



# Implementing the OECD Guidelines for Multinational Enterprises: The National Contact Points from 2000 to 2015





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Enterprises:  
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## *Foreword*

Governments adhering to the OECD Guidelines for Multinational Enterprises are required to set up National Contact Points (NCPs). The main role of NCPs is to further the effectiveness of the Guidelines by undertaking promotional activities, handling enquiries, and contributing to the resolution of issues that arise from the alleged non-observance of the Guidelines in specific instances. On the occasion of the 15<sup>th</sup> anniversary of the NCPs and the 40<sup>th</sup> anniversary of the Guidelines, this report examines progress made and identifies remaining challenges.

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## Glossary

### OECD Guidelines for Multinational Enterprises

The Guidelines are recommendations addressed by governments to multinational enterprises operating in or from adhering countries. They provide non-binding principles and standards for responsible business conduct in a global context consistent with applicable laws and internationally recognised standards.

### Implementation procedures of the OECD Guidelines for Multinational Enterprises

The implementation procedures include the Decision of the Council on the Guidelines for Multinational Enterprises, as amended in 2011, which also contains the Procedural Guidance, as well as the Commentary on the Implementation Procedures of the Guidelines, adopted by the Investment Committee.

### Core criteria for functional equivalence

According to the Procedural Guidance NCPs should function in a visible, accessible, transparent, and accountable manner. These are the core criteria for functional equivalence between NCPs.

### Non-observance

The term non-observance is used to describe a situation in which a multinational enterprise does not abide by the recommendations of the OECD Guidelines for Multinational Enterprises.

### Specific instance

The Guidelines do not provide a formal definition of ‘specific instances’, however the term is used to describe situations of alleged non-observance of the Guidelines brought to NCPs.

### Proactive agenda

Introduced in the 2011 revision of the Guidelines, it refers to work aimed at helping enterprises to identify and respond to risks of adverse impacts associated with particular products, regions, sectors or industries and to contribute to sustainable development through multi-stakeholder engagement. Work on the proactive agenda is carried out by the Investment Committee’s Working Party on Responsible Business Conduct.



## Executive summary

### National Contact Points - a unique implementation mechanism for promoting responsible business conduct

Responsible business conduct (RBC) is an essential part of an open international investment and trade climate and building a responsible business environment is in the interests of all. When the OECD Guidelines for Multinational Enterprises (the Guidelines) were adopted in 1976 as part of the OECD Declaration on International Investment and Multinational Enterprises (the Investment Declaration) they set the bar for the responsible business conduct of enterprises operating internationally. Since then the Guidelines have been subject to review on five occasions to ensure they keep pace with the changing international environment. The most recent revision took place in 2011. Today the Guidelines represent a global framework for responsible business conduct covering all areas of business responsibility including disclosure, human rights, employment and industrial relations, environment, anti-corruption, competition and taxation.

The Guidelines are the only international instrument for responsible business conduct with a built-in implementation mechanism – the National Contact Points (NCPs). All governments adhering to the Investment Declaration are also required to adhere to the Decision of the Council on the Guidelines for Multinational Enterprises. This Decision contains the legally binding obligation for adherents to set up a National Contact Point (NCP), to further the effectiveness of the Guidelines, and make human and financial resources available to their NCP to fulfil their responsibilities.

NCPs are mandated to further the effectiveness of the Guidelines by undertaking promotional activities, handling enquiries and contributing to the resolution of issues that arise relating to the implementation of the Guidelines in specific instances.

NCPs have been part of the Guidelines since 1984. However, it was the 2000 review that provided detailed Procedural Guidance on the role and functions of NCPs and gave them a stronger role to deal with all matters relating to the Guidelines, including resolving issues related to the non-observance of the Guidelines by companies. Through this aspect of their mandate, NCPs are the only governmental, non-judicial grievance mechanism, providing access to remedy to stakeholders wishing to raise issues related to operations of companies operating in or from adhering countries.

The 2011 revision of the Guidelines added a chapter on Human Rights aligned with the language of the UN Guiding Principles on Business and Human Rights (UNGPs) to the Guidelines. Furthermore the Guidelines make reference to relevant provisions of the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy as well as the Rio Declaration. As such the NCPs also function as a grievance mechanism for widely recognised expectations with regard to business and human rights, labour issues and the environment.

In June 2015, on the occasion of the OECD Ministerial Council Meeting, Ministers called on the OECD to continue its efforts to further strengthen the performance of NCPs, including through voluntary peer reviews and the exchange of best practices. This call was also made in the G7 Leaders Declaration in June 2015, in which the G7 governments committed to strengthening mechanisms for providing access to remedies including the NCPs. In order to do this, the G7 governments are encouraging the OECD to promote peer reviews and peer learning on the functioning and performance of NCPs. In addition, the G7 governments committed to ensuring that their own NCPs are effective and that they lead by example.

### **There have been significant improvements in the handling of specific instances by NCPs**

NCPs have the mandate to provide a *forum for discussion* so as to contribute to the resolution of issues that arise relating to implementation of the Guidelines in specific instances. This makes the Guidelines the only government-backed international instrument for responsible business conduct with a built-in non-judicial grievance mechanism. This mechanism has been part of the mandate of NCPs since the 2000 review of the Guidelines. To date over 360 specific instances have been handled by NCPs, addressing impacts from business operations in over 100 countries and territories.

Most specific instances relate to issues arising from multinational enterprises (MNEs) operating in the manufacturing sector, comprising 33% of all specific instances. Mining and quarrying is the second most represented sector in terms of numbers of specific instances. These proportions have remained relatively constant since 2000. Issues arising in the financial sector have seen significant increases in terms of submissions, from about 8% of specific instances from 2000-2010 to 17% from 2011.

Non-governmental organisations (NGOs) have historically been the main group using the specific instance mechanism, accounting for 80 specific instances or 48% of all specific instances since 2011, followed by trade unions which account for 41 specific instances or a quarter of all specific instances since 2011. Individuals have filed 33 specific instances since 2011 accounting for 19% of all specific instances in this time period.

Specific instances treated to date have covered all chapters of the Guidelines with the majority focusing on the chapters on employment and industrial relations (55%), human rights (24%) and environment (21%).

Approximately a third of all closed specific instances were not accepted for further consideration at the initial assessment stage. A non-acceptance rate of between 30-40% has been relatively stable since 2000.

### ***Specific instances have resulted in important impacts***

Between 2011 and 2015, approximately half of all specific instances which were accepted for further examination by NCPs resulted in an agreement between the parties. Agreements reached through NCP processes were often paired with other types of outcomes such as follow-up plans and have led to significant results, including changes to company policies, remediation of adverse impacts, and strengthened relationships between parties. Of all specific instances accepted for further examination between 2011-2015, approximately 36% resulted in an internal policy change by the company in question, contributing to potential prevention of adverse impacts in the future.

In some instances which did not result in agreement between the parties some positive outcomes were nevertheless achieved such as clarification of expectations under the Guidelines and increased use of leverage by companies and investors to promote RBC.

Since the introduction of the chapter on human rights to the Guidelines in 2011 specific instance proceedings have resulted in stronger human rights policies and due diligence processes in a number of companies. NCPs have handled specific instances dealing with a wide range of human rights issues such as the rights of indigenous peoples, lethal injections, and the right to privacy.

Specific instances dealing with employment issues have led to some important results such as engagement with governments to end child labour, formalisation of employment and improved workplace health and safety. For example, one specific instance resulted in a mutually acceptable solution in which a company agreed to the establishment of 200 permanent positions in one of its factories, a significant change for the factory which had been employing high proportions of temporary labour.

NCPs have also handled a range of environmental issues including unsustainable agricultural practices and mitigation of environmental impacts associated with extractive operations and large infrastructure projects. In one specific instance an oil exploration company committed to cease exploration in a UNESCO recognised national park and “not to conduct any operations in any other World Heritage site”.

### ***Some NCPs have developed significant skills and experience in mediation and problem-solving***

In recent years, some governments have made significant efforts in providing NCPs with resources needed to handle specific instances more efficiently; for example, by providing a budget to hire external experts, including mediators; providing training in mediation and problem solving to NCP staff, etc. On the other hand, insufficient resources and a lack of support translate into a lack of skills development for a number of NCPs; this is a challenge since the mandate requires NCPs to address increasingly complex and sophisticated issues.

### ***Application of the procedural guidance for handling specific instances is not uniform***

While there have been many successful outcomes from the specific instance mechanism over the past 15 years, significant variations in the practice of NCPs has contributed to uneven performance in handling specific instances. Significant challenges remain with regard to the handling of specific instances. Stakeholders have highlighted several challenges including accessibility of the NCP due, for example, to procedural rules imposing statute of limitations, overly restrictive definitions (e.g. of the terms “multinational enterprise”, “adverse impact”, “business relationship”), costs for parties to participate in mediation, and the overly stringent interpretation of the requirement that an issue be “material and substantiated”. In addition to accessibility issues non-acceptance of specific instances due to parallel proceedings, delays, insufficient use of recommendations or determinations in final statements, and lack of clear or equitable procedures have also been highlighted by stakeholders as areas for improvement. Recurring challenges mentioned by NCPs in dealing with specific instances include balancing confidentiality and transparency; cooperation between NCPs and resource constraints.

***Some governments have been innovative in increasing the impact of their NCP***

Specific instances are not legal cases and NCPs are not judicial bodies. As such NCPs cannot impose sanctions, directly provide compensation nor compel parties to participate in a conciliation or mediation process. Nevertheless the NCP system can generate important consequences. For example, some NCPs issue final statements upon concluding specific instance processes which include recommendations to companies based on the particular circumstances of the case. Certain NCPs also make determinations, setting out their views on whether a company observed the Guidelines or not. Such practice can have reputational impacts for companies and can encourage engagement of companies in the process. Furthermore, in some contexts governments consider NCP statements with regard to economic decisions, e.g. in the context of public procurement decisions or in providing diplomatic support.

**NCPs are making efforts to promote the Guidelines, but these efforts remain uneven**

A key function of the NCPs is to promote the Guidelines, and most NCPs have focused their efforts on this part of their mandate. Activities by NCPs to raise awareness of the Guidelines amongst different stakeholders range from hosting and organising promotional activities, workshops and conferences, to engaging regularly with key stakeholders and developing and disseminating promotional material on the Guidelines. Viewed as a whole, the NCPs have taken important steps in promoting the Guidelines as a useful tool for enterprises, governments, unions, NGOs and other interested parties.

Significant work has also been carried out by BIAC, OECD Watch and TUAC (and their affiliates in different countries) in ensuring that their various constituents are informed of the Guidelines and in particular of the existence and role of NCPs.

However, although in some countries the Guidelines are known by enterprises, trade unions and civil society representatives, they are less well known in others. In addition, the Guidelines are often not known beyond corporate social responsibility (CSR) practitioners or business and human rights experts, who are directly involved in the policy debates about them. Also, while major listed multinationals may be familiar with the Guidelines, this does not necessarily apply to small and medium enterprises (SMEs).

**Conformity with the core criteria and obligations is improving, but remains uneven**

NCPs are required to operate in accordance with the core criteria of visibility, accessibility, transparency, and accountability. Most governments have made significant progress in ensuring their NCPs meet the core criteria, while others are still lagging behind. Most significantly, some NCPs do not appear to meet any of these criteria, even several years after their creation.

NCPs are required to report annually on the nature and results of their activities, including with regards the handling of specific instances. In addition they are encouraged to publish their annual reports online to promote transparency and accountability amongst their stakeholders and other NCPs and to report on their activities within their governments. Here also, improvements have been made, but more could be done.

### ***Most NCPs are visible, but not all of them are accessible***

Adhering governments are responsible for informing the public of the availability of the Guidelines-related facilities. Websites are one way to make the NCP *visible*. They are the natural entry point to contact an NCP, and the most obvious place for the NCP to communicate about the Guidelines, its role and procedures. While most NCPs have a website, a review shows that while some are clear, complete and easy to navigate, others are poorly designed, lack relevant information and do not provide basic contact details.

*Accessibility* is still a challenge for a number of NCPs. Many NCPs provide clear rules of procedure for submitting and handling specific instances, and many recognise the possibility of considering specific instances in cases where one party is not willing to engage or where there are parallel proceedings ongoing. However, according to users of the NCP mechanism (mainly NGOs and trade unions), the rules of procedure in place for some NCPs may *de facto* impede accessibility, such as high substantiation requirements or short statutes of limitation. Furthermore, some NCPs systematically do not accept specific instances for further examination on the basis of one party not being willing to engage, or when parallel proceedings (e.g. in a national court) are in place. Stakeholders have also highlighted that the resource constraints faced by some NCPs (e.g. to cover translation and interpretation costs) result in obstacles for meaningful participation by parties in specific instance processes.

### ***NCPs can do more to ensure transparency and accountability***

*Transparency* is closely linked to accountability, and is essential to gain confidence of the general public, especially in relation to specific instances. Some NCPs communicate with stakeholders through regular newsletters, or hold regular meetings, thereby making the NCP better known and making its role and activities more transparent. There are, however, significant differences among NCPs in the way they deal with transparency around specific instances. A few NCPs publish their initial assessments once they have accepted a specific instance, and most publish the final statements for specific instances in a timely manner. However, some NCPs do not fully meet the requirement to make the results of specific instances publicly available, or do not report on specific instances to the OECD Secretariat in a timely manner.

### ***Better reporting of NCP activity would help enhance their visibility and accountability, including within the government***

There are significant divergences in the levels of *accountability* of NCPs. Many NCPs do not report at all to different government agencies on their activities, or only do so on an ad hoc basis; a few report to Parliament. Some NCPs do not report at all.

A small number of NCPs fail to meet their minimal obligation of reporting annually to the OECD, and among those which do, some only provide partial information. In addition, although the majority of NCPs participate actively in the peer learning meetings held at the OECD and are active in organising peer learning events for NCPs in their own countries, a small number of NCPs do not attend, nor engage in other kinds of information or experience sharing with other NCPs. A stronger demand within governments for NCPs to report on their activities would be helpful to increase the visibility and raise the internal profile of NCPs and would be an opportunity to highlight the achievements and shortcomings due, for example, to a lack of resources.

## **NCP structures have been evolving to promote diversity, policy coherence, and impartiality**

Governments have flexibility in the way they set up their NCP and the NCP should retain the confidence of social partners and other stakeholders. Over time different types of structures have emerged. Increasingly, driven by the growing expectations around responsible business conduct standards and the growing complexity of specific instances submitted to NCPs, some governments are moving away from the “mono-agency” structure where an NCP is housed in one single Ministry, and are seeking to expand the areas of expertise available within the NCP. For example, some governments have created NCPs that include representatives from several Ministries. Some NCPs are based in one Ministry, but involve other Ministries and other stakeholders, such as enterprises and labour representatives, either as part of their core structure, or through advisory bodies. Some governments have re-structured their NCPs into an office with independent experts and a supporting secretariat attached to a Ministry.

Since 2001, most NCPs have been located in the Ministry which has responsibility for economic issues and investment (e.g. Ministry of Business and Growth, Ministry of Economy, Ministry of Investment, Ministry of Trade, Ministry of Finance, etc.). A total of 34 NCPs are currently located within governmental departments in charge of economic or financial issues, while six are located in Ministries or departments of foreign affairs and four are structured as independent agencies.

A total of 19 governments have created advisory bodies for their NCPs and six have created oversight bodies as of January 2016. Advisory bodies are generally multi-stakeholder platforms and can include representatives from trade unions, NGOs, enterprises or academia. Many advisory bodies also include representatives of other government agencies, thus providing such NCPs with a means of improving policy coherence at the national level. Oversight bodies are commonly composed of representatives from several governmental departments, enterprises, trade unions and non-governmental organisations. One of the roles of oversight bodies is to monitor the effectiveness of the NCP, ensuring that correct and fair procedures are followed in line with the NCP procedures for dealing with complaints.

## **Lack of resources is one of the main challenges for many NCPs**

While most adhering countries have set up and maintain NCPs, the resources and budgetary support provided to enable them to discharge their functions is uneven. Resource constraints are frequently cited by NCPs as being a barrier in fulfilling their mandate and consistently singled out by stakeholders as a major problem with regard to the NCP system. This is in conflict with the commitment by adherent countries under the Decision of the Council on the Guidelines for Multinational Enterprises to make available human and financial resources to their NCPs so that they can effectively fulfil their responsibilities.

### ***A few NCPs are well-resourced, but many others lack staff and budget***

A number of NCPs have indicated that a lack of financial resources poses a challenge in fulfilling their mandate. Few NCPs have staff solely devoted to the responsibilities of the NCP and some do not have any dedicated staff. In most NCPs, members of staff are also responsible for other portfolios. Most NCPs are composed of a mix of full-time and part-time staff, with additional support being requested as needed. Several NCPs –

particularly those with their secretariats housed in a Ministry of trade or foreign affairs – are staffed by officials sharing several functions.

### ***Frequent staff turnover and weak knowledge management hamper NCP efficiency***

In addition to a lack of sufficient resources, a lack of institutional knowledge and management, due to frequent staff turnover, the absence of written terms of reference and rules of procedure, and inadequate record-keeping have been identified as shortcomings in the functioning of some NCPs. A lack of consistency among staff working as part of the NCP, and insufficient institutional support can mean that at times the minimum level of manpower, experience and support needed to properly fulfil NCP tasks is not present.

### ***There is room for greater involvement of NCPs in the sector projects under the “proactive agenda”***

The “proactive agenda” aims to promote the effective observance of the Guidelines by helping enterprises identify and respond to risks of adverse impacts associated with particular products, regions, sectors or industries. Central to its potential to effect change on a broad scale is its use of multi-stakeholder processes which gives relevant stakeholders the opportunity to participate side-by-side with enterprises in developing tools and strategies to avoid and address risks of adverse impacts.

Since 2011, significant work has been carried out to help companies implement the recommendations of the Guidelines, often initiated by NCPs themselves. Examples include the work on responsible supply chains in the garment and agriculture sector as well as meaningful stakeholder engagement in the extractive sector. Some NCPs have actively participated in this work by chairing or participating in advisory groups or providing comments on documents. However there is room for greater involvement of NCPs in the projects in particular in promoting the work to relevant enterprises to encourage implementation.

## **Some NCPs are involved in the development of broader responsible business conduct policy**

Certain NCPs are involved in the development of broader responsible business conduct policy, including the development of National Action Plans (NAPs) on Responsible Business Conduct and/or on Business and Human Rights. Currently 10 adhering countries have developed NAPs on business and human rights. In all but one of these NAPs, NCPs are highlighted as a non-judicial mechanism relevant to promoting access to remedy. In addition another 16 adherent countries are in the process of developing NAPs. Several of these countries have reported strong involvement of NCPs in the development of the NAP.

## **The NCP system is attracting increased attention**

There is growing interest from non-adhering countries in building structures that can undertake NCP-like activities and provide leadership on responsible business conduct matters. For example, in close collaboration with the OECD and supported by direct engagement with several NCPs, the government of Myanmar established a focal point on responsible business conduct. In July 2015, the OECD and the Chinese government

agreed on a programme of work for joint activities. A number of these activities focus on helping China strengthen its framework for responsible business conduct, and notably, to jointly set up a platform on responsible business conduct issues in China, to assist and support Chinese industry to apply and implement responsible business conduct, including sector specific instruments and guidelines.

### **A new Action Plan aims to strengthen National Contact Points**

The OECD Action Plan to strengthen NCPs was adopted by the Working Party on Responsible Business Conduct in December 2015 and responds to calls from OECD Ministers and G7 Leaders. The Action Plan describes individual activities in the form of peer reviews and capacity building and collective activities which include peer learning and the creation of tools and resources. To date, NCPs have benefited from several peer learning sessions at the OECD and at NCP-led meetings which bring together smaller numbers of NCPs and offer an opportunity for sharing experience. Peer reviews have proven beneficial both for the reviewed NCP as well as the peer reviewers and are recognised as a useful tool to identify achievements and areas for improvement. Under the Action Plan, 12 NCPs have committed to undergo a peer review by 2018.

### **Realising the potential of National Contact Points**

There are various advantages inherent to NCPs. Firstly, the broad scope of the Guidelines, across subject matters and business relationships, means that NCPs provide a platform for discussion and resolution of a wide range of issues. Furthermore it means that NCPs are not limited to considering impacts occurring within their borders, but may consider issues occurring across global supply chains.

Additionally NCPs facilitate access to consensual and non-adversarial means of dispute resolution, such as conciliation or mediation. This can be significantly quicker and less expensive than court proceedings or arbitration, and can enable the parties to engage in a process aimed at reaching a mutual agreement rather than a judgement. The process is designed to be constructive and result in recommendations for how companies could make improvements as well as allow for the development of longer term, constructive engagement between companies and stakeholders.

Strengthening the internal functioning of NCPs as well as ensuring that external frameworks promote strong outcomes under the NCP system will be necessary to ensuring that they live up to their full potential. In order to achieve this objective NCPs need adequate resources to fulfil their mandate. Furthermore, promoting policy coherence which recognises the role and value of the NCP system will also be useful. This may include tying consequences to specific instance proceedings in export credit decisions or support in international economic diplomacy, or recognizing the role of NCPs in NAPs or other relevant government policy.

## Introduction and structure of the report

Responsible business conduct is an essential part of an open international investment and trade climate and building a responsible business environment is in the interests of all. When the OECD Guidelines for Multinational Enterprises (the Guidelines) were adopted in 1976 as part of the OECD Declaration on International Investment and Multinational Enterprises (the Investment Declaration) they set the bar for responsible business conduct of enterprises operating internationally. Since then the Guidelines have been subject to review on five occasions to ensure they keep pace with the changing international environment. The most recent revision took place in 2011. Today the Guidelines represent a global framework for responsible business conduct covering all areas of business responsibility including disclosure, human rights, employment and industrial relations, environment, anti-corruption, competition and taxation.

The Guidelines are the only international instrument for responsible business conduct with a built-in implementation mechanism – the National Contact Points (NCPs). All governments adhering to the Investment Declaration are also required to adhere to the Decision of the Council on the Guidelines for Multinational Enterprises.<sup>1</sup> This Decision contains the legally binding obligation for adherents to set up a National Contact Point (NCP), to further the effectiveness of the Guidelines, and make human and financial resources available to their NCP to fulfil their responsibilities. NCPs are mandated to further the effectiveness of the Guidelines by undertaking promotional activities, handling enquiries and contributing to the resolution of issues that arise relating to the implementation of the Guidelines in specific instances.

This report takes stock of the experience gained by NCPs over the past 15 years. It focuses on the role of NCPs both as a platform for promoting the Guidelines and as a non-judicial grievance mechanism for receiving “specific instances” concerning the non-observance of the Guidelines by multinational enterprises. In addition, this report describes the role of NCPs in promoting the Guidelines and the sector projects under the proactive agenda, in developing policy coherence and in the creation of National Action Plans on Responsible Business Conduct (RBC) and/or Business and Human Rights.

The principal audience for the report are NCPs in the countries that have adhered to the Investment Declaration and therefore the Guidelines<sup>2</sup>. This report is also designed to help stakeholders including representatives from enterprises, trade unions and other civil society groups from adhering and non-adhering countries to learn about and understand the NCP system, both as a key contributor to the promotion of responsible business conduct and as a non-judicial grievance mechanism.

The report is divided into seven chapters. Chapter 1 sets out a brief history of the NCP system and the mandate of NCPs. Chapter 2 focuses on the role of NCPs with regard to the handling of specific instances. Chapter 3 looks at the work of NCPs in promoting the Guidelines. Chapter 4 addresses the various ways in which NCPs are structured. Chapter 5 describes the role of NCPs in the “proactive agenda”, which was

introduced in the 2011 revision of the Guidelines. Chapter 6 examines the wider policy role played by a number of NCPs in advancing responsible business conduct and Chapter 7 describes two sets of activities designed to help achieve functional equivalence among NCPs: peer learning and peer reviews.

Each of the chapters begins with relevant citations from the Implementation Procedures of the Guidelines. The Implementation Procedures include the Decision of the Council on the Guidelines for Multinational Enterprises, as amended in 2011 (hereafter the Council Decision), the Procedural Guidance and the Commentary on the Implementation Procedures.<sup>3</sup>

The Council Decision includes the legally binding commitment of adhering countries to further the implementation of the recommendations contained in the Guidelines. The Procedural Guidance sets out the role of the NCPs and the role of the Investment Committee and Working Party on Responsible Business Conduct. The Commentary on the Implementation Procedures was adopted by the Investment Committee to elaborate on these respective roles.

## Chapter 1

### What are NCPs?

This chapter describes the mandate of the National Contact Points (NCPs) and the core criteria that they are expected to meet in discharging their mandate. NCPs are required to operate in accordance with the core criteria of visibility, accessibility, transparency, and accountability. Most governments have made significant progress in ensuring their NCPs meet the core criteria, while others are still lagging behind. Most significantly, some NCPs do not appear to meet any of these criteria, even several years after their creation.

#### **Council Decision**

##### **I. National Contact Points**

*1. Adhering countries shall set up National Contact Points to further the effectiveness of the Guidelines by undertaking promotional activities, handling enquiries and contributing to the resolution of issues that arise relating to the implementation of the Guidelines in specific instances, taking account of the attached procedural guidance.*

##### **Procedural Guidance**

##### **I. National Contact Points**

*The role of National Contact Points (NCPs) is to further the effectiveness of the Guidelines. NCPs will operate in accordance with core criteria of visibility, accessibility, transparency and accountability to further the objective of functional equivalence.*

National Contact Points (NCPs) are offices established by governments that have adhered to the Investment Declaration. They have the mandate of *furthering the effectiveness of the Guidelines*. As set out in the Council Decision, this covers the following:

- Undertaking promotional activities and handling enquiries
- Contributing to the resolution of issues that arise relating to the implementation of the Guidelines in specific instances

In 2000, Procedural Guidance was introduced into the Decision on the Guidelines to assist NCPs in executing their mandate. This was further built upon in the 2011 revision

of the Guidelines. While governments have significant freedom in how they organise their NCPs and execute their mandates, the Procedural Guidance also makes clear that NCPs are expected to operate in accordance with the core criteria of visibility, accessibility, transparency and accountability<sup>4</sup>.

### A brief history of the NCP system

The OECD Guidelines for Multinational Enterprises (the Guidelines)<sup>5</sup> are recommendations addressed by governments to multinational enterprises operating in or from adhering countries. They provide non-binding principles and standards for responsible business conduct in a global context consistent with applicable laws and internationally recognised standards. The Guidelines are the only multilaterally agreed and comprehensive code of responsible business conduct that governments have committed to promoting.

Each adherent country to the Guidelines is required to establish an NCP to promote and implement the Guidelines. NCPs have been part of the Guidelines since 1984. However, it was the 2000 review that provided detailed Procedural Guidance on the role and functions of NCPs and gave them a stronger role to deal with all matters relating to the Guidelines, including resolving issues related to the non-observance of the Guidelines by companies.

#### **Box 1. The 2000 Review of the OECD Guidelines for Multinational Enterprises**

In order to ensure the Guidelines' relevance and effectiveness as a tool for the promotion of responsible business conduct, the 2000 review of the Guidelines echoed developments in the globalisation of the operations of Multinational Enterprises (MNEs) and changes in the world economy. The additions to the 2000 version of the Guidelines were: MNEs' contribution to sustainable development; respecting human rights; MNE's encouragement to suppliers, subcontractors and business partners to apply principles of corporate conduct compatible with the Guidelines; respect of core labour standards (child labour, forced labour, freedom of association and collective bargaining and non-discrimination in terms of race, religion, gender etc.); establishment of environmental management systems, the precautionary principle; and new chapters on bribery and consumer interests.<sup>6</sup>

The review also considered procedural and textual changes that promoted the visibility and effective implementation of the Guidelines, by providing a clearer and stronger Procedural Guidance on the role and functions of NCPs, reinforcing their role as a forum for discussion on all matters related to the Guidelines, and, in particular in providing a non-judicial grievance mechanism.

