

5 February 2019

## FRENCH NCP BYLAWS

The purpose of these bylaws is to specify the role and operations of the French National Contact Point established in compliance with the Implementation Procedures of the OECD Guidelines for Multinational Enterprises.

The National Contact Point and its operating rules have been established with reference to the procedural guidance annexed to the Decision of the OECD Council on the Guidelines for Multinational Enterprises.<sup>1</sup>

### I. Missions

1. The National Contact Point contributes to reinforcing the effectiveness of the Guidelines by conducting promotional activities and responding to requests for information. It also helps resolve problems raised by implementation of the Guidelines, in particular by examining issues, known as “specific instances”, which are referred to it. Such specific instances refer to activities that might not be compliant with the Guidelines and are due either to French multinational enterprises<sup>2</sup> in any country, or to foreign companies in France. The NCP examines specific instances in the light of the OECD procedural guidance annexed to the aforementioned Decision of the OECD Council.
2. Lastly, as provided for in the OECD’s aforementioned procedural guidance, the NCP operates in accordance with core criteria of visibility, accessibility, transparency and accountability, and it contributes 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.

### II. Composition

3. The NCP comprises the following members:
  - Representatives of enterprises: MEDEF (Mouvement des entreprises de France).
  - Labour representatives from the following trade unions: CFDT (Confédération française démocratique du travail); FO (Force ouvrière); CFE-CGC (Confédération française de l’encadrement-Confédération générale des cadres); CFTC (Confédération française des travailleurs chrétiens); UNSA (Union nationale des syndicats autonomes); and CGT (Confédération générale du travail).
  - Government departments:

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<sup>1</sup> The Guidelines may be found in Annex 1 to the Declaration on International Investment and Multinational Enterprises, as amended on 25 May 2011.

<sup>2</sup> The notion of multinational enterprise is that set out in Article 4 of the Concepts and Principles of the Guidelines which provides that “A precise definition of multinational enterprises is not required for the purposes of the Guidelines” and that “They usually comprise companies or other entities established in more than one country and so linked that they may coordinate their operations in various ways”. Further information on this point can be found in the OECD’s annual reports on responsible business conduct.

- Ministry for the economy and finance;
  - Ministry for labour and employment;
  - Ministry for foreign affairs;
  - Ministry for the environment.
4. Each organisation or ministry appoints one representative and one alternate to represent it at meetings.
  5. NCP secretarial services are provided by the Directorate-General of the Treasury,<sup>3</sup> which appoints the NCP's Secretary-General.
  6. The NCP is chaired by a senior official of the Directorate-General of the Treasury, appointed by the Directorate-General. The Directorate-General of the Treasury shall be tasked with ensuring proper interministerial co-ordination of NCP activity.
  7. From time to time, outside experts known for their technical expertise (e.g. in the realms of corporate social accountability, human rights or the environment) may be called on. Any such additional participation must be approved by the NCP members.

### **III. Operations**

8. The NCP's decisions are adopted by consensus amongst its members. Failing such consensus, the decision shall revert to the NCP Chair, who shall take the diversity of all opinions expressed into account. When there is no consensus, NCP decisions shall state this explicitly.
9. The Chair of the NCP proposes the agenda for NCP meetings. One or more members of the NCP may request the Chair to add additional item to the agenda. The NCP may deliberate only if all three categories of members are represented.
10. NCP members shall undertake not to disclose any documents not already made public by their respective authors, or the content of its discussions, or any non-public information gathered during examination of specific instances.
11. All documents submitted to the NCP shall be distributed to all of its members, if at all possible sufficiently in advance to give them time for detailed examination thereof.
12. Minutes of National Contact Point meetings shall be drafted and distributed to all NCP members.
13. In order to examine specific instances referred to it, and as required, the National Contact Point may call upon "rapporteurs" designated by the NCP Chair after consultation with NCP members.
14. As needed, the NCP may, after consultation of its members, hear the author of a referral made to the NCP and / or a representative of the company concerned by the referral. The Secretariat shall so inform NCP members prior to the meeting.
15. Each year the NCP shall draft a report outlining its activities and the cases dealt with over the course of the year. This report shall be discussed at an annual information session of the NCP

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<sup>3</sup> Decree of 21 April 2009 of the Ministry for the Economy, Industry and Employment establishing the Directorate-General of the Treasury and Economic Policy, *Journal officiel de la République française* of 8 May 2009.

(“*reunion annuelle d’information du PCN*”), and, if at all possible, prior to the annual meeting of NCPs with the OECD Investment Committee. The list of invited stakeholders and the agenda shall be determined by consensus amongst NCP members. Once a year, the NCP shall hold a meeting to dialogue with organisations representing civil society (NGOs, associations, etc.) to discuss about its activity.

