated to IndusdriAll Europe and to IndustriALL Global. In May 2017, the complainant union conducted a unionisation drive vis-à-vis workers in the Diam Vitrin plant. On Friday 12 May 2017, DIAM Vitrin dismissed five workers on the grounds of "inappropriate behaviour, improper remarks concerning the employer and groundless allegations about working conditions and your employer's practices" (see dismissal letters). According to the complainant, these workers were all affiliated to Birlesik Metal Is. The dismissals led to a demonstration by the workers on Monday 15 May 2017 coupled with a two-hour work stoppage. The workers denounced anti-union dismissals. Both parties have informed the NCP that, as from this moment, the plant's management understood that Birlesik Metal Is was looking to gain a foothold in the enterprise. Furthermore, a poster stating that there could not be any unions in the plant as it had fewer than 400 employees had been displayed in the enterprise.<sup>5</sup> The Turkish NCP has stated that this 400-employee threshold only applies in the public sector. This is therefore invalid in the case at hand.

On Monday 15 May and Wednesday 17 May 2017, DIAM Vitrin dismissed one worker followed by eight others. The tension that had been sparked by the previous dismissals then intensified. The workers filed complaints for anti-union dismissals and these were upheld by the court at first instance. The enterprise appealed against the decision. The proceedings are ongoing (see below).

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<sup>4</sup> Excerpts from the Turkish Act on Trade Unions and Collective Labour Agreements of 7 November 2012: "Determination of the branch of activity", Article 5.1 "The branch of activity in which a workplace will be included shall be determined by the Ministry. The decision of the Ministry shall be published in the Official Gazette. The parties concerned may apply against this decision to the local court having jurisdiction in labour matters within 15 days of the publication of the decision. The court shall give its decision within two months. Where this ruling is appealed, a final ruling shall be given by the Supreme Court within two months"; Article 5.2. "If the competency process for a new collective bargaining agreement has begun, the determination of the branch of activity shall prevail for the next period. Requests for determination of the branch of activity and cases brought to court on the basis of these requests shall not be regarded as reasons to delay authorization procedures and authorization determination cases".

<sup>5</sup> "Employees are free to join unions, establish unions and collective bargaining. Unions can be founded with 400 members. Since there are only 140 workers in our company, there are no unions in our company. When the number of employees in our company reaches 400 then we will respect the freedom of association."

On Tuesday 16 May 2017, Birlesik Metal Is, considering that over 50% of workers at DIAM Vitrin were affiliated to it, sent an application for certification to the Turkish authorities to be recognised as competent in order to request the start of negotiations for a collective labour agreement. On the same day, DIAM Vitrin initiated legal proceedings to challenge its affiliation to the “Metal” branch of activity as the enterprise considered that it belonged to the “Wood and paper” branch. The union Birlesik Metal Is covers the metal sector. The union considered that the purpose of these proceedings was to dissuade workers from joining the union and to delay the collective bargaining process, but this is refuted by the enterprise. On 16 August 2017, the Turkish Ministry of Family, Labour and Social Services published an order stating that DIAM Vitrin “belongs to the ‘Metal’ branch of activity”. The enterprise persisted with its complaint filed; these proceedings are still ongoing (see below).

