

SPECIFIC INSTANCE « PUTZMEISTER IN TURKEY»

23 December 2019

Final Assessment Turkish National Contact Point

Turkish NCP decided to offer its good offices to the parties, PUTZMEISTER Makina San ve Tic. A.Ş. and to the Turkish trade union Turkish Metal Union (Türk Metal); but PUTZMEISTER representatives informed the Turkish NCP that they did not wish to participate in the joint meetings. On these grounds, the Turkish NCP concluded the case

Turkey, as an OECD Member and adherent country to the OECD Guidelines for Multinational Enterprises (hereinafter: the Guidelines), entitled the Ministry of Industry and Technology as National Contact Point to promote the Guidelines and to act as a forum for discussion of all matters relating to the Guidelines.

Turkish National Contact Point (hereinafter: Turkish NCP) received a specific instance notification submitted by the Turkish trade union TÜRK METAL SENDİKASI (hereinafter: Trade Union) on May 29, 2017 regarding an alleged violation of the Guidelines by PUTZMEISTER Makina San ve Tic. A.Ş. (hereinafter: Putzmeister).

As part of the initial assessment process, Turkish NCP contacted both parties, asked for supporting documents and held separate and confidential meetings to address the specific instance allegations.

After these meetings, Turkish NCP decided that the notification requires further consideration based on the following criteria:

- the notifying party is a concerned party with a legitimate interest in the issues raised in the notification;
- Putzmeister is a multinational enterprise with operations in different regions and subject to the Guidelines;
- the issues raised by the Trade Union are material and substantiated,
- the consideration of this specific instance may contribute to the Guidelines' objectives and effectiveness,

Based on the meetings and documents received, Turkish NCP publicly issued its initial assessment on May 13, 2019 and shared it with the parties and the German NCP. Turkish NCP offered parties its “good offices” to come to a solution through constructive dialogue. It should be noted that the decision to further examine this specific instance and offering good offices is not based on any fact-finding substantive research, nor does it represent any judgment.

The Trade Union informed the NCP about their willingness to enter into mediation with Putzmeister. However, Putzmeister refused to participate in mediation process and preferred to wait for the results of the legal proceedings.

This statement will be shared with parties involved and it will be published online at <https://tuys.sanayi.gov.tr> unless a comment is received within a month from either party.

About Putzmeister

Putzmeister is a German manufacturer of concrete pumps that has operations in 20 subsidiaries through Europe, America, Asia, MENA, Russia and India.

The company has been in operation since 2007 in Çerkezköy/Tekirdağ of Turkey and employs 433 people in total. The company has a distribution network of 14 and sales and after-sales services in Istanbul, Ankara and İzmir.

About Turkish Metal Union (Türk Metal)

Established in 1963, Turkish Metal Union has a vision of unionization of metal workers in automotive, consumer durables, electronics, iron-steel and supply industries. It is also a member of International Eurasian Metal Workers Federation which has 19 million members across 21 countries.

Türk Metal is an authorized union in leading Turkish companies (8 out of top 10 industrial enterprises, 40 out of top 100), namely: Mercedes Benz Türk AŞ, Ford Otosan, Bosch, Arçelik, BSH, Karsan, Renault, BMC, Tofaş, Türk Traktör, Delphi, Hema, MAN Türkiye AŞ, Erdemir...

Summary of the case and procedure followed

On May 29, 2017, Turkish NCP received a specific instance notification via a letter signed by the Trade Union targeting Putzmeister about alleged violation of Chapter V of the Guidelines, especially in respect of workers' freedom of association, representation and collective bargaining at the company.

Turkish NCP acknowledged the receipt of the letter on July 15, 2017 and requested the Trade Union to submit some additional supporting documents. On July 18, 2017 the Trade Union sent those documents via e-mail.

After the thorough examination of the submitted documents, Turkish NCP contacted with relevant authorities including the Ministry of Family, Labor and Social Security regarding the legal base of the issues raised.

On December 14, 2017, Turkish NCP has organized a meeting with Putzmeister executives and attorneys to hear about their assessments:

- Putzmeister have been operating in Turkey since 2007, engaged in manufacturing and sales of construction equipment with 100% German capital.
- In 2015, due to deteriorations in the market, the company decided to downsize and decrease their employment by 25 workers.
- On August 2015, the General Director of Putzmeister held meetings with the staff and explained this situation to all workers. Upon the meetings, 9 workers voluntarily decided to quit, 11 were laid off according to performance and work discipline criteria, 2 workers for the termination of their contract, one worker resigned, one worker laid off on the grounds of occupational safety and one for damaging company assets.
- Putzmeister claims that they have paid the benefits and compensations to the workers both laid off and quit voluntarily, regardless of their membership with the union; only the workers who are laid off on legal grounds (damaging property and occupational safety) were not compensated.