In June 2001, National Contact Points held their first annual meeting. This meeting was preceded by consultations with the Business and Industry Advisory Committee (BIAC), Trade Union Advisory Council (TUAC) and non-governmental organisations, and was followed by a Roundtable on Global Instruments for Corporate Responsibility. The 2001 annual meeting provided a unique opportunity for NCPs to share their experiences during the first year of activity since the completion of the 2000 review of the Guidelines, and to reflect on directions for future activity. Since then NCPs have held meetings at the OECD in Paris every year.

Between 2000 and the 2011 revision of the Guidelines the NCPs handled approximately 208 specific instances. Records from this period show that during this time NCPs were working to interpret the Procedural Guidance for specific instances and adapt it their own processes. In 2004, NCPs first raised the idea of pursuing projects to develop

proactive solutions to issues related to the Guidelines; this was the precursor to the “proactive agenda” component of the Guidelines. The financial sector was identified as one potential sector in this regard. It was also during this time that NCPs identified the need for peer learning to promote functional equivalence and to overcoming challenges in handling of specific instances.

In 2010, adhering governments agreed to revise the Guidelines to reflect changes in the landscape for international investment and multinational enterprises since the last review in 2000. The revised Guidelines and the related Council Decision were adopted by the then 42 adhering governments on 25 May 2011, on the occasion of the OECD’s 50th Anniversary Ministerial Council Meeting.

The 2011 revision of the Guidelines added a chapter on Human Rights aligned with the language of the UN Guiding Principles on Business and Human Rights (UNGPs) to the Guidelines. Furthermore the Guidelines make reference to relevant provisions of the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy as well as the Rio Declaration. As such the NCPs also function as a grievance mechanism for widely recognised expectations with regard to business and human rights, labour issues and the environment.

#### **Box 2. What changed in the 2011 revision to the OECD Guidelines for Multinational Enterprises with respect to NCPs**

The changes made during the 2011 revision aimed to ensure the continued role of the Guidelines as a leading international instrument for the promotion of responsible business conduct. In particular a new chapter dedicated to human rights was incorporated which is aligned with the UN Guiding Principles on Business and Human Rights (UNGPs). The revision introduced the expectation that enterprises should not only act responsibly in the context of their own business operations but also across supply chains and business relationships. It called on enterprises to carry out due diligence to manage risks and respond to adverse impacts they cause or contribute to or are linked to through a business relationship.

The 2011 revision:

- ✓ Added criteria of impartiality, predictability, equitability, and compatibility with the Guidelines for handling of specific instances.
- ✓ Included a commitment to contribute adequate resources for NCPs.
- ✓ Provided more detailed reporting criteria with regard to specific instances including:
  - When to report (at the conclusion of the procedures).
  - What to report (can vary depending upon whether the specific instance was accepted or whether agreement was reached between the parties)
  - Who to report to (the Investment Committee, relevant government agencies, and the public).
- ✓ Introduced the proactive agenda, including the role of the NCP.
- ✓ Provided greater flexibility in terms of institutional arrangements of NCPs.
- ✓ Introduced a recommendation that NCPs should have advisory or oversight bodies.

**Box 2. What changed in the 2011 revision to the OECD Guidelines for Multinational Enterprises with respect to NCPs (cont.)**

- ✓ Included a recommendation that NCPs provide advice and procedural information on filing specific instances.
- ✓ Included an expectation that NCPs engage in peer learning activities.
- ✓ Included language stating that the effectiveness of a specific instance procedure depends on the good faith of all parties involved and describing what is expected in terms of ‘good faith’ behaviour.
- ✓ Provided guidance on how NCPs should coordinate with one another in handling specific instances.
- ✓ Included the link between enterprises’ activity and the issue raised as a criterion during initial assessment.
- ✓ Clarified that parallel proceedings cannot be invoked as grounds for not accepting a specific instance submission for further examination unless it can be demonstrated that acceptance of the submission and any mediation process resulting therefrom would be prejudicial to the outcome of those proceedings.
- ✓ Included language stating that it may be appropriate for NCPs to follow up with regards to their recommendations in specific instances.
- ✓ Included indicative timeframes for specific instances: initial assessments (3 months); assistance to parties (as agreed to); conclusion of procedures (3 months); entire procedure (ideally within 12 months).
- ✓ Provided the flexibility to increase the frequency of NCP meetings.
- ✓ Included OECD Watch as a party that may bring a request for clarification or substantiated submission on whether an NCP is fulfilling its responsibilities with regard to its handling of specific instances.

## Role of institutional stakeholders

There are three institutional stakeholders connected to the Guidelines: the Business and Industry Advisory Committee (BIAC), the Trade Union Advisory Committee (TUAC) (the “advisory bodies”) and OECD Watch, an international network of more than 80 civil society organisations. The Investment Committee and the Working Party on Responsible Business Conduct periodically invites these organisations as well as other international partners to express their views on matters covered by the Guidelines. In addition, exchanges of views with these organisations on these matters can be held at their request.

These three organisations play a critical role by ensuring the views of their stakeholders are represented and communicated to NCPs. The institutional stakeholders also draw attention to areas in need of improvement. In advance of meetings of the NCPs or the OECD Working Party on Responsible Business Conduct, TUAC and OECD Watch generally prepare submissions and assessments relating to topics to be discussed on the agenda. In 2015, OECD Watch published the report “Remedy Remains Rare”, a critical analysis of the first 15 years of NCP performance<sup>7</sup>. In addition, prior to the revision of the Guidelines in 2011, OECD Watch produced a report setting out its ideas for a model NCP.<sup>8</sup>

In 2011 TUAC developed a check-list for NCPs on the steps to be taken to implement the revised 2011 Guidelines. In 2012 TUAC published profiles of NCPs on its website and in 2015, TUAC issued a 15 point plan for National Contact Points, setting out recommendations for improvements drawing on the core criteria for functional equivalence.<sup>9</sup> Also in 2015, BIAC shared the results of their third survey of members' experiences with NCPs and specific instance procedures.<sup>10</sup>

As users of the NCP grievance mechanism, OECD Watch and TUAC have carried out significant work to track the performance of individual NCPs while BIAC plays an important role in ensuring the Guidelines are promoted to enterprises. All three stakeholders made a joint statement in October 2015 calling on the OECD "to provide the resources necessary to fund an effective peer review programme and on governments of all adhering countries to ensure that their NCPs are adequately equipped and staffed to fulfil their objectives, as set out in the OECD Guidelines."

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### Institutional stakeholders

**BIAC** The Business and Industry Advisory Committee to the OECD (BIAC) is an independent international business association devoted to advising government policymakers at the OECD and related fora on the many diversified issues of globalisation and the world economy. Officially recognised since its founding in 1962 as being representative of the OECD business community, BIAC promotes the interests of business by engaging, understanding and advising policy makers on a broad range of issues. Through its 38 policy groups, which cover the major aspects of OECD work most relevant to business, BIAC members participate in meetings, global forums and consultations with OECD leadership, government delegates, committees and working groups. BIAC advocates consensus industry views so to ensure that the resulting policy instruments and guidance assist, not hinder, private sector capacity to generate growth and prosperity.

**TUAC** The Trade Union Advisory Committee to the OECD (TUAC) is an international trade union organisation that represents the views of trade unions at the OECD. TUAC's origins go back to 1948 when it was founded as a trade union advisory committee for the European Recovery Programme - the Marshall Plan. When the OECD was created in its current form in 1962 as an intergovernmental policy making body, TUAC continued its work of representing organised labour's views to the new organisation. TUAC's role is to help ensure that global markets are balanced by an effective social dimension. Through regular consultations with various OECD committees, the secretariat, and member governments TUAC coordinates and represents the views of the trade union movement in the industrialized countries. A key policy priority for TUAC is the effective implementation of the OECD Guidelines.

**OECD Watch** OECD Watch is a global network of a diverse range of civil society organisations. More than 80 members in 45 countries are bound together by a commitment to ensure business activity contributes to sustainable development and poverty eradication, and to hold corporations accountable for their activities. OECD Watch acts as a conduit for bringing the perspectives and interests of NGOs and disadvantaged communities into policy discussions at the OECD Investment Committee. In addition to monitoring and advocating for improved NCP performance and implementation of the Guidelines, OECD Watch develops policy advice on a wide range of social, environmental and economic topics related to international investment and business activity. The network advocates for these policies and positions in its interactions with policy-makers, businesses and trade unions.

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## Chapter 2

### Handling specific instances

NCPs have the mandate to provide a *forum for discussion* so as to contribute to the resolution of issues that arise relating to implementation of the Guidelines in specific instances. This makes the Guidelines the only government-backed international instrument for responsible business conduct with a built-in non-judicial grievance mechanism. This mechanism has been part of the mandate of NCPs since the 2000 review of the Guidelines. To date over 360 specific instances have been handled by NCPs, addressing impacts from business operations in over 100 countries and territories.<sup>11</sup> The specific instance mechanism of National Contact Points provides a unique platform for resolving issues arising under the Guidelines and has achieved impressive results over the past 15 years.

The NCP system has handled a wide range of issues over the past 15 years and has successfully mediated many specific instances covering business and human rights, employment and labour and environmental issues, among others. Between 2011 and 2015, approximately half of all specific instances which were accepted for further examination by NCPs and concluded resulted in an agreement between the parties. Agreements reached through NCP processes were often paired with other types of outcomes such as follow-up plans and have led to significant results, including changes to company policies, remediation of adverse impacts, and strengthened relationships between parties.

While there have been many successful outcomes from the specific instance mechanism over the past 15 years, significant variations in the practice of NCPs has contributed to uneven performance in handling specific instances. Significant challenges remain with regard to the handling of specific instances. Stakeholders have highlighted several challenges including accessibility of the NCP due, for example, to procedural rules imposing statute of limitations, overly restrictive definitions (e.g. of the terms “multinational enterprise”, “adverse impact”, “business relationship”), costs for parties to participate in mediation, and the overly stringent interpretation of the requirement that an issue be “material and substantiated”. In addition to accessibility issues non-acceptance of specific instances due to parallel proceedings, delays, insufficient use of recommendations or determinations in final statements, and lack of clear or equitable procedures have also been highlighted by stakeholders as areas for improvement. Recurring challenges mentioned by NCPs in dealing with specific instances include balancing confidentiality and transparency; cooperation between NCPs and resource constraints.

**Council Decision**

*Adhering countries shall set up National Contact Points to further the effectiveness of the Guidelines by undertaking promotional activities, handling enquiries and contributing to the resolution of issues that arise relating to the implementation of the Guidelines in specific instances, taking account of the attached procedural guidance.*

**Procedural Guidance****C. Implementation in Specific Instances**

*The National Contact Point will contribute to the resolution of issues that arise relating to implementation of the Guidelines in specific instances in a manner that is impartial, predictable, equitable and compatible with the principles and standards of the Guidelines. The NCP will offer a forum for discussion and assist the business community, worker organisations, other non-governmental organisations, and other interested parties concerned to deal with the issues raised in an efficient and timely manner and in accordance with applicable law. In providing this assistance, the NCP will:*

- 1. Make an initial assessment of whether the issues raised merit further examination and respond to the parties involved.*
- 2. Where the issues raised merit further examination, offer good offices to help the parties involved to resolve the issues. For this purpose, the NCP will consult with these parties and where relevant:*
  - a) Seek advice from relevant authorities, and/or representatives of the business community, worker organisations, other non-governmental organisations, and relevant experts;*
  - b) Consult the NCP in the other country or countries concerned;*
  - c) Seek the guidance of the Committee if it has doubt about the interpretation of the Guidelines in particular circumstances;*
  - d) Offer, and with the agreement of the parties involved, facilitate access to consensual and non-adversarial means, such as conciliation or mediation, to assist the parties in dealing with the issues.*
- 3. At the conclusion of the procedures and after consultation with the parties involved, make the results of the procedures publicly available, taking into account the need to protect sensitive business and other stakeholder information [...]*

*The NCP will notify the results of its specific instance procedures to the Committee in a timely manner.*

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|  | <p>4. <i>In order to facilitate resolution of the issues raised, take appropriate steps to protect sensitive business and other information and the interests of other stakeholders involved in the specific instance. While the procedures under paragraph 2 are underway, confidentiality of the proceedings will be maintained. At the conclusion of the procedures, if the parties involved have not agreed on a resolution of the issues raised, they are free to communicate about and discuss these issues. However, information and views provided during the proceedings by another party involved will remain confidential, unless that other party agrees to their disclosure or this would be contrary to the provisions of national law.</i></p> <p>5. <i>If issues arise in non-adhering countries, take steps to develop an understanding of the issues involved, and follow these procedures where relevant and practicable.</i></p> |
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## NCPs - A unique grievance mechanism

The NCPs have the mandate to provide a *forum for discussion* so as to contribute to the resolution of issues that arise relating to implementation of the Guidelines in specific instances. This makes the Guidelines the only government-backed international instrument for responsible business conduct with a built-in non-judicial grievance mechanism. This mechanism has been part of the mandate of NCPs since the 2000 review of the Guidelines.

Half of all specific instances have been handled by just six NCPs, and 14 NCPs have not yet received a specific instance. In recent years, some governments have made significant efforts in providing NCPs with resources needed to handle specific instances more efficiently; for example, by providing a budget to hire external experts, including mediators; providing training in mediation and problem solving to NCP staff, etc. On the other hand, insufficient resources and a lack of support translate into a lack of skills development for a number of NCPs; this is a challenge since the mandate involves increasingly complex and sophisticated issues.

Specific instances are not legal cases and NCPs are not judicial bodies. As such NCPs cannot impose sanctions, directly provide compensation nor compel parties to participate in a conciliation or mediation process. Nevertheless the NCP system can generate important consequences. For example, some NCPs issue final statements upon concluding specific instance processes which include recommendations to companies based on the particular circumstances of the case. Certain NCPs also make determinations, setting out their views on whether a company observed the Guidelines or not. Such practice can have reputational impacts for companies and can encourage engagement of companies in the process. Furthermore, in some contexts governments consider NCP statements with regard to economic decisions, e.g. in the context of public procurement decisions or in providing diplomatic support.

### *Advantages*

The OECD Guidelines are aligned with the language of the UN Guiding Principles for Business and Human Rights (UNGPs) and make reference to relevant provisions of the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy as well as the Rio Declaration. As such the NCPs also function as a grievance mechanism for widely recognised expectations with regard to business and human rights, labour issues and the environment.

There are various advantages inherent to the NCP mechanism as compared to other forms of access to remedy. Firstly, the broad scope of the Guidelines, across subject matters and business relationships, means that NCPs provide a platform for discussion and resolution of a wide range of issues. Secondly NCPs facilitate access to consensual and non-adversarial means of dispute resolution, such as conciliation or mediation. This can be significantly quicker and less expensive than court proceedings or arbitration, and can enable the parties to engage in a process aimed at reaching a mutual agreement rather than a judgement, distinguishing it from formal judicial processes. Thirdly, the system allows for the development of longer term, constructive engagement between companies and stakeholders and cooperation in designing and implementing improvements in business behaviour.

### *Challenges*

There have been many successful outcomes from the specific instance mechanism over the past 15 years, however significant variations in the practice of NCPs in applying the guidance for specific instances has contributed to uneven performance in handling specific instances.

Challenges remain with regards the handling of specific instances by NCPs, among which stakeholders have highlighted: accessibility and overly stringent interpretation of criteria “material and substantiated” resulting in a high rate of non-acceptance of specific instances for further examination, overly restrictive definitions (e.g. of the term “multinational enterprises”, “adverse impact”, “business relationship”), costs for parties to participate in mediation, parallel proceedings, delays, insufficient use of recommendations or determinations in final statements, and lack of clear or equitable procedures. Recurring challenges mentioned by NCPs in dealing with specific instances include balancing confidentiality and transparency, cooperation between NCPs, and resource constraints.

## **Criteria for dealing with specific instances**

The Procedural Guidance provides broad orientation to NCPs on how to deal with specific instances.<sup>12</sup> It requires NCPs to handle specific instances in a manner that is impartial, predictable, equitable and compatible with the Guidelines.

### ***Guiding Principles for Specific Instances***

*Consistent with the core criteria for functional equivalence in their activities NCPs should deal with specific instances in a manner that is:*

*Impartial. NCPs should ensure impartiality in the resolution of specific instances.*

*Predictable. NCPs should ensure predictability by providing clear and publicly available information on their role in the resolution of specific instances, including the provision of good offices, the stages of the specific instance process including indicative timeframes, and the potential role they can play in monitoring the implementation of agreements reached between the parties.*

*Equitable. NCPs should ensure that the parties can engage in the process on fair and equitable terms, for example by providing reasonable access to sources of information relevant to the procedure.*

*Compatible with the Guidelines. NCPs should operate in accordance with the principles and standards contained in the Guidelines.*

### ***NCP rules of procedure***

In addition to developing general rules of procedure many NCPs develop specific rules of procedure for engagement with parties to a specific instance. Rules of procedure may include objectives, scope, process and rules around confidentiality. A number of NCPs also make their rules of procedure available online.

Having clear and equitable rules of procedure can help to ensure predictability and can help build trust among the parties engaged in specific instances. In interviews with NCPs and parties that have been involved in specific instances, clear rules of procedure were raised as one of the most important aspects of ensuring successful handling of specific instances. One company reported that vague and poorly communicated procedures were one of the most discouraging aspects of their experience with the NCP system.

Many NCPs make efforts to stress equitability and transparency in their procedures, often through developing them via multi-stakeholder consultation. For example in 2014, the German NCP revised its “procedural notes” to make the process of dealing with specific instances more transparent. This was done in consultation with all relevant stakeholders.<sup>13</sup> The procedures and practices of the Danish NCP include aspects that seek to address perceptions of fairness between parties with regard to information sharing. For instance, the procedures clearly identify what type of information should be shared by and with parties, which can help to ensure that parties feel they have equal access to information. The procedures for handling specific instances within the Brazilian NCP are regulated by a resolution which was the result of comprehensive debate among the NCP and broad consultation with stakeholders.<sup>14</sup>

The Norwegian NCP has detailed rules of procedure which provide a predictable process for stakeholders. The NCP also provides a guidance form for making submissions. After the handling of a specific instance, the NCP always invites parties to complete a feedback form to gather their views on how the case was handled. The Norwegian NCP updated its procedural rules in 2014 on the basis of feedback received in the peer review completed earlier that year.<sup>15</sup>

### Box 3. UK NCP procedures for specific instances

The UK NCP has published its procedures for dealing with complaints since 2008. Key points are:

- **Initial assessment:** The NCP determines if the issues raised merit further examination. If there is no further action necessary an Initial Assessment is published anonymising the names of the parties. If any party feels that the NCP has not acted in accordance with NCP procedures they can ask for a review by the independent Steering Board.
- **Mediation:** If there is something further to examine, the NCP offers professional paid mediation. A time limit of 6 to 9 months depending on the complexity of the case is usually set for mediation.
- **Final assessment:** This may include any mediated settlement and an investigation of the complaint including taking expert evidence on a particular issue. Recommendations may be issued as well. Both parties are able to comment on the draft and if they feel that the NCP has not acted in accordance with its procedures they can ask for a review by the Steering Board.
- **Follow-up Statement:** Usually made within 12 to 18 months after the final assessment. The purpose of this is to see if the mediated settlement was complied with.

The initial assessment, final assessment and follow-up statements are all publically available on the NCP website and sent to interested bodies such as Parliament, UK Export Finance, the Foreign and Commonwealth Office and the Department for International Development.

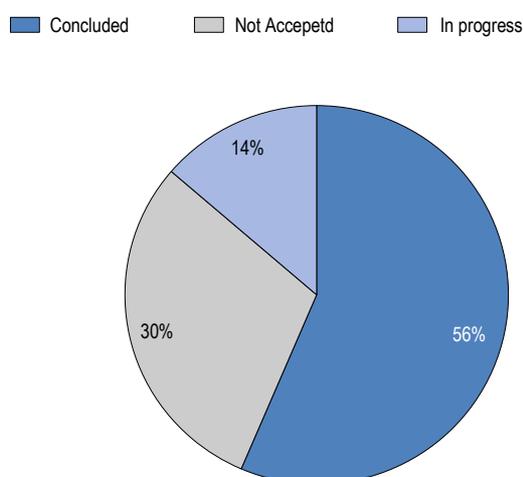
Source: UK National Contact Point , Procedures for dealing with complaints brought under the OECD Guidelines for Multinational Enterprises available at [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/270577/bis-14-518-procedural-guidance.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/270577/bis-14-518-procedural-guidance.pdf).

## Overview of specific instances

Between 2000 and 2015, 366 specific instances have been filed with NCPs, with a slight increase recorded from 2011 onwards during which 169 specific instances were filed. Currently 341 of these are reported on the OECD specific database, 25 additional specific instances filed after 2011 have not yet been reported on the database as they were only recently closed or are pending submission of initial assessments at the time of writing. Additionally, comparison of the OECD database of specific instances with the TUAC and OECD Watch databases reporting specific instances has found an additional 49 specific instances unreported on the OECD database from the year 2000 through 2010. As the 2011 revision of the Guidelines introduced new reporting requirements with regard to specific instances, these 49 specific instances have not been included in the total reported number of 366.

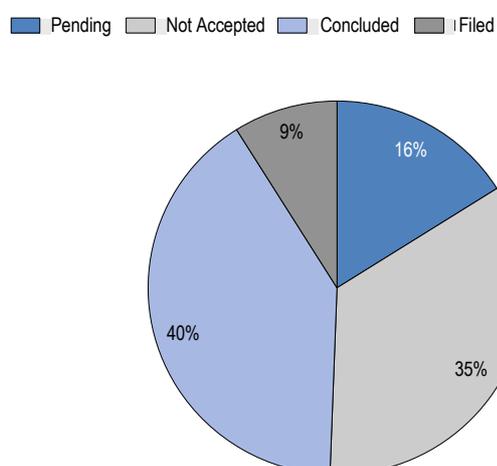
Of the 366 specific instances recorded, 206 have been reported as concluded, 110 were reported as not accepted for further examination and 50 are in progress.<sup>16</sup>

Figure 1. Status of specific instances reported between 2000-15



A review of specific instances reported between 2011 and 2015 reveals that 40% (68 specific instances) of these have been reported as concluded, 35% (59 specific instances) were reported as not accepted for further examination, 9% (15 specific instances) were recently filed and another 16% (27 specific instances) are pending.

Figure 2. Status of specific instances reported between 2011-15



Until this year specific instances were either reported as concluded or in progress on the OECD database. The term ‘‘rejected’’ is not included nor defined in the Guidelines. As such NCPs have reported specific instances not accepted for further examination differently. Some NCPs report any case which was not deemed to require further examination during the initial assessment as ‘rejected’ other NCPs report these as concluded if they nevertheless engaged with parties and came to a decision on the substance of a specific instance. For this reason 16 specific instances, or 24% of all

specific instances reported as concluded between 2011 and 2015 were in fact deemed not to require further examination during the initial assessment stage because the issues raised were not found to be *bona fide* or relevant to the implementation of the Guidelines under the criteria provided in the Procedural Guidance or because the specific instance was withdrawn before this assessment took place. A lack of clear frameworks on how to report on specific instances not accepted for further examination may mean that current numbers on ‘concluded specific instances’ are not completely accurate and additional guidance on how to report on the status of specific instances may be useful.

#### Box 4. Databases tracking specific instances

At present there are three databases tracking specific instances submitted to NCPs. The OECD database of specific instances covers those submitted between 2001 to present. The database is populated on the basis of information provided by NCPs directly to the OECD Secretariat. The OECD database organises specific instances by sector, chapter of the Guidelines, home country (location of MNE subject to the case), host country (location where the impact occurred), etc.

The other two databases are managed by OECD Watch and TUAC respectively, the former covering specific instances brought forward by civil society and individuals and the latter by trade unions. OECD Watch has recorded 250 specific instances submitted by civil society as of June 2015 and TUAC has recorded 175 instances submitted by trade unions at the time of writing<sup>17</sup>. Both of these databases cover specific instances dating from 2000.

Each database reports specific instances differently. This explains some of the discrepancy in the numbers of reported specific instances. For example the OECD Watch database reports specific instances from the point of filing and according to the different MNEs involved. A related specific instance against three MNEs is therefore recorded as three separate specific instances. The OECD database records specific instances as they are reported by NCPs. Therefore one specific instance involving three MNEs may be recorded as one specific instance if it is reported as one specific instance to the OECD Secretariat by the NCP. Table 1 sets out the main differences between the three databases. Until 2014, updates to the OECD database occurred on an annual basis following the annual reporting schedule of NCPs to the OECD which ran from June – May. Since 2015, all NCPs have been requested to send updates to the database as they occur to help improve the accuracy of the database and ensure more frequent updates.

A review of all specific instances reported on the three databases since 2011 identified several specific instances that had not been reported on the OECD database. The Secretariat has reviewed all discrepancies within the database and is in the process of addressing any gaps in reporting.<sup>18</sup> Going forward the Secretariat will liaise more closely with TUAC and OECD Watch to ensure comprehensive and up-to-date reporting and follow up with NCPs regarding specific instances. Additionally the Secretariat will explore aligning reporting approaches between the OECD, TUAC and OECD Watch databases to ensure consistent reporting and cataloguing of specific instances. Finally, since 2015, the Secretariat has begun to reflect the follow-up of specific instances by updating the database of closed specific instances and including links to follow-up communiqués issued by NCPs.

## Parties to specific instances

The Procedural Guidance of the Guidelines provides that NCPs will offer a ‘forum for discussion and assist the business community, worker organisations, other non-governmental organisations, and other interested parties concerned to deal with the issues raised in an efficient and timely manner and in accordance with applicable law.’<sup>19</sup>

NGOs have historically been the main group using the specific instance mechanism, accounting for 80 specific instances or 48% of all specific instances since 2011, followed by trade unions which account for 41 specific instances or a quarter of all specific instances since 2011. Individuals have filed 33 specific instances since 2011 accounting for 19% of all specific instances in this time period. In recent years specific instances have also been filed by government officials and companies, demonstrating that the NCP mechanism remains accessible to a wide range of stakeholders. It should be noted that some specific instances are brought jointly by NGO/communities and trade unions. These are represented by ‘multistakeholder consortium’ below.