On 22 May 2017, the Turkish Ministry of Family, Labour and Social Services validated Birlesik Metal Is’s application for certification and communicated it to the enterprise which, under Turkish legislation, had six working days to challenge this decision.<sup>6</sup> DIAM Vitrin received the union’s application for certification (“*Yetki Tespiti*”) on Monday 29 May 2017 and filed a complaint challenging it before the Labour Court on 5 June 2017. In the wake of this decision, the workers again demonstrated on Tuesday 6 June 2017, with the support of Birlesik Metal Is. The demonstration took place in front of the plant, work stoppages occurred, and tension grew both inside and outside. The management mentioned that it was subject to both threats and intimidation. The allegation was refuted by the complainant. On Wednesday 7 June 2017, the management hired a security company to screen people entering the site with an eye to protecting both employees and machinery. Cameras were installed according to the complainant. In the days that followed, the demonstrations by workers and unionists, and the work stoppages, continued. According to the complainant, the workers were filmed and were, on occasion, locked in the plant to prevent them joining the demonstrations outside. The Group then considered that it was faced with an “illegal” strike. It filed a complaint following allegedly violent acts against the plant’s managers. The Turkish plant’s management asked its managers to appeal to the workers for calm and to inform them of the seriousness of the situation and the repercussions of an “illegal” strike, namely potential dismissals for serious misconduct (without notice and severance pay). The Group’s headquarters refused to authorise the plant’s management to call in the police. According to the complainant, the workers asked management to hold talks with the union.

On Monday 12 June 2017, headquarters asked its Turkish subsidiary to instruct a lawyer to begin discussions with Birlesik Metal Is. According to DIAM, this initiative failed on Tuesday 13 June as the workers and the union wanted to discuss directly with the management and have the union’s competence recognised in line with the Ministry’s validation of its application for certification. DIAM informed the NCP that the management had taken due note of the refusal to discuss with the lawyer and advised the NCP that it was challenging the union’s certification by the Ministry. During the referral’s conclusion, the complainant advised the NCP that the lawyer allegedly informed it that the enterprise would have agreed to talks with the union if the demonstrations had ceased. However, and still according to the complainant, the enterprise went back on its word. Workers’ demonstrations and work stoppages continued. DIAM stressed the fact that tension was still running high in the plant. According to the complainant, pressure was exerted on unionised workers but this is refuted by the enterprise.

On Thursday 15 June 2017, DIAM Vitrin’s management dismissed 76 workers (80 according to the complainant) on the grounds of an “illegal eight day strike”. It informed them of their dismissal by SMS and notarised letter. This is common practice under Turkish law according to the enterprise. According to the complainant, all the dismissed workers were affiliated to Birlesik Metal Is. Overall, DIAM Vitrin dismissed around half of the plant’s employees, the majority of whom had been working on the production lines.

- **Legal proceedings parallel to the NCP’s work:**

In light of the circumstances, the enterprise decided to institute a number of legal proceedings before the Turkish courts. These actions involved: 1) a challenge to the Turkish plant’s affiliation in the “Metal” branch of activity and

<sup>6</sup> See Article 42 of the Turkish Act on Unions and Collective Labour Agreements.

applying for reclassification in the “Wood and paper” branch (case no. 1), 2) a challenge to Birlesik Metal Is’s application for certification (case no. 2), 3) a complaint against what it considered to be an illegal eight day strike (case no. 3) , and 4) a complaint against the alleged acts of violence against the Turkish plant’s managers (case no. 4). The first three proceedings are thought to be still ongoing and the fourth was dismissed in 2018.

In the first case, the enterprise stated that, initially (in August 2018), the court upheld the “Metal” branch of activity and ordered an expert appraisal. During the referral’s conclusion, DIAM stated that an expert had concluded, in July 2018 and after having visited the plant, that DIAM Vitrin belonged to the “Wood and paper” branch and that the complainant had instituted proceedings to challenge the expert’s report and had applied for a new expert appraisal. These proceedings are ongoing.

In respect of the second case, the enterprise referred the matter to the court with jurisdiction in the location of the plant and not of the court with jurisdiction in the location of the Ministry which had recognised the union’s competence. As a result, there was initial litigation to determine which court had jurisdiction. DIAM informed the NCP that the court to which its subsidiary referred the case had declared itself incompetent in May 2018 and that it was waiting both for a new court to be designated and for a new date. During the referral’s conclusion, the complainant advised the NCP that the enterprise had appealed against the incompetence ruling but that this decision had been upheld on appeal. The Turkish NCP confirmed to the NCP that the first instance and appeal judgments provide for the case to be referred to the court having jurisdiction in the location of the Ministry. According to the complainant, the enterprise referred the case to the Supreme Court and this has been confirmed by DIAM. The case will only be able to be judged on the merits following the Supreme Court’s ruling on the court’s jurisdiction.