- The Trade Union, who is not legally recognized as competent at Putzmeister, assisted the laid off workers to file cases for reinstatement. According to Putzmeister, the Trade Union is campaigning for the minimum number of members for them to be recognized as a competent union for representation.
- Besides, three Putzmeister executives were charged for forcefully obtaining the e-state accounts and passwords of the workers to check their union membership status, in an attempt to restrain unionization efforts.
- Putzmeister also claims that they are bound to comply with a corporate ethics code issued by the headquarters and they would by no means breach constitutional right of workers (including unionization rights).
- Putzmeister executives also raised their discomfort about the negative social media coverage of the case by the Trade Union, which harmed the commercial reputation of the company.

The Turkish NCP organized another meeting with the Trade Union management, including the headquarters in Ankara their branch management where Putzmeister is incorporated:

- The Trade Union representatives claimed that all 25 dismissed workers were union members and they were laid off as a result of an anti-union campaign in Putzmeister.
- The Trade Union was about to organize the threshold number of members so that they could apply to the Ministry of Family, Labour and Social Services for the issuance of competency to conduct collective bargaining ¹
- Therefore, the dismissal of 25 workers mainly aims to hamper the exercise of union rights in the work place.
- Of the 25 lawsuits against the company, 19 workers were ruled to be reinstated by Putzmeister. Since the lawsuits were on the grounds of unionization activities, the Trade Union claims that the Courts approve their arguments.

Following the meetings with the parties, and interim follow-ups, the Turkish NCP decided that the notifying party is a concerned party with a legitimate interest in the issues raised in the notification and the issues raised are material and substantiated.

The Turkish NCP prepared an initial assessment report on May 13, 2019 and shared it with both parties, the German NCP (since Putzmeister is a MNE whose headquarters is based in Germany) and the OECD. Both parties consented to the initial assessment report.

^{1 1} The Turkish Act on Trade Unions and Collective Labour Agreements stipulates that a union's competence to conclude a collective labour agreement must be determined by the Ministry of Family, Labour and Social Services. In order to be recognised as competent for a given enterprise, the union must represent at least 1% of workers engaged in the branch of activity, more than half the workers employed in the workplace and 40% of the 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.

On June 13 2019 the Turkish NCP wrote letters to both parties, offering them its “good offices” and come to a solution through constructive dialogue.

On June 26, 2019, an official letter from the Trade Union was received that they are pleased to hear that the case is undertaken by the Turkish NCP and they would be willing to participate in mediation efforts organized by the Turkish NCP.

Whereas, on June 25, 2019, Putzmeister sent a letter stating that they are refusing to participate in mediation efforts with the Trade Union at this stage. Turkish NCP initiated an unofficial contact once more for the acceptance of constructive dialogue and requested to have detailed information for their unwillingness about good office practices.

Upon a series of telephone and e-mail conversations, Putzmeister summarized their position as such:

- Putzmeister insists that laying off the workers are related with the downsizing of the company on economic grounds and they do not reflect any anti-union attitude.
- As the trade union stated, 19 legal cases have resulted for the reinstatement of workers; but only 4 of them have been finalized and Putzmeister applied for cassation (second-degree courts) and the cases are still going on.
- Putzmeister also notes that, it is a common procedure in Turkey that the courts generally rule in favor of employees; which do not necessarily confirm an anti-union attitude of the employer.
- Besides, two of the three cases against Putzmeister executives for forcefully restraining unionization activities resulted in favor of Putzmeister; which also confirms their neutral attitude.
- Since there are several cases on Turkish labor and criminal courts, they believe that mediation efforts would not have a functional contribution to the instance; therefore, Putzmeister prefers to wait for the finalization of the legal proceedings.

Conclusion

Based on the detailed explanations above, The Turkish NCP have decided to close the case on the grounds that one of the parties do not voluntarily accept the good offices offer.

Turkish NCP will inform Putzmeister about the OECD’s Due Diligance Guidance, besides the MNE Guidelines, and stress its importance for responsible business conduct.

The Turkish NCP will also follow up the specific instance in the following six-month and inquire about the results of legal proceedings.