



NON-OFFICIAL TRANSLATION

SPECIFIC INSTANCE

“STARBUCKS COFFEE IN FRANCE”

10 July 2020

Initial Assessment Statement of the French National Contact Point

At the end of its initial assessment, the NCP accepts the specific instance and begins its good offices with the Company Starbucks Coffee France and I-buycott

The French National Contact Point for the Implementation of the OECD Guidelines for Multinational Enterprises (NCP) was referred to by the French association I-buycott on 22 November 2019 with a specific instance concerning the enterprise Starbucks Coffee France.

The specific instance raises issues about the compliance with the OECD Guidelines by Starbucks Coffee's activities in France regarding responsible business conduct in relation to the disclosure of information, consumer interest and taxation.

The NCP recalls that acceptance of the referral and acceptance of its good offices by the parties do not determine whether or not the company acted in accordance with the OECD Guidelines.

1. Procedure followed by the NCP in accordance with its bylaws

The procedure for referral to the NCP is confidential. The NCP shall endeavor to carry out the initial assessment of a referral within an indicative time frame of three months after the acknowledgement of receipt. It then prepares a statement on admissibility of the specific instance (art. 19). If the initial assessment is positive, the NCP reviews the referral and offers its good offices to the parties to assist them in resolving their disputes. Otherwise, it proceeds to the conclusion phase of the procedure.

1.1. Receipt of the referral. The NCP received the specific instance on 22 November 2019. It acknowledged its receipt on 29 November 2019 and informed the complainant accordingly on 2 December 2019.

1.2. Formal admissibility of referral. The NCP noted formal admissibility of the specific instance on 3 December 2019 and then began its initial assessment. The NCP informed the complainant on 4 December 2019. It notified the company with the referral on 18 December 2019 by mail and invited it to respond to it as of now. The Company acknowledged receipt of the referral on 20 December 2019. On 23 December 2019, the French NCP informed the US, British and Dutch NCPs of the existence of the referral (see 3.Coordination of NCPs).

1.3. Initial assessment of the specific instance. The NCP began the initial assessment as of 3 December 2019. The NCP Secretariat offered to meet separately with the parties to present the procedure. The NCP discussed the referral initial assessment at its meeting on 14 January 2020 and decided to accept it, informing the company of its decision on 22 January 2020. The NCP also invited I-buycott to sign an agreement to commit to respect confidentiality and secrecy of the procedure, which it did on 28 January 2020.



NON-OFFICIAL TRANSLATION

The NCP was informed on 13 and 28 January 2020 by Alsea Group's lawyer in France of changes that occurred at the end of 2018 and in January 2019 regarding the capital structure of Starbucks Coffee France. This is the sale of 100 % of the capital of certain subsidiaries of the Starbucks Coffee group, namely the acquisition of 100 % of the capital of the French company by a Spanish company, a subsidiary of the Mexican group Alsea, and of the existence of a license agreement between Starbucks Coffee and Alsea covering activities carried out in France on behalf of Starbucks Coffee¹.

The NCP considered that these changes had an impact on the initial specific instance. In this context, it decided on 4 February 2020 to extend the initial assessment period and to invite the complainant to redraft its referral. It informed the lawyers of the company and of Alsea Group in France. They then participated in a meeting with the NCP leading team on 9 March 2020 to present the specific instance procedure. Mexican and Spanish NCPs were informed of the existence of the referral. The complainant redrafted its referral on 30 March 2020. These elements were transmitted to Alsea's lawyer in France on 31 March 2020. Relevant NCPs were also informed of the referral reformulation. On 5 May 2020, the lawyer of Alsea in France sent a letter to the NCP Chair explaining the company's position with respect to the complainant's new requests.