In respect of the third case, on 8 May 2019, the complainant union informed the NCP that on 7 May 2019 the court of first instance dismissed the “unlawful strike” complaint lodged by DIAM Vitin against 80 workers following the conflict of May— June 2017. The parties have two weeks to appeal against this decision.

A number of proceedings were also initiated by workers to challenge the dismissals carried out on 12, 15 and 17 May 2017 and on 15 June 2017 which they deemed as illegal on the grounds of their anti-union bias. On 21 September 2018, the court overturned 11 of the dismissals made on 15 and 17 May 2017 – the complainant sent these 11 decisions to the NCP. It ruled that the employment contracts were terminated on union-based grounds and ordered the reinstatement of the workers and payment of compensation. The enterprise appealed against this decision and the various proceedings are still under way.

➔ *The list of the Guidelines’ recommendations targeted by the referral is attached as Appendix 1.*



## 2. Procedure followed by the NCP

*The French NCP endeavours to conduct the initial assessment of a referral within three months of the acknowledgment of receipt and publishes a statement explaining its decision. When this assessment is positive, it offers its good offices to the parties and examines the case. It endeavours to finalise its action within twelve months of receipt of the referral (Article 31). It then concludes the referral by preparing and publishing a statement or a report in the event of agreement between the parties (Article 35). It may decide to follow up on its recommendations (Article 32).*

### • 1<sup>st</sup> step: Admissibility and initial assessment of the referral (August – October 2017)

The French NCP received this referral by e-mail on 2 August 2017. It acknowledged receipt on 21 August 2017. It validated the referral's formal admissibility on 30 August 2017. The NCP contacted the Turkish NCP in order to agree to the terms of coordination between the two NCPs. As the referral targeted several entities of a French Group and questioned the parent company's due diligence vis-à-vis its Turkish subsidiary, the NCPs decided that the French NCP would lead the referral with support from the Turkish NCP.

On 4 September 2017, the NCP informed the Group about the existence of the specific instance and the procedure. It shared a copy of the file and invited it to respond as of then. On 5 September 2017, the NCP informed the complainant about the referral's formal admissibility and asked it to submit additional information in order for it to carry out the initial assessment. The complainant sent this information on 5 and 7 September 2017.

On 10 October 2017, the French NCP formally assumed leadership for this specific instance. It finalised its initial assessment on 13 October 2017. It duly informed the parties and, on 16 October 2017, offered them its good offices which they rapidly accepted. DIAM stated that due to the legal proceedings instituted by its subsidiary in Turkey, the responses that the enterprise may provide to the NCP could not be forwarded on to the complainant. The NCP duly noted DIAM's position and advised the complainant thereof. As a result, the documents sent by the enterprise to the NCP in response to the referral were unable to be forwarded to the complainant and the latter was therefore unable to comment on them.

The NCP adopted the initial assessment statement on 14 December 2017 after having consulted the parties and the Turkish NCP. It then published the statement on its website<sup>7</sup> and informed the OECD.<sup>8</sup>

### • 2<sup>nd</sup> step: Examination of the referral and NCP good offices (November 2017 – October 2018)

The NCP began its good offices on 2 November 2017. The complainant sent additional information in October, November and December 2017 and again in May, July, September and October 2018. In turn, the NCP's Secretariat forwarded the information provided by the complainant to the enterprise and the Turkish NCP. The Group submitted responses to the referral on 11 September and 20 November 2017 as well as additional documents in March, May, September and October 2018 to address issues raised by the NCP. To respect the enterprise's request concerning the ongoing legal proceedings, this information was not sent to the complainant.

