

National Contact Point for the OECD Guidelines

**Specific instance submitted to the Italian NCP on 23 July, 2018, by FIOM-CGIL Firenze,
against N.V. BEKAERT S.A. and BEKAERT FIGLINE S.p.A.**

INITIAL ASSESSMENT¹

1. This document contains the initial assessment of the Italian National Contact Point ("NCP") on the specific instance submitted to it on 23 July 2018 by FIOM-CGIL Firenze, against N.V. BEKAERT S.A. and BEKAERT FIGLINE S.p.A.

The OECD Guidelines and the NCP activities

2. A specific instance is a request to the NCP to offer its good offices to contribute to the shared resolution of issues relating to the implementation of the Guidelines of the Organisation for Economic Co-operation and Development ("OECD") for Multinational Enterprises (hereinafter the "Guidelines") in specific cases.
3. The Guidelines are recommendations of responsible business conduct addressed by adhering Governments to the multinational enterprises operating in or from their territories.
4. To disseminate the Guidelines, each adhering Government is bound to establish a National Contact Point that has the task to manage a non-judicial mechanism for settling disputes between a Company and a stakeholder arising from an alleged breach of the Guidelines.
5. Through the offer of good offices by the NCP, this mechanism is aimed at finding a concrete solution to the case, compliant with the Guidelines and agreed by the parties.
6. The Initial Assessment is the preliminary examination that the NCP carries out to determine whether the issue raised in a specific instance merits further examination. If the case merits further examination, the NCP offer its good offices, to help the interested parties to solve the issues, in accordance with the Guidelines and the applicable laws. If the case doesn't merit further examination, the NCP communicates it to the parties, publishes its conclusion and, therefore, concludes the procedure.
7. The effectiveness of the specific instances' procedure depends on the behaviour in good faith of all parties involved.

Presentation of the specific instance - Alleged violations of the Guidelines

8. The specific instance submitted by FIOM-CGIL Firenze, against N.V. BEKAERT S.A. and BEKAERT FIGLINE S.p.A.
9. The complaining workers' organisation claims that N.V. BEKAERT S.A. and BEKAERT FIGLINE S.p.A. has taken the decision to close the Figline Valdarno site in ways and times in stark contrast to the following recommendations of the Guidelines:
É Chapter V, Employment and Industrial Relations, § 6.

The initial assessment phase

¹ The official version of this Initial Assessment is in Italian.

10. As part of the specific instance procedure, the initial assessment is intended to ascertain whether the issue raised in the specific instance merits further examination. That is, the NCP must determine whether the issue is "bona fide" and relevant to the implementation of the Guidelines, based on the following criteria, established by the Guidelines²:
 - É The identity of the party concerned and its interest in the matter.
 - É Whether the issue is material and substantiated.
 - É Whether there seems to be a link between the enterprise's activities and the issue raised in the specific instance.
 - É The relevance of applicable law and procedures, including court rulings.
 - É How similar issues have been, or are being, treated in other domestic or international proceedings.
 - É Whether the consideration of the specific issue would contribute to the purposes and effectiveness of the Guidelines.
11. By letter dated 26 July 2018, sent to all the identified parties, the NCP confirmed to FIOM-CGIL the reception of the complaint and informed N.V. BEKAERT S.A. and BEKAERT FIGLINE S.p.A. of the submission, giving the Companies a deadline expiring on 31 August 2018 to present a reply.
12. On 30 August 2018 BEKAERT FIGLINE S.p.A. presented its reply notes.
13. On 31 August 2018 the NCP requested FIOM-CIGIL to submit its counter-replies.
14. FIOM CGIL did not present any further counter-replies within the established deadline.
15. Since the N.V. BEKAERT S.A. a Belgian multinational, on September 7, 2018, the NCP informed the Belgian NCP of the application by e-mail.
16. The Complainant warned of the existence of an ongoing parallel proceeding at the Ministry of Economic Development (MED), consisting of crisis talks concerning the same issue (closure of the Bekaert plant in Figline).
17. The NCP prepared a first draft positive initial assessment, considering that, even in the presence of the aforementioned parallel proceeding, the examination of the specific issue, with its good offices, could contribute to the purposes and effectiveness of the Guidelines. The NCP Committee expressed a positive opinion on the draft.
18. On 3 October 2018, as part of the aforementioned parallel proceeding, an agreement was signed concerning social aspects and new safety nets for workers at the Bekaert plant in Figline Valdarno.
19. Therefore, the NCP prepared a new different draft initial assessment of the case, on which, on 17 October 2018, the NCP Committee expressed a positive opinion.
20. On 18 October 2018 the NCP sent the initial draft assessment to the parties for comments, granting, for this purpose, a deadline expiring on 31 October 2018. No comment was made by the parties within the given deadline.
21. Therefore the NCP publishes this definitive version of the initial assessment, signed by the Chair of the NCP.