Figure 3. Users of the specific instance mechanism between 2011-2015

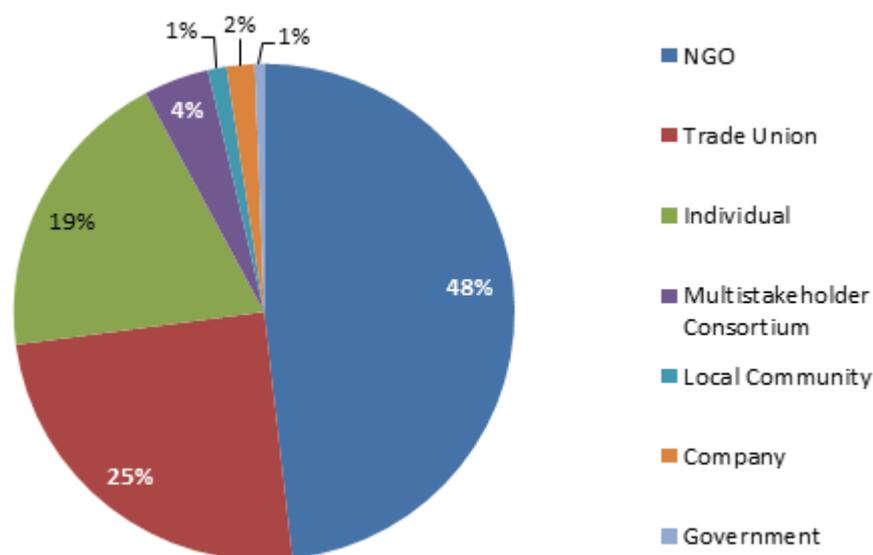


Table 1. Technical specifications of the specific instances databases (field descriptions)

	Title	Lead NCP	Host Country	Issues/Themes	Date	Status
<b>OECD</b>	Contains a short summary of the specific instance. Company, NGOs and trade union names are only mentioned when the NCP has mentioned them in its public statements or in its submissions to the Secretariat.	Only NCPs who have received a specific instance are listed in this field. When a specific instance involves several NCPs, a lead NCP is designated and supporting NCPs are named separately.	Countries that have been host to a specific instance are displayed in this drop down list. Some specific instances involve multiple host countries.	The thematic list is based on the 11 chapters of the Guidelines. The chapter numbers are not included to allow for the specific instances treated between 2000 and 2011 to be integrated in the database.	Designates the date the NCP reports receiving a submission.	This field contains three options: (1) In progress: includes all specific instances that fall in the categories: - under initial assessment - assistance to parties - transferred (2) Concluded: includes all specific instances reported as concluded. These fall into two categories : - specific instances closed after initial assessment - specific instances closed after assistance to parties (3) Not accepted: which includes all specific instances reported as not accepted for further examination at the initial assessment stage.
<b>OECD Watch</b>	Contains name of the complainant(s) and company information*.  *Name of the company/ies responsible for the alleged violation and address/website, country where the alleged violation is occurring, other companies involved (listed in the complaint or in related complaints).	The NCP where the complaint was filed / lead NCP, NCP address, website and other NCP involved.	The country where the alleged violation has allegedly taken place appears under company information.	It does not include themes, but list all the Chapter of the Guidelines that has allegedly been breached in the case database.  However, entries distinguish between the old and new Guidelines. Old cases are referenced as “2000 Guidelines”.	Date the complaint was filed with the NCP.	This field contains seven options: (1) Filed: the NGO has sent the complaint to the NCP. (2) Pending: the NCP has confirmed that it is admissible and the specific instance procedure is under way. (3) Concluded: the NCP has reached a decision and issued a statement. (4) Agreement: the complainants and company have reached a (partial) agreement. (5) Rejected: the NCP has formally rejected the case presented by the NGO. (6) Withdrawn: the complainants have decided to withdraw the case from the NCP procedure. (7) Blocked/Delayed without resolution: the NCP is not clear about the status of the case (no formal rejection but no intention of accepting the specific instance).
<b>TUAC</b>	Same as OECD Watch	Same as OECD Watch	The country where the alleged violation has allegedly taken	TUAC files its cases in the same manner as OECD Watch but also	This field designates the day on which the	This field distinguishes between the Status and the NCP Decision.

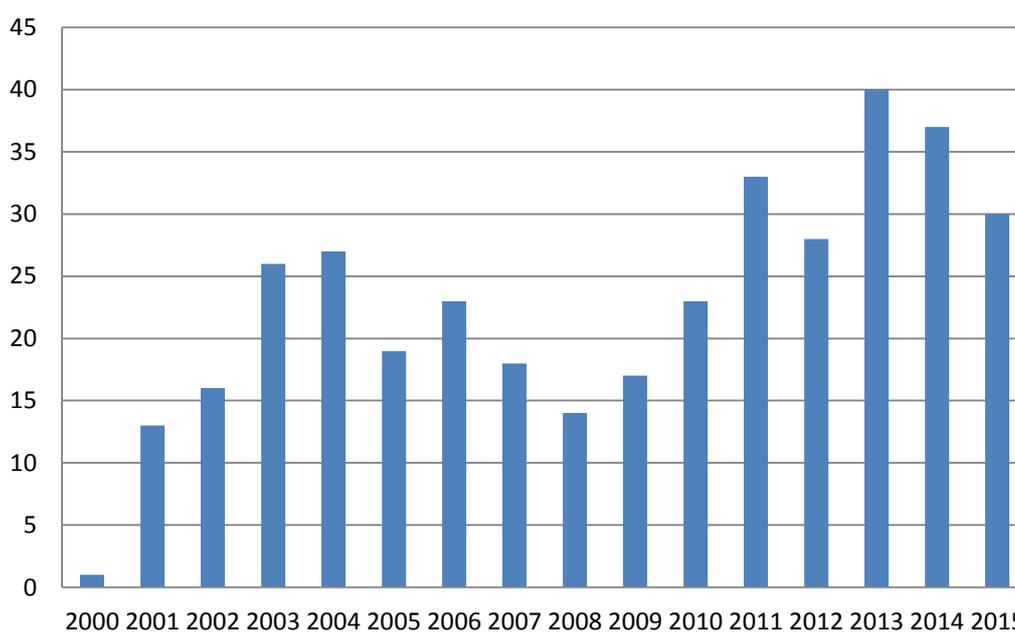
Title	Lead NCP	Host Country	Issues/Themes	Date	Status
		place appears under overview.	includes number of the chapter referenced in the specific instances and includes the paragraph. Pre-2011 cases have the numbering from the old Guidelines but statistics are able to combine the new and the old numbering.	complaint was sent to the NCP.	<p>Status is classified under six options:</p> <ol style="list-style-type: none"> <li>(1) Suspended;</li> <li>(2) Closed;</li> <li>(3) Withdrawn;</li> <li>(4) Ongoing</li> <li>(5) No Information;</li> <li>(6) No Decision</li> </ol> <p>NCP decision is different from the Status (the Status might be Withdrawn but the NCP might have accepted the case). It is classified into:</p> <ol style="list-style-type: none"> <li>(1) Decision Pending;</li> <li>(2) Suspended;</li> <li>(3) Rejected;</li> <li>(4) Accepted;</li> <li>(5) No Information;</li> <li>(6) No Decision;</li> <li>(7) Blocked.</li> </ol>

## Key trends

The OECD database shows a steady but not extensive use of the NCP mechanism. Over the past 15 years, the number of specific instances brought to NCPs has increased overall but not at a regular nor significant rate (see Figure 4). This could suggest that awareness among potential users of the system has remained relatively constant since NCPs began accepting specific instances in 2000.

Figure 4 sets out the number of specific instances received annually since 2000. The date referred to here is the date when the NCP in question received the submission.

Figure 4. Number of specific instances received annually since 2000



### *Trends by sector*

Most specific instances relate to issues arising from MNEs operating in the manufacturing sector, comprising 33% of all specific instances. Mining and quarrying is the second most represented sector in terms of numbers of specific instances. These proportions have remained relatively constant since 2000.

Issues arising in the financial sector have seen significant increases in terms of submissions, from about 8% of specific instances from 2000-2010 to 17% from 2011. Through the specific instance procedure NCPs have been instrumental in considering expectations of the financial sector in applying the Guidelines. As early as 2004 a case was brought against three Belgian banks due to their alleged role in facilitating conflict financing in the Democratic Republic of the Congo, however this case was ultimately concluded without resolution due to parallel legal proceedings.

Figure 5. Sectors represented in specific instances from 2000 - 2015

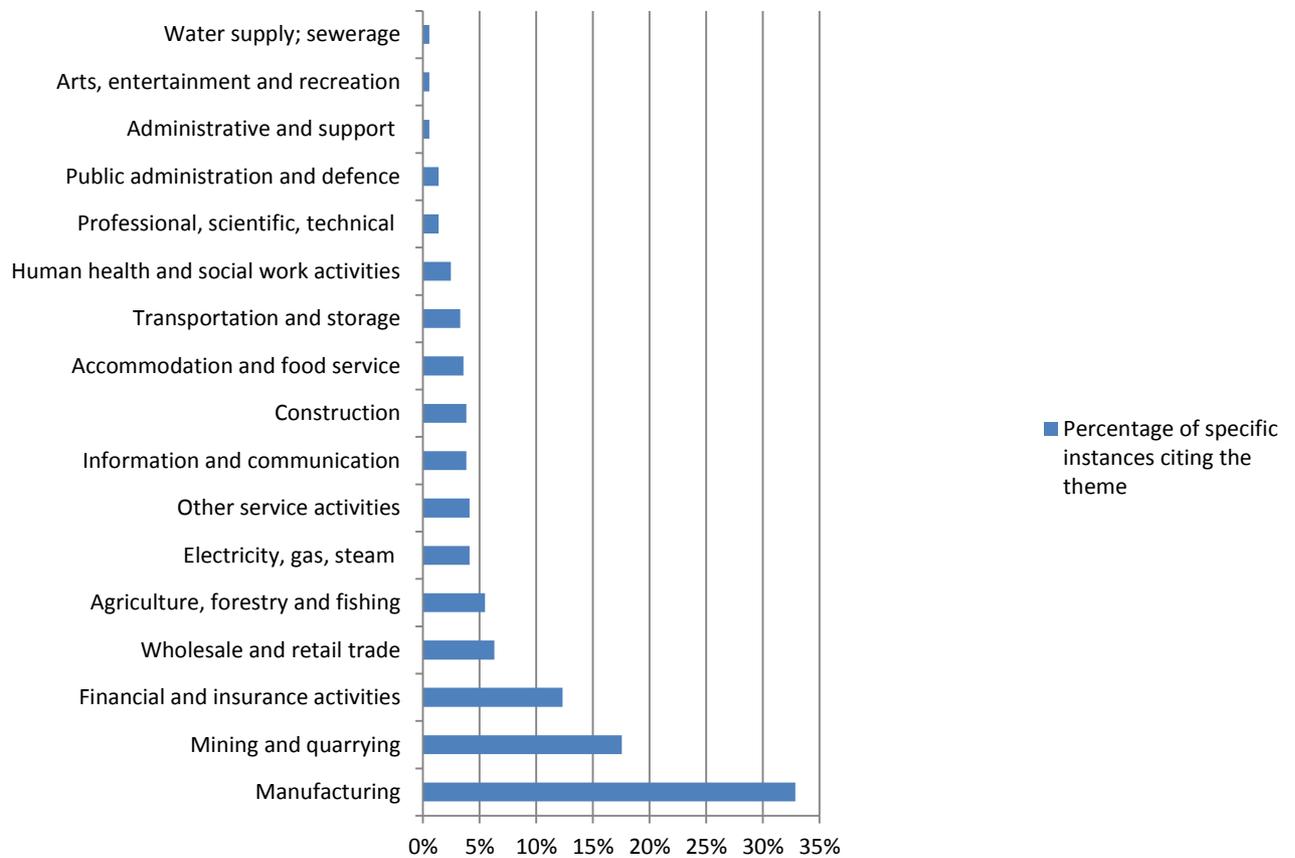
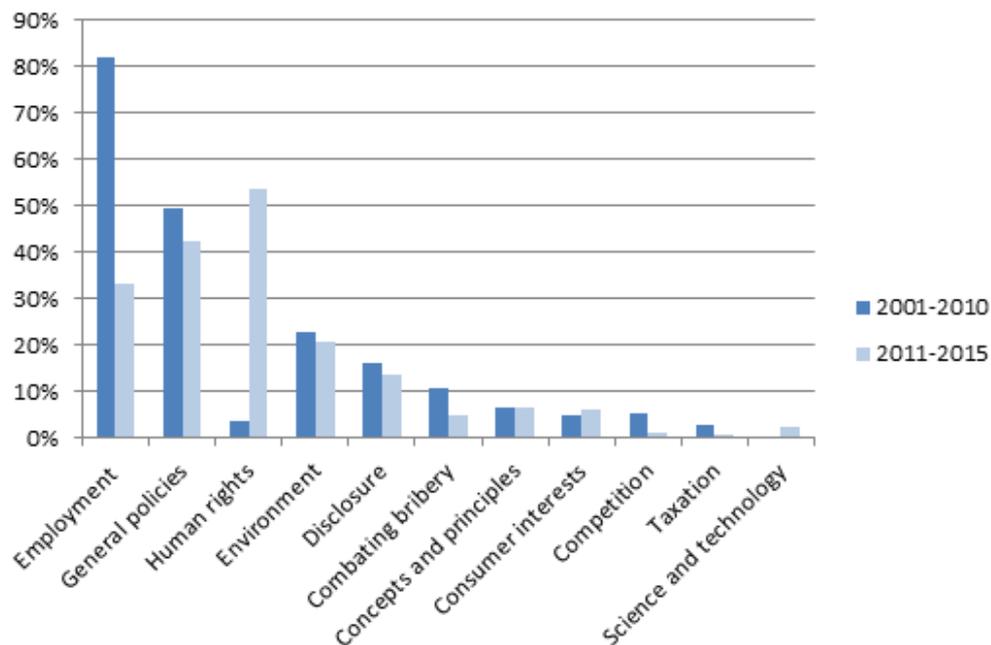


Figure 6. Main themes of specific instances (before and after 2011)



### ***Trends by Guidelines chapter***

Specific instances treated to date have covered all chapters of the Guidelines with the majority focusing on the chapters on employment and industrial relations (55%), human rights (24%) and environment (21%). Following the addition of a human rights chapter in the 2011 revision to the Guidelines, there has been an increase in instances citing the human rights chapter. A recent analysis of a sample of 158 human rights specific instances identified the following trends: “more human rights cases than other types of complaints; a greater diversity of human rights cases than in the past; a diversification of industries against which complaints are brought; the growing role of the Guidelines’ due diligence provisions; and a higher admissibility rate for human rights cases than for others.”<sup>20</sup> The changes in distribution of themes and the increase in specific instances treating human rights issues after the 2011 revision of the Guidelines is illustrated in Figure 6.

### ***Trends by location***

Under the Procedural Guidance of the Guidelines, specific instances will generally be dealt with by the NCP of the country in which the issues have arisen. However, only approximately one third of specific instances are actually handled by the NCP of the country where the impact occurred. This is in part because specific instances often occur in countries that are not adherents to the Guidelines and thus do not have NCPs. In these cases specific instances are usually brought to the country where the company is headquartered. To date, specific instances have covered impacts occurring in a total of 101 “host” countries, i.e. those countries where the impacts arose. The number of specific instances by host country is set out in Table 2.

Some specific instances cover issues in several countries at the same time (both adhering and non-adhering countries) and can involve several companies based in different countries. In addition, the same specific instance can be submitted to several NCPs. The complexity of such cases calls for innovative and appropriate coordination among NCPs.

Approximately half of all specific instances reported since 2000 have been handled by just 6 NCPs (United Kingdom, United States, Netherlands, Germany, Brazil and France). Several reasons may explain this. One reason is that many of the largest MNEs operating globally are headquartered in these countries. Another reason is that these NCPs may have been particularly successful in promoting the Guidelines and have made the NCP mechanism available in their jurisdictions among their stakeholders. In addition, it is also possible that in these jurisdictions NCPs represent attractive alternatives to formal judicial processes which may be more onerous or expensive or employ different standards of assessment. The number of specific instances received by individual NCPs is set out in Table 3.

There are 14 NCPs which have not received any specific instances and three that have received only one. Professor John Ruggie argued in an article exploring human rights specific instances that “[i]t is simply implausible to assume that this in every case reflects the absence of breaches of the Guidelines; it is far more likely that the NCPs in question are invisible or unresponsive to potential complainants”.<sup>21</sup> Another explanation is that there is little awareness of the NCP system in certain countries or potentially a lack of an active civil society, such as worker organisations or NGOs, which are the primary users of the NCP system. Alternatively a lack of resources within certain groups of civil society may also be a reason explaining the absence or low number of specific instances in certain countries. The lack of a large number of companies operating in or from the country may also have an impact.

Table 2. Number of specific instances by host country or territory 2000-2015

<b>101 Host countries and territories</b>	
United States	30
Brazil	26
Democratic Republic of the Congo	24
India	21
United Kingdom	15
Argentina	13
New Zealand	12
Indonesia	11
Denmark, France, Chile	10
Philippines	9
Turkey, Uzbekistan, Russian Federation	8
Netherlands, Peru	7
Bahrain, , Cameroon, Canada, Czech Republic Korea, México,	6
Belgium, Germany, Italy, Malaysia, Myanmar, Pakistan, Papua New Guinea	5
Australia, Bangladesh, China, Colombia, Ecuador, Lao, Norway, Spain, Sri Lanka, Zambia	4
Austria, Guatemala, Israel, Japan, Liberia, Mali, Poland, Portugal, South Africa, Sweden, Thailand, Uruguay	3
Cambodia, Georgia, Hungary, Ireland, Malawi, Mongolia, Montenegro, Mozambique, Nigeria, Palestinian Administered Areas, Paraguay, Switzerland, Yemen	2
Algeria, Azerbaijan, Belize, Benin, Cuba, Dominican Republic, Egypt, Ethiopia, El Salvador, European Union, Finland, Gabon, Ghana, Greece, Hong Kong, Iceland, Iraq, Kazakhstan, Kosovo, Luxembourg, Maldives, Morocco, Nepal, Nicaragua, Panama, Qatar, Romania, Senegal, Singapore, Slovak Republic, Tunisia, Uganda, United Arab Emirates, Vietnam, Venezuela, Western Sahara	1

Table 3. Number of specific instances handled by NCPs 2000-2015

<b>NCP</b>	
United Kingdom	45
United States	43
Netherlands	28
Brazil, Germany	25
France	21
Belgium	15
Canada, Denmark	14
Norway, Switzerland	13
New Zealand	12
Australia, Chile	11
Argentina	10
South Korea	8
Italy, Sweden, Japan	7
Austria, Czech Republic, Mexico, Spain	5
Finland, Peru, Turkey	3
Israel, Poland, Ireland	2
Hungary, Luxembourg, Portugal	1
Colombia, Costa Rica, Egypt, Estonia, Greece, Iceland, Jordan, Latvia, Lithuania, Morocco, Romania, Slovak Republic, Slovenia, Tunisia	0

## Positive results of specific instances

### *Agreements between parties*

Between 2011 and 2015 approximately 50% (or 26 specific instances) which were accepted for further examination and concluded resulted in an agreement between the parties.<sup>22</sup> In another five which were not accepted for further examination an agreement was reached using an alternative process external to the NCP (e.g. through judicial proceedings, bilateral negotiations, etc.). In some cases where agreement was reached externally it is possible that the NCP process helped to positively influence the resolution of issues. For example in 2014, the Danish NCP received a submission from ActionAid Denmark regarding Arla Foods and its awareness of the need to undertake social, environmental and human rights due diligence in the context of the planned expansion of its activities in sub-Saharan Africa. ActionAid Denmark had been communicating with Arla Foods for many years to highlight the adverse impacts of exporting subsidised milk powder from Europe. However four months after a submission was filed on this issue with the Danish NCP, the parties reached an agreement to ensure Arla's compliance with international human rights standards in its operations in developing countries. Both parties recognised that the submission of the specific instance to the NCP served to improve the pace of the dialogue between the parties.<sup>23</sup>

Agreements reached through NCP processes can differ in form and in scope and are often paired with other types of outcomes such as follow-up plans, or a change in company policy. Furthermore successful mediation resulting in agreement has been shown in some cases to result in constructive relationships going forward, meaning that companies are more likely to engage in dialogue with parties with which they have engaged with through the NCP process.

#### Box 5. Specific instances resulting in agreement between parties

***Sherpa et al and Intercultures (Socapalm):*** In December 2010 the NCPs of France, Belgium and Luxembourg received a submission alleging that a Cameroonian enterprise was not observing the general policies, disclosure, employment and industrial relations, and environment provisions of the Guidelines in Cameroon. The company engaged in mediation through the NCP resulting in an agreement between the parties which covered the following issues: communication with local communities, the environment, access to public services, local development, situation of workers and subcontractors, transparency and compensation for local residents regarding land issues.

Additionally an action plan was created which is monitored by an independent third-party committee and closely followed by the NCP. The French NCP was selected to lead the case and upon its conclusion issued a final statement referencing the agreement, providing determinations and recommendations to the parties as well as a follow-up plan. The French and Belgian NCPs have since followed up to ensure that the action plan is being implemented.

***H. Recalde and H.W. Jofre and Accor Service:*** In November 2007, the Argentinian NCP received a submission from a national congressman alleging that a representative from ACCOR, a French multinational, was not observing the employment and industrial relations and combating bribery provisions of the Guidelines. The submission dealt with efforts to delay a bill of law that aimed at “formalising” the inclusion of lunch vouchers in salaries – a measure that would reduce employers’ demand for the vouchers offered by the company. The NCP invited the company to engage in a mediation process. The company did so, and the case was successfully concluded with a negotiated agreement in March 2009. Part of the agreement was that ACCOR would make a financial contribution to an Argentinian NGO for support of its transparency and anti-corruption programs.

### Box 5. Specific Instances resulting in agreement between parties (cont.)

Among other measures, the agreement further obliged the company to seek new employment possibilities for its workers and to provide an extra allowance and/or training for the workers who were affected by the change in the regulation.

***Centro de Derechos Humanos y Ambiente (CEDHA) and Nidera:*** In 2011 the Dutch NCP mediated a specific instance between an Argentinian NGO and Nidera, an agriculture company, for alleged non-observation of worker's rights and unsafe working conditions. The mediation resulted in an agreement between the parties and establishment of a human rights policy and human rights due diligence procedure. A fact finding mission two years later revealed improved conditions and that the company had complied with the agreement.

***Herkales Farms affiliate and Center for Environment and Development:*** In 2013 the US NCP received a submission alleging that Herakles Farms' affiliate SG Sustainable Oils Cameroon (SGSOC) had not observed the bribery provisions of the Guidelines in Cameroon. The US NCP undertook mediation resulting in agreement between the parties. The company agreed to receive a written request from the NGOs regarding the investigation of any past cases of alleged corruption, and to investigate credible cases and provide a written response back to the NGOs. This was the first mediation conducted by the office of the US NCP that reached a mutually agreed resolution by all parties.

### ***Change in company policy or management systems***

Of all specific instances accepted for further examination and reported as concluded between 2011-2015, approximately 36% (19 specific instances) resulted in an internal policy change by the company in question, contributing to potential prevention of adverse impacts in the future.

### Box 6. Specific instances resulting in changes to company policy or management systems

***ADHRB and Formula One World Championship Ltd.:*** This specific instance was brought to the UK NCP regarding the non-observance of the human rights chapter of the Guidelines in connection with the organisation of the Formula One (F1) Grand Prix in Bahrain. The NCP provided external mediation that helped the parties come to an agreement in which Formula One publicly committed to respecting internationally recognised human rights in all of its operations and announced the development and implementation of a due diligence policy to analyse and mitigate human rights impacts in host countries.

***Norwegian Society for the Conservation of Nature and ForUM regarding the activities of Cermaq:*** This specific instance concerned the alleged non-observance of the Guidelines in the salmon farming industry in Canada and Chile. A joint statement was agreed upon after a constructive mediation amongst the parties to the case. The statement resulted in changes to Cermaq's corporate responsibility code of conduct, including the clearer inclusion of human rights for suppliers based on the Guidelines recommendations; a commitment to seek to enter into mutually beneficial agreements with indigenous peoples; and a commitment to further develop efforts to minimise the risk of inflicting serious environmental damage.

***Uwe Kekeritz and Karl Rieker GmbH & Co:*** In this case concerning the Tazreen factory fire in Bangladesh, the complainant, Uwe Kekeritz, a member of the German Bundestag, and Karl Rieker, a garment company, reached an agreement in which Karl Rieker committed to improve the fire and building safety standards in its supplier factories. Measures included reducing of the number of supplier factories, establishing long-term supplier relations, close supervision by local staff, and signing the Bangladesh Accord on Fire and Building Safety.

### ***Direct remedy to victims***

Through mediation or provision of their good offices NCPs can help facilitate agreements between parties which may also include a wide range of remedies, including direct remedy. NCPs can also provide recommendations to companies regarding appropriate remedies in instances where agreements are not reached. However these recommendations are non-binding and NCPs cannot oblige parties to follow them. Research by OECD Watch has shown that NCPs have had more success in dealing with (elements of) submissions related to improving companies' communication and due diligence policies to prevent and mitigate against future harm, as opposed to (elements of) submissions seeking access to remedy for actual harms committed. On the other hand, NCPs have in some cases succeeded in facilitating a direct remedy to victims of adverse impacts of business operations such as apology, restitution, compensation, satisfaction and guarantees of non-repetition. (See Box 7 for further examples).

#### **Box 7. Specific instances resulting in direct remedy**

***International Union of Food Workers (IUF) and Unilever Pakistan:*** In 2009 a submission was brought by the International Union of Food Workers (IUF) to the UK NCP against Unilever Pakistan Ltd regarding the use of temporary contracts and precarious work at its Khanewal factory in Pakistan. This issue was ultimately resolved through a mutually acceptable solution reached through conciliation facilitated by the NCP. The parties agreed on the establishment of 200 permanent positions, a significant change for the factory which had been employing high proportions of temporary labor.

***World Wildlife Fund (WWF) and SOCO International PLC:*** In 2014 the UK NCP concluded mediation between the World Wildlife Fund (WWF) and SOCO International PLC regarding oil exploration being conducted by SOCO in Virunga National Park in the Democratic Republic of Congo (DRC), a World Heritage site. The mediation led to an agreement and joint statement issued by the parties in which SOCO committed to cease exploration in the park unless UNESCO and the DRC government agree that such activities are not incompatible with its World Heritage status and "not to conduct any operations in any other World Heritage site".

***International Union of Food Workers (IUF) and ACCOR:*** In December 2012, the French NCP closed this specific instance by determining that the Guidelines provisions regarding freedom of association and of collective negotiation were not respected in some ACCOR hotels both in Ontario (Canada) and in Benin and by addressing recommendations to the company. ACCOR committed to remedy to the situation. The French NCP (coordinating with the Canadian NCP) followed up on its recommendations until 2015. In April 2015, the NCP issued a follow-up communiqué noting that the situation had been corrected in both countries.

### ***Clarifying expectations of the Guidelines***

Another important outcome of specific instances is that they can help to clarify expectations of the Guidelines and identify areas where additional guidance is needed to help implement the Guidelines. (See Box 8 for further examples and Chapter 5 on NCPs and the Proactive Agenda).

### Box 8. Specific instances resulting in clarifications of expectations

**ABP/APG - Lok Shakti Abhiyan, KTNC et al.:** In 2012 a specific instance was brought to the Dutch NCP by a group of NGOs against investors in a multinational steel-making company accused of contributing to adverse human rights impacts in India. In its final statement the Dutch NCP concluded that “[m]inority shareholders, like any other investors, are expected to apply the Guidelines and, more specifically, carry out a risk based due diligence prior to making a decision relating to lending, investing or other financial services to a client. [...]”. This specific instance in part helped to launch the OECD proactive agenda project on responsible business conduct in the financial sector (See Section V, NCPs and the Proactive Agenda, for more information).

**Forum Suape et al. vs. Atradius Dutch State Business:** This specific instance involves Atradius Dutch State Business (ADSB), a Dutch export credit agency (ECA), which provided export credit guarantees to Van Oord, a Dutch dredging company, whose dredging operations have, according to complainants, caused adverse human rights and environmental impacts. In its initial assessment the Dutch NCP confirmed that ADSB is a multinational enterprise within the meaning of the Guidelines, an issue the ECA initially contested, and accepted the case for further review.

### Using leverage to promote responsible business conduct

In some cases a specific instance procedure served as the catalyst for use of leverage by way of stronger engagement, advocacy or disengagement by companies and investors to promote better business conduct. This is in line with the Guidelines which encourage enterprises to use their leverage to influence the entity causing an adverse impact to prevent or mitigate that impact. (See Box 9 for further examples)

### Box 9. Specific instances resulting in use of leverage to promote responsible business conduct

**ECCHR, Sherpa and UGF re Uzbeki cotton:** In 2011, several specific instances were submitted to the NCP mechanism regarding sourcing of cotton from Uzbekistan cultivated using child labour. The NCP mediation processes led to several agreements with companies involved in sourcing the products as well as heightened industry attention to this issue. Several years later, the European Center for Constitutional and Human Rights (ECCHR) concluded that the submission of the specific instances had encouraged traders to take some steps to pressure the Uzbek government to end forced labour, although company commitment and media attention around the issue diminished over time. The report also noted that NCP specific instances triggered investment banks to monitor forced labour issues in Uzbekistan.