<sup>7</sup> <https://www.tresor.economie.gouv.fr/Articles/97b72bda-92bf-47ad-930e-0d2a82364108/files/185c042c-2bc7-436e-817a-33f67d59fd44>

<sup>8</sup> Database of specific instances: <http://mneguidelines.oecd.org/database/instances/fr0024.htm>

The French NCP's Secretariat kept its Turkish counterpart regularly informed of the progress of the referral. For its part, the Turkish NCP answered the French NCP's questions concerning the Turkish legislation and regulations applying to the case.

The French NCP began its good offices by interviewing the parties individually on 14 December 2017. It interviewed the complainant by videoconferencing in English from the French Economic Department's premises in Istanbul. It interviewed DIAM and DIAM Vitrin on the premises of the French Ministry for the Economy and Finance. The NCP decided to interview the parties separately again in order to discuss the referral. It wrote to DIAM on 21 February 2018 to remind it of the NCP's attachment to responsible business conduct and social dialogue and interviewed it on 15 March 2018 to examine the measures taken following the initial interview and the NCP's letter. It interviewed the complainant on 15 May 2018 by videoconferencing in English from the French Economic Department's premises in Istanbul. The NCP suggested that Birlesik Metal Is should write to DIAM to request a meeting and the union did so. On 25 May 2018, DIAM agreed to meet with Birlesik Metal Is in Istanbul as part of the referral. The NCP duly noted that the meeting would take place in the context of the referral but that it would not be in attendance.

The parties met for the first time on 3 July 2018 in Istanbul without the NCP. They subsequently and separately informed the latter of the content of the discussions and that they had agreed to meet again.

On 11 July 2018, the NCP wrote to the parties to congratulate them on having held this first meeting which was the direct result of its good offices. It noted that the discussions had failed to resolve the issues raised by the referral concerning the actual implementation of the Guidelines and suggested that they hold their next meeting on the premises of the French Economic Department in Istanbul. The NCP again reminded DIAM of its attachment to the OECD Guidelines and social dialogue. It asked the parties to continue their discussions and to keep it informed of measures introduced up to its meeting of 4 September 2018.

On 4 September 2018, the NCP decided to wait for the parties' next meeting before considering closing its good offices. It further decided that it would monitor the referral. On 22 September 2018, the complainant informed the NCP of the 11 court rulings handed down against DIAM Vitrin for dismissals deemed as having an anti-union bias (these were the dismissals carried out on 12 and 17 May 2017). The NCP was subsequently informed by the union, and then by the enterprise, that DIAM Vitrin was appealing against these decisions which are therefore not definitive. The parties met on 24 September 2018 on the premises of the French Economic Department in Istanbul, without the NCP, which they duly and separately informed of the content of their discussions. The NCP noted that the union had provided DIAM Vitrin with a draft agreement concerning, according to DIAM, requests for salary increases and other benefits (leave, holiday bonus, etc.). The union stated that DIAM ultimately failed to reply to the draft agreement and that no further meetings were held. It would appear that the enterprise was unable to follow up on the union's proposed agreement as it would not have had legal value owing to the ongoing proceedings concerning the union's competence.

During its meeting on 2 October 2018, the NCP noted changes in the situation and welcomed the direct discussions between the parties. It decided to close its good offices and to move on to the concluding phase of the specific instance. On 8 October 2018, the complainant wrote to the NCP to thank it for having allowed direct discussions to start with the company, and to request that its good offices be extended pending a response to the draft agreement. This letter was sent on to DIAM Group on 9 October 2018. On 24 October 2018, the NCP asked the parties to inform it of any developments regarding the referral before its next meeting on 6 November 2018. On 30 October 2018, DIAM sent the NCP a memo summarising the actions undertaken during the procedure. This memo was unable to be forwarded to the complainant, which was unable therefore to either refute or confirm implementation of these actions. On 6 November 2018, the NCP definitively closed its good offices. It confirmed its decision to follow up on the referral shortly thereafter and then 12 months later. It tasked its Secretariat with preparing a draft statement.

