

National Contact Point for the OECD Guidelines

Specific instance submitted to the Italian NCP on 27 November 2018, by the national FIOM-CGIL, against Ball Beverage Packaging Italia S.r.l.

INITIAL ASSESSMENT

1. This document contains the initial assessment of the Italian National Contact Point ("NCP") on the specific instance submitted on 27 November 2018 by the national FIOM-CGIL, against Ball Beverage Packaging Italia S.r.l.

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 does not merit further examination, the NCP communicates it to the parties, publishes its conclusion and, therefore, concludes the procedure.
7. The effectiveness of the specific instance proceedings 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 is submitted by the national FIOM-CGIL union, against Ball Beverage Packaging Italia S.r.l., the Italian branch of the Ball Corporation- a US multinational supplier of metal packaging to beverage, food and household products, as well as aerospace technologies and other industries, and also services for government and commercial clients.

9. The complaining trade union claims that Ball Beverage Packaging Italia S.r.l., on October the 11th 2018 has suddenly taken the decision to close its plant in San Martino sulla Marruccina without notification, refusing to conduct any negotiation about the destiny of the industrial area and its workers, not even asking for a period of special lay-off funding, in contrast with the following recommendations of the Guidelines:
 - i. Chapter II, General Policies, § 14;
 - ii. Chapter III, Disclosure, § 1 e 2;
 - iii. Chapter V, Employment and Industrial Relations, § 6.

The initial assessment phase

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 Guidelines:¹
 - The identity of the party concerned and its interest in the matter;
 - Whether the issue is material and substantiated;
 - Whether there seems to be a link between the enterprise's activities and the issue raised in the specific instance;
 - The relevance of applicable law and procedures, including court rulings;
 - How similar issues have been, or are being, treated in other domestic or international Proceedings;
 - Whether the consideration of the specific issue would contribute to the purposes and effectiveness of the Guidelines;
11. By letter prot. n, 0409537 dated 30th November 2018, the NCP acknowledged to FIOM-CGIL the reception of the complaint and informed Ball Beverage Packaging Italia S.r.l. of the submission, giving the Parties a deadline expiring on 8 January 2019 to submit a reply.
12. On 8th January, 2019 Ball Beverage Packaging Italia S.r.l. submitted its reply notes, by Certified Electronic Mail, specifying that a collective agreement had been reached on the 21st December 2018 with all local institutions and local workers' organisations - including FIOM CGIL.
13. The NCP prepared a first draft initial assessment of the case, on which, on 1st February 2019 the NCP Committee expressed a positive opinion
14. On 6th February 2019 the NCP sent the initial draft assessment to the Parties for comments, granting, for this purpose, a deadline expiring on 18th February 2019. No comment was made by the parties within the given deadline.
15. Therefore, the NCP publishes this definitive version of the initial assessment, signed by the Chair of the NCP.

¹ Guidelines, Commentary on the Implementation, Procedures § 25

Position of the Complainant

16. According to the Complainant - national FIOM-CGIL - the management of the Ball Beverage Packaging Italia:
 - a. On 11 October 2018, abruptly and without notification, the Company announced to local institutions and local workers' organisations, the closure its plant in San Martino sulla Marruccina, located in the province of Chieti, starting from January 2019;
 - b. After a meeting held at the Ministry of Economic Development - crisis unit - on 15 November 2018, again without notification to the local workers' organisations, but rather using only an internal statement, the Company informed directly the workers about the forthcoming termination of production at the plant.
 - c. Until the submission of the specific instance, the Company refused to conduct any negotiation neither for the possibility of re-industrialization of the site, nor for the chance of replacement for the workers.
 - d. The Company also refused to request, as an alternative to the mobility procedure, a period of special lay-off funding, which could have been useful to the re-industrialization of the site.
17. All of this in violation of the aforementioned recommendations of the Guidelines.

Position of the Company

18. Ball Beverage Packaging Italia S.r.l. in its reply stated that the object of the specific instance should have been considered to be over, thanks to the positive conclusion of the trade union procedure carried out ex l.223/1991 and ended with the collective agreement reached on the 21st December 2018 at the Abruzzo Region, with all local workers' organisations involved - including FIOM-CGIL.
19. The Company stated that this agreement had been reached after a long process of discussions and meetings between Ball, the workers' organisations involved, the institutions (First, the Ministry of Economic Development, the Abruzzo Region, the Prefect of Chieti, all the Mayors of the province of Chieti and the local employers' federation ó Confindustria).