**KTNCW et al. and Daewoo:** In 2015 the Korean NCP closed a specific instance which dealt with the purchase of cotton produced in Uzbekistan through two subsidiaries of Daewoo. While the case was not accepted for further examination, in their initial assessment the Korean NCP recommended that the respondents continue to monitor the situation regarding forced labour and respond actively in every possible way concerning the issues by means of dialogue and cooperation with the government of Uzbekistan and other stakeholders. Daewoo is currently engaging with the government of Uzbekistan on these issues.

**The Canada Tibet Committee and China Gold:** China Gold, a mining company, refused to engage with the NCP, or in dialogue when a submission was brought against them to the Canadian NCP alleging adverse impacts to local communities as a result of its mining activities. The Canadian NCP announced that China Gold’s refusal to engage in the process would be taken into consideration in any applications by the company for enhanced advocacy support from the Trade Commissioner Service and/or Export Development Canada (EDC) financial services, should they be made. This case represents the first example of a company’s engagement with an NCP process being directly linked to access to government economic and trade-related advocacy support.

## Addressing challenges when handling specific instances

Significant challenges remain with regards the handling of specific instances by NCPs, among which stakeholders have highlighted: accessibility and the definition of overly stringent interpretation of criteria “material and substantiated” resulting, in a high rate of non-acceptance of submissions for further examination, overly restrictive definitions (e.g. of the term “multinational enterprises”, “adverse impact”, “business relationship”), costs for parties to participate in mediation, parallel proceedings, delays, insufficient use of recommendations or determinations in final statements, and lack of clear or equitable procedures, etc. Recurring challenges mentioned by NCPs in dealing with specific instances include balancing confidentiality and transparency, cooperation between NCPs, and resource constraints.<sup>24</sup>

Under the Guidelines in instances where an adhering country, BIAC, TUAC or OECD Watch believe an NCP is not fulfilling its responsibilities with regard to handling of specific instances or has not correctly interpreted the Guidelines in a specific instance, a submission for review can be made to the Investment Committee. Since 2000 two requests for clarification have been brought to the Investment Committee with regard to outcomes of specific instances. As of yet no submissions have been made requesting review of whether an NCP is fulfilling its procedural responsibilities; however this channel remains open to stakeholders.

### *Good faith behaviour by Parties*

	<p><b>Commentary</b></p> <p><i>Implementation in Specific Instances</i></p> <p><i>21. The effectiveness of the specific instances procedure depends on good faith behaviour of all parties involved in the procedures. Good faith behaviour in this context means responding in a timely fashion, maintaining confidentiality where appropriate, refraining from misrepresenting the process and from threatening or taking reprisals against parties involved in the procedure, and genuinely engaging in the procedures with a view to finding a solution to the issues raised in accordance with the Guidelines.</i></p>
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Good faith behaviour of all parties involved in the procedure is particularly important to ensure a balanced handling of the specific instance. According to some NCPs, regular stakeholder engagement outside of specific instances can contribute to a good faith engagement. Additionally, establishing and communicating strong terms of reference around confidentiality can also be useful. Nevertheless, a lack of cooperation or good faith continues to be cited as a problem by NCPs and parties that have been involved in specific instances.

In some instances a misalignment with regards to what qualifies as good faith prevents parties from developing a relationship of trust. For example, some companies have stated that external campaigns regarding company behaviour are not appropriate during the handling of a specific instance. Parties making submissions, such as trade

unions or NGOs, on the other hand may see campaigns as an important strategy for exerting leverage and encouraging companies to engage in dialogue, as long as information that is exchanged in confidence through the process is not used in a public campaign.

In practice, campaigning during specific instance processes is fairly common. Campaigning can involve issuing of press releases announcing the specific instance, providing updates on the status of a specific instance on an organisation's website or reaching out to other stakeholders (such as investors) to inform them about ongoing specific instances. Some NCPs have found ways to deal with campaigning during specific instance processes. For example, with the increase of public campaigning during specific instances, the Swiss NCP decided to begin publishing initial assessments in an effort to ensure that information in the public domain is impartial and balanced, and to promote transparency.

In addition to issues around good faith one of the major challenges identified by NCPs in handling specific instances is also ensuring that those involved engage in the procedures with a view to finding a resolution. In particular, engaging with the company subject to a specific instance has proven difficult and some NCPs have faced challenges bringing companies to the table to engage in a dialogue.

As a result some NCPs have not accepted specific instances for further examination because one or both of the parties did not wish to engage in mediation. A significant amount of specific instances are not accepted for further examination at the initial assessment due to lack of cooperation of complainants themselves, e.g. through lack of communication, absences of responses to requests for more information, refusal to reveal their identity, or refusal to engage in mediation or dialogue. Lack of engagement on the part of the complainant has been cited as a reason for non-acceptance of specific instances in about 10 % (6 specific instances) of all specific instances that were not accepted since 2011. Even where specific instances are accepted for further examination, a refusal to engage in the process by one party can make mediation impossible. This has been the result in about 20% of specific instances found to merit further examination between 2011- 2015 (14 specific instances).

Several NCPs and stakeholders have underlined that a lack of willingness by both parties to participate in mediation should not lead to non-acceptance of a specific instance as there are other ways in which an NCP may offer "good offices" to support the process apart from mediation.<sup>25</sup> For example, in 2015 a specific instance was submitted to the US NCP by the United Auto Workers (UAW) and IndustriALL Global Union federation alleging that Nissan North America engaged in conduct which was inconsistent with the employment and industrial relations chapter of the Guidelines. Although the company declined to participate in the mediation process offered, the US NCP nevertheless reviewed the submission and issued recommendations in its final statement for the specific instance including the suggestion of a corporate-wide labour rights review process.<sup>26</sup>

## Accessibility

### Commentary

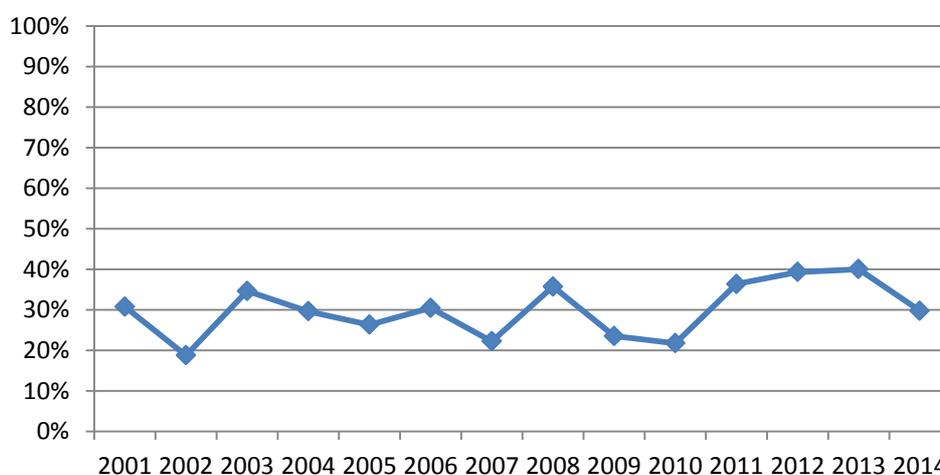
#### Initial Assessment

*In making an initial assessment of whether the issue raised merits further examination, the NCP will need to determine whether the issue is bona fide and relevant to the implementation of the Guidelines. In this context, the NCP will take into account:*

- *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.*

Stakeholders have noted that accessibility is a particular challenge for complainants bringing forward specific instances to NCPs. One of the principal ways in which accessibility is perceived to be restricted is through imposing a high threshold for acceptance of specific instance for further examination at the initial assessment stage. Approximately a third of all closed specific instances (106 specific instances) were reported as not accepted for further examination at the initial assessment stage.<sup>27</sup> Furthermore, this rate is likely under-reported because, as noted, as some NCPs have reported non-accepted specific instances as concluded. A non-acceptance rate of between 30-40% has been relatively stable since 2000. (See figure 7)

Figure 7. Non-acceptance of specific instances (in percentage)



### *Assessing materiality and substantiation*

The Procedural Guidance directs NCPs to consider whether an issue is *material and substantiated* but provides no definition of how this should be assessed in practice. Since 2011, in 53% percent of all specific instances (35 in total) which were not accepted for further examination at the initial assessment stage based on the NCP's analysis of the submission, the NCP cited lack of materiality or substantiation (See Figure 8). Stakeholders have noted that certain NCPs impose a high threshold in terms of the standards of proof required.

However a finding that a specific instance is not adequately substantiated is not necessarily inappropriate or inequitable. Many initial assessments involve careful analysis and consideration of issues and a well-reasoned decision not to pursue a specific instance procedure. In many cases, specific instances found not to merit further examination at this stage are not relevant for the NCP system. For example, several specific instances found not to merit further examination the stage of initial assessment have involved issues regarding government policy, rather than corporate conduct. For example, a submission brought to the Norwegian NCP was not accepted for further examination as the issues raised were related to the Government of Canada's policies on the development of oil sands as opposed to the activities of the company in question.

In other cases the issues brought were clearly outside of the scope of the Guidelines. For example, the peer review of the Danish NCP recognised that a number of submissions (6) were not accepted for further examination as they were largely outside the scope of the Guidelines, these included complaints involving (a) dissatisfaction with goods purchased on the internet, (b) alleged defamation on a website; (c) alleged medical malpractice; and (d) disputes over patent rights. The review noted that in some of these complaints, complainants were referred to more appropriate national institutions, such as the Consumer Ombudsman and the national judicial system.<sup>28</sup>

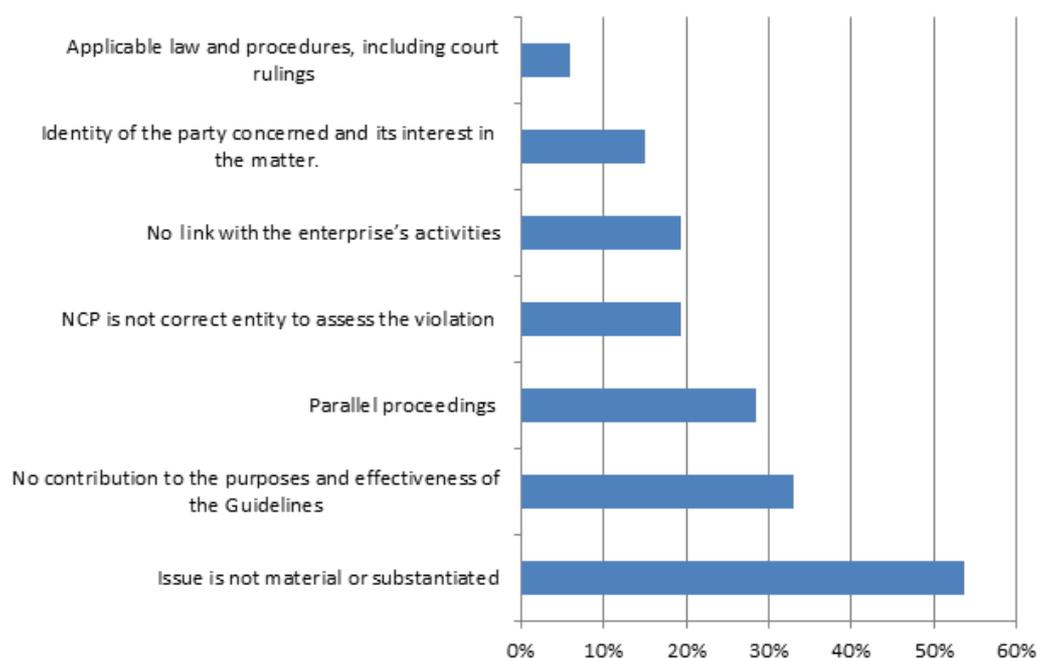
Furthermore in interviews with NCPs, several stated that a finding of lack of materiality or substantiation was often not based on the fact that not enough information was provided to them but that it was the wrong kind of information. For example NCPs noted that complainants often pointed to contextual problems which do not align with the recommendations of the Guidelines (e.g. an operational climate in which workers rights are not respected, or where corruption is common) but not to specific company conduct demonstrating non-observance of the Guidelines.

NCPs have stated that complainants must establish a clear link with the Guidelines, explain why there was non-observance of the Guidelines, as well as understand who the relevant parties are and their relationship to the issues, in particular where there are multiple parties or complex corporate structures involved. One potential way of addressing this issue would be to provide clearer guidance to complainants on what sort of substantiation is necessary. For example the Secretariat of the Danish NCP has in some instances provided informal feedback to complainants identifying steps the complainant could take to improve its chances for admissibility of a specific instance. The French NCP provides a formal explanation of problems within a submission and offers dedicated time to complainants to reformulate their submission. Some NCPs have suggested that developing a clear guidance for submission of complaints could also help to address some of these problems.

Out of all the specific instances brought by individuals between 2011 and 2015 (a total of 33), 25 were not accepted for further examination at the initial assessment stage

under the criteria of the Guidelines. These represent over a third of all specific instances not accepted for further examination during the initial assessment stage between 2011-2015. All these cases cited lack of materiality or substantiation. This suggests that individuals bringing specific instances may need additional support in developing submissions.

Figure 8. **Reasons for non-admissibility of specific instances between 2011-2015**



Lastly, in some instances where specific instances were found not to merit further examination, NCPs have nevertheless offered mediation in the interest of promoting dialogue and clarifying any misunderstandings among parties. For example in a case handled regarding intellectual property issues, the NCP of Chile concluded that the company observed the Guidelines but nevertheless offered mediation to the parties, which was ultimately refused. In a case handled by the French NCP in which all the claims brought by the complainant were found to be outside the scope of the Guidelines and unsubstantiated the NCP nevertheless undertook an analysis of the company's behaviour and found it had carried out appropriate due diligence and provided additional recommendations for how the dispute between the parties might be resolved.

### ***Restrictive procedural rules***

Some stakeholders perceive that NCPs limit accessibility through the use of statutes of limitations. No reference to statutes of limitations is included in the text of the Guidelines or the Procedural Guidance; however some NCPs include reference to a time limit within their own procedural guidance. Since 2011, two specific instances have been reported as not accepted for further examination due to expiration of a statute of limitations. A recent peer review of the NCP of Denmark encouraged the NCP to reconcile inconsistencies with the Guidelines specifically with regard to a five-year statute of limitation which excludes the applicability of the Guidelines to specific instances that would otherwise be admissible under the Guidelines.<sup>29</sup>

Stakeholders have also highlighted specific instances which have been denied further examination due to a restrictive definition of “multinational enterprise” or because the entity in question was a not-for-profit entity. Some NCPs have not accepted specific instances brought against a domestic multinational enterprise regarding issues raised in the home country, despite the fact that the Guidelines make no exceptions for these types of situations.

### ***Support during dialogue and mediation***

Accessibility can also be an issue after the initial assessment phase. The Procedural Guidance does not determine which entity covers the costs of translation of documents, interpretation or travel costs necessary to engage in mediation. This is further complicated when several NCPs are participating in a process and it is unclear which documents need to be translated and who should bear the cost. OECD Watch has argued that when NCPs rely on parties to a specific instance to cover these costs they are creating obstacles to their participation and thus not complying with the core criterion of accessibility.<sup>30</sup> However many NCPs struggle with capacity constraints and may not have the resources to cover such costs. In order to overcome resource challenges innovative cost saving approaches will be necessary. For example in one case the US NCP allowed parties to a specific instance to engage in dialogue with local mediators, while international mediators joined the process by video conferencing.

### ***Considering parallel proceedings***

<b><i>Commentary</i></b>
<p><i>26. When assessing the significance for the specific instance procedure of other domestic or international proceedings addressing similar issues in parallel, NCPs should not decide that issues do not merit further consideration solely because parallel proceedings have been conducted, are under way or are available to the parties concerned. NCPs should evaluate whether an offer of good offices could make a positive contribution to the resolution of the issues raised and would not create serious prejudice for either of the parties involved in these other proceedings or cause a contempt of court situation. In making such an evaluation, NCPs could take into account practice among other NCPs and, where appropriate, consult with the institutions in which the parallel proceeding is being or could be conducted. Parties should also assist NCPs in their consideration of these matters by providing relevant information on the parallel proceedings.</i></p>

The 2011 revision of the Guidelines included language that made it clear that parallel proceedings, such as ongoing legal proceedings, cannot be invoked as grounds for not accepting a submission for further examination unless acceptance of the submission and any mediation process would be prejudicial to the outcome of those proceedings.<sup>31</sup> This addition was seen as significant for strengthening the NCP system by some stakeholders who claimed that prior to the update specific instances were routinely dismissed due to parallel proceedings. Nevertheless, since 2011 approximately 28% of all specific instances which were not accepted for further examination at the initial assessment stage based on the NCP’s analysis of the submission (19 cases) cited parallel proceedings as a reason for non-acceptance. NCPs themselves have cited consideration of parallel proceedings as a challenge. For example, there is a concern that specific instance

processes may influence legal proceedings and ongoing proceedings may limit the ability for open and good faith mediation, or may undermine NCPs in cases where the outcomes of the two processes are very different.

Some NCPs have raised the concern that the NCP mechanism can be used as a “fishing expedition” to build specific instances against a company outside of the NCP mediation process through inflicting reputational damage or misappropriating information. Parties have also raised the concern that in some cases a specific instance procedure may be prejudicial to parallel proceedings. On the other hand the NCP system provides access for parties that may lack standing in legal systems, allowing dialogue between parties, such as international worker organisations, which may not have a seat at the table when these issues are being discussed in domestic legal proceedings. Therefore all such considerations must be weighed carefully.

### Respecting indicative timeframes

	<p><b>Commentary</b></p> <p><i>Indicative Timeframe</i></p> <p><i>The specific instance procedure comprises three different stages:</i></p> <ol style="list-style-type: none"> <li><i>1. Initial assessment and decision whether to offer good offices to assist the parties: NCPs should seek to conclude an initial assessment within three months, although additional time might be needed in order to collect information necessary for an informed decision.</i></li> <li><i>2. Assistance to the parties in their efforts to resolve the issues raised: If an NCP decides to offer its good offices, it should strive to facilitate the resolution of the issues in a timely manner. Recognising that progress through good offices, including mediation and conciliation, ultimately depends upon the parties involved, the NCP should, after consultation with the parties, establish a reasonable timeframe for the discussion between the parties to resolve the issues raised. If they fail to reach an agreement within this timeframe, the NCP should consult with the parties on the value of continuing its assistance to the parties; if the NCP comes to the conclusion that the continuation of the procedure is not likely to be productive, it should conclude the process and proceed to prepare a statement.</i></li> <li><i>3. Conclusion of the procedures: The NCP should issue its statement or report within three months after the conclusion of the procedure.</i></li> </ol>
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Stakeholders have also raised concerns about significant delays in handling of specific instances.<sup>32</sup> In certain cases these delays have spanned several years. Between 2011- 2015 the initial assessment stage of the specific instance process has exceeded two years in five cases and one year in seven cases. By the end of 2015 there were 13 specific instances pending that were submitted over two years ago. One company interviewed noted that long delays in communication with the NCP handling their specific instance undermined in their view the professionalism of the process.

It is in the interest of all parties for the NCP to maintain regular communication during the specific instance process. The Commentary to the Procedural Guidance sets

out an indicative timeline which recommends that NCPs should aim to conclude the procedure within 12 months from receipt of the specific instance while recognising that the timeframe may need to be extended according to the circumstances. Delays that surpass several years with little communication to the parties are not in line with the Procedural Guidance.

Approximately 30% of initial assessments (representing 40 specific instances) reported since 2011 were published within the indicative timeframe of 1-3 months. However, approximately 85% of them (114 specific instances) were published in under 9 months. Some NCPs engage in initial dialogue with parties in an attempt to better understand the specific instance before issuing initial assessments and delays in communication from parties to a specific instance during this stage can often slow down this process.

Timeframes for engagement of parties have varied significantly between specific instances since 2011. More complex specific instances, for example those taking place in several jurisdictions or involving complex issues, may take longer to organise and resolve.

In approximately 55% (27 cases) of specific instances since 2011 where the NCPs issued final statements following engagement with the parties, the final statement was published within 3 months of the last engagement between the parties in accordance with the Procedural Guidance.

### ***Balancing confidentiality and transparency***

#### ***Procedural Guidance***

#### ***C. Implementation in Specific Instances***

*3. At the conclusion of the procedures and after consultation with the parties involved, [NCPs will] make the results of the procedures publicly available, taking into account the need to protect sensitive business and other stakeholder information, by issuing:*

- a) A statement when the NCP decides that the issues raised do not merit further consideration. The statement should at a minimum describe the issues raised and the reasons for the NCP's decision.*
- b) A report when the parties have reached agreement on the issues raised. The report should at a minimum describe the issues raised, the procedures the NCP initiated in assisting the parties and when agreement was reached. Information on the content of the agreement will only be included insofar as the parties involved agree thereto.*
- c) A statement when no agreement is reached or when a party is unwilling to participate in the procedures. This statement should at a minimum describe the issues raised, the reasons why the NCP decided that the issues raised merit further examination and the procedures the NCP initiated in assisting the parties. The NCP will make recommendations on the implementation of the Guidelines as appropriate, which should be included in the statement. Where appropriate, the statement could also include the reasons that agreement could not be reached.*

**Commentary*****Transparency and confidentiality***

*38. Transparency is recognised as a general principle for the conduct of NCPs in their dealings with the public[.] However, the Procedural Guidance recognises that there are specific circumstances where confidentiality is important. The NCP will take appropriate steps to protect sensitive business information. Equally, other information, such as the identity of individuals involved in the procedures, should be kept confidential in the interests of the effective implementation of the Guidelines. It is understood that proceedings include the facts and arguments brought forward by the parties. Nonetheless, it remains important to strike a balance between transparency and confidentiality in order to build confidence in the Guidelines procedures and to promote their effective implementation. Thus, while the proceedings associated with implementation will normally be confidential, the results will normally be transparent.*

Transparency is part of the core criteria of the functioning of an NCP. NCPs are expected to be transparent about their processes and outcomes of specific instances. At the conclusion of specific instance procedures NCPs are expected to make the results publicly available, whether this includes a decision that the case does not merit further consideration or, in the case that a specific instance is accepted, the results of the proceedings.

The Procedural Guidance recognises that there are specific circumstances where confidentiality is important. For example it directs NCPs to take appropriate steps to protect sensitive business information. Equally, other information, such as the identity of individuals involved in the procedures, should be kept confidential in cases where there is strong reason to believe that disclosure of this information can be detrimental. Furthermore the proceedings (including facts and arguments brought forward by the parties) associated with implementation should be kept confidential, while the results should be made transparent. Many NCPs reflect this understanding in their own procedures for specific instances. For example, the German NCP procedural note provides for publishing all final decisions but not intermediate ones in order to provide a “closed room” in which parties can freely agree on a common solution. The UK NCP and the German NCP keep the identity of parties confidential if requested following non-acceptance of a case for further examination.

According to a professional mediator who has handled several successful specific instances, it is more effective and efficient to have clear and consistent policies and procedures with regard to confidentiality and transparency than negotiating these issues on a case by case basis during engagement among parties.

In practice the ways in which NCPs have approached transparency and confidentiality have been mixed. In over one third of specific instances since 2011 (60 cases) NCPs did not report the names of the party in their final or initial statements. In 12 specific instances between 2011-2015, representing nearly 10% of all closed specific instances neither an initial assessment nor final statement has been published. This practice does not align with the core criteria of transparency. The absence of a statement on the specific instance also goes against the requirement of the Procedural Guidance that NCPs report on specific instances.

## Cooperation between NCPs

### *Procedural Guidance*

#### **C. Implementation in Specific Instances**

*The NCP will [...] consult the NCP in the other country or countries concerned.*

#### **Commentary**

#### **Coordination between NCPs in Specific Instances**

*23. Generally, issues will be dealt with by the NCP of the country in which the issues have arisen. Among adhering countries, such issues will first be discussed on the national level and, where appropriate, pursued at the bilateral level. The NCP of the host country should consult with the NCP of the home country in its efforts to assist the parties in resolving the issues. The NCP of the home country should strive to provide appropriate assistance in a timely manner when requested by the NCP of the host country.*

*24. When issues arise from an enterprise's activity that takes place in several adhering countries or from the activity of a group of enterprises organised as consortium, joint venture or other similar form, based in different adhering countries, the NCPs involved should consult with a view to agreeing on which NCP will take the lead in assisting the parties. The NCPs can seek assistance from the Chair of the Investment Committee in arriving at such agreement. The lead NCP should consult with the other NCPs, which should provide appropriate assistance when requested by the lead NCP. If the parties fail to reach an agreement, the lead NCP should make a final decision in consultation with the other NCPs.*

The Guidelines call on NCPs to co-operate with one another if needed on matters related to the Guidelines. In the context of specific instances NCPs are asked to consult with the NCP of other countries concerned and coordinate on who should lead the specific instance in cases where issues arise in several adhering countries. However there has been inconsistency in how NCPs interact with one another as well as delays in handling specific instances where it is unclear which NCP should take the lead.

The Guidelines provide that generally, issues will be dealt with by the NCP of the country in which the *issues* have arisen. In the past this has often been interpreted as the country in which *impacts have occurred*, and thus some NCPs consider that the determining factor is location of the harm or adverse impact. However this is not necessarily the case as some specific instances will focus on issues at the headquarters level that are linked to impacts. An analysis of which NCP will take the lead therefore needs to take into account where the emphasis of the submission falls and what type of connection to the impact (causing, contributing or directly linked) is being evaluated.

The challenge in identifying a lead NCP has increased since the 2011 revision of the Guidelines which introduced expectations of responsible business conduct across business relationships and supply chains and not simply in a company's direct operations. Indeed, as supply chain and corporate structures become more complex new approaches may be required to handle complex cases involving multiple parties and jurisdictions such as assigning external third party mediators to handle cases on behalf of several NCPs.

In providing good offices NCPs are also encouraged by the Guidelines to consult with NCPs in other countries on issues raised in specific instances and on issues related to the interpretation of the Guidelines.

Since 2011 about half of all specific instances brought to the NCP mechanism (82 specific instances) dealt with issues in non-adhering host-countries. These types of specific instances pose both logistical and conceptual challenges for NCPs. Fact-finding, reaching out and building relationships with parties, and language barriers can all pose difficulties.

### Good practices in handling specific instances

Some good practices can assist in improving the outcomes of specific instance proceedings.

#### Box 10. Good practices in handling of specific instances

The good practices listed below were identified through a series of interviews with NCPs as well as with individuals that have been party to specific instances procedures, institutional stakeholders that have experience with the mechanism and professional mediators that have been involved in specific instance proceedings.

**Clear rules of procedure:** Often parties to specific instance procedures will be unfamiliar with the NCP mechanism and its processes. Communicating clear rules of procedure or negotiating a terms of reference for engagement will be important in ensuring parties feel more at ease with the process and understand what is expected of them. Such procedures should ideally address criteria for admissibility, evaluation processes for submissions, envisioned timelines and deadlines for certain activities, policies on confidentiality and what constitutes good faith. Additionally, communicating possible outcomes of the specific instance process is important in terms of managing expectations as well as clarifying any potential consequences attached to the process.

**Engagement with decisions makers:** Direct involvement of decision makers in the specific instance process helps to communicate to all parties that the process is being taken seriously and also contributes to the effectiveness and efficiency of the process. Where possible, NCPs should communicate to parties that they should involve a representative with the power to make decisions in the process.

**Prompt communication:** Timely responses to inquiries by the NCP as well as provision of updates and compliance with agreed deadlines promote efficiency in the specific instance process as well as demonstrate professionalism of the NCP mechanism, helping to build confidence of parties to the specific instance and encourage engagement.

**Issuing meaningful statements:** As NCPs are a voluntary, non-judicial grievance mechanism, issuing statements is one of the few tools at their disposal to encourage participation of parties. Furthermore NCP statements represent an important resource by providing information on emerging issues in RBC as well as interpretations of what constitutes responsible business in certain contexts. Developing recommendations can be useful in guiding companies on how to improve their conduct going forward and how to address adverse impacts. Determinations can be effective ways of incentivising companies to participate in the specific instance procedure but more importantly they can provide guidance and clarity to companies on what constitutes behavior in conformity with the Guidelines. Issuing determinations can also be a helpful way of framing and justifying recommendations.