### • 3<sup>rd</sup> step: Conclusion of the specific instance (November 2018 – May 2019)

On 23 November 2018, the French NCP informed the parties and the Turkish NCP that it was closing its good offices and preparing the final statement. The French NCP approved the draft final statement by consensus on 5 February 2019, then consulted with the parties and the Turkish NCP between 13 February and 1 March 2019 on the French and English drafts.

The French NCP adopted the final version of the statement by consensus, with the exception of one trade union, on 14 May then transmitted it to the parties and the Turkish NCP prior to publication on its website. It then informed the OECD so that the database of specific instances could be updated.

## 3. Substantiated analysis of the questions raised about the effectiveness of the OECD's Guidelines implementation

The NCP endeavours to conclude its actions within 12 months of receipt of the referral. Following its good offices, exchanges with the parties and a careful analysis of the various documents in the file and the information from the Turkish NCP regarding Turkish legislation, the French NCP answered the questions raised about the actual implementation of the Guidelines at the time of the dispute in May – June 2017 and following the measures taken by DIAM in response to the referral.

The referral relates to an industrial dispute concerning workers' requests for unionisation and for the opening of collective bargaining in a Turkish plant that led to tension. The dispute occurred in legal and administrative circumstances involving the Turkish procedure for recognising the competence of a labour union as representative of the majority of staff in order to start collective bargaining. In these specific circumstances, the company's initial decisions (a first round of staff dismissals, then disputing the union's application for certification and disputing the sector affiliation) may have aggravated this tension within the plant, and work stoppages continued until the dismissals decided on 15 June 2017. The attempts at discussions on 12 and 13 June 2017 between a lawyer appointed by the enterprise and the union failed. Faced with an unprecedented crisis for the Group, the NCP noted that DIAM decided to pursue legal channels, as permitted under Turkish law. The parent company was present alongside its subsidiary throughout the crisis and afterwards, according to the enterprise, in order to avoid ratcheting up the violence and to initiate several legal proceedings in compliance with local law. The complainant considered that the institution of the various legal proceedings was intended to prevent the workers' unionisation and to delay collective bargaining, but this is refuted by the enterprise.

The NCP noted that the situation was tense and complex. It also noted that legal proceedings were started by the company and by workers during the May-June 2017 dispute. These proceedings are still under way. The NCP must take them into consideration in its analysis of the conditions for workers to exercise their freedom of association and collective bargaining within this plant (see below). It observes that the various ongoing proceedings suspend the process of recognising the competence of the union in this plant.

The NCP reiterates that according to the Guidelines, companies should implement a due diligence policy for, in particular, human rights to avoid causing or contributing to adverse human rights impacts, and to deal with such impacts when they occur (see Chapters II and IV). The NCP reiterates the fact that freedom of association, representation and the right to collective bargaining are among the human rights recognised by the OECD Guidelines (see Chapter V) and that they are part of corporate due diligence (see Chapter II). It observes that at the time the referral was made, the Group and its Turkish subsidiary were not exercising due diligence in human rights and employment matters and had not set up legitimate mechanisms to resolve any possible adverse impacts.



**Following the NCP-led dialogue, DIAM Group improved its due diligence policy, although the NCP did note shortcomings in respect of a number of the OECD Guidelines' recommendations. DIAM Group must strengthen its due diligence vis-à-vis its Turkish subsidiary to achieve full compliance with the Guidelines.**

**1. During its good offices, the NCP observed that DIAM Group took various measures to respond to the referral and answer its questions. These measures led to substantial changes at Group level and within the Turkish subsidiary to identify and mitigate social and labour-related risks. As the documents and information provided by DIAM during the procedure were unable to be forwarded to the complainant, it was unable to either refute or confirm implementation of all these actions.**