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

20. The Italian Federation of Metalworkers (FIOM) is a national trade union of workers operating in the Italian metal-mechanical industry, affiliated to the wider workers' organisation CGIL.
21. FIOM took part in the negotiation dealing with the closure of the San Martino sulla Marruccina site of Ball Beverage Packaging Italia.
22. **Therefore, FIOM-CGIL is entitled to submit and carry on the specific instance in the interest of the workers of the Ball Beverage Packaging's factory of San Martino sulla Marruccina.**

Whether the issue is material and substantiated ó Whether there seems to be a link between the enterprise's activities and the issue raised in the specific instance

23. 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 cooperate 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".*
24. 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.*"²
25. 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 have on workers and employment. In fact, **the aim is to provide an opportunity for cooperation to mitigate the impacts of these changes**. This concept is also clearly expounded, in more generic terms in Chap. II, § A 14 recommending that enterprises *involve interested stakeholders by affording them real opportunities to assert their point of view concerning planning and decisions about projects and other activities which may strongly impact upon local communities*
26. 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. Indeed, the Guidelines attach , great importance to the fact that, within the context of a responsible business conduct *timely and accurate information is disclosed on all material matters regarding their activities, structure, financial situation, performance, ownership and governance* since *Clear and complete information on enterprises is important to a variety of users ranging from shareholders and the financial community to other constituencies such as workers, local communities, special interest groups, governments and society at large*³
27. 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

² *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".*

³ OECD Guidelines, Chapter III. Disclosure, § 1 e Comments, § 28.

prevention and mitigation of the negative impacts produced by the conduct of the enterprises. Indeed, in relation to the **identification, prevention and mitigation** of the negative impacts, the Guidelines recommend that Companies⁴ *“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”*.

28. **The NCP notes that the decision to close its plant in San Martino sulla Marruccina is bound to have a substantial impact on both the 70 employees of the plant, and the territory as a whole.**
29. **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.**
30. **For all the above, the issue is material and the link with the activities of the Company is evident.**

The relevance of applicable rules and procedures, including court rulings

31. Law 1.23, n°223 dated July 1991 mentioned above includes rules covering lay off fund, mobility, unemployment treatment, enforcement of European Community directives, introduction to work and additional provisions regarding the work market.
32. 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

33. 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 examination.⁵

⁴ OECD Guidelines, Chapter II. General Policies, A. 10 and A. 11

⁵ 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; Japannais 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).

34. It has also been repeatedly stated by the NCPs that enterprise 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 stakeholders.⁶
35. It is worth observing how, in several of these cases, the plant in question was located in a European country.
36. In some cases, the concerned NCP intervened with the offer of good offices, also in parallel with other proceedings already in progress.⁷ This was the behaviour of the Italian NCP in the case *FIOM-CGIL v. EATON S.R.L* (2011)
37. In a similar case, the initial assessment by the Italian NCP was preceded by an agreement entered by the Parties within the parallel proceeding ongoing at the MED crisis unit and was, therefore, negative.⁸
38. **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 merited further examination).**

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

39. On the 21st of December 2018, within the context of the aforementioned parallel proceedings, an agreement was entered at the Regione Abruzzo, between the Company and all the involved unions - including FIOM-CGIL- dealing with voluntary redundancy schemes.
40. In view of the agreement reached between the parties concerned, **the NCP considers that the further examination of the specific issue would not contribute to the purposes and effectiveness of the Guidelines.**

Conclusions

41. **For the future, this NCP recommends that Bell Beverage Packaging Italia S.r.l. involve all concerned workers, their representatives and other stakeholders, whenever it is in the process to take decisions regarding the closure or reorganization of its plants and/or regarding the dismissal of its workers;**
42. **The PCN also recommends that, in case of closure or reorganisation of its plants, the Company ó- promptly discloses the information and undertakes the necessary process of due diligence as described in the Guidelines with the aim to identify, prevent and reduce the negative impacts ó either potential or actual ó which such decisions may have on workers and, more widely, on the interested stakeholders and accounts on how these impacts are addressed.**

⁶ 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 (õSomadexõ)*, 2016.

⁷ Cf. *Peruvian NCP: Central Única de Trabajadores del Perú (CUT) v. Perubar S.A.*, 2016.

⁸ Cfr. Initial assessment *FIOM-CGIL / N.V Bekaert S.A. and Bekaert Figline S.p.A.* (<https://pcnitalia.mise.gov.it/attachments/article/2035928/Initial%20assessment%20FIOM-CGIL%20BEKAERT.pdf>)

43. **In consideration of the agreement reached between the Parties, the PCN believes that, since it would not contribute to the purposes and effectiveness of the Guidelines; the specific issue does not merit further examination.**
44. **This determination concludes the initial assessment.**

Place and date

Rome, 21/02/2019

The Director-General
Chair of the National Contact Point
Stefano FIRPO