#### **IV. Referrals to the NCP – Initial Assessment**

For further information, refer to the diagram and to the factsheet on the specific instance processing procedure and the factsheet on the admissibility of a specific instance.<sup>4</sup>

##### ***Form of referrals***

16. A referral to the NCP must be precise. In this regard, it must stipulate:

- The identity of the enterprise in question;
- The identity and contact details of the complainant;
- Details of the facts of which the enterprise is accused;
- Elements of the OECD Guidelines for Multinational Enterprises in respect of which the referral to the NCP is being made.

##### ***Processing referrals: evaluation of admissibility***

17. Upon receiving a referral, the NCP Secretariat shall send the referring party an acknowledgement of receipt, through the post or electronically, and shall forward copies of any items submitted in support of the referral to NCP members.
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.
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.
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.

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<sup>4</sup> [https://www.tresor.economie.gouv.fr/Ressources/6373\\_Que-signifie-la-recevabilite-dune-circonstance-specifique-](https://www.tresor.economie.gouv.fr/Ressources/6373_Que-signifie-la-recevabilite-dune-circonstance-specifique-)

### *Admissibility criteria*

- 21.1 A referral shall be declared admissible if it fulfils the formal conditions stated in Article 16.
- 21.2 When the NCP notes that the formal criteria for admissibility provided for by Article 16 have not been met, it shall ask the complainant to reformulate the referral within a certain timeframe which shall be set by the NCP.
- 21.3 When the NCP duly notes the formal admissibility of the referral, it shall begin the initial assessment provided for in Articles 18, 22, 23 and 25. The NCP shall inform the complainant of the formal admissibility of the referral and the start of the initial assessment. The NCP shall inform the enterprise of the existence of the specific instance, send it a copy of the file and ask it to respond to the referral as from the initial assessment stage. The NCP publishes an initial assessment statement in which it sets out the issues raised by the specific instance and provides the reasons for its decision. The parties and, where applicable, the supporting NCP, are consulted concerning the statement.
22. The NCP shall also ascertain whether the issue in question has been raised in good faith and in accordance with the Guidelines.
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.
24. A referral submitted by any NCP member shall be presumed admissible if it meets the above conditions.
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.
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**

For further information, refer to the diagram and to the factsheet on the specific instance processing procedure, the factsheet on the admissibility of a specific instance.<sup>5</sup>

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<sup>5</sup> [https://www.tresor.economie.gouv.fr/Ressources/6373\\_Que-signifie-la-recevabilite-dune-circonstance-specifique-](https://www.tresor.economie.gouv.fr/Ressources/6373_Que-signifie-la-recevabilite-dune-circonstance-specifique-)

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;
  - 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.
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.
29. To contribute to the examination of a specific instance, NCP members may provide additional items to supplement those already submitted by the enterprise in question and by the party or parties having referred the specific instance to the NCP.
30. The NCP's examination of a specific instance may in no way be deemed a judicial procedure insofar as the OECD Guidelines consist merely of recommendations, and are not legally binding principles. The NCP shall take care to avoid all interference with any judicial or administrative proceedings underway in France and concerning the matters under review. If a referral is also the subject of judicial or administrative proceedings, the NCP shall pursue its examination only if its intervention provides real added value relative to those other proceedings, arising in particular from the international dimension of the case.
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.
32. If it deems necessary or useful, the NCP may monitor the follow-up to its recommendations after having closed the examination of the specific instance.

## ***Communication***

33. After consulting with the parties involved, the NCP shall make public the results of the procedures, taking into account the need to protect sensitive information, in respect of either commercial information or other information relating to the parties involved. Should it see fit, in particular to further the effectiveness of the Guidelines, the NCP may give its opinion on the compliance of the actions, measures and decisions of the parties, examined as part of the procedure, with the Guidelines.
34. In the event of a disagreement amongst NCP members regarding the examination procedure or the outcome of a specific instance, including the publication of any possible NCP statement, the decision shall lie with the NCP Chair.
35. At the conclusion of the consultation procedure, the NCP shall issue:
  - 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 an agreement was reached. Information on the content of the agreement will only be included insofar as the parties involved agree thereto.
  - 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 merited further examination and the procedures the NCP initiated in assisting the parties. The NCP shall make relevant recommendations on the implementation of the Guidelines, which should be included in the statement. Where appropriate, the statement could also include the reasons why an agreement could not be reached.
36. NCP decisions, which may take the form of press releases, shall in any event be made public by the NCP. They may be addressed specifically to the public bodies concerned. The NCP shall reserve the right to issue statements during the course of its examination of the procedure, subject to confidentiality obligations.
37. The NCP Secretariat shall advise the Investment Committee Secretariat of the outcomes of any procedures it has undertaken in respect of specific instances.

## ***Confidentiality***

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.
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.
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***

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.

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These bylaws are published on the website of the French National Contact Point.

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