The NCP finalized the referral initial assessment at its meeting on 14 May 2020 and took several decisions:

- The NCP considered that the issues raised by the referral as reformulated on 30 March 2020 merited further examination in order to contribute to the effectiveness of the Guidelines. The NCP decided to accept the specific instance and to offer its good offices to Starbucks Coffee France and I-buycott. It invited the parties to provide their response by 3 June 2020. I-buycott and Starbucks Coffee France accepted the good offices of the NCP on 22 May 2020 and 2 June 2020, respectively.
- The NCP asked the complainant to sign by 3 June 2020, an updated version of the confidentiality agreement, which it did on 6 June 2020.
- The NCP decided to set up coordination arrangements between the six NCPs. After consultation with his counterparts, its leadership was confirmed on 20 May 2020. It will continue its work in coordination with the U.S., British, Spanish, Mexican and Dutch NCPs.

The NCP adopted a draft initial assessment statement on 22 June 2020 and consulted with the complainant, the company and the five supporting NCPs. The complainant validated the draft statement. Spanish and Mexican NCPs wanted it to better clarify their role. The Company made several comments and asked to anonymise all Companies mentioned in the statement.

The NCP reviewed the comments of the Company and of supporting NCPs at its meeting on 30 June 2020. It decided to finalize the initial assessment statement in accordance with its Bylaws. It recalls that Article 19 of its Bylaws provides that the statement announcing the admissibility of a referral "*shall stipulate the identity of the parties, the country or countries concerned by the referral and a summary of its initial assessment*" and that Article 20 provides for the anonymity of the enterprise

¹ Alsea press release on the development of Starbucks brand in France, 27 December 2018:

https://www.alsea.net/uploads/en/documents/general_documents/alsea_signs_the_contract_for_the_development_of_the_starbucks_brand_in_france.pdf

Alsea press release on the development of Starbucks brand in the Netherlands, Belgium and Luxembourg, 25 February 2019:

https://www.alsea.net/uploads/en/documents/general_documents/closing_sbux_benelux_25feb19.pdf

NON-OFFICIAL TRANSLATION

only in cases where a referral is not admissible². The NCP took into account the Company's other comments and those of the supporting NCPs and finalized the statement. The NCP adopted this statement on 10 July 2020. It circulated it to the parties and supportive NCPs prior to its publication on the NCP's website. The specific instance was then notified to the OECD.

2. Presentation of the specific instance

2.1. Presentation of the complainant. The referral is submitted by a French non-governmental organization. The association I-boycott states that it is a not-for-profit association recognized as of general interest. Its aim is to "raise awareness, inform and support consumers in their desire for responsible consumption". In June 2016, it launched a campaign it called "["benevolent boycott"](#)" targeting Starbucks Coffee in France³. The complainant relies on this campaign in the referral.

2.2. Allegations of violations of the Guidelines. The complainant considers that the French Company does not comply with several recommendations of the OECD Guidelines on Disclosure, Consumer Interests and Taxation (Chapter III, VIII and XI). The allegations are also outlined in I-boycott's online campaign launched in June 2016. As I-boycott considered that it had not received a satisfactory response following its campaign, it decided to refer the matter to the French NCP.

The referral, as reformulated on 30 March 2020, covers the period prior to and after the sale of the French company by Starbucks Coffee to Alsea Group in early 2019⁴. It is now raising issues about the French company and its business relationships within Starbucks Coffee group as well as Alsea Group and about the license agreement with Starbucks Coffee.

The referral contains three issues regarding responsible business conduct:

- The complainant calls into question **the publication of inadequate and insufficient information**, according to it, by the French company, first as a subsidiary of Starbucks Coffee, then as a subsidiary of Alsea, concerning its organization, operation, intra-group transfer prices, the license agreement between Starbucks Coffee and Alsea and its tax operations. According to the referral, many of the key information requirements provided for in the Guidelines are missing (Articles 1, 2c, 2e, 3a and 4 of Chapter III).

- The referral also concerns **the interests of consumers in France** regarding transparency on the taxation of activities carried out in France on behalf of Starbucks Coffee and its contribution to tax in France (Articles 2 and 4, comments 85 and 86 of Chapter VIII). According to the complainant, if the company would meet its responsibility for transparency and consumer information, consumers should have more information on the company's taxation in order to be able to make an informed choice in its purchase acts. The complainant considers that knowledge of a company's tax contribution in France

² Example : French NCP Statement, 15 May 20, Monegasque and Congolese Companies in Bukavu in the DR-Congo [here](#)

³ <https://www.i-boycott.org/campaigns/starbucks>

⁴ Alsea press release on the development of the Starbucks brand in France, 27 December 2018: https://www.alsea.net/uploads/en/documents/general_documents/alsea_signs_the_contract_for_the_development_of_the_starbucks_brand_in_france.pdf. Alsea press release on the development of the Starbucks brand in the Netherlands, Belgium and Luxembourg, 25 February 2019: https://www.alsea.net/uploads/en/documents/general_documents/closing_sbux_benelux_25feb19.pdf.