**In-person meetings:** In-person meetings are more effective at fostering compromise and clear communication amongst parties than remote conferencing or written communication.

**Follow-up:** Following up on specific instances is important to ensure that agreements are actually implemented. Additionally following up can lead to successful results even if initially an agreement was not reached between parties.

### ***Building trust amongst parties***

One of the main challenges faced by NCPs is to build and maintain trust between the parties throughout the process. NCPs have highlighted the following good practices to encourage trust-building when engaging with stakeholders<sup>33</sup>:

- When discussing how to best engage with the parties during the initial assessment, in order to build a strong relationship based on trust, NCPs need to provide each of the parties with all the information available.
- NCPs should contact both the company and the complainants to discuss and explain the procedure, so as to manage the parties' expectations.
- NCPs should explain the procedure and the Guidelines, but should also emphasise to the companies from the outset that the specific instance is an opportunity to engage in dialogue and solve the conflict and also to demonstrate leadership in responsible business practices.
- NCPs should give the parties opportunities to comment on the draft version of the initial assessment and final statements to help maintain trust and buy-in from the parties.

### ***Promoting effective and efficient engagement***

NCPs and other stakeholders also noted some practical techniques which can promote efficiency and effectiveness in engaging with parties. These include having clear rules of procedure and communicating with parties in a prompt fashion. Some NCPs have suggested that engagement with representatives from the CSR department of a company may be more constructive than engagement with legal counsel only. On the other hand, some NCPs also felt that the involvement of companies' legal counsel is a good sign and can assist raising the level of attention to the specific instance within the company.

### ***Issuing recommendations or determinations***

NCPs also stressed the importance of highlighting to companies that there will be a public outcome with regards to the specific instances process. The most important factor cited in encouraging engagement of parties with the NCP process by NCPs and various stakeholders interviewed in preparation for this report was the practice of attaching consequences to NCP proceedings by way of determinations or through specific recommendations. According to OECD Watch (2015) 77% of cases with a positive outcome came from NCPs that indicated they would make determinations of (non)observance with the Guidelines if mediation failed.

Between 2011-2015, about 50% of concluded specific instances (about 34 cases) included recommendations within their final statements. Determinations were included in final statements for about 25% of concluded specific instances (17 cases).

### ***Monitoring plans or follow-up action***

	<p><b><i>Commentary</i></b> <b><i>Conclusion of the Procedures</i></b></p> <p>34. [...] <i>The parties may also agree to seek the assistance of the NCP in following-up on the implementation of the agreement and the NCP may do so on terms agreed between the parties and the NCP.</i></p> <p>36. [...] <i>If the NCP makes recommendations to the parties, it may be appropriate under specific circumstances for the NCP to follow-up with the parties on their response to these recommendations. If the NCP deems it appropriate to follow-up on its recommendations, the timeframe for doing so should be addressed in the statement of the NCP.</i></p>
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In only seven specific instances accepted for mediation since 2011, was there mention of a monitoring plan involving the NCP in published final statements. However, some NCPs make it regular practice to follow up on recommendations they provide during specific instances. For example, follow-up is part of the UK NCP's rules of procedure for specific instances. The Swiss NCP asks parties to report to the NCP on the progress of the implementation of the agreed outcome after a certain period (e.g. 6 months) after the closure of the specific instance. If the NCP does not see enough progress, the NCP can make recommendations and request further reporting. The French NCP follows up with parties where appropriate and maintains contact for several years. This policy has resulted in successful outcomes of certain cases even if agreements were not originally reached through the specific instance process. For example while an agreement was not initially reached under the specific instance involving Michelin Group's operations in the Indian state of Tamil Nadu, the French NCP continued to follow up and in response Michelin Group reported regularly to the NCP on a series of measures taken to implement the recommendations of the NCP.

The Norwegian NCP includes a clause regarding follow-up within a set time-limit, often a year following a mediated outcome. The NCP notes that parties have expressed a wish for greater NCP involvement in follow-up, for instance to monitor whether the Guidelines are more effectively implemented by a company after the specific instance. However, the NCP is cautious about the potential resource implications of maintaining an on-going involvement with every specific instance. In addition, there is a risk of re-opening specific instances that have been closed, or becoming involved in a follow-up role that had not been agreed to from the outset. The Norwegian NCP now advises parties to include more detailed provisions about the implementation of the parties' agreement as part of the follow-up in any mediated statement, including the role of the NCP.

## Chapter 3

### Promoting the Guidelines

This chapter focuses on the promotion of the Guidelines as part of the mandate of NCPs. A key function of the NCPs is to promote the Guidelines, and most NCPs have focused their efforts on this part of their mandate. Activities by NCPs to raise awareness of the Guidelines amongst different stakeholders range from hosting and organising promotional activities, workshops and conferences, to engaging regularly with key stakeholders and developing and disseminating promotional material on the Guidelines. Viewed as a whole, the NCPs have taken important steps in promoting the Guidelines as a useful tool for enterprises, governments, unions, NGOs and other interested parties.

#### **Council Decision**

*Adhering countries shall set up National Contact Points to further the effectiveness of the Guidelines by undertaking promotional activities, handling enquiries and contributing to the resolution of issues that arise relating to the implementation of the Guidelines in specific instances, taking account of the attached procedural guidance.*

#### **Procedural Guidance**

##### **B. Information and Promotion**

*The National Contact Point will:*

- 6. Make the Guidelines known and available by appropriate means, including through on-line information, and in national languages. Prospective investors (inward and outward) should be informed about the Guidelines, as appropriate.*
- 7. Raise awareness of the Guidelines and their implementation procedures, including through co-operation, as appropriate, with the business community, worker organisations, other non-governmental organisations, and the interested public.*
- 8. Respond to enquiries about the Guidelines from:*
  - a) Other National Contact Points;*
  - b) The business community, worker organisations, other non-governmental organisations and the public; and*
  - c) Governments of non-adhering countries.*

#### **Commentary**

### **Information and Promotion**

1. *The NCP functions associated with information and promotion are fundamentally important to enhancing the profile of the Guidelines.*
2. *NCPs are required to make the Guidelines better known and available online and by other appropriate means, including in national languages. English and French language versions will be available from the OECD, and website links to the Guidelines website are encouraged. As appropriate, NCPs will also provide prospective investors, both inward and outward, with information about the Guidelines.*
3. *NCPs should provide information on the procedures that parties should follow when raising or responding to a specific instance. It should include advice on the information that is necessary to raise a specific instance, the requirements for parties participating in specific instances, including confidentiality, and the processes and indicative timeframes that will be followed by the NCP.*
4. *In their efforts to raise awareness of the Guidelines, NCPs will cooperate with a wide variety of organisations and individuals, including, as appropriate, the business community, worker organisations, other non-governmental organisations, and other interested parties. Such organisations have a strong stake in the promotion of the Guidelines and their institutional networks provide opportunities for promotion that, if used for this purpose, will greatly enhance the efforts of NCPs in this regard.*
5. *Another basic activity expected of NCPs is responding to legitimate enquiries. Three groups have been singled out for attention in this regard: i) other NCPs (reflecting a provision in the Decision); ii) the business community, worker organisations, other non-governmental organisations and the public; and iii) governments of non-adhering countries.*

Since the creation of NCPs in 1984, undertaking promotional activities<sup>34</sup> and responding to enquiries about the Guidelines have been responsibilities of NCPs.<sup>35</sup> Three groups have been identified with regards promotion: i) other NCPs; ii) the business community, worker organisations, other non-governmental organisations and the public; and iii) governments of non-adhering countries.<sup>36</sup>

Significant work has also been carried out by BIAC, OECD Watch and TUAC (and their affiliates in different countries) in ensuring that their various constituents are informed of the Guidelines and in particular of the existence and role of NCPs.

### **Promotional material**

To promote the Guidelines, NCPs have developed a range of materials. These include user guides giving substantial background information and translations of the text of the

Guidelines. Some NCPs have drawn on advice from business, labour and civil society in developing this material. A number of NCPs issue press releases in order to highlight Guidelines activities and events and some have produced brochures, manuals and documents explaining the specific instance procedure.

For example the UK has a core strategy of targeted outreach and engagement with three principal stakeholder groups. These include other NCPs and governments interested in the NCP mechanism, local and international business to raise awareness of expectations of the Guidelines and civil society to engage them in the specific instance process.

### Promotional events

Promoting the Guidelines also involves activities such as hosting and participating in meetings, seminars, workshops, and other initiatives to promote policy coherence on responsible business conduct. NCPs have generally been quite active in this role and the amount of promotional events organised by NCPs has been increasing over the years. Individual promotional events are described by NCPs in their annual reports to the OECD.

### Promotion of the Guidelines to SMEs

Promotional events focus not only on raising awareness of the Guidelines amongst relevant stakeholders but also on tackling ongoing challenges with regard to the implementation of the Guidelines. For example a particular audience for NCPs are small and medium sized enterprises, for whom implementation of the Guidelines, and meeting increasing demands for RBC, can pose significant challenges.

The Italian NCP gives particular attention to the involvement of SMEs in the implementation of the Guidelines. After the 2011 revision of the Guidelines, SMEs' involvement became more and more important considering the new and comprehensive approach of the Guidelines to due diligence and responsible supply chain management. In the Italian NCP's experience, there are particular challenges in supporting SMEs on responsible business conduct. SMEs understand the principles of the Guidelines, but they lack the capabilities to implement them, procedural indications are seen by SMEs as designed for large companies and not tailored to them, linked to this is the fact that it is not clear to SMEs what is expected from them. To assist SMEs in better understanding and implementing the Guidelines, the Italian NCP has put in place many activities such as: surveys, awareness raising, training, tools and guidance. (See also Box 14 in Chapter 5).

### Impact of promotional activities

Although in some countries the Guidelines are known by enterprises, trade unions and civil society representatives, they are less well known in others. In addition, the Guidelines are often not known beyond CSR practitioners or business and human rights experts, who are directly involved in the policy debates about them. Also, while major listed multinationals may be familiar with the Guidelines, this does not necessarily apply to SMEs. According to BIAC's *Third Survey of Member Companies' Experiences with NCPs and Specific Instance Procedures*<sup>37</sup>, "*Some respondents only became aware of the Guidelines after a specific instance was raised in relation to their operations. Other*

*companies had learned about the MNE Guidelines through their respective national business organization.*<sup>38</sup> Promotion of the Guidelines therefore remains an ongoing necessity. NCPs themselves have identified this as a challenge and have repeatedly indicated that in order to have an impact, promotional outreach to enterprises must be ongoing.

The aim of promotional activities is not only to raise awareness of the Guidelines amongst the private sector and civil society but also to promote policy coherence on RBC in general. For example, in 2015 Switzerland approved a CSR position paper and action plan in which CSR is defined in line with the Guidelines. Following the publication of the Swiss CSR action plan, two major Swiss business associations published a CSR brochure with close references to the CSR action plan of the Swiss Government including OECD references<sup>39</sup>.

The US NCP has taken steps to promote coherent policy with regards to the Guidelines. For example the US Global Anti-corruption Agenda includes specific reference to the Guidelines as a tool for ensuring transparency among private actors.<sup>40</sup> Furthermore, similar to other adhering countries the US is also in the process of developing a National Action Plan on Responsible Business Conduct, aligned with the Guidelines. (See Chapter 6 on NCPs and Policy Coherence).

Additionally the promotional work of the NCPs is reflected in increasing integration of references to the NCP system in the context of export credit and investment promotion agencies of adhering countries. In 2003 only three countries (France, Finland and the Netherlands), reported having any sort of formal integration of the Guidelines into procedures for considering export credit or investment guarantees. None reported formal interaction with the NCP system nor consideration of NCP statements. By comparison at the time of writing 25 countries reported that NCP statements are taken into account in reviews of applications to their export credit agencies, of these 6 of these report having formal procedures in place for review of NCP statements. (See Chapter 6 on NCPs and Policy Coherence).

External stakeholders have identified advocacy and promotion of the Guidelines within governments as an especially strategic and important outreach activity for NCPs. While internal advocacy may be more challenging than organisation of promotional events, it is also often less resource intensive. For example, integration of references to the Guidelines within government policies, such as within criteria for export credit and investment promotion raises significant awareness among the business community by attaching real consequences to the non-observance of the Guidelines.

## Core criteria

National Contact Points are required to operate in accordance with the core criteria of visibility, accessibility, transparency, and accountability. Most governments have made significant progress in ensuring their NCPs meet the core criteria, while others are still lagging behind. Most significantly, some NCPs do not appear to meet any of these criteria, even several years after their creation. The table below provides a general assessment and areas for improvement, on each of the core criteria, based on feedback from users of the NCP system.

Table 4. Assessment of NCP performance under core criteria

Visibility		
Commentary	What is working	Where is there room for improvement
<p>In conformity with the Council Decision, adhering governments agree to nominate NCPs, and also to inform the business community, worker organisations and other interested parties, including NGOs, about the availability of facilities associated with NCPs in the implementation of the Guidelines. Governments are expected to publish information about their NCPs and to take an active role in promoting the Guidelines, which could include hosting seminars and meetings on the instrument. These events could be arranged in cooperation with business, labour, NGOs, and other interested parties, though not necessarily with all groups on each occasion.</p>	<ul style="list-style-type: none"> <li>• Most NCPs have a website with key information</li> <li>• Many NCPs are engaging in promotional events</li> <li>• There is significant co-operation with other NCPs through peer learning events</li> <li>• Some NCPs are taking a proactive role in developing resources on RBC such as industry guides etc.</li> <li>• Some NCPs partner with other organisations to raise the profile of the NCP</li> </ul>	<ul style="list-style-type: none"> <li>• A small number of NCPs do not have a website</li> <li>• Awareness of the NCP system and OECD Guidelines among the private sector continues to be low</li> </ul>

Accessibility		
Commentary	What is working	Where is there room for improvement
<p>Easy access to NCPs is important to their effective functioning. This includes facilitating access by business, labour, NGOs, and other members of the public. Electronic communications can also assist in this regard. NCPs would respond to all legitimate requests for information, and also undertake to deal with specific issues raised by parties concerned in an efficient and timely manner.</p>	<ul style="list-style-type: none"> <li>• Many NCPs provide clear rules of procedure for specific instances</li> <li>• Many NCPs recognise the possibility of considering specific instances in cases where one party is not willing to engage, or where there are parallel proceedings ongoing</li> </ul>	<ul style="list-style-type: none"> <li>• The rules of procedure for specific instances of some NCPs may impede accessibility (e.g. high substantiation requirements, statutes of limitations, etc.).</li> <li>• Some NCPs continue to not accept specific instances for further examination on the basis of one party not being willing to engage or due to parallel proceedings.</li> <li>• Many NCPs face resource constraints which can hinder participation in specific instance processes.</li> </ul>

<b>Transparency</b>		
<b>Commentary</b>	<b>What is working</b>	<b>Where is there room for improvement</b>
<p>Transparency is an important criterion with respect to its contribution to the accountability of the NCP and in gaining the confidence of the general public. Thus, as a general principle, the activities of the NCP will be transparent. Nonetheless when the NCP offers its “good offices” in implementing the Guidelines in specific instances, it will be in the interests of their effectiveness to take appropriate steps to establish confidentiality of the proceedings. Outcomes will be transparent unless preserving confidentiality is in the best interests of effective implementation of the Guidelines.</p>	<ul style="list-style-type: none"> <li>• Some NCPs communicate with stakeholders through regular newsletters etc.</li> <li>• Many NCPs publish final statements for specific instances in a timely manner</li> <li>• Some NCPs publish initial assessments</li> </ul>	<ul style="list-style-type: none"> <li>• Some NCPs do not report on specific instances to the OECD Secretariat in a timely or regular manner</li> <li>• No final statements were published for 12 completed specific instances since 2011.</li> <li>• Some NCPs do not publish an annual report on their websites.</li> </ul>

<b>Accountability</b>		
<b>Commentary</b>	<b>What is working</b>	<b>Where is there room for improvement</b>
<p>A more active role with respect to enhancing the profile of the Guidelines – and their potential to aid in the management of difficult issues between enterprises and the societies in which they operate – will also put the activities of NCPs in the public eye. Nationally, parliaments could have a role to play. Annual reports and regular meetings of NCPs will provide an opportunity to share experiences and encourage “best practices” with respect to NCPs. The Committee will also hold exchanges of views, where experiences would be exchanged and the effectiveness of the activities of NCPs could be assessed.</p>	<ul style="list-style-type: none"> <li>• Some NCPs report within their governments on progress and activities.</li> <li>• Some NCPs have undergone and others are committing to peer reviews.</li> <li>• Many NCPs are engaging stakeholders in an advisory capacity</li> <li>• Some NCPs develop and agree with parties clear terms of reference for specific instance procedures in advance of mediation.</li> </ul>	<ul style="list-style-type: none"> <li>• Annual reporting is not standard practice for some NCPs and some do not provide the compulsory annual report, or only respond to some of the questions in the reporting questionnaire.</li> <li>• A small number of NCPs do not attend the NCP meetings held at the OECD</li> </ul>

Adhering governments are responsible for informing the public of the availability of the Guidelines-related facilities. Websites are one way to make the NCP *visible*. They are the natural entry point to contact an NCP, and the most obvious place for the NCP to communicate about the Guidelines, its role and procedures. By end 2015, 39 NCPs had websites within the agency or ministry they are housed in. With few exceptions, contact information such as name, email and phone number is often published or accessible online, either on the NCP website or on their agency's relevant website. Official translations of the Guidelines are available in 19 different languages on the OECD Guidelines for Multinational Enterprises website; and translations of the Guidelines into 14 languages are also accessible online through the websites of NCPs. In addition to general information about the NCP and accessing the specific instance procedure, NCP websites provide additional resources such as previous statements related to specific instances, guidance materials or NCP annual reports. Some NCPs publish their annual reports online as well as initial assessments and final statements of specific instances<sup>41</sup>.

However, while some websites are clear, complete and easy to navigate, others are poorly designed, lack relevant information and do not provide basic contact details.

*Accessibility* is still a challenge for a number of NCPs. Many NCPs provide clear rules of procedure for submitting and handling specific instances, and many recognise the possibility of considering specific instances in cases where one party is not willing to engage or where there are parallel proceedings ongoing. However, according to users of the NCP mechanism (mainly NGOs and trade unions), the rules of procedure in place for some NCPs may *de facto* impede accessibility, such as high substantiation requirements or short statutes of limitation. Furthermore, some NCPs systematically do not accept specific instances for further examination on the basis of one party not being willing to engage, or when parallel proceedings (e.g. in a national court) are in place. Stakeholders have also highlighted that the resource constraints faced by some NCPs (e.g. to cover translation and interpretation costs) result in obstacles for meaningful participation by parties in specific instance processes. (See Chapter 2 on Handling Specific Instances).

Linked to this, some NCPs also face a branding challenge. NCPs have raised the challenge of explaining their role to a variety of different audiences. This is due to their unique nature of being a governmental agency, often housed in a ministry dealing with economic issues, addressing issues that are not necessarily in the mainstream of that ministry's activities, with specific, non-judicial, problem-solving functions, no specific sanctioning power, etc. Additionally, the name "National Contact Point" and the terminology around NCP functions and activities (especially around the term "specific instances") also make it challenging to identify the NCP and associate it with its specific role. Over the last years, a few NCPs have added some explanation to their name, such as the National Contact Point for Responsible Business Conduct, or have changed it altogether. For instance, in Denmark the NCP is called the Mediation and Complaints-Handling Institution for Responsible Business Conduct.

*Transparency* is closely linked to accountability, and is essential to gain confidence of the general public, especially in relation to specific instances. Some NCPs communicate with stakeholders through regular newsletters, or hold regular meetings, thereby making the NCP better known and making its role and activities more transparent. There are, however, significant differences among NCPs in the way they deal with transparency around specific instances. A few NCPs publish their initial assessments once they have accepted a specific instance, and most publish the final statements for specific instances in a timely manner. However, some NCPs do not fully meet the

requirement to make the results of specific instances publicly available, or do not report on specific instances to the OECD Secretariat in a timely manner.

## Reporting

	<p><b>Procedural Guidance</b></p> <p><b>D. Reporting</b></p> <p>1. Each NCP will report annually to the Committee.</p> <p>2. Reports should contain information on the nature and results of the activities of the NCP, including implementation activities in specific instances.</p> <p><b>Commentary</b></p> <p><b>Reporting to the Investment Committee</b></p> <p>42. Reporting would be an important responsibility of NCPs that would also help to build up a knowledge base and core competencies in furthering the effectiveness of the Guidelines. In this light, NCPs will report to the Investment Committee in order to include in the Annual Report on the OECD Guidelines information on all specific instances that have been initiated by parties, including those that are in the process of an initial assessment, those for which offers of good offices have been extended and discussions are in progress, and those in which the NCP has decided not to extend an offer of good offices after an initial assessment. In reporting on implementation activities in specific instances, NCPs will comply with transparency and confidentiality considerations as set out in paragraph C-4.</p>
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NCPs are required to report annually on the nature and results of their activities, including with regards the handling of specific instances. In addition they are encouraged to publish their annual reports online to promote transparency and accountability amongst their stakeholders and other NCPs and to report on their activities within their governments. For example the Danish NCP presents its annual report each year at the Danish Council on Corporate Social Responsibility and has established a close cooperation with the latter as a result.

However there are significant divergences in the levels of **accountability** of NCPs. Many NCPs do not report at all to different government agencies on their activities, or only do so on an ad hoc basis; a few report to Parliament. Some NCPs do not report at all.

A small number of NCPs fail to meet their minimal obligation of reporting annually to the OECD, and among those which do, some only provide partial information. In addition, although the majority of NCPs participate actively in the peer learning meetings held at the OECD and are active in organising peer learning events for NCPs in their own countries, a small number of NCPs do not attend, nor engage in other kinds of information or experience sharing with other NCPs. A stronger demand within governments for NCPs to report on their activities would be helpful to increase the visibility and raise the internal profile of NCPs and would be an opportunity to highlight the achievements and shortcomings due, for example, to a lack of resources.

## Chapter 4

### NCP structures

This Chapter provides a summary of the different ways in which NCPs are structured. Governments have flexibility in the way they set up their NCP and the NCP should retain the confidence of social partners and other stakeholders. Over time different types of structures have emerged. Increasingly, driven by the growing expectations around responsible business conduct standards and the growing complexity of specific instances submitted to NCPs, some governments are moving away from the “mono-agency” structure where an NCP is housed in one single Ministry, and are seeking to expand the areas of expertise available within the NCP. For example, some governments have created NCPs that include representatives from several Ministries. Some NCPs are based in one Ministry, but involve other ministries and other stakeholders, such as enterprises and labour representatives, either as part of their core structure, or through advisory bodies. A few governments have re-structured their NCPs into an office with independent experts and a supporting secretariat attached to a Ministry.

#### ***Guidelines for Multinational Enterprises***

##### *I. Concepts and Principles*

*Governments adhering to the Guidelines will implement them and encourage their use. They will establish National Contact Points that promote the Guidelines and act as a forum for discussion of all matters relating to the Guidelines.*

##### ***Council Decision***

*Adhering countries shall set up National Contact Points to further the effectiveness of the Guidelines by undertaking promotional activities, handling enquiries and contributing to the resolution of issues that arise relating to the implementation of the Guidelines in specific instances, taking account of the attached procedural guidance.*

##### ***Procedural Guidance***

###### *A. Institutional Arrangements*

*Consistent with the objective of functional equivalence and furthering the effectiveness of the Guidelines, adhering countries have flexibility in organising their NCPs, seeking the active support of social partners, including the business community, worker organisations, other non-governmental organisations, and other interested parties.*

*Accordingly, the National Contact Points:*

- 1. Will be composed and organised such that they provide an effective basis for dealing with the broad range of issues covered by the Guidelines and enable the NCP to operate in an impartial manner while maintaining an adequate level of accountability to the adhering government.*
- 2. Can use different forms of organisation to meet this objective. An NCP can consist of senior representatives from one or more Ministries, may be a senior government official or a government office headed by a senior official, be an interagency group, or one that contains independent experts. Representatives of the business community, worker organisations and other non-governmental organisations may also be included.*
- 3. Will develop and maintain relations with representatives of the business community, worker organisations and other interested parties that are able to contribute to the effective functioning of the Guidelines.*

### Diversity in NCP structures and composition

Governments have flexibility in the way they set up their NCP and over time different types of structures have emerged. Increasingly, driven by the growing expectations around responsible business conduct standards and the growing complexity of specific instances submitted to NCPs, some governments are moving away from the “mono-agency” structure where an NCP is housed in one single Ministry, and are seeking to expand the areas of expertise available within the NCP. For example, some governments have created NCPs that include representatives from several Ministries. Some NCPs are based in one Ministry, but involve other ministries and other stakeholders, such as enterprises and labour representatives, either as part of their core structure, or through advisory bodies. A few governments have re-structured their NCPs into an office with independent experts and a supporting secretariat attached to a Ministry.

The structure and composition of an NCP needs to be designed so that the NCP can deal with the broad range of issues covered by the Guidelines and enable the NCP to operate in an **impartial** manner while maintaining an adequate level of accountability to the adhering government. Importantly, the Guidelines provide that NCP leadership should be such that it retains the confidence of social partners and other stakeholders, and fosters the public profile of the Guidelines.<sup>42</sup> Whatever the composition, NCPs should function in a **visible, accessible, transparent, and accountable** manner, and are expected to develop and maintain relations with representatives of the business community, worker organisations and other non-governmental organisations. Thus, governments can use different forms of NCP organisation to meet these objectives.

The structures of NCPs can be categorised as follows<sup>43</sup>:

- **Mono-agency:** The NCP is composed of one or more representatives of a single Ministry. (Examples include Argentina, Costa Rica, Greece, Iceland, Ireland, Lithuania, Luxembourg, Mexico, New Zealand, Poland, Slovak Republic and Turkey).

- **Mono-agency ‘plus’:** The NCP secretariat is located in one Ministry but other Ministries or stakeholders are involved in the work of the NCP on an advisory basis. (Examples include Australia, Austria, Chile, Colombia, Estonia, Hungary, Israel, Italy, Peru, Romania, Spain and the United States).
- **Interagency:** The NCP is composed of representatives of two or more Ministries. (Examples include Brazil, Canada, Germany, Japan, Morocco, Portugal, Slovenia, Switzerland and the United Kingdom).
- **Tripartite:** The NCP is composed of representatives of one or more Ministries, business associations, and trade unions. (Examples include Belgium, France, Latvia, Tunisia and Sweden).
- **Quadripartite:** The NCP is composed of representatives of one or more Ministries, business associations, trade unions, and NGOs. (Examples include Czech Republic and Finland).
- **Independent Agency:** The NCP is composed of independent experts and usually benefiting from a supporting secretariat attached to a Ministry. (Examples include Denmark, Korea, the Netherlands and Norway).

Over the past 15 years, governments have used increasingly diverse NCP structures. In 2001 71% of all NCPs (a total of 17 NCPs) were structured under a mono-agency model. By 2015 a total of 12 NCPs were structured as mono-agency, with 12 as mono-agency ‘plus’ involving advisory groups. Countries adhering to the Guidelines after 2001 have adopted various structures and in some cases NCPs have re-organised their structures to move away from their original models.