Position of the Complainant

² Guidelines, Commentary on the Implementation, Procedures § 25

22. According to the Complainant FIOM-CGIL Firenze, the decision of the Company, announced on 22 June 2018 to local institutions and local workers' organisations, to close the Italian site of Figline Valdarno, which employs 318 employees, is in stark contrast to the Chapter V, § 6 of the Guidelines, because the Company has:
- É informed institutions and organisations only after having already taken the decision to close the site;
 - É given a period of notice of only 75 days, insufficient to mitigate the impacts of this decision, totally unexpected especially after confirming the strategic value of the Figline plant during a meeting held at the MED crisis unit on 29 March 2018.
23. The Complainant brings to the attention of the NCP also the lack of information on this issue, from the Company management to the European institutions and trade unions³.

Position of the Company

24. BEKAERT FIGLINE S.p.A, in its reply, highlights the non-binding nature of the Guidelines, taking up the text of chapter V, § 6 and its commentary and it observes how these latter recall the laws and practices of the member Countries.
25. The Company believes that it has acted in full compliance with national and European legislation, favouring the consultation and the discussion with all the involved parties, first of all trade unions.
26. In the communication to the RSU (Unitary Workplace Union Structure) and Confindustria Firenze⁴ of 22 June 2018 (attached to the Company's reply), the Company had informed that the reason for the redundancy of personnel and the forthcoming termination of each activity and the consequent closure of the Figline and Incisa Valdarno site (FI) was based on the fact that the plant was no longer economically sustainable and recorded losses that could no longer be absorbed.
27. The Company had stated, in the same communication, that it had adopted, over the last few years, a series of measures to deal with the crisis of the plant and, as part of a contractual agreement, had offered to provide economic incentives to support the dismissed personnel, as well as outplacement or retraining programmes.
28. In addition, the Company informs that, although it was not held to do it, on 7 August 2018, it consented to the request of the Tuscany Region and the OOSS to suspend the deadline of the procedure until September 3rd, in order to guarantee a period of further effective consultation of the parties involved.

The identity of the party concerned and its interest in the matter

29. The FIOM-CGIL Firenze union represents over 8,000 members and it is present in 929 Companies in the area, including the Bekaert of Figline. It is, also, present in 206 Unitary Workplace Union Structures with 616 delegates elected by the workers⁵.
30. It also participated in the aforementioned crisis talks at the MED.

³ In this regard, it should be noted that Bekaert has set up a European Works Council

⁴ The General Confederation of Italian Industry in Florence

⁵ <http://fiomfirenze.it/chi-siamo>

31. Therefore, FIOM-CGIL Firenze is entitled to submit and carry on the specific instance in the interest of the workers of the BEKAERT factory of Figline and Incisa Valdarno.

Whether the issue is material and substantiated

32. The Guidelines (Chapter V, § 6) recommend to Companies that "*In considering changes in their operations which would have major employment effects, in particular in the case of the closure of an entity involving collective lay-offs or dismissals, provide reasonable notice of such changes to representatives of the workers in their employment and their organisations, and, where appropriate, to the relevant governmental authorities, and co-operate with the worker representatives and appropriate governmental authorities so as to mitigate to the maximum extent practicable adverse effects. In light of the specific circumstances of each case, it would be appropriate if management were able to give such notice prior to the final decision being taken. Other means may also be employed to provide meaningful co-operation to mitigate the effects of such decisions*".
33. In the Commentary in Chapter V § 6 of the Guidelines, it is explained that "*Paragraph 6 recommends that enterprises provide reasonable notice to the representatives of workers and relevant government authorities, of changes in their operations which would have major effects upon the livelihood of their workers, in particular the closure of an entity involving collective layoffs or dismissals. As stated therein, the purpose of this provision is to afford an opportunity for co-operation to mitigate the effects of such changes. This is an important principle that is widely reflected in the industrial relations laws and practices of adhering countries, although the approaches taken to ensuring an opportunity for meaningful co-operation are not identical in all adhering countries. The paragraph also notes that it would be appropriate if, in light of specific circumstances, management were able to give such notice prior to the final decision. Indeed, notice prior to the final decision is a feature of industrial relations laws and practices in a number of adhering countries. However, it is not the only means to ensure an opportunity for meaningful co-operation to mitigate the effects of such decisions, and the laws and practices of other adhering countries provide for other means such as defined periods during which consultations must be undertaken before decisions may be implemented*".
34. From all of the above it emerges that the main purpose of these recommendations in the Guidelines is to **prevent and mitigate the negative impacts** that the restructuring or closing processes of business units determine on workers and on employment. In fact, **the aim is to provide an opportunity for cooperation to mitigate the impacts of these changes**.
35. To this end, it is recommended that the Company provides reasonable notice to the workers' representatives and to the competent authorities and also that the Company's management informs the interested parties before adopting the final decision.
36. In addition to the process of information, consultation and involvement of workers, the Guidelines indicate that other actions can be taken that are strongly focused on the prevention and mitigation of the negative impacts produced by the conduct of Companies.

Indeed, in relation to the **identification, prevention and mitigation** of the negative impacts, the Guidelines recommend that Companies⁶ "*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, (...) and account for how these impacts are addressed. The nature and extent of due diligence depend on the circumstances of a particular situation*". The Guidelines also recommend that the Companies "*avoid provoking or contributing with their activities to the negative impact on the matters covered by the Guidelines, through their own activities, and address such impacts when they occur*".