**(a) The Group's corporate policy has changed following the crisis and the discussions conducted with the NCP.** The Group carried out an internal review of the Turkish crisis. It mapped all its entities and this helped identify the progress that needed to be made. This mapping revealed that certain entities diverged from the Group's values. The NCP noted that DIAM took measures to adapt its corporate social responsibility policy and to bolster its social and labour-related risk analysis tools. This resulted in: 1) an update of the Group's ethics code and its social and ethics guidebook to emphasise the importance of social dialogue, 2) strengthening the internal setup to monitor the labour issues of its subsidiaries (setting up systems for gathering information, revamping Group governance prior to creating a "European" works council), and 3) boosting awareness of chief executives at "continent" level so that they in turn can make the "country" chief executives more aware of the need for social dialogue. The NCP observes that the Group has revised its corporate social responsibility policy and that the situation in the plant has calmed down. The complainant considers that the situation is calmer owing to the pressure exerted on workers by the previous round of dismissals.

**(b) The parent company's exercising of due diligence led to changes in the Turkish subsidiary's situation, with DIAM undertaking four sets of actions and keeping the NCP regularly informed:**

- 1) Continued legal proceedings (a challenge to the union's application for certification, a challenge to its sector affiliation, a complaint against of an illegal eight-day strike, and an appeal against DIAM Vitrin's conviction for anti-union dismissals);
- 2) Operational changes and a strengthening of the local team (human resources department created, disciplinary measures against a production manager following the 2017 crisis, recruitment of a new production manager);
- 3) Drafting and rolling out an action plan focused on human resources. The NCP observes that DIAM drafted an action plan for DIAM Vitrin in 2018 after carrying out an internal labour investigation beginning in August 2017 and an external audit in May 2018. It started its subsidiary along the process of SA8000 certification. This action plan covers five human resources focus areas:
  - i) wages and benefits in kind: the decision was made to upgrade canteen services, provide better reimbursement of workers' transportation expenses, and give individual pay rises and special bonuses in light of the challenging economic context resulting notably from the adverse impact of the 2017 industrial dispute on the Group's business and clients;
  - ii) development of employees' skillsets to offer them career prospects (training and promotions for five team leaders amongst the plant operators, setting up a flexible work plan);
  - iii) improved internal communication and better information on the company's operations (monthly manager meetings, monthly staff update from the CEO, setting up a works council with the production manager, HR division and team leaders);
  - iv) clarification of responsibilities by defining job roles in greater detail (this process has been completed for five of eight departments);

- v) clarification of internal rules with the drafting of an internal procedures document. The NCP notes that in 2019, staff-elected representatives will replace the current team leaders on the works council;
- 4) The beginning of direct discussions with Birlesik Metal Is, following a recommendation by the NCP: two meetings were organised (in July 2018) to gather feedback from the 2017 industrial dispute, and Birlesik Metal Is submitted a draft agreement including requests for salary increases (September 2018) pending the resolution of the legal proceedings.

**2. The NCP deems all these measures and the direct discussions between DIAM and Birlesik Metal Is to constitute due diligence measures that will partly resolve the adverse impact of the 2017 dispute, but these measures are not sufficient for full compliance with the Guidelines with regard to social dialogue (freedom of association and collective bargaining). The NCP considers these due diligence measures to result directly from its actions and the discussions that it was able to foster between the parties. These measures will significantly improve the Group's situation as regards responsible business conduct as laid out by the OECD, but there are still points that require monitoring to ensure that the Guidelines are complied with.**

Therefore, the NCP currently believes that:

**(a) II A10, A11, A12: DIAM and DIAM Vitrin have taken due diligence measures to identify and prevent the adverse labour impacts. However, the NCP believes that social dialogue within the enterprise must still improve.**

Following the industrial dispute in its Turkish subsidiary, DIAM revised its ethics code and guidebook and rolled out a system to identify labour-related risks in its plants, in particular by strengthening audit processes, with extra reinforcement in DIAM Vitrin (internal and external audits, action plan aimed at compliance with the SA8000 Standard before considering certification). DIAM exercises its due diligence towards its Turkish subsidiary to ensure this system is actually rolled out. The NCP welcomes these improvements, but notes that the situation still needs to be monitored with regard to the OECD's labour recommendations (see below).

