

Specific Instance Procedure - Dutch National Contact Point OECD Guidelines for Multinational Enterprises

OECD Guidelines for Multinational Enterprises

..... has reported a specific instance involving the OECD Guidelines for Multinational Enterprises (hereinafter: the *Guidelines*). The *Guidelines* aim to ensure that the activities of multinational enterprises are consistent with government policy, to strengthen the trust between enterprises and the societies in which they are active, to improve the investment climate for foreign enterprises, and to increase the contribution multinational enterprises make to sustainable development.

All OECD countries, as well as ten non-OECD countries adhering to the *Guidelines*, are committed to promoting businesses' implementation of the *Guidelines*. To this end, National Contact Points (NCPs) have been established in all countries adhering to the *Guidelines*. NCPs assist in resolving any issues that may arise relating to the implementation of the *Guidelines*. Stakeholders may report such issues to an NCP. The NCP will then endeavor to establish a dialogue between the reporting party and the business in question on the effective implementation of the *Guidelines*, in an effort to resolve the issue at hand and prevent future problems.

Dutch National Contact Point

The Dutch National Contact Point (NCP) consists of four independent members: Mr. L. de Waal (Chair), Mr. H. Mulder, Mrs. M. van Putten and Mrs. M. Peters. The Dutch NCP is supported by four government advisory officials from the Ministry of Foreign Affairs, the Ministry of Social Affairs and Employment, the Ministry of Infrastructure and the Environment, and the Ministry of Economic Affairs. The NCP has its Secretariat at the Ministry of Foreign Affairs.

The Dutch government has deliberately chosen to establish an independent NCP which is responsible for its own procedures and decision making, in accordance with the Procedural Guidelines section of the *Guidelines*. The Minister for Foreign Trade and Development Cooperation is politically responsible for the functioning of the Dutch NCP.

The *Guidelines* define several core criteria and guiding principles for the functioning of the NCPs. These are visibility, accessibility, transparency, impartiality, predictability and equitability. The NCP expects all involved stakeholders to act in good faith¹.

Visibility means that the NCP highly values its task of providing information to increase awareness of the *Guidelines* and to increase their effective implementation.

Accessibility means that the NCP can be contacted easily and is open to discussion with all parties and stakeholders.

Transparency means that the NCP strives to be transparent about its procedures and that it encourages mediation. However, this can mean that the NCP is not transparent about the content of the mediation, as confidentiality may contribute to the success of the procedure. Section B. of this document further elaborates on confidentiality and transparency.

Impartiality means that at all times the NCP will be neutral and will avoid any appearance of partiality in its contacts with stakeholders, the consideration of specific instances and its promotional

¹ 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*. When the NCP suspects that a party involved is not acting in good faith, this can be reason not to take the issue into further consideration or to end mediation.

activities. If one of the independent members of the NCP has a stake in one of the parties involved with a specific instance, the member NCP will notify the NCP of this and he/she will not be involved in this specific instance.

Predictability means that the NCP will act in accordance with the Procedural Guidelines section of the *Guidelines*, will provide clear information on the NCP procedures and will act accordingly in handling specific instances. It also means that the NCP will provide substantiated arguments on decisions made whether to take a specific instance into further consideration and on reaching a final statement.

Equitability means that parties will be treated on fair and equitable terms and have access to the same procedures. It also means that the NCP will use the concept of proportionality in the handling of specific instances.

Procedures

A. Steps in handling specific instances

Below is a brief description of the procedures to be followed by the NCP in the event an issue is raised related to the implementation of the *Guidelines* in specific instances (see also pp. 71-75 of the Procedural Guidance section of the *Guidelines*).

Confirmation of receipt (within seven business days of receipt by the NCP)

Upon receiving a specific instance, the NCP confirms receipt to the party raising the issue and notifies the business involved that this specific instance has been received. The letters to the reporting party and the business contain a description of the further procedure.

In this confirmation of receipt to the notifying party and the business involved, the NCP does not address the *contents* of the specific instance itself.