NON-OFFICIAL TRANSLATION

is likely to guide consumer purchasing decisions. In particular, the complainant supports this assertion by the number of participants in its “benevolent boycott” campaign.

- Finally, the complainant raises issues concerning **the taxation of activities carried out in France on behalf of Starbucks Coffee group before and since the sale of the French company to the Alsea Group** (Article 1 of Chapter XI). The complainant points out that Starbucks Coffee France’s responsibility under the Guidelines is to “*comply with the letter and the spirit of the tax laws and regulations of the countries in which they operate*” and “*to comply in their transfer pricing practices with the principle of arm’s length*”⁵. The complainant questions the payment of corporate tax in France, transfer prices charged between the French company and the two Groups as well as the license agreement concluded between Starbucks Coffee and Alsea.

See Appendix: List of recommendations of the Guidelines referred to in the referral.

2.3. Other elements reviewed for the initial assessment. The specific instance refers to the disclosure of information by companies and to taxation in France. It referred to European Union law concerning State aid and transfer prices through a procedure brought before the European Commission and then before the General Court concerning Starbucks Coffee and the Netherlands⁶. The NCP will take into account European’s bodies decisions.

2.4. Complainant’s requests. The complainant states that it referred to the French NCP in order to be able to engage with Starbucks Coffee France on issues raised in the referral. It mentions the importance of a correct tax contribution in France, in relation with the real value of the company’s activities. It recalls the responsible conduct that is expected from Starbucks Coffee France. The complainant also stresses the need to improve transparency on the business’s activities, to inform the consumer, in particular on tax matters, and to improve accessibility of this information.

2.5 Response from Starbucks Coffee France

The company states that it denies all allegations made by I-buycott in this specific instance.

During the initial assessment, the French Company informed the French NCP that since 28 January 2019, this French company (Starbucks Coffee France) is 100 % owned by a Spanish company, a company governed by Spanish law, itself a subsidiary of a Mexican company, Alsea, a company listed on Mexico Stock Exchange. The Alsea and Starbucks Coffee groups have no capitalistic ties and are totally independent. The Alsea Group has entered into a master license agreement with the American group Starbucks Coffee to operate the French market. Under license agreements between independent companies, Alsea operates today activities on behalf of the Starbucks Coffee brand in several countries around the world, including in France and the Netherlands. In addition to France, the referral refers to several entities of the two groups in the United Kingdom and the United States of America concerning Starbucks Coffee and in the Netherlands and Mexico concerning Alsea.

⁵ Article 1, Chapter XI of the Guidelines.

⁶ On the EC’s investigation and decision: https://ec.europa.eu/commission/presscorner/detail/fr/IP_14_663 et https://ec.europa.eu/commission/presscorner/detail/fr/IP_15_5880.

On General Court’s judgment: <https://curia.europa.eu/jcms/upload/docs/application/pdf/2019-09/cp190119fr.pdf>.

NON-OFFICIAL TRANSLATION

The company provides several elements of response, which it could developed during the good offices:

- **With regard to the publication of information:** *“Two periods must be strictly considered, the period prior to the transfer of the Company to the Mexican group and the period from 28 January 2019, when the Company became a subsidiary of the Spanish company, a subsidiary of the Mexican group”*. According to the Company, this distinction has consequences for legal reporting obligations of the groups concerned and for business secrecy. Finally, the Company notes *“that the Company files its financial statements with the Registry of the Commercial Court on which it depends and that they are perfectly accessible to any public.”*
- **With regard to the interests of consumers:** *“The Company finds it difficult to accept I-buycott’s criticism in light of the number of signatories to the campaign launched in 2016 which has received only 32,821 signatures since that date without affecting the attractiveness of the brand’s stores during this period of supposed mobilization”*.
- **With regard to questions relating to taxation:** The Company states that it is necessary to distinguish between the two periods preceding and succeeding the transfer of the Company (see above) which occurred on 28 January 2019 and the consequences arising therefrom. In addition, the Company refers the NCP to the decision of the Court of the European Union of 24 September 2019 concerning State aid and transfer prices. Finally, Company states that it will *“provide to the NCP a certificate of tax regularity dated 25 June 2020 certifying that the Company is in good standing with regard to the filing of the returns of results and VAT, the payment of VAT, and the payment of corporate tax, as well as evidence that the Company has complied with the provisions on transfer pricing”*.

Alsea’s lawyer in France informed the NCP on 2 June 2020 that the company accepted the NCP’s good offices and that the company will provide evidence that allegations made by the complainant are unfounded. The Company specifies that strictest rules of confidentiality will have to be respected.

3. Coordination with foreign NCPs

The complainant submitted the referral regarding Starbucks Coffee’s activities in France to the French NCP. The referral raises issues, including issues about intra-group transfer pricing and taxation, in relation with existing relationships between the French company and entities of the Starbucks Coffee and Alsea groups in five countries that adhere to the Guidelines. These are Mexico, the Netherlands, Spain, the United States of America and the United Kingdom. As such, the referral concerns the business relationships of the French Company, within the meaning of the Guidelines.

Firstly, the French NCP considered necessary to inform NCP’s of three other States adhering to the Guidelines which were potentially concerned: the United States, the Netherlands and the United Kingdom. Following the referral reformulation, on 30 March 2020 it considered necessary to also inform Mexican and Spanish NCPs. This coordination is in line with the practice of the French NCP and the [OECD Guide on NCP Coordination](#).

The French NCP Secretariat regularly informed the NCPs about the procedure progress. On 20 May 2020 the French NCP Secretariat organized a coordination meeting to formalize coordination modalities among the six NCPs. This coordination meeting took place on 27 May 2020. NCPs decided that the French NCP would lead the referral due to the nationality of the complainant and the company and because alleged facts occur in France. The other five NCPs are designated as supportive NCPs.

NON-OFFICIAL TRANSLATION

The French NCP will coordinate its actions with the five supporting NCPs. Supportive NCPs have confirmed their readiness to support its action. It will invite them to forward the referral and this statement to companies present in their countries potentially affected by the specific instance. The French NCP could notably request American and Mexican NCPs to contact Starbucks Coffee or Alsea Groups, and British, Dutch and Spanish NCPs to contact other subsidiaries of Starbucks Coffee or Alsea groups present in their country, if it wishes to ask questions to these companies in relation with the specific instance.

The NCP thanks American, British, Dutch, Mexican and Spanish NCPs for this support.

4. Summary of the initial assessment of the specific instance

The referral fulfils formal admissibility criteria laid down in Article 16 of the NCP's bylaws.

4.1. The referral fulfils admissibility criteria laid down in Articles 22 and 23 of the French NCP's bylaws.

The referral is sufficiently precise and documented enough for the NCP to begin its review (Article 23). The referral appears to be in good faith (art. 22) and the complainant is properly identified and has an interest in taking action (art. 23). Nevertheless, the NCP wished to ensure that the confidentiality of the proceedings was respected (arts. 38, 39 and 40). In response to the NCP, the complainant agreed to sign the commitment to respect confidentiality and secrecy. This is an important element in building a climate of trust and serenity that creates favorable conditions for dialogue between the parties and with the NCP.

The referral raises significant issues about the effectiveness of the Guidelines (arts. 18 and 23). It questions disclosure of information, access to consumer information and taxation in France of a French company affiliated with an American group and then with a Mexican group, by addressing in particular issues related to intra-group transfer pricing and a license agreement. As such, it is fully related to the Guidelines (arts. 22 and 23).