#### NCP structures

NCP	Location	Structure
Argentina	Ministry of Foreign Affairs and Worship	Monoagency
Australia	Treasury – Foreign Investment and Trade Policy Division	Monoagency ‘plus’
Austria	Federal Ministry of Science, Research and Economy	Monoagency ‘plus’
Belgium	Federal Public Service Economy, S.M.E's, Self-Employed and Energy	Tripartite
Brazil	Ministry of Finance – International Affairs Department	Interagency
Canada	Department of Global Affairs Canada – International Trade Portfolio Division	Interagency
Chile	Ministry of Foreign Affairs – General Directorate for International Economic Relations	Monoagency ‘plus’
Colombia	Ministry of Trade, Industry and Tourism	Monoagency ‘plus’
Costa Rica	Investment Division of the Ministry of Foreign Trade	Monoagency
Czech Republic	Ministry of Trade and Industry	Quadripartite
Denmark	Ministry of Business and Growth – The Danish Mediation and Complaints-handling Institution	Independent Agency
Egypt		
Estonia	Ministry of Economic Affairs and Communications – Executive Office of Enterprise Division	Monoagency ‘plus’
Finland	Ministry of Employment and Economy – Committee on Corporate Social Responsibility	Quadripartite

#### 4. NCP STRUCTURES

<b>NCP</b>	<b>Location</b>	<b>Structure</b>
France	Ministry of Economy, Finance and Employment – Directorate General of the Treasury	Tripartite
Germany	Federal Ministry for Economic Affairs and Energy	Interagency
Greece	Ministry for Development, Competitiveness, Infrastructure and Networks – General Directorate for International Economic Policy.	Monoagency
Hungary	Ministry for National Economy – Department for International Finance	Monoagency 'plus'
Iceland	Ministry of Industries and Innovation	Monoagency
Ireland	Department of Jobs, Enterprise and Innovation	Monoagency
Israel	Ministry of Economy and Industry	Monoagency 'plus'
Italy	Ministry of Economic Development – General Directorate for Industrial Policy and Competitiveness	Monoagency 'plus'
Japan	Ministry of Foreign Affairs – Economic Affairs Bureau; Ministry of Economy, Trade and Industry, Ministry of Health, Labour and Welfare	Interagency
Jordan		
Korea	Independent private body delegated by Ministry of Trade, Industry and Energy	Independent Agency
Latvia	Ministry of Foreign Affairs – Economic Relations and Development Cooperation Policy Department.	Tripartite
Lithuania	Ministry of Economy – Investment and Export Department	Monoagency
Luxembourg	Ministry of Economy	Monoagency
Mexico	Ministry of Economy – Directorate General for Foreign Investment	Monoagency
Morocco	Agency for Investment Development	Interagency
Netherlands	Ministry of Foreign Affairs	Independent Agency
New Zealand	Ministry of Business, Innovation and Employment – Trade and International Environmental Branch	Monoagency
Norway	Ministry of Foreign Affairs	Independent Agency
Peru	Investment Promotion Agency	Monoagency 'plus'
Poland	Information and Foreign Investment Agency – Economic Information Department	Monoagency
Portugal	Ministry of Economy – Directorate General for Economic Activities; Ministry of Foreign Affairs – Investment Agency	Interagency
Romania	Department for Foreign Investment and Public Private Partnership.	Monoagency 'plus'
Slovak Republic	Investment and Trade Development Agency	Monoagency

NCP	Location	Structure
Slovenia	Ministry of Economic Development and Technology – Directorate for Tourism and Internationalisation	Interagency
Spain	Ministry of Economy and Competitiveness – Secretariat of State for International Trade	Monoagency 'plus'
Sweden	Ministry for Foreign Affairs – International Trade Policy Department	Tripartite
Switzerland	State Secretariat for Economic Affairs – International Investment and Multinational Enterprises Unit	Interagency
Tunisia	Ministry of Development and International Co-operation	Tripartite
Turkey	Ministry of Economy	Monoagency
United Kingdom	Department for Business, Innovation and Skills.	Interagency
United States	Department of State – Bureau of Economic and Business Affairs	Monoagency 'plus'

#### Box 11. Structure of the NCP of Norway

The NCP of Norway became an independent public body in 2011. Prior to that, the NCP had a tripartite structure but certain weaknesses had been identified such as: prevalence of government interests; no NGO representation; a lack of financial resources; appointment on the basis of position and a high degree of staff turnover.<sup>44</sup> In a broad stakeholder consultation process, civil society organisations encouraged the restructuring of the NCP to make it more independent and effective. Following this, two alternative models for the NCP were proposed, and in 2010 the Government decided to make the NCP independent of the Government while the Ministry of Foreign Affairs was given administrative responsibilities. The NCP is comprised of a four-person Expert Panel and a two-person full-time Secretariat. The Ministry of Foreign Affairs in consultation with the Ministry of Trade and Industry appoints the Expert Panel based on proposals from the Norwegian Confederation of Trade Unions (LO), the Confederation of Norwegian Enterprises (NHO), and the Forum for Environment and Development (ForUM) on behalf of NGOs.

Different types of NCP structures bring various advantages and disadvantages. Structures composed of multiple government ministries and/or stakeholders present opportunities for policy coherence, enhanced communication and shared expertise in the performance of NCP duties; however they may pose challenges with regard to efficiency. For example, when the Japanese NCP was first established in 2000 it was a mono-agency located in the Ministry of Foreign Affairs (MOFA). Soon after, it reorganised as an inter-agency body composed of the MOFA, the Ministry of Economy, Trade and Industry (METI), and the Ministry of Health, Labour and Welfare (MHLW). MOFA was given the task of hosting the NCP and coordinating the work on the Guidelines, METI that of supporting business activities in overseas markets and MHLW that of providing advice on labour issues. While the interagency structure has facilitated the Japanese NCP in making balanced judgements, reaching decisions can take longer.

Since its creation, the French NCP has had a tripartite format made up of six trade unions, representatives from a wide range of administrations (Economy and Finance,

Foreign Affairs and Development, Labour and Social Affairs, Environment, Energy and Sustainable Development) and the main French business organisation (“MEDEF”). The NCP is located in the Directorate General of the Treasury (Ministry of Economy and Finance) who nominates its Chairman and its Secretary General. The large composition of the NCP is designed to ensure legitimacy and impartiality and offers a platform to dialogue and build trust among parties.

In addition to an NCP’s structure, its location can shape perceptions about the NCP’s ability to function in an impartial manner. For example, situating an NCP within an investment promotion agency or one whose role is to foster economic relationships between the government and companies, risks the perception among some stakeholders that the NCP will act preferably towards enterprises. On the other hand, there may be advantages to such structures. For example, the NCP may be better placed to convene companies, encourage dialogue and place responsible business conduct within economic policy making.

Since 2001, most NCPs have been located in the Ministry which has responsibility for economic issues and investment (e.g. Ministry of Business and Growth, Ministry of Economy, Ministry of Investment, Ministry of Trade, Ministry of Finance, etc.). A total of 34 NCPs are currently located within governmental departments in charge of economic or financial issues, while six are located in Ministries or departments of foreign affairs. Four governments (Denmark, Korea, Netherlands and Norway) have set up NCPs with independent experts and a supporting secretariat attached to a Ministry.

There is scope for creativity in the structure of an NCP regardless of where it is based. For example, the NCP in Switzerland is based in the State Secretariat for Economic Affairs. However, for each specific instance handled by the Swiss NCP, an ad hoc group consisting of different departments such as the Federal Department of Foreign Affairs, the Federal Office for the Environment, etc. is constituted. This ad hoc group is involved in all important steps of the specific instance procedure ensuring impartiality of the process as well as drawing on relevant expertise. Another way of promoting impartiality is through permanent advisory or oversight bodies, discussed below.

Germany’s NCP is based in the Federal Ministry for Economic Affairs and Energy acting in coordination with other ministries. The Inter-ministerial Steering Group for the OECD Guidelines in Germany brings together representatives from those federal ministries that are deemed to have a particular interest in the Guidelines.<sup>45</sup> The German NCP holds regular meetings with the Steering Group to discuss specific instances as well as promotional activities, the working methods of the NCP and other topics related to the Guidelines. In addition a Working Group composed of representatives of companies, trade unions and NGOs provides for a forum for discussions for issues related to the Guidelines. Close cooperation and voting on all relevant topics contributes to impartiality and also brings in the expertise of a broad range of professionals.

### ***Oversight and advisory bodies***

	<p><b><i>Commentary</i></b></p> <p><b><i>Institutional Arrangements</i></b></p> <p><i>11. Regardless of the structure Governments have chosen for their NCP, they can also establish multi-stakeholder advisory or oversight bodies to assist NCPs in their tasks.</i></p>
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A total of 19 governments have created advisory bodies for their NCPs and six have created oversight bodies as of January 2016. Advisory bodies are generally multi-stakeholder platforms and can include representatives from trade unions, NGOs, enterprises or academia. Many advisory bodies also include representatives of other government agencies, thus providing such NCPs with a means of improving policy coherence at the national level. Oversight bodies are commonly composed of representatives from several governmental departments, enterprises, trade unions and NGOs. One of the roles of oversight bodies is to monitor the effectiveness of the NCP, ensuring that correct and fair procedures are followed in line with the NCP procedures for dealing with complaints.

The Swiss NCP has an advisory board composed of 14 representatives from different stakeholder groups: employer associations, trade unions, business associations, NGOs, academia (each group having 2 representatives in the advisory board), as well as two departments of the federal administration (Federal Department of Foreign Affairs and the Federal Department of Economic Affairs, Education and Research EAER). The advisory board is co-chaired by the Director of the State Secretariat of Economic Affairs, and a university professor. The advisory board is consulted on issues such as changes to the procedural guidelines of the NCP, changes to the mandate of the internal working groups of the federal administration that handles specific instances, the selection of external mediators, the annual report of the NCP and promotional activities. The advisory board is kept informed of the handling of specific instances by the NCP. However the advisory board is not directly involved in specific instances.

Similarly, an advisory body was created in 2008 to assist the NCP of Japan. It consists of the NCP secretariat, the Corporate Accounting, Disclosure and CSR Policy Office of Ministry of Economy, Trade and Industry (METI), Keidanren (a Japanese business association) and Rengo (the Japanese Trade Union Confederation). The Committee meets regularly and the NCP shares updates from OECD NCP meetings about the specific instances which the NCP is dealing with without identifying the individuals or organisations involved.

Since 2008, the UK NCP has had a Steering Board which covers the joint functions of an advisory and oversight body. The Steering Board consists of members from relevant Government departments (Foreign and Commonwealth Office, Trade and Investment, Export Finance and the Department for International Development). There are also four members representing enterprises, trade unions and NGOs. These members are unpaid and their membership is reviewed every three years. The Steering Board meets four times a year and examines the work of the NCP in detail particularly on specific instances and promotion. All minutes of the Board are published on the UK NCP website. The Steering Board has the power to review a particular specific instance on procedural grounds, if an appeal is made.

In addition to setting up advisory bodies, a number of NCPs have also formalised channels of communication with stakeholders. Others maintain relations with stakeholders on an ad hoc basis, for instance as part of events to promote the Guidelines.

Table 5. Overview of NCP advisory and oversight bodies

NCP	Advisory	Oversight	NCP	Advisory	Oversight
Argentina			Jordan		
Australia	✓		Korea		
Austria	✓	✓	Latvia		
Belgium	✓		Lithuania	✓	✓
Brazil	✓		Luxembourg		
Canada			Mexico		
Chile	✓		Morocco		
Colombia	✓		Netherlands	✓	
Costa Rica			New Zealand	✓	
Czech Republic			Norway		
Denmark			Peru		
Egypt			Poland		
Estonia			Portugal		
Finland	✓		Romania	✓	✓
France			Slovak Republic		
Germany	✓	✓	Slovenia		
Greece			Spain	✓	
Hungary		✓	Sweden		
Iceland			Switzerland	✓	
Ireland			Tunisia		
Israel	✓		Turkey		
Italy	✓		United Kingdom	✓	✓
Japan	✓		United States	✓	

Source: Based on 2015 NCP annual reports.

### *Human and financial resources*

	<p><b>Council Decision</b></p> <p><b>I. National Contact Points</b></p> <p><i>4. Adhering countries shall make available human and financial resources to their National Contact Points so that they can effectively fulfil their responsibilities, taking into account internal budget priorities and practices.</i></p>
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While most adhering countries have set up and maintain NCPs, the resources and budgetary support provided to enable them to discharge their functions is uneven. Resource constraints are frequently cited by NCPs as being a barrier in fulfilling their mandate and consistently singled out by stakeholders as a major problem with regard to the NCP system. This is in conflict with the commitment by adherent countries under the

Decision of the Council on the Guidelines for Multinational Enterprises to make available human and financial resources to their NCPs so that they can effectively fulfil their responsibilities.

A number of NCPs have indicated that a lack of financial resources poses a challenge in fulfilling their mandate. Few NCPs have staff solely devoted to the responsibilities of the NCP and some do not have any dedicated staff. In most NCPs, members of staff are also responsible for other portfolios. Most NCPs are composed of a mix of full-time and part-time staff, with additional support being requested as needed. Several NCPs – particularly those with their secretariats housed in a Ministry of trade or foreign affairs are staffed by officials sharing several functions.

In addition to a lack of sufficient resources, a lack of institutional knowledge and management, due to frequent staff turnover, the absence of written terms of reference and rules of procedure, and inadequate record-keeping have been identified as shortcomings in the functioning of some NCPs. A lack of consistency among staff working as part of the NCP, and insufficient institutional support can mean that at times the minimum level of manpower, experience and support needed to properly fulfil NCP tasks is not present.

A lack of sufficient human or financial resources is inconsistent with the binding commitment made by adhering countries to “make available human and financial resources to their National Contact Points so that they can effectively fulfil their responsibilities, taking into account internal budget priorities and practices.”<sup>46</sup>



## Chapter 5

### NCPs and the proactive agenda

The “proactive agenda” aims to promote the effective observance of the Guidelines by helping enterprises identify and respond to risks of adverse impacts associated with particular products, regions, sectors or industries. Central to its potential to effect change on a broad scale is its use of multi-stakeholder processes which gives relevant stakeholders the opportunity to participate side-by-side with enterprises in developing tools and strategies to avoid and address risks of adverse impacts.

Since 2011, significant work has been carried out to help companies implement the recommendations of the Guidelines, often initiated by NCPs themselves. Examples include the work on responsible supply chains in the garment and agriculture sector as well as meaningful stakeholder engagement in the extractive sector. Some NCPs have actively participated in this work by chairing or participating in advisory groups or providing comments on documents. However there is room for greater involvement of NCPs in the projects in particular in promoting the work to relevant enterprises to encourage implementation.

In the future, NCPs will have an important additional role in promoting and disseminating the different guidance documents among their stakeholders; which may raise additional challenges for NCPs with resources and skills shortages.

#### **Council Decision**

#### **II. Investment Committee**

*8. The Committee shall, in co-operation with National Contact Points, pursue a proactive agenda that promotes the effective observance by enterprises of the principles and standards contained in the Guidelines.*

#### **Commentary**

#### *Proactive Agenda*

*18. In accordance with the Investment Committee’s proactive agenda, NCPs should maintain regular contact, including meetings, with social partners and other stakeholders in order to:*

- a) consider new developments and emerging practices concerning responsible business conduct;*
- b) support the positive contributions enterprises can make to economic, social and environmental progress;*
- c) participate where appropriate in collaborative initiatives to identify and respond to risks of adverse impacts associated with particular products, regions, sectors or industries.*

## The proactive agenda: providing practical guidance to companies

The “proactive agenda” aims to promote the effective observance of the Guidelines by helping enterprises identify and respond to risks of adverse impacts associated with particular products, regions, sectors or industries. Central to its potential to effect change on a broad scale is its use of multi-stakeholder processes which gives relevant stakeholders the opportunity to participate side-by-side with enterprises in developing tools and strategies to avoid and address risks of adverse impacts.

Current projects include guidance to companies in the following sectors: minerals from high-risk and conflict-affected areas, stakeholder engagement in the extractives sector, the garment and footwear sector, the agricultural sector, and the financial sector. The decision to focus on these sectors was in part shaped by the experiences of NCPs.

### Box 12. Principles for the Proactive Agenda

In 2013, the WPRBC approved the Principles for the Proactive Agenda of the OECD Guidelines for Multinational Enterprises. Accordingly, projects supported under the proactive agenda should:

- Be demand-driven;
- Be broadly supported by NCPs and relevant stakeholders;
- Address issues where there may be risks of significant adverse impacts on matters covered by the Guidelines, and be sufficiently important and in need of attention to justify the time, energy and resources entailed in a broad and inclusive multi-stakeholder process;
- Add value in terms of contributing to the effective observance by enterprises of the principles and standards contained in the Guidelines;
- Avoid duplication with other efforts relevant to the effective implementation of the Guidelines; and
- Have a reasonable expectation of success in reaching an outcome that will be supported by adherents to the OECD Declaration on Investment and Multinational Enterprises as well as affected stakeholders.
- In co-operation with NCPs, the Working Party will seek to encourage multi-stakeholder dialogue to more clearly identify areas in which enterprises can make a positive contribution to economic, environmental and social progress, as well as activities and relationships of enterprises which pose common risks and could result in serious adverse impacts, in particular as they relate to specific products, regions, sectors or industries.
- Outcomes of the proactive agenda should seek to identify such issues and also develop strategies to address them to promote the effective observance by enterprises of the principles and standards contained in the Guidelines. Those strategies may include sharing individual experiences in managing those risks among stakeholders, promoting better understanding of risks and their potential consequences if unaddressed, mapping gaps in the existing tools, sharing best practices, and, where appropriate, clarifying the application of the Guidelines and/or developing additional guidance.

Source: OECD (2013) Principles for the Proactive Agenda of the OECD Guidelines for Multinational Enterprises.

### ***The role of NCPs in promoting the proactive agenda***

The ways in which NCPs contribute to the proactive agenda is by identifying issues which require guidance; by helping to develop such guidance and by promoting understanding and uptake of the guidance nationally. This third step is critical in promoting uptake of standards by national enterprises. NCPs know the relevant stakeholders and communities affected by RBC issues and understand how recommendations can be applied at the local level and the challenges to wider uptake and implementation.

NCPs perform a variety of activities to help promote the proactive agenda. Sector specific guidance documents are typically available in English and French, the official OECD languages. NCPs are encouraged to translate these documents into their national languages and to make these documents widely available.

NCPs also organise promotional activities in their country to introduce and promote sector specific guides to local stakeholders. Workshops include seminars or longer multi-day events and are often conducted in collaboration with the OECD Secretariat and in coordination with local stakeholders. The French NCP for example, organised a consultation meeting with extractive industries in France to gather feedback on the draft *Due Diligence Guidance for Meaningful Stakeholder Engagement in the Extractive Sector*. NCPs will be key interlocutors in promoting uptake of the recommendations through raising awareness and in referring to standards of meaningful stakeholder engagement within relevant specific instance procedures

The promotion of the OECD due diligence guidance can also be related to the size of the sector at a national level. For example Switzerland has a long tradition as a centre of commodity trading. As a consequence, the Swiss NCP has been involved in the elaboration of a report on commodities by the interdepartmental platform on commodities of the Federal Council. The NCP included references to OECD due diligence guidance and a link to the NCP as a grievance mechanism in the report.

### ***NCPs as agenda-setters for the proactive agenda***

In the early 2000s there were a number of specific instances relating to minerals trade and supply chains. A third of all specific instances submitted in 2003 related to the sourcing of minerals in the Democratic Republic of Congo (DRC). The need for guidance on company practice in mineral supply chains was further underlined in a 2007 case received by the UK NCP, regarding an allegation of non-observance of various chapters of the Guidelines through activities in the DRC by the company Afrimex. The NCP's final statement concluded that Afrimex did not undertake appropriate due diligence in its supply chain and failed to take requisite steps towards the abolition of child labour and forced labour in the mines it was sourcing from. The final statement of the UK NCP helped pave the way for the development of the *OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas*, which was developed in 2010 with in-depth engagement from OECD member countries and African countries, industry, civil society, as well as the United Nations.

Another example of NCPs shaping the proactive agenda can be found in a specific instance involving human rights impacts of a steel company and two of its investors. In this case, the Dutch and Norwegian NCPs considered the expectations under the Guidelines for the financial sector. These specific instances revealed the need for further guidance in this area. Upon conclusion of the specific instance in the Norwegian NCP,

Norway's Central Bank issued a request for clarification on the applicability of the Guidelines to minority shareholders, explaining that "the complexity of the relationships in the financial sector and the multitude of business models within this sector warrant a careful and thorough assessment of the proper functioning of the Guidelines within the sector". The Dutch NCP's statements on the involvement of the Dutch pension fund also highlighted that further clarification of the applicability of the Guidelines to specific financial instruments and services in the day-to-day business of financial institutions is necessary. These conclusions helped to provide a mandate to launch a proactive agenda project in the financial sector to further explore these issues.

### ***NCPs and the development of sector-specific due diligence guidance***

Proactive agenda projects bring together sector experts from enterprises, civil society, trade unions and governments who form part of each project's advisory group. NCPs are encouraged to participate in these advisory groups as representatives from adhering governments in order to contribute their practical experience and knowledge from interacting with key stakeholders in these sectors. For example, the French, Italian and Swedish NCPs, as well as government representatives from Canada, United States, Denmark, Germany and the Netherlands participate in the Advisory Group for the development of the *OECD Due Diligence Guidance for Responsible Supply Chains in the Garment and Footwear Sector*.

Beyond participation in advisory groups for sector projects, NCPs have also pioneered and led the development of national guidance for industry. For example in the wake of Rana Plaza and the Tazreen factory fires the French and Italian NCPs issued independent reports on supply chain due diligence and responsible business conduct in the garment and footwear sector in 2013 and 2014 respectively. The Italian NCP has also been highly active on promoting RBC with regards SMEs.

#### **Box 13. France and Italy: Guidance for the garment sector**

In December of 2013 the French NCP published a report of the application of the OECD Guidelines for Multinational Enterprises in the Textile and Clothing Sector in response to a referral by the French Minister of Trade that the NCP treat this issue.<sup>47</sup> Seventy industry representatives were interviewed in development of the report which describes the structures and challenges around international supply chains in the textile and garment sector and formulates key recommendations to help companies manage their supply chains. In follow-up to the report the French NCP has organised various dissemination and awareness raising events and engaged in ongoing consultations with local industry on implementing the recommendations of the report as well as on identifying remaining challenges within the sector and consulting on how to develop more refined guidance for overcoming these issues.

Likewise, following the tragedy of Rana Plaza the Italian NCP adopted an Action Plan on Bangladesh with the aim of promoting due diligence in the supply chains of Italian textile companies, and within the garment sector more broadly. In June of 2014 Italy released a report as a part of one of the expected outcomes of the Action Plan.<sup>48</sup> The report on responsible business conduct in the textile and garment supply chains was drafted in consultation with various stakeholders and lays out operational recommendations, in line with the OECD Guidelines, aiming to improve responsible management of textile and garment supply chains.

#### Box 14. Italy NCP: Focus on SMEs

The Italian NCP has put a particular focus on disseminating due diligence guidance to SMEs. The NCP has developed the following actions and tools:

- General Guidance for SMEs on Due Diligence in the Supply Chain elaborated by the Italian NCP in 2011;
- In the gold sector – in cooperation with industry – many actions were put in place for the promotion of the OECD Guidelines and of the OECD due diligence guidance on conflict minerals in the gold sector, including a survey on SME's approaches to RBC in the supply chain, identifying risks and opportunities for the sector; specialised trainings involving also entrepreneurs; several awareness raising events involving national and international actors and a toolkit of indicators for responsible supply chains management for SMEs;
- In 2013-2014 in the framework of the Italian National Action Plan on CSR, the NCP created a platform of CSR/RBC indicators, to provide a shared language both for firms, especially SMEs, and institutions, to be referred to in order to understand and put in place CSR actions but also to assist institutions.
- More recently the NCP has launched pilot projects with large companies that have a significant number of SMEs as suppliers. The aim is to involve large companies in proactive responsible supply chain management towards their supplier through training, information and assistance.

#### *The impact of the proactive agenda on NCP work*

The proactive agenda has increased stakeholders' awareness of the NCP system and has led to increased expectations. For example the European Union is negotiating draft EU regulation on responsible minerals and is contemplating a series of accompanying measures to support the impact of the regulation. A joint communication of the European Commission and the High Representative<sup>49</sup> outlines the possibility of using government-to-business networks, including the NCP system, to promote the minerals certification programme and its uptake.



## Chapter 6

### NCPs and policy coherence on Responsible Business Conduct

Certain NCPs are involved in the development of broader responsible business conduct policy, including the development of National Action Plans (NAPs) on Responsible Business Conduct and/or Business and Human Rights. Currently 10 adherent countries have developed NAPs on business and human rights. In all but one of these NAPs, NCPs are highlighted as a non-judicial mechanism relevant to promoting access to remedy. In addition another 16 adherent countries are in the process of developing NAPs. Several of these countries have reported strong involvement of NCPs in the development of the NAP. In addition, there is growing interest from non-adhering countries in building structures that can undertake NCP-like activities and provide leadership on responsible business conduct matters.

#### Alignment of government policy on responsible business conduct

Awareness raising of the Guidelines at a government level has resulted in some countries in increased alignment of government policy on responsible business conduct. Certain NCPs occupy a permanent role in relevant government bodies to ensure ongoing coherence. For example Chile's NCP is a permanent member of the Council on Social Responsibility for Sustainable Development, a multi stakeholder platform committed to Chile's economic, social and environmental development, through the promotion of business and social responsibility. Among the Council's main tasks, is to propose to the Minister of Economics, policies, practices and concrete actions regarding responsible business conduct.

The Norwegian NCP engages in ongoing domestic responsible business conduct processes to ensure that the OECD Guidelines and the NCP are mentioned in an appropriate way. The NCP sends comments and suggestions to governmental documents, plans and reports, for instance to the draft National Action Plan on Business and Human Rights, but also to white papers to Parliament on "Globalization and trade" and "Human Rights in Norway's Foreign Policy and Development Cooperation". The NCP also participates as an observer in the Government's consultative body for corporate social responsibility, KOMpakt.

In France, the CSR Ambassador responsible for the creation of a NAP on business and human rights is also a member of the NCP. Furthermore, several members of the NCP participate in the activities of the CSR platform.

#### ***National Action Plans on Business and Human Rights and on RBC***

National Action Plans (NAPs) are strategy documents that States have been encouraged by the UN<sup>50</sup> to develop as part of the State responsibility to disseminate and implement the UN Guiding Principles on Business and Human Rights (UNGPs).<sup>51</sup> Many

countries are developing or have developed NAPs on issues related to business and human rights based on the frameworks set out in the UNGPs and the human rights chapter of the Guidelines. Currently 10 adherent countries to the OECD Guidelines have developed NAPs on business and human rights. In all but one of these NAPs, NCPs are highlighted as a non-judicial mechanism relevant to promoting access to remedy. In addition another 16 adherent countries are in the process of developing NAPs. Some countries are going further than just addressing human rights issues in their NAPs to include the range of issues covered under responsible business conduct as defined by the Guidelines. For example, the US draft NAP addresses ways in which the U.S. government can promote and encourage established norms of responsible business conduct with respect, but not limited to, human rights, labour rights, land tenure, anti-corruption, and transparency. It also references ongoing work on RBC at the OECD as a motivating factor to developing a NAP.<sup>52</sup> The UK NCP played an active part in the development of the UK Business and Human Rights Action Plan, which was published in 2013 and refers to the role of the UK NCP.

NAPs represent an important resource for highlighting a country's policy with regard to human rights and business and signalling needs for future action, they are also useful tools for promoting policy coherence on business and human rights or more broadly. Additionally many countries have policies or action plans on RBC not tied to the UNGPs which are likewise valuable tools for promoting RBC.

### *NCPs and export credits*

ECAs are a significant source of global financing and insurance, specifically with regard to financing of large scale projects and business opportunities in developing countries, which may come with risks of social and environmental impacts.