1. Initial assessment (within three months of receiving the report, wherever possible)

Firstly, the NCP performs an initial assessment of the specific instance to determine whether further consideration by the NCP is warranted. In doing this, the NCP will take the following aspects into account:

- Whether the Dutch NCP is the appropriate entity;
- The identity of the party concerned (be it an individual or an organization) and its interest in the case;
- 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 consideration of this specific problem would contribute to the purposes and effectiveness of the *Guidelines*.

The NCP will hear both sides to an issue. As part of the initial assessment of the specific instance, the NCP will have separate, confidential meetings with both the party raising the issue and the business involved concerning the specific instance and related considerations, unless the NCP has already concluded – on the basis of the criteria in the Procedural Guidance – not to take the issue into further consideration. The NCP can also conclude not to take the issue into further consideration after the meetings with both parties.

Following this initial assessment, the NCP notifies all parties in writing of its conclusion. The NCP will motivate its decision whether or not to offer its good offices in order to resolve the issue at hand by means of a dialogue involving both parties. The Procedural Guidance section of the *Guidelines* name the following phase of facilitating dialogue 'further consideration'.

The parties are given two weeks to respond to a provisional version of the initial assessment, which will then be finalized and published on the Dutch NCP website: www.oecdguidelines.nl. The original issue received and the response of the company will not be published as part of this initial assessment.

2. Take issue under further consideration and/or facilitate dialogue between parties (wherever possible, within six months of completing the initial assessment)

The NCP selects two of its members to assign to the case. They will establish Terms of Reference with the parties to be used for the rest of the procedure. Consultations between the parties can be organized in a number of different ways, for example as a dialogue or using mediation techniques. In certain cases, the NCP may – with the agreement of the parties involved – choose to appoint a third party to assist with conciliation or mediation.

The NCP will compile its own concise meeting reports on the outcome of meetings in the context of a specific instance and will share these with the parties which were part of that meeting.

The phase of further consideration and/or facilitation of dialogue, which may include a 'field visit', concludes when an agreement has been reached that is supported by all parties or when the NCP has concluded that the issue is not likely to be resolved within a reasonable timeframe. In both cases, the NCP then prepares to issue its final statement or report.

3. Complete the procedure and draft final NCP statement (wherever possible, within three months of completing the phase of further consideration/ facilitation dialogue)

The NCP will complete the procedure by issuing a public statement on the results of the procedure. Confidential information made available to the NCP or mediator during mediation will not be used for this final NCP statement.

If the parties have reached an agreement, the NCP will refer to this agreement in its final statement. The text of the agreement itself will be appended to the final statement unless one of the parties objects to this. If the parties failed to reach an agreement, the NCP will qualify the proceedings in its final statement and make recommendations concerning the implementation of the *Guidelines*.

Parties are given two weeks in which to respond to a provisional version of the final statement, which will then be finalized.

The final version of the NCP statement is then published on the Dutch NCP website: www.oecdguidelines.nl.

4. Provide follow-up services

Following the completion of a procedure for a specific instance, the NCP requests all parties to provide the NCP with information on any progress regarding implementation of the agreements and/or recommendations. As standard practice, the NCP will publish a brief evaluation of the implementation of the agreements and/or recommendations on the website one year after the publication of the final statement.

B. Confidentiality and transparency with regard to the procedure

Communication to the general public

In principle, neither the NCP nor the parties involved may make information from the specific instance or the subsequent proceedings publicly available. Exceptions to this principle of confidentiality are:

- i) The statement issued by the NCP as to whether the specific instance merits further consideration (described above, under A. 1);

March 2015

- ii) When the party that has provided information has granted permission for making that information publicly available;
- iii) The final statement from the NCP.

Communication between parties

To ensure the proceedings' transparency, parties are encouraged to share all communication with one another. If one of the parties communicates directly with the NCP, the NCP will inform the other party, unless explicitly requested not to do so by the communicating party.

Public statements and appearances

The parties should bear in mind the possible influence any public appearances or public statements could have on the success of the proceedings, even in cases where agreements on confidentiality are not at issue.