The NCP notes that certain elements relating to the tax issues raised by the referral may fall within the scope of business secrecy and tax secrecy in France or other countries concerned by the referral. The NCP further notes that the OECD Inclusive Framework on Base Erosion and Profit Shifting Project ("[BEPS](#)"), in particular [Actions 8 to 10](#) on transfer pricing, could be useful in considering this specific instance. In accordance with Article 27 of its Bylaws, the NCP may seek advice of relevant authorities on these matters, such as the OECD Department in charge of the BEPS project and the Directorate-General for Public Finance of the Ministry of Economy and Finance.

4.2. The referral creates an opportunity to contribute positively to the resolution of the questions raised in the specific instance (Article 25). The action of the NCP provides a forum for dialogue for the parties to conduct discussions on the effectiveness of the Guidelines.

5. Conclusion of the initial assessment

In accordance with article 18 of its Bylaws, the NCP considers that the issues raised by the referral on the effectiveness of the Guidelines merit further examination. The NCP recalls that acceptance of the referral does not determine whether or not the company acted in accordance with the OECD Guidelines.



NON-OFFICIAL TRANSLATION

The NCP has decided to offer its good offices to the parties who have accepted them. In accordance with its Bylaws, the NCP is now beginning the good offices and referral review phase. Its good offices will begin with separate interviews of the parties. As the lead NCP, the French NCP will coordinate its actions with the five supporting NCPs, i.e. American, British, Dutch, Mexican and Spanish NCPs.

The NCP reserves the opportunity to consult competent authorities on issues raised by the referral. It will take into account laws and regulations applicable in this case. It may take into account the BEPS project and Convention. The NCP may also take into account European Commission and the General Court decisions referred to by the complainant as well as those of other relevant authorities on similar matters.

The NCP procedure is confidential. In accordance with its Bylaws and the Procedural Guidance established by the OECD and in order to build a climate of trust with the Parties, the NCP will take appropriate measures to protect sensitive, commercial or other information, as well as the interests of other stakeholders involved in this specific instance. Finally, certain elements brought to the attention of the NCP may be subject to confidentiality.

In the Annex:

- Recommendations of the 2011 Guidelines referred to in the specific instance.
- Outline of the procedure for handling a specific instance of the French NCP.
- Extract from the bylaws of the French NCP on the initial assessment of a referral (Articles 18, 19, 20, 22, 23, 24, 25, 26, 31) and on the examination of specific instances (Articles 27, 28, 31, 38, 39 and 40).

Website: <http://www.pcn-france.fr>

Email: pointdecontactnational-France@dgtresor.gouv.fr

© OECD French National Contact Point



NON-OFFICIAL TRANSLATION

Recommendations of the May 2011 Guidelines referred to in the referral:

Chapter III on Disclosure

1. Enterprises should ensure that timely and accurate information is disclosed on all material matters regarding their activities, structure, financial situation, performance, ownership and governance. This information should be disclosed for the enterprise as a whole, and, where appropriate, along business lines or geographic areas. Disclosure policies of enterprises should be tailored to the nature, size and location of the enterprise, with due regard taken of costs, business confidentiality and other competitive concerns.

2. Disclosure policies of enterprises should include, but not be limited to, material information on:

c) major share ownership and voting rights, including the structure of a group of enterprises and intra-group relations, as well as control enhancing mechanisms;

e) related party transactions;

3. Enterprises are encouraged to communicate additional information that could include:

a) value statements or statements of business conduct intended for public disclosure including, depending on its relevance for the enterprise's activities, information on the enterprise's policies relating to matters covered by the Guidelines;

4. Enterprises should apply high quality standards for accounting, and financial as well as non-financial disclosure, including environmental and social reporting where they exist. The standards or policies under which information is compiled and published should be reported. An annual audit should be conducted by an independent, competent and qualified auditor in order to provide an external and objective assurance to the board and shareholders that the financial statements fairly represent the financial position and performance of the enterprise in all material respects.

Chapter VIII on the Consumer Interests

When dealing with consumers, enterprises should act in accordance with fair business, marketing and advertising practices and should take all reasonable steps to ensure the quality and reliability of the goods and services that they provide. In particular, they should:

2. Provide accurate, verifiable and clear information that is sufficient to enable consumers to make informed decisions, including information on the prices and, where appropriate, content, safe use, environmental attributes, maintenance, storage and disposal of goods and services. Where feasible this information should be provided in a manner that facilitates consumers' ability to compare products.