The 2012 OECD Recommendation of the Council on Common Approaches for Officially Supported Export Credits and Environmental and Social Due Diligence (“the Common Approaches”) (updated in 2016) provides that “[m]embers should... [p]romote awareness of the [the Guidelines] among appropriate parties involved in applications for officially supported export credits as a tool for responsible business conduct in a global context”, and “*should... where appropriate: [...] consider any statements or reports made publicly available by their National Contact Points (NCPs) at the conclusion of a specific instance procedure under the OECD Guidelines for Multinational Enterprises*”.<sup>53</sup>

As a result many adherents have incorporated reference to the Guidelines within their ECA policies. Thirty adherents report having policies in place that either directly reference the Guidelines or indirectly reference them through the Common Approaches, and 25 adherents report that NCP statements are taken into account in reviews of applications to the ECA, of these 6 report having formal procedures in place for review of NCP statements.<sup>54</sup>

### *NCPs and economic diplomacy*

In 2014 Canada released its Enhanced Corporate Social Responsibility (CSR) Strategy, “*Doing Business the Canadian Way: A Strategy to Advance Corporate Social Responsibility in Canada's Extractive Sector Abroad*”.<sup>55</sup> The strategy highlights promotion and dissemination of the Guidelines as widely-recognised international CSR performance and reporting guidelines.

The CSR strategy also emphasises the role of Canada’s NCP in implementing its objectives. Importantly under the strategy companies are encouraged to participate in the NCP mechanism and “[a]s a penalty for companies that do not embody CSR best practices and refuse to participate in the CSR Counsellor’s Office or NCP dispute resolution processes, Government of Canada support in foreign markets will be withdrawn”. In a specific instance concluded by the Canadian NCP in 2015, this was invoked for the first time against a company that refused to engage in dialogue through the NCP.

### The NCP system as a model for RBC platforms

There is growing interest from non-adhering countries in building structures that can undertake NCP-like activities and provide leadership on responsible business conduct matters. For example, in close collaboration with the OECD and supported by direct engagement with several NCPs, the government of Myanmar established a focal point on responsible business conduct.

Currently NCPs are only established in countries which adhere to the Guidelines. However, short of actual adherence to the Guidelines, analogous mechanisms can be established in countries. For example, in close collaboration with the OECD and supported by direct engagement with several NCPs, the government of Myanmar established a focal point on responsible business conduct, whose mandate is inspired by the NCP mandate, to promote responsible business conduct and coordinate related activities. In May 2015, the OECD Secretariat organised a joint workshop in Beijing on the OECD Guidelines and the National Contact Points, with representatives from Chinese ministries, government agencies, industry and NGOs, the Trade Union Advisory Committee (TUAC), the Business and Industry Advisory Committee (BIAC), OECD Watch as well governments adhering to the OECD Guidelines. Representatives from 10 NCPs actively participated in the workshop, and participants from China, especially business representatives, expressed a great interest in the mechanism.

In July 2015, the OECD and the Chinese government agreed on a programme of work for joint activities. A number of these activities focus on helping China strengthen its framework for responsible business conduct, and notably, to jointly set up a platform on responsible business conduct issues in China, to assist and support Chinese industry to apply and implement responsible business conduct, including sector specific instruments and guidelines. The cooperation has already yielded some concrete results, such as the development and release in December 2015 of the Chinese Due Diligence Guidelines for Responsible Mineral Supply Chains. With regards to setting up the RBC platform in China, many of the practical modalities of this activity still need to be resolved and decided by Chinese authorities. Initial discussion on the possible functions of the Chinese RBC platform indicated preliminary interest in activities typically carried out by NCPs including promoting RBC standards and responding to enquiries, providing advice to companies on expected conduct abroad; and helping address issues arising from the non-observance of RBC standards by companies.



## Chapter 7

### Peer learning and peer reviews

The OECD Action Plan to strengthen NCPs was adopted by the Working Party on Responsible Business Conduct in December 2015 and responds to calls from OECD Ministers and G7 Leaders. The Action Plan describes individual activities in the form of peer reviews and capacity building and collective activities which include peer learning and the creation of tools and resources. To date, NCPs have benefited from several peer learning sessions at the OECD and at NCP-led meetings which bring together smaller numbers of NCPs and offer an opportunity for sharing experience. Peer reviews have proven beneficial both for the reviewed NCP as well as the peer reviewers and are recognised as a useful tool to identify achievements and areas for improvement. Under the Action Plan, 12 NCPs have committed to undergo a peer review by 2018.

#### ***Procedural guidance***

#### ***II. Investment Committee***

*5. In discharging its responsibilities, the Committee will be assisted by the OECD Secretariat, which, under the overall guidance of the Investment Committee, and subject to the Organisation's Programme of Work and Budget, will:*

*(a)...*

*(b)...*

*(c) Facilitate peer learning activities, including voluntary peer evaluations, as well as capacity building and training, in particular for NCPs of new adhering countries, on the implementation procedures of the Guidelines such as promotion and the facilitation of conciliation and mediation.*

#### ***Commentary***

#### ***Peer Learning***

*19. In addition to contributing to the Committee's work to enhance the effectiveness of the Guidelines, NCPs will engage in joint peer learning activities. In particular, they are encouraged to engage in horizontal, thematic peer reviews and voluntary NCP peer evaluations. Such peer learning can be carried out through meetings at the OECD or through direct co-operation between NCPs.*

## Peer learning

NCPs regularly engage in peer learning which occurs through ad hoc events as well as through meetings of NCPs held at the OECD in Paris. These meetings provide an opportunity for NCPs to share their experiences, identify achievements and shortcomings, and reflect on directions for future activity. Structured peer learning activities are also organised at these meetings. For example at the demand of NCPs, a large part of the 16<sup>th</sup> annual meeting of National Contact Points in June 2015 was dedicated to peer learning. Three parallel sessions were focused on visibility: ensuring good communication; balancing transparency and confidentiality; and initial assessments, with focus on non-engagement and disengagement of parties. The variety of practices and shared experiences in these meetings help best practices to emerge.

One example of peer learning was a mediation workshop aimed at NCPs which was held in 2014. Some of the questions that were considered included: What can the NCP do if a company involved in a specific instance refuses to engage in a dialogue? How can NCPs pave the way for parties to concur on non-judicial agreements? How can NCPs balance the need for confidentiality with the need for disclosure during the process? What is required to ensure that the parties later agree that the mediated arrangements were implemented in good faith? A total of 12 participants from the NCPs in Sweden, Denmark, Finland, Norway, Belgium, the Netherlands and the OECD Secretariat received theoretical and practical input from two experts from Shift and the Consensus Building Institute (CBI) who used the Mediation Manual for National Contact Points as a starting point.

In addition NCPs have been proactive in organising regional or thematic events to further peer learning and experience sharing. For example in 2014 Colombia's NCP hosted a peer learning and capacity-building session for Latin American NCPs, with the support of the UK NCP. Participants included representatives of NCPs from Chile, Mexico, and Peru, and the Brazilian Embassy in Colombia. The UK NCP presented on the operation of its NCP, administration of specific instances, and the use of mediation. A practical workshop on resolving conflicts related to responsible business conduct also took place. In addition, during the Latin-American Capacity Building activity, hosted by the Chilean NCP, NCPs from across Latin America had an opportunity to benefit from the experiences of other NCPs regarding their procedures, promotional activities, best practices, successful and un-successful outcomes of a variety of specific instances.

In September 2014 the German NCP hosted the Second Regional Meeting 2014 for Central European National Contact Points, which had been organised by the Austrian NCP the preceding year. NCPs from Austria, Czech Republic, Germany, Slovenia and Switzerland attended the meeting. The agenda concentrated on current issues resulting from their recent case handling practice. These issues included due diligence and supply chains, NCP proceedings concerning final declarations, media campaigning and NCP activities after a case is closed. Furthermore the group discussed how to cooperate in concrete cases between different NCPs as well as how to better promote the activities of the NCPs.

In addition to the annual meetings of NCPs, regional workshops are also organised by the OECD Secretariat, TUAC, BIAC or OECD Watch in cooperation with NCPs to facilitate peer learning between smaller groups of countries. In 2015 such workshops were held in Poland, Austria, Morocco, China and Hungary.

## Peer reviews

During the 2011 revision of the OECD Guidelines, governments agreed that NCPs would reinforce their joint peer learning activities and in particular, those involving voluntary peer reviews. Peer reviews are a helpful mechanism for highlighting achievements of individual NCPs, identifying areas in need of improvement and setting out specific recommendations which can then be followed up within a certain timeframe. Peer reviews of the NCPs of the Netherlands (2009), Japan (2012), Norway (2013) and Denmark (2015) have been completed.

In 2015, there was increased attention on peer reviews of NCPs as a means to improve performance. In June 2015, on the occasion of the OECD Ministerial Council Meeting, Ministers called on the OECD *to continue its efforts to further strengthen the performance of MNE National Contact Points, including through voluntary peer reviews and the exchange of best practices*.<sup>56</sup> This call was also made in the G7 Leaders Declaration in June 2015, in which the G7 governments committed to *strengthening mechanisms for providing access to remedies including the National Contact Points (NCPs)*. In order to do this, the G7 governments are encouraging the OECD to promote peer reviews and peer learning on the functioning and performance of NCPs. In addition, the G7 governments committed to ensuring that their own NCPs are effective and that they “lead by example”.<sup>57</sup>

To date, the process through which peer reviews have been conducted has been coordinated by the governments and their NCP under review. To help promote functional equivalence of NCPs, to ensure coherence in the way peer reviews are conducted and to make peer reviews as efficient as possible, a “core” template for voluntary peer reviews was agreed in 2015. This template aims to create a standard by which the quality of peer reviews can be ensured, by assessing conformity of an NCP with the core criteria of visibility, accessibility, transparency and accountability, and with guiding principles for specific instances as set out in the Procedural Guidance.

NCPs that have undergone peer reviews as well as those that have been part of peer review teams have consistently reported positive experiences with the peer review exercise. For example the Japanese NCP, which undertook the first peer review after the 2011 revision of the Guidelines, reported that it was a very fruitful experience for them and the six NCPs that participated in the process with regard to exchanging experiences and challenges and learning from other NCPs good practices. In response to their own peer review Denmark has stated that it was a very good learning exercise and served as an inspiration for the future work and strategy of the NCP, although it does require time and resources from the NCP to implement the review and the recommendations.

The NCP of Norway led the peer review of Japan (2012) and found it to be a valuable learning experience in advance of its own peer review in 2013. For the peer review of Norway the intention was to have a thorough review that could examine the handling of the different aspects of the mandate. Since the Norwegian NCP had been re-organised in 2011 as an independent Expert Panel with a dedicated Secretariat, the peer review also looked into the implications of this institutional structure. Norway found that the process was time-consuming, but that the final document provided constructive input. The report and the follow-up work plan were shared with other NCPs, and Norway contributed to the discussion regarding a core template for future peer reviews in order to reduce the workload for others. The experience of Norway was also valuable when the former NCP Chair led the peer review of the Danish NCP in 2015. Similarly the Hungarian NCP

participated in the peer review of the Norwegian NCP as an observer and found it extremely useful and an inspiring learning exercise. Canada, which participated in the peer review of Norway, reported satisfaction with their experience in the process and being impressed by the work and dedication of the Norwegian NCP. The UK NCP has engaged in all four peer reviews to date and has stated that while the processes are useful a light-touch method could be equally valuable in assisting NCPs that are struggling. The core template adopted in 2015, to be used in all upcoming reviews, aims to address these concerns.

## Conclusion

### Realising the potential of NCPs

There are various advantages inherent to NCPs. Firstly, the broad scope of the Guidelines, across subject matters and business relationships, means that NCPs provide a platform for discussion and resolution of a wide range of issues. Furthermore it means that NCPs are not limited to considering impacts occurring within their borders, but may consider issues occurring across global supply chains.

Additionally NCPs facilitate access to consensual and non-adversarial means of dispute resolution, such as conciliation or mediation. This can be significantly quicker and less expensive than court proceedings or arbitration, and can enable the parties to engage in a process aimed at reaching a mutual agreement rather than a judgement. The process is designed to be constructive and result in recommendations for how companies could make improvements as well as allow for the development of longer term, constructive engagement between companies and stakeholders.

Strengthening the internal functioning of NCPs as well as ensuring that external frameworks promote strong outcomes under the NCP system will be necessary to ensuring that they live up to their full potential. In order to achieve this objective NCPs need adequate resources to fulfil their mandate. Furthermore, promoting policy coherence which recognises the role and value of the NCP system will also be useful. This may include tying consequences to specific instance proceedings in export credit decisions or support in international economic diplomacy, or recognizing the role of NCPs in NAPs or other relevant government policy.



## *Notes*

1. Decision of the Council on the OECD Guidelines for Multinational Enterprises [C(2000)96/FINAL] as amended in 2011.
2. Argentina (1997), Australia (1976), Austria (1976), Belgium (1976), Brazil (1997), Canada (1976), Chile (1997), Colombia (2011), Costa Rica (2013), Czech Republic (1995), Denmark (1976), Egypt (2007), Estonia (2001), Finland (1976), France (1976), Germany (1976), Greece (1976), Hungary (1994), Iceland (1976), Ireland (1976), Israel (2002), Italy (1976), Japan (1976), Jordan (2013), Korea (1996), Latvia (2004), Lithuania (2001), Luxembourg (1976), Mexico (1994), Morocco (2009), Netherlands (1976), New Zealand (1976), Norway (1976), Peru (2008), Poland (1996), Portugal (1976), Romania (2005), Slovak Republic (2000), Slovenia (2002), Spain (1976), Sweden (1976), Switzerland (1976), Tunisia (2012), Turkey (1981), United Kingdom (1976), United States (1976).
3. OECD Guidelines for Multinational Enterprises, 2011, <http://mneguidelines.oecd.org/>
4. OECD Guidelines for Multinational Enterprises, (2011). Section I of the Commentary: *Core Criteria for Functional Equivalence in the Activities of NCPs*.
5. OECD Guidelines for Multinational Enterprises, 2011. Available at <http://mneguidelines.oecd.org/> The Implementation Procedures of the OECD Guidelines for Multinational Enterprises include the *Decision of the Council on the Guidelines for Multinational Enterprises*, as amended in 2011 (hereafter “the Council Decision”), which also contains the *Procedural Guidance*, as well as the *Commentary on the Implementation Procedures of the OECD Guidelines for Multinational Enterprises*, adopted by the Investment Committee (hereafter “the Commentary”).
6. Information Meeting with Non-members on the OECD Declaration for International Investment and Multinational Enterprises and the Guidelines for Multinational Enterprises. Paris, 12 December 2000. [www.oecd.org/corporate/mne/2439128.pdf](http://www.oecd.org/corporate/mne/2439128.pdf)
7. OECD Watch, *Remedy Remains Rare*, (June, 2015) available at: [www.oecdwatch.org/publications-fr/Publication\\_4201-fr](http://www.oecdwatch.org/publications-fr/Publication_4201-fr) (hereinafter OECD Watch, 2015)
8. OECD Watch, *Model National Contact Point* (May, 2007) available at: [www.oecdwatch.org/publications-en/Publication\\_2223](http://www.oecdwatch.org/publications-en/Publication_2223)
9. TUAC, 15 point plan for National Contract Points (June, 2015) available at: [www.tuac.org/fr/public/e-docs/00/00/10/99/document\\_doc.phtml](http://www.tuac.org/fr/public/e-docs/00/00/10/99/document_doc.phtml)
10. BIAC, *Third BIAC Survey of Member Companies' Experiences with NCPs and Specific Instance Procedures* (June, 2015) available at: <http://biac.org/wp-content/uploads/2015/06/FIN-15-06-BIAC-NCP-Survey-Discussion-Paper1.pdf> (hereinafter BIAC, 2015)
11. Currently 341 of these are reported on the OECD specific database, 25 additional specific instances filed after 2011 have not yet been reported on the database as they have only recently been closed or are pending submission of initial assessments. Additionally, comparison of the OECD database of specific instances with the TUAC and OCED Watch databases reporting specific instances has found an additional 49 specific instances unreported on the OECD database from the year 2000 through 2010. As the 2011 revision of the Guidelines introduced new reporting requirements with regard to specific instances, these 49 specific instances have not been included in the total reported number of 366.
12. OECD Guidelines for Multinational Enterprises, 2011. Procedural Guidance. Section C.
13. See Website of the German NCP for more information. [www.bmwi.de/EN/Topics/Foreign-trade/International-bodies/oecd-guidelines-for-multinational-enterprises.did=430518.html](http://www.bmwi.de/EN/Topics/Foreign-trade/International-bodies/oecd-guidelines-for-multinational-enterprises.did=430518.html) (last accessed May 30, 2016).
14. See Resolution NCP N. 01/2012 (14 September 2012) available at [www.pcn.fazenda.gov.br/assuntos/english/files/resolution-no-01.pdf](http://www.pcn.fazenda.gov.br/assuntos/english/files/resolution-no-01.pdf)

15. See website of the Norwegian NCP, <http://nettsteder.regjeringen.no/ansvarlignaringsliv-en/assessment-of-complaints/> (last accessed May 26, 2016)
16. This data refers to the total number of specific instances on the OECD database (341) as of May 2016, plus an additional 25 specific instances identified as of 2011 which are in the process of being added to the database.
17. See TUAC specific instance database [www.tuacoecdmguidelines.org/home.asp](http://www.tuacoecdmguidelines.org/home.asp); and OECD Watch specific instance database [www.oecdwatch.org/cases](http://www.oecdwatch.org/cases)
18. Additionally 49 specific instances were identified as not reported on the OECD database prior to 2011. As reporting obligations changed in 2011 revision to the Guidelines, these cases filed prior to 2011 will not be included in the OECD database; however efforts have been made to ensure completeness from 2011 onwards.
19. OECD Guidelines for Multinational Enterprises, (2011) Procedural Guidance, I.C
20. Ruggie, John G., and Tamaryn Nelson. 2015. "Human Rights and the OECD Guidelines for Multinational Enterprises: Normative Innovations and Implementation Challenges." Corporate Social Responsibility Initiative Working Paper No. 66. Cambridge, MA: John F. Kennedy School of Government, Harvard University.
21. Ruggie, John G., and Tamaryn Nelson. 2015. "Human Rights and the OECD Guidelines for Multinational Enterprises: Normative Innovations and Implementation Challenges." Corporate Social Responsibility Initiative Working Paper No. 66. Cambridge, MA: John F. Kennedy School of Government, Harvard University.
22. The 2011 revision of the Guidelines included more robust reporting requirements from NCPs with regard to specific instances allowing collection of more detailed information regarding process and outcome of specific instances. As a result some of the findings in this report are based on specific instances starting from 2011. These are indicated throughout.
23. See OECD Watch Specific Instance Database, [http://oecdwatch.org/cases/Case\\_358](http://oecdwatch.org/cases/Case_358)
24. OECD Guidelines for Multinational Enterprises (2011), Para.II(2) c-d
25. OECD Watch, June 2015
26. U.S. NCP Final Statement UAW-IndustriALL and Nissan North America, Inc. for operations in the United States, (January 2015), available at [www.state.gov/e/eb/oecd/usncp/links/rls/236972.htm](http://www.state.gov/e/eb/oecd/usncp/links/rls/236972.htm)
27. As reported on the OECD Specific Instance Database, <https://mneguidelines.oecd.org/database/>
28. Denmark National Contact Point Peer Review Report, June 2015, para. 6.4.b
29. Denmark National Contact Point Peer Review Report, June 2015, para. 10.2.a.3.
30. OECD Watch, June 2015.
31. OECD Guidelines for Multinational Enterprises (2011), I. Commentary on the Procedural Guidance for NCPs, para 26.
32. OECD Watch, June 2015
33. NCP Horizontal peer learning session, June 2015.
34. OECD International Investment and Multinational Enterprises. Revised Edition, 1984
35. OECD Guidelines for Multinational Enterprises (2011), Procedural Guidance, Section B, para 3.
36. OECD Guidelines for Multinational Enterprises (2011), Procedural Guidance, Section B, para 3.
37. BIAC, June 2015.
38. Ibid. Page 2.

39. Swiss Federal Council, *Position Paper and Action Plan of the Federal Council* (April, 2015). Available at: [https://www.seco.admin.ch/seco/en/home/Aussenwirtschaftspolitik\\_Wirtschaftliche\\_Zusammenarbeit/Wirtschaftsbeziehungen/Gesellschaftliche\\_Verantwortung\\_der\\_Unternehmen/Positionspapier\\_und\\_Aktionsplan\\_BR.html](https://www.seco.admin.ch/seco/en/home/Aussenwirtschaftspolitik_Wirtschaftliche_Zusammenarbeit/Wirtschaftsbeziehungen/Gesellschaftliche_Verantwortung_der_Unternehmen/Positionspapier_und_Aktionsplan_BR.html)
40. Fact sheet: The U.S. Global Anticorruption Agenda, September 24, 2014, <https://www.whitehouse.gov/the-press-office/2014/09/24/fact-sheet-us-global-anticorruption-agenda>
41. These include the French, Norwegian, UK and US NCPs.
42. OECD Guidelines for Multinational Enterprises (2011), I. Commentary on the Procedural Guidance for NCPs, para. 10.
43. This categorisation is based on information provided by NCPs in their 2015 annual reports to the OECD.
44. These challenges were mentioned in a report to the Norwegian Parliament in 2009 by the NCP.
45. This currently applies to the: Federal Foreign Office, Federal Ministry of Justice and Consumer Protection, Federal Ministry of Finance, Federal Ministry of Labour and Social Affairs, Federal Ministry of Food and Agriculture, Federal Ministry for the Environment, Nature Conservation, Building and Nuclear Safety, and the Federal Ministry for Economic Cooperation and Development.
46. Amendment of the Decision of the Council on the OECD Guidelines for Multinational Enterprises, para 4.
47. See NCP Report on Implementation of the OECD Guidelines in the Textile and Clothing Sector, December 2014. [www.tresor.economie.gouv.fr/File/398811](http://www.tresor.economie.gouv.fr/File/398811)
48. See Report on responsible business conduct in the textile and garment supply chain, June 2014. <http://pcnitalia.sviluppoeconomico.gov.it/en/news/item/301-report-on-responsible-business-conduct-in-the-textile-and-garment-supply-chain>
49. European Commission (2014), Responsible sourcing of minerals originating in conflict-affected and high-risk areas. Towards an integrated EU approach, Brussels, 5.3.2014, JOIN(2014) 8 final
50. UN OHCHR, State National Action Plans [www.ohchr.org/EN/Issues/Business/Pages/NationalActionPlans.aspx](http://www.ohchr.org/EN/Issues/Business/Pages/NationalActionPlans.aspx)
51. OHCHR, National Actions Plans, [www.ohchr.org/EN/Issues/Business/Pages/NationalActionPlans.aspx](http://www.ohchr.org/EN/Issues/Business/Pages/NationalActionPlans.aspx)
52. U.S. Department of State, USG National Action Plan on Responsible Business Conduct: Frequently Asked Questions, 12 February 2015, [www.humanrights.gov/dyn/2015/usg-national-action-plan-on-responsible-business-conduct/](http://www.humanrights.gov/dyn/2015/usg-national-action-plan-on-responsible-business-conduct/)
53. OECD Recommendation of the Council on Common Approaches for Officially Supported Export Credits and Environmental and Social Due Diligence (2012), paragraph 4 (iii), 15.
54. Id.
55. Canada's Enhanced Social Responsibility Strategy to Strengthen Canada's Extractive Sector Abroad. November 14, 2014), available at [www.international.gc.ca/trade-agreements-accords-commerciaux/topics-domaines/other-autre/csr-strat-rse.aspx?lang=eng](http://www.international.gc.ca/trade-agreements-accords-commerciaux/topics-domaines/other-autre/csr-strat-rse.aspx?lang=eng)
56. Unlocking Investment for Sustainable Growth and Jobs - 2015 Ministerial Council Statement, [www.oecd.org/mcm/documents/ministerial-council-statement-2015.htm](http://www.oecd.org/mcm/documents/ministerial-council-statement-2015.htm)
57. Leaders' Declaration, G7 Summit, 7-8 June 2015 [https://www.g7germany.de/Content/EN/Anlagen/G7/2015-06-08-g7-abschluss-eng\\_en.pdf?blob=publicationFile&v=3](https://www.g7germany.de/Content/EN/Anlagen/G7/2015-06-08-g7-abschluss-eng_en.pdf?blob=publicationFile&v=3)



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## *Annex*

### **Legal texts relating to the functioning of National Contact Points from the OECD Guidelines for Multinational Enterprises**

This Annex contains extracts of legal texts relating to NCPs.

**Part 1** includes extracts referring to adhering countries' obligation to set up a National Contact Point, as well as the functions and core criteria for functional equivalence and procedural guidance.

**Part 2** contains extracts referring to NCPs, but not directly related to their functions.

The extracts are taken from the following documents:

- **The Declaration on International Investment and Multinational Enterprises:** The OECD Guidelines for Multinational Enterprises (the Guidelines) were adopted in 1976 as part of the OECD Declaration on International Investment and Multinational Enterprises (the Investment Declaration). Since then the Guidelines have been subject to review on five occasions to ensure they keep pace with the changing international environment. The most recent revision took place in 2011. Today the Guidelines represent a global framework for responsible business conduct covering all areas of business responsibility including disclosure, human rights, employment and industrial relations, environment, anti-corruption, competition and taxation.
- **The Council Decision on the OECD Guidelines for Multinational Enterprises:** All governments adhering to the Investment Declaration are also required to adhere to the Decision of the Council on the Guidelines for Multinational Enterprises [insert code]. This Decision contains the obligation for adherents to set up a National Contact Point (NCP) to further the effectiveness of the Guidelines, and make human and financial resources available to their NCP to fulfil their responsibilities. The Council Decision contains the Procedural Guidance which sets out the role of the National Contact Points and the role of the Investment Committee and Working Party on Responsible Business Conduct.
- **Commentary on the OECD Guidelines for Multinational Enterprises:** The Commentary on the Implementation Procedures was adopted by the Investment Committee to elaborate on the roles of the Investment Committee and National Contact Points.

## *Part I*

### **Extracts referring to adhering countries' obligation to set up a National Contact Point, as well as the functions and core criteria for functional equivalence and procedural guidance.**

#### **OECD Guidelines for Multinational Enterprises Recommendations for responsible business conduct in a global context**

##### **I. Concepts and Principles**

[...]

*11. Governments adhering to the Guidelines will implement them and encourage their use. They will establish National Contact Points that promote the Guidelines and act as a forum for discussion of all matters relating to the Guidelines. The adhering Governments will also participate in appropriate review and consultation procedures to address issues concerning interpretation of the Guidelines in a changing world.*

[...]

#### **Amendment of the Decision of the Council on the OECD Guidelines for Multinational Enterprises Implementation Procedures of the OECD Guidelines for Multinational Enterprises**

*THE COUNCIL, [...] DECIDES:*

##### ***I. National Contact Points***

*1. Adhering countries shall set up National Contact Points to further the effectiveness of the Guidelines by undertaking promotional activities, handling enquiries and contributing to the resolution of issues that arise relating to the implementation of the Guidelines in specific instances, taking account of the attached procedural guidance. The business community, worker organisations, other non-governmental organisations and other interested parties shall be informed of the availability of such facilities.*

*2. National Contact Points in different countries shall co-operate if such need arises, on any matter related to the Guidelines relevant to their activities. As a general procedure, discussions at the national level should be initiated before contacts with other National Contact Points are undertaken.*

*3. National Contact Points shall meet regularly to share experiences and report to the Investment Committee.*

*4. Adhering countries shall make available human and financial resources to their National Contact Points so that they can effectively fulfil their responsibilities, taking into account internal budget priorities and practices.*

[...]