The opening up of direct discussions between DIAM Vitrin and Birlesik Metal Is is an important achievement of the NCP procedure. However, DIAM's decision to continue with the various legal proceedings in parallel with the NCP's actions – notably its decision to appeal against the court ruling of 21 September 2018 that cancelled 11 dismissals made on 15 and 17 May 2017 and found them to be anti-union – does not help lay the foundations for social dialogue within the enterprise nor does it address the issue of the remediating adverse impacts. The NCP regrets that DIAM did not reconsider its legal strategy after the initial court's decision, as had been suggested.

- ⇒ **RECOMMENDATION 1:** Regardless of the outcome of the ongoing legal proceedings, and pending final court decisions, the NCP recommends that DIAM should continue to implement its due diligence initiatives for its Turkish subsidiary in order to remediate adverse impact on labour-related human rights (workers' freedom of association and right to be consulted on matters of mutual concern; see below) and to create conditions conducive to social dialogue in the plant in compliance with the Guidelines and local laws.

**(b) IV.2, 5 and 6 on Human Rights and V.1a, 1b, V.3 and V.8 on Employment and Industrial Relations: DIAM and DIAM Vitrin have changed their practices in order to comply with the Guidelines' recommendations on human rights. However, despite improved working conditions and labour relations at DIAM Vitrin, the OECD's recommendations for workers' freedom of association, collective bargaining and constructive negotiations are in suspense pending the legal decisions regarding Birlesik Metal Is's application for certification, DIAM Vitrin's sector affiliation, the accusation of illegal strike action, and accusations of anti-union dismissals. In these circumstances, the situation in DIAM is not fully compliant with the OECD's recommendations for human rights and labour.**

**The NCP's actions have had a genuine impact, with certain measures implemented:**

- DIAM and DIAM Vitrin have revamped their labour policy and stepped up their due diligence with regard to human rights and labour-related risks.
- DIAM Vitrin has taken disciplinary measures against a production manager due to his behaviour during the dispute in May – June 2017.
- The anti-union memorandum/poster that was posted in the plant in May 2017 was removed as soon as the NCP's procedure for discussions had begun. Company headquarters immediately acknowledged that the Turkish subsidiary had made a mistake.
- The NCP's actions have had a genuine impact in the Turkish subsidiary: the complainant has noted significant improvements in working conditions at DIAM Vitrin; two meetings were held between DIAM Vitrin and Birlesik Metal Is, whereas the two parties had never met with each other previously.

**DIAM Group must strengthen its due diligence vis-à-vis its Turkish subsidiary to achieve full compliance with the Guidelines. There is room for progress in terms of workers' freedom of association in the plant:**

- When the specific instance was submitted in August 2017, there were no workers' representatives per se at DIAM Vitrin: no staff delegates, no union representatives. Social dialogue, as provided for in the Guidelines was non-existent; it was limited to managerial relations. The NCP's actions had an impact: DIAM has stated that a works council, that meets every month with "designated" staff representatives, was set up in September 2018. DIAM has also stated that these "designated" representatives were set to be replaced by representatives elected by the workers and that an election process was launched in early February 2019. Lastly, DIAM stated that the elections were held on 27 March 2019, that the works council has six elected representatives and that discussions have started on practical arrangements within the enterprise. These points should be confirmed by the complainant during the monitoring process.
- The dismissals in May and June 2017 coincided with Birlesik's unionisation drive and certification campaign. According to the complainant, these dismissals violated the workers' right to establish or join trade unions and representative organisations of their own choosing, their right to be represented for the purpose of collective bargaining, and their right to engage in constructive negotiations with workers' representatives on conditions of employment. The NCP notes that these issues are still being examined by the Turkish courts and that 11 dismissals were found to be anti-union at first instance and that the complaint for an "illegal strike" against 80 workers was rejected at first instance. A follow up is therefore necessary.