4. Not make representations or omissions, nor engage in any other practices, that are deceptive, misleading, fraudulent or unfair.

Comment 85. Paragraph 2 concerns information disclosure. It calls for enterprises to provide information which is sufficient for consumers to make informed decisions. This would include information on the financial risks associated with products, where relevant. Furthermore, in some instances enterprises are legally required to provide information in a manner that enables consumers to make direct comparisons of goods and services (for example, unit pricing). In the absence of direct legislation, enterprises are encouraged to present information, when dealing with consumers, in a way that facilitates comparisons of goods and services and enables consumers to easily determine what the total cost of a product will be. It should be noted that what is considered to be "sufficient" can change over time and enterprises should be responsive to these changes. Any product and environmental claims that enterprises make should be based on adequate evidence and, as applicable, proper tests. Given consumers' growing interest in environmental issues and sustainable consumption, information should be provided, as appropriate, on the environmental attributes of products. This could include information on the energy efficiency and the degree of recyclability of products and, in the case of food products, information on agricultural practices.

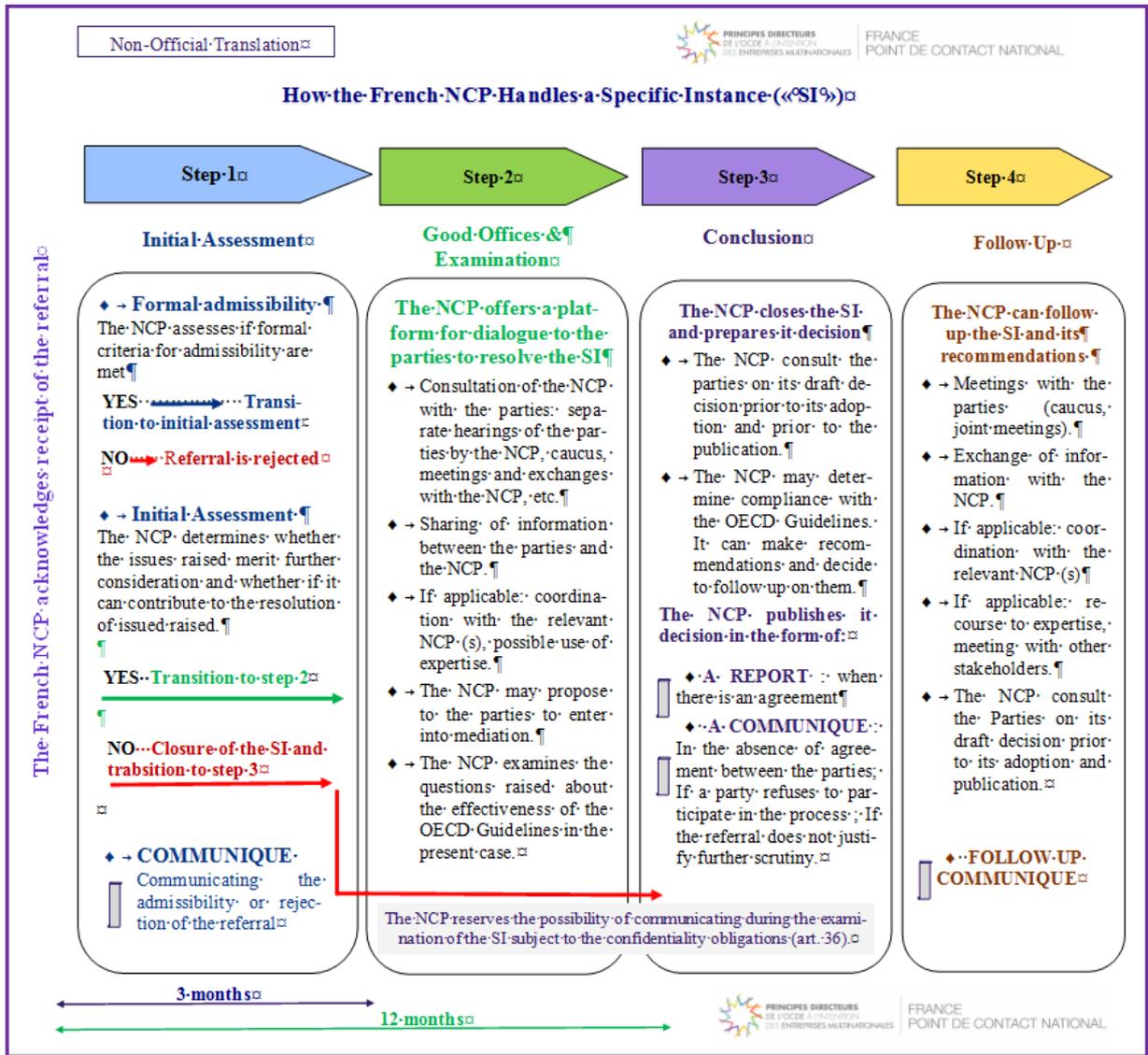
Comment 86. Business conduct is increasingly considered by consumers when making their purchasing decisions. Enterprises are therefore encouraged to make information available on initiatives they have taken to integrate social and environmental concerns into their business operations and to otherwise support sustainable consumption. Chapter III of the Guidelines on Disclosure is relevant in this regard. Enterprises are there encouraged to communicate value statements or statements of business conduct to the public, including information on the social, ethical and environmental policies of the enterprise and other codes of conduct to which the company subscribes. Enterprises are encouraged to make this information available in plain language and in a format that is appealing to consumers. Growth in the number of enterprises reporting in these areas and targeting information to consumers would be welcome.