37. The NCP notes that the decision to close the Figline Valdarno plant is destined to have a substantial impact on both the 318 employees of the plant, which will be dismissed, and the territory as a whole.
38. From the documentation at the disposal of the NCP it does not appear evident that the Company has implemented measures to prevent the risk of closure of the plant and to mitigate the resulting impacts on employment, as well as other economic and social impacts.
39. **For all the above, the issue is relevant and the link with the activities of the Company is evident.**

The relevance of applicable rules and procedures, including court rulings

40. In this case, in addition to the national legislation applicable, the European directives concerning EWCs are also considered relevant⁷.
41. The NCP is not aware of ongoing or closed judicial procedures related to this case.

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

42. In the practice of the NCPs of the countries adhering to the Guidelines, the decision to close or drastically reduce the activities of a production plant without adequate notice and/or without adequate consultation of workers' organisations is an issue that in many cases has given rise to a positive initial assessment, with the conclusion that the issue merits further examination⁸.

⁶ OECD Guidelines, Chapter II. General Policies, A. 10 and A. 11

⁷ Council Directive 94/45/EC of 22 September 1994 on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees. Directive 2009/38/EC of the European Parliament and of the Council of 6 May 2009 on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees.

⁸ Cf. Ex. French NCP: *Trade unions v. Marks & Spencer*, 2001; *Trade unions v. Molex Automotive SAR*, 2012; UK NCP: *Amicus and T&G, v PSA Peugeot Citroen*, 2008; Mexican NCP *Sindicato Nacional Revolucionario de Trabajadores de la Compañía Hulera Euzkadi (SNRTE) v. Continental Tire*, 2005; Japanese NCP: *TowerJazz Branch of Rengo Hokuban Local Union, the Hokuban Local Council of Rengo-Hyogo, Rengo-Hyogo, and Rengo v. Tower Semiconductor Ltd. and TowerJazz Japan, Ltd.*, 2016; Swiss NCP: *Triumph International Thailand Labour Union (TITLU), Thai Labour Campaign, Bagong Pagkakaisa ng mga Manggagawa sa Triumph Int'l. Phils. Inc. (BPMTI) and Defend Job Philippines Organisation Inc. v. Body Fashion (Thailand) Ltd. (BFT), Triumph International (Philippines) Inc. (TIPI) and Star Performance Inc. (SPI)*, 2011).

43. It has also been repeatedly stated by the NCPs that the Company should carry out a due diligence in relation to the impact that its decisions on closure, restructuring and dismissal could have on workers and, more generally, on stakeholders⁹.
44. It is worth observing how, in several of these cases, the establishment in question was located in a European country.
45. In some cases, the concerned NCP intervened with the offer of good offices, also in parallel with other proceedings already in progress. This was the behaviour of the Italian NCP in the case *FIOM-CGIL v. EATON S.R.L.* (2011)¹⁰.
46. **The NCP notes that in several cases managed by NCPs of other countries adhering to the Guidelines, the closure or reduction of activities in a production plant has led to an initial positive assessment (the case merits further examination).**
47. **In this specific case, having obtained the necessary information from the competent office and considered the aforementioned practice, this NCP came to the conclusion that the coexistence of the aforementioned proceeding at the MED does not, in itself, preclude a further examination of the case.**

Whether the consideration of the specific issue would contribute to the purposes and effectiveness of the Guidelines

48. On the 3rd October 2018, as part of the aforementioned parallel proceeding, an agreement was signed at the MED concerning social aspects and new safety nets for workers at the Bekaert plant in Figline Valdarno. The agreement includes a series of measures to protect employees and reindustrialize the site (<http://www.mise.gov.it/index.php/it/194-comunicati-stampa/2038669-bekaert-sig-lato-accordo-su-piano-sociale-e-nuovi-ammortizzatori>)
49. **In view of the agreement reached between the parties concerned, the NCP considers that the further examination of the specific issue would not further contribute to the purposes and effectiveness of the Guidelines.**

Conclusions

50. **This NCP recommends to N.V. BEKAERT S.A. and BEKAERT FIGLINE S.p.A. that, in the future, when taking decisions to close or restructure facilities and/or dismiss workers, they carry out the due diligence needed, as described in the Guidelines, in order to identify, prevent and mitigate the negative, potential or effective impact, that such decisions can have on workers and, more generally, on stakeholders, and to account for how this impact is addressed.**
51. **The NCP believes that the issue does not merit further examination.**
52. **This determination concludes the initial assessment.**

⁹ Cf. ex. Japanese NCP: *Trade unions and NGOS v. Suzuki Motor Corporation and Suzuki Motor (Thailand) Co., Ltd.*, 2017; French NCP: *Turkish trade union Birlesik Metal-Is v. the DIAM INTERNATIONAL SAS Group*, 2017; *Group of 255 former Somadex workers v. French Group Bouygues Construction (öSomadexö)*, 2016.

¹⁰ Cf. Peruvian NCP: *Central Única de Trabajadores del Perú (CUT) v. Perubar S.A.*, 2016.



Rome, 5 November 2018

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