As a result, the NCP has issued the following recommendations:

- ⇒ **RECOMMENDATION 2:** The NCP recommends that DIAM and DIAM Vitrin improve social dialogue within the Turkish subsidiary in order to comply with the OECD's Guidelines and decisions of the Turkish courts.
- ⇒ **RECOMMENDATION 3:** When the courts issue their final decisions, the NCP requests that DIAM's Turkish subsidiary should act promptly to comply with these decisions. For these purposes, the NCP recommends that DIAM and DIAM Vitrin establish and contribute to remediation schemes that could be used, for example, should the Turkish courts rule that the dismissals in May – June 2017 were anti-union in nature.
- ⇒ **RECOMMENDATION 4:** The NCP requests that DIAM Vitrin comply with the "Employment and Industrial Relations" chapter of the Guidelines. More specifically, the NCP recommends that the Group should ramp up its action plan at DIAM Vitrin so that workers can elect their own representatives as soon as possible and begin consultations on matters of mutual concern (V.8) until a union is recognised as legally competent to carry out collective bargaining or to lead negotiations on labour relations (V.1a, V.1b, V.3). It notes that DIAM has informed it that an election process was launched and elections have indeed been held in its Turkish subsidiary.

## 4. Conclusion

The NCP reiterates its letters sent to DIAM in February and July 2018, noting its strong attachment to social dialogue and the OECD's guidelines, which notably call for enterprises to:

- *"Respect the right of workers employed by the multinational enterprise to establish or join trade unions and representative organisations of their own choosing."* (V.1a)
- *"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.1b)
- *"Promote consultation and cooperation between employers and workers and their representatives on matters of mutual concern."* (V.3)

The NCP again emphasises the importance of due diligence within enterprises that should *"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.11) and *"Seek to prevent or mitigate an adverse impact where they have not contributed to that impact, when the impact is nevertheless directly linked to their operations, products or services by a business relationship. This is not intended to shift responsibility from the entity causing an adverse impact to the enterprise with which it has a business relationship"* (II.A.12). In this respect, the NCP calls on DIAM to provide it with relevant information concerning the situation and changes within its Turkish subsidiary until labour conditions there comply with the OECD's Guidelines and the ILO's fundamental conventions as incorporated into the Guidelines, so that the NCP has the information required to draft a follow-up statement.

The NCP calls on the DIAM International Group to follow its recommendations and comply with the Guidelines. In keeping with Article 32 of its Bylaws, the NCP has decided to monitor the implementation of these recommendations in coordination with the Turkish NCP. It requests that the parties keep it informed, in writing, of changes to the situation in six months (October 2019) and 12 months (April 2020). It may organise one or more monitoring meetings if it deems necessary. It will publish a follow-up statement if it considers this to be relevant.

### ➔ Appendix 1: List of the Guidelines' recommendations targeted by the referral (May 2011 revision)

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## **APPENDIX I**

**The following recommendations of the May 2011 Guidelines are targeted by the referral:**

### **Chapter II on General Policies**

*Enterprise 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. 12.** Seek to prevent or mitigate an adverse impact where they have not contributed to that impact, when the impact is nevertheless directly linked to their operations, products or services by a business relationship. This is not intended to shift responsibility from the entity causing an adverse impact to the enterprise with which it has a business relationship.

**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 choosing.

**V.1b.** Respect the right of workers employed by the multinational enterprise to have trade unions and representative organisations of their 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.3.** Promote consultation and cooperation between employers and workers and their representatives on matters of mutual concern.

**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 organise.

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