Chapter XI on Taxation

1. It is important that enterprises contribute to the public finances of host countries by making timely payment of their tax liabilities. In particular, enterprises should comply with both the letter and spirit of the tax laws and regulations of the countries in which they operate. Complying with the spirit of the law means discerning and following the intention of the legislature. It does not require an enterprise to make payment in excess of the amount legally required pursuant to such an interpretation. Tax compliance includes such measures as providing to the relevant authorities timely information that is relevant or required by law for purposes of the correct determination of taxes to be assessed in connection with their operations and conforming transfer pricing practices to the arm's length principle.



NON-OFFICIAL TRANSLATION





NON-OFFICIAL TRANSLATION

Extracts from the bylaws of the French NCP

IV – NCP referral – Initial Assessment

- **Article 18.** *In examining the admissibility of a referral, the NCP shall begin by analysing the formal admissibility provided for by Article 16 and then carry out the initial assessment in order to assess the importance of the issues raised to ascertain whether they merit further examination as provided for in Articles 22, 23 and 25. The NCP shall contact the parties and may ask them for further information so as to finalise its initial assessment.*
- **Article 19.** *Following its initial assessment, the NCP conveys its response to the parties involved. The NCP shall issue a statement announcing the admissibility of the specific instance, which shall stipulate the identity of the parties, the country or countries concerned by the referral and a summary of its initial assessment. With due regard to the confidentiality incumbent on the NCP, the complainant may inform its principal(s) of the decision taken by the NCP with regard to admissibility.*
- **Article 20.** *When the NCP notes that a specific instance does not meet the formal criteria for admissibility set out in Article 16 and/or it notes that it is not competent to handle it, it shall declare the referral to be inadmissible. It informs the complainant of its decision and sends the referral to the enterprise. It then publishes a statement of inadmissibility after having informed the complainant and the enterprise. In this statement, the NCP shall outline the issues raised and set forth the reasons for its decision. The statement shall not disclose the identity of the enterprise in question*
- **Article 22.** *The NCP shall also ascertain whether the issue in question has been raised in good faith and in accordance with the Guidelines.*
- **Article 23.** *In assessing the admissibility of a referral to it, the NCP shall consider:*
 - *The identity of the party concerned and its interest in the case;*
 - *The significance of the issue and the supporting items provided;*
 - *The apparent connection between the enterprise's activities and the issue raised in the specific instance;*
 - *The relevance of the applicable laws and procedures, notably jurisdictional proceedings;*
 - *How similar issues are being (or have been) examined at national or international level.*
- **Article 24.** *A referral submitted by any NCP member shall be presumed admissible if it meets the above conditions.*
- **Article 25.** *The NCP shall strive to ascertain whether, in making an offer of good offices, it could make a positive contribution to the resolution of the issues raised and if this would not create serious prejudice for either of the parties involved in other proceedings, or cause a contempt-of-court situation. It may then decide either to pursue or to renounce its consideration of the specific instance.*
- **Article 26.** *The NCP shall endeavour to conclude an initial assessment within three months of acknowledging receipt of the referral, although additional time may be granted, if need be, in order to collect essential information necessary for an informed decision*