## Procedural Guidance

### **I. National Contact Points**

*The role of National Contact Points (NCPs) is to further the effectiveness of the Guidelines. NCPs will operate in accordance with core criteria of visibility, accessibility, transparency and accountability to further the objective of functional equivalence.*

#### **A. Institutional Arrangements**

*Consistent with the objective of functional equivalence and furthering the effectiveness of the Guidelines, adhering countries have flexibility in organising their NCPs, seeking the active support of social partners, including the business community, worker organisations, other nongovernmental organisations, and other interested parties.*

*Accordingly, the National Contact Points:*

- 1. Will be composed and organised such that they provide an effective basis for dealing with the broad range of issues covered by the Guidelines and enable the NCP to operate in an impartial manner while maintaining an adequate level of accountability to the adhering government.*
- 2. Can use different forms of organisation to meet this objective. An NCP can consist of senior representatives from one or more Ministries, may be a senior government official or a government office headed by a senior official, be an interagency group, or one that contains independent experts. Representatives of the business community, worker organisations and other non-governmental organisations may also be included.*
- 3. Will develop and maintain relations with representatives of the business community, worker organisations and other interested parties that are able to contribute to the effective functioning of the Guidelines.*

#### **B. Information and Promotion**

*The National Contact Point will:*

- 1. Make the Guidelines known and available by appropriate means, including through on-line information, and in national languages. Prospective investors (inward and outward) should be informed about the Guidelines, as appropriate.*
- 2. Raise awareness of the Guidelines and their implementation procedures, including through co-operation, as appropriate, with the business community, worker organisations, other non-governmental organisations, and the interested public.*
- 3. Respond to enquiries about the Guidelines from: a) other National Contact Points; b) the business community, worker organisations, other nongovernmental organisations and the public; and c) governments of non-adhering countries.*

#### **C. Implementation in Specific Instances**

*The National Contact Point will contribute to the resolution of issues that arise relating to implementation of the Guidelines in specific instances in a manner that is impartial, predictable, equitable and compatible with the principles and standards of the Guidelines. The NCP will offer a*

*forum for discussion and assist the business community, worker organisations, other non-governmental organisations, and other interested parties concerned to deal with the issues raised in an efficient and timely manner and in accordance with applicable law.*

*In providing this assistance, the NCP will:*

*1. Make an initial assessment of whether the issues raised merit further examination and respond to the parties involved.*

*2. Where the issues raised merit further examination, offer good offices to help the parties involved to resolve the issues. For this purpose, the NCP will consult with these parties and where relevant:*

- a) seek advice from relevant authorities, and/or representatives of the business community, worker organisations, other nongovernmental organisations, and relevant experts;*
- b) consult the NCP in the other country or countries concerned;*
- c) seek the guidance of the Committee if it has doubt about the interpretation of the Guidelines in particular circumstances;*
- d) offer, and with the agreement of the parties involved, facilitate access to consensual and non-adversarial means, such as conciliation or mediation, to assist the parties in dealing with the issues.*

*3. At the conclusion of the procedures and after consultation with the parties involved, make the results of the procedures publicly available, taking into account the need to protect sensitive business and other stakeholder information, by issuing:*

- a) a statement when the NCP decides that the issues raised do not merit further consideration. The statement should at a minimum describe the issues raised and the reasons for the NCP's decision;*
- b) a report when the parties have reached agreement on the issues raised. The report should at a minimum describe the issues raised, the procedures the NCP initiated in assisting the parties and when agreement was reached. Information on the content of the agreement will only be included insofar as the parties involved agree thereto;*
- c) a statement when no agreement is reached or when a party is unwilling to participate in the procedures. This statement should at a minimum describe the issues raised, the reasons why the NCP decided that the issues raised merit further examination and the procedures the NCP initiated in assisting the parties. The NCP will make recommendations on the implementation of the Guidelines as appropriate, which should be included in the statement. Where appropriate, the statement could also include the reasons that agreement could not be reached.*

*The NCP will notify the results of its specific instance procedures to the Committee in a timely manner.*

*4. In order to facilitate resolution of the issues raised, take appropriate steps to protect sensitive business and other information and the interests of other stakeholders involved in the specific instance. While the procedures under paragraph 2 are underway, confidentiality of the proceedings will be maintained. At the conclusion of the procedures, if the parties involved have not agreed on a resolution of the issues raised, they are free to communicate about and discuss these issues. However, information and views provided during the proceedings by another party involved will remain confidential, unless that other party agrees to their disclosure or this would be contrary to the provisions of national law.*

*5. If issues arise in non-adhering countries, take steps to develop an understanding of the issues involved, and follow these procedures where relevant and practicable.*

## **D. Reporting**

1. *Each NCP will report annually to the Committee.*
2. *Reports should contain information on the nature and results of the activities of the NCP, including implementation activities in specific instances.*

## **Commentary on the Implementation Procedures of the OECD Guidelines for Multinational Enterprises**

[...]

### **I. Commentary on the Procedural Guidance for NCPs**

*7. National Contact Points have an important role in enhancing the profile and effectiveness of the Guidelines. While it is enterprises that are responsible for observing the Guidelines in their day-to-day behaviour, governments can contribute to improving the effectiveness of the implementation procedures. To this end, they have agreed that better guidance for the conduct and activities of NCPs is warranted, including through regular meetings and Committee oversight.*

*8. Many of the functions in the Procedural Guidance of the Decision are not new, but reflect experience and recommendations developed over the years. By making them explicit the expected functioning of the implementation mechanisms of the Guidelines is made more transparent. All functions are now outlined in four parts of the Procedural Guidance pertaining to NCPs: institutional arrangements, information and promotion, implementation in specific instances, and reporting.*

*9. These four parts are preceded by an introductory paragraph that sets out the basic purpose of NCPs, together with core criteria to promote the concept of “functional equivalence”. Since governments are accorded flexibility in the way they organise NCPs, NCPs should function in a visible, accessible, transparent, and accountable manner. These criteria will guide NCPs in carrying out their activities and will also assist the Committee in discussing the conduct of NCPs.*

#### **Core Criteria for Functional Equivalence in the Activities of NCPs**

*Visibility. In conformity with the Decision, adhering governments agree to nominate NCPs, and also to inform the business community, worker organisations and other interested parties, including NGOs, about the availability of facilities associated with NCPs in the implementation of the Guidelines. Governments are expected to publish information about their NCPs and to take an active role in promoting the Guidelines, which could include hosting seminars and meetings on the instrument. These events could be arranged in cooperation with business, labour, NGOs, and other interested parties, though not necessarily with all groups on each occasion.*

*Accessibility. Easy access to NCPs is important to their effective functioning. This includes facilitating access by business, labour, NGOs, and other members of the public. Electronic communications can also assist in this regard. NCPs would respond to all legitimate requests for information, and also undertake to deal with specific issues raised by parties concerned in an efficient and timely manner.*

*Transparency. Transparency is an important criterion with respect to its contribution to the accountability of the NCP and in gaining the confidence of the general public. Thus, as a general principle, the activities of the NCP will be transparent. Nonetheless when the NCP offers its “good offices” in implementing the Guidelines in specific instances, it will be in the interests of their*

*effectiveness to take appropriate steps to establish confidentiality of the proceedings. Outcomes will be transparent unless preserving confidentiality is in the best interests of effective implementation of the Guidelines.*

*Accountability. A more active role with respect to enhancing the profile of the Guidelines – and their potential to aid in the management of difficult issues between enterprises and the societies in which they operate – will also put the activities of NCPs in the public eye. Nationally, parliaments could have a role to play. Annual reports and regular meetings of NCPs will provide an opportunity to share experiences and encourage “best practices” with respect to NCPs. The Committee will also hold exchanges of views, where experiences would be exchanged and the effectiveness of the activities of NCPs could be assessed.*

### ***Institutional Arrangements***

*10. NCP leadership should be such that it retains the confidence of social partners and other stakeholders, and fosters the public profile of the Guidelines.*

*11. Regardless of the structure Governments have chosen for their NCP, they can also establish multi-stakeholder advisory or oversight bodies to assist NCPs in their tasks.*

*12. NCPs, whatever their composition, are expected to develop and maintain relations with representatives of the business community, worker organisations, other non-governmental organisations, and other interested parties.*

### ***Information and Promotion***

*13. The NCP functions associated with information and promotion are fundamentally important to enhancing the profile of the Guidelines.*

*14. NCPs are required to make the Guidelines better known and available online and by other appropriate means, including in national languages. English and French language versions will be available from the OECD, and website links to the Guidelines website are encouraged. As appropriate, NCPs will also provide prospective investors, both inward and outward, with information about the Guidelines.*

*15. NCPs should provide information on the procedures that parties should follow when raising or responding to a specific instance. It should include advice on the information that is necessary to raise a specific instance, the requirements for parties participating in specific instances, including confidentiality, and the processes and indicative timeframes that will be followed by the NCP.*

*16. In their efforts to raise awareness of the Guidelines, NCPs will co-operate with a wide variety of organisations and individuals, including, as appropriate, the business community, worker organisations, other nongovernmental organisations, and other interested parties. Such organisations have a strong stake in the promotion of the Guidelines and their institutional networks provide opportunities for promotion that, if used for this purpose, will greatly enhance the efforts of NCPs in this regard.*

*17. Another basic activity expected of NCPs is responding to legitimate enquiries. Three groups have been singled out for attention in this regard: i) other NCPs (reflecting a provision in the Decision); ii) the business community, worker organisations, other non-governmental organisations and the public; and iii) governments of non-adhering countries.*

### ***Proactive Agenda***

18. *In accordance with the Investment Committee's proactive agenda, NCPs should maintain regular contact, including meetings, with social partners and other stakeholders in order to:*

- a) *consider new developments and emerging practices concerning responsible business conduct;*
- b) *support the positive contributions enterprises can make to economic, social and environmental progress;*
- c) *participate where appropriate in collaborative initiatives to identify and respond to risks of adverse impacts associated with particular products, regions, sectors or industries.*

### ***Peer Learning***

19. *In addition to contributing to the Committee's work to enhance the effectiveness of the Guidelines, NCPs will engage in joint peer learning activities. In particular, they are encouraged to engage in horizontal, thematic peer reviews and voluntary NCP peer evaluations. Such peer learning can be carried out through meetings at the OECD or through direct co-operation between NCPs.*

### ***Implementation in Specific Instances***

20. *When issues arise relating to implementation of the Guidelines in specific instances, the NCP is expected to help resolve them. This section of the Procedural Guidance provides guidance to NCPs on how to handle specific instances.*

21. *The effectiveness of the specific instances procedure depends on good faith behaviour of all parties involved in the procedures. Good faith behaviour in this context means responding in a timely fashion, maintaining confidentiality where appropriate, refraining from misrepresenting the process and from threatening or taking reprisals against parties involved in the procedure, and genuinely engaging in the procedures with a view to finding a solution to the issues raised in accordance with the Guidelines.*

### ***Guiding Principles for Specific Instances***

22. *Consistent with the core criteria for functional equivalence in their activities NCPs should deal with specific instances in a manner that is:*

*Impartial. NCPs should ensure impartiality in the resolution of specific instances.*

*Predictable. NCPs should ensure predictability by providing clear and publicly available information on their role in the resolution of specific instances, including the provision of good offices, the stages of the specific instance process including indicative timeframes, and the potential role they can play in monitoring the implementation of agreements reached between the parties.*

*Equitable. NCPs should ensure that the parties can engage in the process on fair and equitable terms, for example by providing reasonable access to sources of information relevant to the procedure.*

*Compatible with the Guidelines. NCPs should operate in accordance with the principles and standards contained in the Guidelines.*

### ***Coordination between NCPs in Specific Instances***

23. *Generally, issues will be dealt with by the NCP of the country in which the issues have arisen. Among adhering countries, such issues will first be discussed on the national level and, where appropriate, pursued at the bilateral level. The NCP of the host country should consult with the NCP of the home*

country in its efforts to assist the parties in resolving the issues. The NCP of the home country should strive to provide appropriate assistance in a timely manner when requested by the NCP of the host country.

24. When issues arise from an enterprise's activity that takes place in several adhering countries or from the activity of a group of enterprises organised as consortium, joint venture or other similar form, based in different adhering countries, the NCPs involved should consult with a view to agreeing on which NCP will take the lead in assisting the parties. The NCPs can seek assistance from the Chair of the Investment Committee in arriving at such agreement. The lead NCP should consult with the other NCPs, which should provide appropriate assistance when requested by the lead NCP. If the parties fail to reach an agreement, the lead NCP should make a final decision in consultation with the other NCPs.

### **Initial Assessment**

25. In making an initial assessment of whether the issue raised merits further examination, the NCP will need to determine whether the issue is *bona fide* and relevant to the implementation of the Guidelines. In this context, the NCP will take into account:

- 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.

26. When assessing the significance for the specific instance procedure of other domestic or international proceedings addressing similar issues in parallel, NCPs should not decide that issues do not merit further consideration solely because parallel proceedings have been conducted, are under way or are available to the parties concerned. NCPs should evaluate whether an offer of good offices could make a positive contribution to the resolution of the issues raised and would not create serious prejudice for either of the parties involved in these other proceedings or cause a contempt of court situation. In making such an evaluation, NCPs could take into account practice among other NCPs and, where appropriate, consult with the institutions in which the parallel proceeding is being or could be conducted. Parties should also assist NCPs in their consideration of these matters by providing relevant information on the parallel proceedings.

27. Following its initial assessment, the NCP will respond to the parties concerned. If the NCP decides that the issue does not merit further consideration, it will inform the parties of the reasons for its decision.

### **Providing Assistance to the Parties**

28. Where the issues raised merit further consideration, the NCP would discuss the issue further with parties involved and offer "good offices" in an effort to contribute informally to the resolution of issues. Where relevant, NCPs will follow the procedures set out in paragraph C-2a) through C-2d). This could include seeking the advice of relevant authorities, as well as representatives of the business community, labour organisations, other non-governmental organisations, and experts. Consultations with NCPs in other countries, or seeking guidance on issues related to the interpretation of the Guidelines may also help to resolve the issue.

29. As part of making available good offices, and where relevant to the issues at hand, NCPs will offer, or facilitate access to, consensual and non-adversarial procedures, such as conciliation or mediation, to assist in dealing with the issues at hand. In common with accepted practices on conciliation and mediation procedures, these procedures would be used only upon agreement of the parties concerned and their commitment to participate in good faith during the procedure.

30. When offering their good offices, NCPs may take steps to protect the identity of the parties involved where there are strong reasons to believe that the disclosure of this information would be detrimental to one or more of the parties. This could include circumstances where there may be a need to withhold the identity of a party or parties from the enterprise involved.

### **Conclusion of the Procedures**

31. NCPs are expected to always make the results of a specific instance publicly available in accordance with paragraphs C-3 and C-4 of the Procedural Guidance.

32. When the NCP, after having carried out its initial assessment, decides that the issues raised in the specific instance do not merit further consideration, it will make a statement publicly available after consultations with the parties involved and taking into account the need to preserve the confidentiality of sensitive business and other information. If the NCP believes that, based on the results of its initial assessment, it would be unfair to publicly identify a party in a statement on its decision, it may draft the statement so as to protect the identity of the party.

33. The NCP may also make publicly available its decision that the issues raised merit further examination and its offer of good offices to the parties involved.

34. If the parties involved reach agreement on the issues raised, the parties should address in their agreement how and to what extent the content of the agreement is to be made publicly available. The NCP, in consultation with the parties, will make publicly available a report with the results of the proceedings. The parties may also agree to seek the assistance of the NCP in following-up on the implementation of the agreement and the NCP may do so on terms agreed between the parties and the NCP.

35. If the parties involved fail to reach agreement on the issues raised or if the NCP finds that one or more of the parties to the specific instance is unwilling to engage or to participate in good faith, the NCP will issue a statement, and make recommendations as appropriate, on the implementation of the Guidelines. This procedure makes it clear that an NCP will issue a statement, even when it feels that a specific recommendation is not called for. The statement should identify the parties concerned, the issues involved, the date on which the issues were raised with the NCP, any recommendations by the NCP, and any observations the NCP deems appropriate to include on the reasons why the proceedings did not produce an agreement.

36. The NCP should provide an opportunity for the parties to comment on a draft statement. However, the statement is that of the NCP and it is within the NCP's discretion to decide whether to change the draft statement in response to comments from the parties. If the NCP makes recommendations to the parties, it may be appropriate under specific circumstances for the NCP to follow-up with the parties on their response to these recommendations. If the NCP deems it appropriate to follow-up on its recommendations, the timeframe for doing so should be addressed in the statement of the NCP.

37. Statements and reports on the results of the proceedings made publicly available by the NCPs could be relevant to the administration of government programmes and policies. In order to foster policy

coherence, NCPs are encouraged to inform these government agencies of their statements and reports when they are known by the NCP to be relevant to a specific agency's policies and programmes. This provision does not change the voluntary nature of the Guidelines.

### **Transparency and Confidentiality**

38. Transparency is recognised as a general principle for the conduct of NCPs in their dealings with the public (see paragraph 9 in "Core Criteria" section, above). However, paragraph C-4 of the Procedural Guidance recognises that there are specific circumstances where confidentiality is important. The NCP will take appropriate steps to protect sensitive business information. Equally, other information, such as the identity of individuals involved in the procedures, should be kept confidential in the interests of the effective implementation of the Guidelines. It is understood that proceedings include the facts and arguments brought forward by the parties. Nonetheless, it remains important to strike a balance between transparency and confidentiality in order to build confidence in the Guidelines procedures and to promote their effective implementation. Thus, while paragraph C-4 broadly outlines that the proceedings associated with implementation will normally be confidential, the results will normally be transparent.

### **Issues Arising in Non-Adhering Countries**

39. As noted in paragraph 2 of the Concepts and Principles chapter, enterprises are encouraged to observe the Guidelines wherever they operate, taking into account the particular circumstances of each host country.

- In the event that Guidelines-related issues arise in a non-adhering country, home NCPs will take steps to develop an understanding of the issues involved. While it may not always be practicable to obtain access to all pertinent information, or to bring all the parties involved together, the NCP may still be in a position to pursue enquiries and engage in other fact finding activities. Examples of such steps could include contacting the management of the enterprise in the home country, and, as appropriate, embassies and government officials in the non-adhering country.
- Conflicts with host country laws, regulations, rules and policies may make effective implementation of the Guidelines in specific instances more difficult than in adhering countries. As noted in the commentary to the General Policies chapter, while the Guidelines extend beyond the law in many cases, they should not and are not intended to place an enterprise in a situation where it faces conflicting requirements.
- The parties involved will have to be advised of the limitations inherent in implementing the Guidelines in non-adhering countries.
- Issues relating to the Guidelines in non-adhering countries could also be discussed at NCP meetings with a view to building expertise in handling issues arising in non-adhering countries.

### **Indicative Timeframe**

40. The specific instance procedure comprises three different stages:

1. Initial assessment and decision whether to offer good offices to assist the parties: NCPs should seek to conclude an initial assessment within three months, although additional time might be needed in order to collect information necessary for an informed decision.
2. Assistance to the parties in their efforts to resolve the issues raised: If an NCP decides to offer its good offices, it should strive to facilitate the resolution of the issues in a timely manner. Recognising that progress through good offices, including mediation and conciliation, ultimately depends upon the parties involved, the NCP should, after consultation with the parties, establish a reasonable timeframe for the discussion between the

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*parties to resolve the issues raised. If they fail to reach an agreement within this timeframe, the NCP should consult with the parties on the value of continuing its assistance to the parties; if the NCP comes to the conclusion that the continuation of the procedure is not likely to be productive, it should conclude the process and proceed to prepare a statement.*

3. *Conclusion of the procedures: The NCP should issue its statement or report within three months after the conclusion of the procedure.*

*41. As a general principle, NCPs should strive to conclude the procedure within 12 months from receipt of the specific instance. It is recognised that this timeframe may need to be extended if circumstances warrant it, such as when the issues arise in a non-adhering country.*

### ***Reporting to the Investment Committee***

*42. Reporting would be an important responsibility of NCPs that would also help to build up a knowledge base and core competencies in furthering the effectiveness of the Guidelines. In this light, NCPs will report to the Investment Committee in order to include in the Annual Report on the OECD Guidelines information on all specific instances that have been initiated by parties, including those that are in the process of an initial assessment, those for which offers of good offices have been extended and discussions are in progress, and those in which the NCP has decided not to extend an offer of good offices after an initial assessment. In reporting on implementation activities in specific instances, NCPs will comply with transparency and confidentiality considerations as set out in paragraph C-4.*

*[...]*

## Part 2

### Texts referring to National Contact Points but not directly related to their functions

#### IV. Human Rights

##### Commentary on Human Rights

[...]

46. When enterprises identify through their human rights due diligence process or other means that they have caused or contributed to an adverse impact, the Guidelines recommend that enterprises have processes in place to enable remediation. Some situations require cooperation with judicial or State-based non-judicial mechanisms. In others, operational-level grievance mechanisms for those potentially impacted by enterprises' activities can be an effective means of providing for such processes when they meet the core criteria of: legitimacy, accessibility, predictability, equitability, compatibility with the Guidelines and transparency, and are based on dialogue and engagement with a view to seeking agreed solutions. Such mechanisms can be administered by an enterprise alone or in collaboration with other stakeholders and can be a source of continuous learning. Operational level grievance mechanisms should not be used to undermine the role of trade unions in addressing labour-related disputes, nor should such mechanisms preclude access to judicial or non-judicial grievance mechanisms, including the National Contact Points under the Guidelines.

[...]

#### Part 2

##### Implementation Procedures of the OECD Guidelines for Multinational Enterprises Amendment of the Decision of the Council on the OECD Guidelines for Multinational Enterprises

[...]

#### II. The Investment Committee

[...]

5. The Committee shall hold exchanges of views on the activities of National Contact Points with a view to enhancing the effectiveness of the Guidelines and fostering functional equivalence of National Contact Points.

[...]

7. The Committee shall periodically report to the Council on matters covered by the Guidelines. In its reports, the Committee shall take account of reports by National Contact Points and the views expressed by the advisory bodies, OECD Watch, other international partners and non-adhering countries as appropriate.

8. The Committee shall, in co-operation with National Contact Points, pursue a proactive agenda that promotes the effective observance by enterprises of the principles and standards contained in the Guidelines. It shall, in particular, seek opportunities to collaborate with the advisory bodies, OECD Watch, other international partners and other stakeholders in order to encourage the positive contributions that multinational enterprises can make, in the context of the Guidelines, to economic, environmental and social progress with a view to achieving sustainable development, and to help them

identify and respond to risks of adverse impacts associated with particular products, regions, sectors or industries.[...]

- **Procedural Guidance**

[...]

## **II. Investment Committee**

1. *The Committee will consider requests from NCPs for assistance in carrying out their activities, including in the event of doubt about the interpretation of the Guidelines in particular circumstances.*

2. *The Committee will, with a view to enhancing the effectiveness of the Guidelines and to fostering the functional equivalence of NCPs:*

- a) *consider the reports of NCPs;*
- b) *consider a substantiated submission by an adhering country, an advisory body or OECD Watch on whether an NCP is fulfilling its responsibilities with regard to its handling of specific instances;*
- c) *consider issuing a clarification where an adhering country, an advisory body or OECD Watch makes a substantiated submission on whether an NCP has correctly interpreted the Guidelines in specific instances;*
- d) *make recommendations, as necessary, to improve the functioning of NCPs and the effective implementation of the Guidelines;*
- e) *co-operate with international partners;*
- f) *engage with interested non-adhering countries on matters covered by the Guidelines and their implementation.*

3. *The Committee may seek and consider advice from experts on any matters covered by the Guidelines. For this purpose, the Committee will decide on suitable procedures.*

4. *The Committee will discharge its responsibilities in an efficient and timely manner.*

5. *In discharging its responsibilities, the Committee will be assisted by the OECD Secretariat, which, under the overall guidance of the Investment Committee, and subject to the Organisation's Programme of Work and Budget, will:*

- a) *serve as a central point of information for NCPs that have questions on the promotion and implementation of the Guidelines;*
- b) *collect and make publicly available relevant information on recent trends and emerging practices with regard to the promotional activities of NCPs and the implementation of the Guidelines in specific instances. The Secretariat will develop unified reporting formats to support the establishment and maintenance of an up-to-date database on specific instances and conduct regular analysis of these specific instances;*
- c) *facilitate peer learning activities, including voluntary peer evaluations, as well as capacity building and training, in particular for NCPs of new adhering countries, on the implementation procedures of the Guidelines such as promotion and the facilitation of conciliation and mediation;*
- d) *facilitate co-operation between NCPs where appropriate; and*

- e) *promote the Guidelines in relevant international forums and meetings and provide support to NCPs and the Committee in their efforts to raise awareness of the Guidelines among non-adhering countries.*

## **Commentary on the Implementation Procedures of the OECD Guidelines for Multinational Enterprises**

*1. The Council Decision represents the commitment of adhering countries to further the implementation of the recommendations contained in the text of the Guidelines. Procedural guidance for both NCPs and the Investment Committee is attached to the Council Decision.*

*2. The Council Decision sets out key adhering country responsibilities for the Guidelines with respect to NCPs, summarised as follows:*

- *Setting up NCPs (which will take account of the procedural guidance attached to the Decision), and informing interested parties of the availability of Guidelines-related facilities.*
- *Making available necessary human and financial resources.*
- *Enabling NCPs in different countries to co-operate with each other as necessary.*
- *Enabling NCPs to meet regularly and report to the Committee.*

*3. The Council Decision also establishes the Committee's responsibilities for the Guidelines, including:*

- *Organising exchanges of views on matters relating to the Guidelines.*
- *Issuing clarifications as necessary.*
- *Holding exchanges of views on the activities of NCPs.*
- *Reporting to the OECD Council on the Guidelines.*

*4. The Investment Committee is the OECD body responsible for overseeing the functioning of the Guidelines. This responsibility applies not only to the Guidelines, but to all elements of the Declaration (National Treatment Instrument, and the instruments on International Investment Incentives and Disincentives, and Conflicting Requirements). The Committee seeks to ensure that each element in the Declaration is respected and understood, and that they all complement and operate in harmony with each other.*

*5. Reflecting the increasing relevance of responsible business conduct to countries outside the OECD, the Decision provides for engagement and co-operation with non-adhering countries on matters covered by the Guidelines. This provision allows the Committee to arrange special meetings with interested non-adhering countries to promote understanding of the standards and principles contained in the Guidelines and of their implementation procedures. Subject to relevant OECD procedures, the Committee may also associate them with special activities or projects on responsible business conduct, including by inviting them to its meetings and to the Corporate Responsibility Roundtables.*

*6. In its pursuit of a proactive agenda, the Committee will co-operate with NCPs and seek opportunities to collaborate with the advisory bodies, OECD Watch, and other international partners. Further guidance for NCPs in this respect is provided in paragraph 18.*

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## ***II. Commentary on the Procedural Guidance for the Investment Committee***

43. *The Procedural Guidance to the Council Decision provides additional guidance to the Committee in carrying out its responsibilities, including:*

- *Discharging its responsibilities in an efficient and timely manner.*
- *Considering requests from NCPs for assistance.*
- *Holding exchanges of views on the activities of NCPs.*
- *Providing for the possibility of seeking advice from international partners and experts.*

44. *The non-binding nature of the Guidelines precludes the Committee from acting as a judicial or quasi-judicial body. Nor should the findings and statements made by the NCP (other than interpretations of the Guidelines) be questioned by a referral to the Committee. The provision that the Committee shall not reach conclusions on the conduct of individual enterprises has been maintained in the Decision itself.*

45. *The Committee will consider requests from NCPs for assistance, including in the event of doubt about the interpretation of the Guidelines in particular circumstances. This paragraph reflects paragraph C-2c) of the Procedural Guidance to the Council Decision pertaining to NCPs, where NCPs are invited to seek the guidance of the Committee if they have doubt about the interpretation of the Guidelines in these circumstances.*

46. *When discussing NCP activities, the Committee may make recommendations, as necessary, to improve their functioning, including with respect to the effective implementation of the Guidelines.*

47. *A substantiated submission by an adhering country, an advisory body or OECD Watch that an NCP was not fulfilling its procedural responsibilities in the implementation of the Guidelines in specific instances will also be considered by the Committee. This complements provisions in the section of the Procedural Guidance pertaining to NCPs reporting on their activities.*

48. *Clarifications of the meaning of the Guidelines at the multilateral level would remain a key responsibility of the Committee to ensure that the meaning of the Guidelines would not vary from country to country. A substantiated submission by an adhering country, an advisory body or OECD Watch with respect to whether an NCP interpretation of the Guidelines is consistent with Committee interpretations will also be considered.*

[...]

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