V – EXAMINATION OF SPECIFIC INSTANCES

- **Article 27.** *Where the issues raised merit further examination, the NCP shall offer its good offices to help the parties involved to resolve them by providing a forum for dialogue. During its good offices and the examination of the specific instance, the NCP shall consult with these parties and, where appropriate, according to the cases examined, the NCP shall:*
 - *Seek advice from competent authorities, and/or representatives of the business community, worker organisations, other non-governmental organisations, and experts;*
 - *Consult the NCP(s) in the other country or countries concerned, including in respect of draft statements if the foreign NCP is mentioned;*



NON-OFFICIAL TRANSLATION

- *Seek the opinion of the OECD Investment Committee if it has doubts about the interpretation of the Guidelines in the particular circumstances;*
- *Propose, 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 resolving the problems.*
- **Article 28.** *The examination of a specific instance shall take the form of a series of consultations between the enterprise involved, the party or parties having made the referral to the NCP and all NCP members. These consultations shall enable the referring party or parties to set forth the grounds for the referral in detail and allow the enterprise concerned to respond thereto. The NCP's good offices may represent regular exchanges between the NCP and the parties (meetings, interviews, telephone conversations, videoconferencing, letters/emails). Subject to respecting the confidentiality which applies to the procedure, the NCP Secretariat manages the exchange of information between the complainant and the enterprise, on one hand, and the parties and the NCP, on the other. As from the start of its good offices, the NCP may suggest to the parties that they meet and this proposal may be reiterated during the procedure. It may also offer them mediation or conciliation which it can manage directly. The NCP shall keep the parties regularly informed of the progress of its discussions and may ask them questions.*
- **Article 31.** *The NCP shall strive to examine the issues raised within the best timeframe, if possible within 12 months of receipt of a specific instance, it being understood that this timeframe may be extended if circumstances so warrant, e.g. if the issue raised involves a country that has not adhered to the Guidelines, or in the event of parallel procedures*

Confidentiality

- **Article 38.** *In compliance with the provisions of Article 40, NCP members' involvement in examining a specific instance carries with it their commitment to respect the confidentiality of the discussions, interviews and documents exchanged. NCP members are bound to respect the confidentiality of a referral while its examination is not closed. When required for the handling of a specific instance, certain documents may be provided at meetings to NCP members who shall formally acknowledge receipt thereof.*
- **Article 39.** *In order to facilitate resolution of the issues raised, the NCP shall take appropriate measures to protect sensitive business and other information and the interests of other stakeholders involved in the specific instance.*
- **Article 40.** *When closing the procedures, if the parties involved have not agreed on the resolution of the issues raised, they shall be free to communicate about and discuss these issues. However, information and opinions provided during the procedures by another party involved shall remain confidential, for the parties and for the NCP members, unless that other party agrees to their disclosure or this would be contrary to the provisions of national law*

Transparency, impartiality and prevention of potential conflicts of interest

Article 41. *Impartiality is one of the criteria for handling specific instances which are set by the procedural guidance of the Guidelines (refer to Article 2). A member concerned or any other NCP member shall report, on a case-by-case basis, any perceived conflict of interest or actual conflict of interest which may lead to a lack of impartiality that could have an effect on the handling of the specific instance. The member concerned shall assess whether his/her presence is likely to be detrimental to the impartial handling of the specific instance or whether he/she should stand down. Should he/she see fit, the NCP Chair may arrange for a discussion of cases of perceived conflicts of interest.*