

NON OFFICIAL TRANSLATION

## SPECIFIC INSTANCE

### “Airbnb in France”

1<sup>st</sup> June 2021

#### Final Statement of the French National Contact Point

**The NCP forwards the referral to the French tax authority, which is competent to consider transfer pricing issues. In addition, the NCP recommends that Airbnb France "comply with the letter and the spirit of tax laws and regulations" applicable in France and "publish information on its taxation in accordance with recommendations XI.1 and III.3a of the Guidelines.**

The French National Contact Point for the implementation of the OECD Guidelines for Multinational Enterprises (“NCP”) was referred on 11 March 2020 by AhTop, the Association for Professional Accommodation and Tourism<sup>1</sup> with a specific instance concerning Airbnb France SARL.

The NCP accepted the referral on 30 June 2020. On 27 August 2020, AhTop confirmed its acceptance of the NCP’s good offices. On 28 August 2020, Airbnb France SARL refused to participate in the good offices proposed by the NCP. The NCP therefore moved to the conclusion phase of the referral. This statement closes the proceedings.

*The French NCP is a tripartite body for the non-judicial grievance mechanism for the implementation of the OECD Guidelines for Multinational Enterprises. Its purpose is to contribute to solving issues raised to it through its good offices, mediation and conciliation. It shall endeavour to examine issues raised as soon as possible, if possible within 12 months of receipt of the specific instance. It shall publish its decisions on its website.*

### 1. Presentation of the specific instance

The referral is submitted by a French employers’ organisation in the tourism sector, the Association for a Professional Accommodation and Tourism, “AhTop”. Its aim is to “*defend and carry out the actions necessary for the promotion of tourism accommodations of quality in France*” and “*focuses in particular (...) at the establishment of a fair competition between traditional tourism accommodation and the model of online platforms for housing rental*”. AhTop’s statutes provide that it can “*take all actions, even judicial ones, related to the preservation, to the competitiveness and to the quality of tourist accommodation in France*”. AhTop’s Executive Committee decided on 11 February 2020 to refer to the French NCP issue concerning the taxation of transfer prices charged by Airbnb in France.

<sup>1</sup> « Association pour un Hébergement et un Tourisme Professionnels », AhTop

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The referral is about the tax policy of a company in the digital economy. It questions Airbnb France SARL's compliance with the OECD Guidelines which recommend companies "to comply with both the letter and spirit of the tax laws and regulations of the countries in which they operate" and "to conforming transfer pricing practices to the arm's length principle" with regard to the taxation of activities carried out in France on behalf of the Airbnb Group. The referral questions compliance with several OECD standards: the OECD Guidelines for Multinational Enterprises and, implicitly, the OECD Transfer Pricing Guidelines.

The complainant mentions "a suspicion of a violation of the OECD Guidelines by Airbnb France SARL which, given the nature of the services rendered by the latter to Airbnb Ireland, may not be considered to provide low value-added services as defined by the 2015 BEPS final reports on actions 8 to 10. In this situation, if this was not the case, the fact that Airbnb France re-invoices its costs to Airbnb Ireland only with a margin of 5 % could constitute a breach of the OECD Guidelines".

AhTop indicates that the OECD's recommendations on transfer pricing provide for the application of a 5 % margin rate on low-value-added intra-group services paid between companies within the same group. These services are defined by the OECD and G20 2015 report on the tax Base Erosion and Profit Shifting, or "BEPS". The complainant refers to Airbnb France's annual accounts between 2015 and 2018. It deduces that the company would apply a margin rate of close to 5 % to services it renders to Airbnb Ireland. According to the complainant, services provided by Airbnb France to the company Airbnb Ireland do not fall within the category of low value-adding services as defined by the OECD. It notes that "the services rendered by Airbnb France to Airbnb Ireland are inter alia directly linked to the "sale, marketing and distribution" of Airbnb's offer in France". The referral highlights the strong increase in Airbnb's turnover in France, from EUR 4.95 million in 2015 to EUR 9.94 million in 2018. It emphasizes the importance of the French market for Airbnb group. According to AhTop, Airbnb France – and by extension Airbnb Ireland and the Airbnb Group – would not comply with the OECD's recommendations on transfer pricing, thereby creating a distortion of competition with other stakeholders in the accommodation sector in France. Thus, Airbnb France would not respect the "arm's length principle" as set out in the Guidelines.

During the initial assessment, Airbnb France SARL would like "to acknowledge the work of the NCP promoting the success of the OECD Guidelines for Multinational Enterprises by contributing to the resolution of issues that arise relating to the implementation of the Guidelines in specific instances". It states that "Airbnb France is part of the Airbnb Group, which carries out activities in a number of countries across the world. Accordingly, the Airbnb Group implements its Transfer Pricing policy in accordance with the arm's length principle outlined in the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations, as embodied in Article 57 of the French tax code as well as Article 5 of the Double Taxation Treaty between Ireland and France". The company also states that "any discussion regarding the taxation of Airbnb's activities in France and the appropriateness of Airbnb France's Transfer Pricing policy is matter between Airbnb and the French Tax Administration ". It states "priority to its interaction with the privileged interlocutor of the tax administration ".

**For more details on the Initial Assessment → See [NCP Communiqué of 14 December 2020](#)**

## 2. Procedure followed by the NCP in accordance with its rules of procedure

Taking into account health guidelines for the prevention of Covid 19, meetings and exchanges between the parties and the NCP as well as its internal meetings took the form of video-conferences and call-conferences.

The specific instance procedure to the NCP is confidential.

Under its Bylaws, the NCP shall endeavour to carry out an initial assessment of a referral within 3 months after the acknowledgement of receipt of the referral, but additional time may be granted if it is necessary to collect necessary information for an informed decision (art.26). The NCP shall endeavour to examine the issues raised as soon as possible, if possible within 12 months of receipt of the specific instance (Art. 31). Where a party does not wish to participate in the good offices proposed by the NCP, the NCP moves directly to the preparation of a final statement, i.e. the conclusion phase of the proceedings (art. 35). The Bylaws also provide for the possibility of hearing experts (Art. 27<sup>2</sup>). In the framework of this procedure and as indicated in the initial assessment statement, the NCP heard the French Directorate-General for Public Finance (“DGFIP”) and consulted the OECD Secretariat’s Centre for Tax Policy and Administration who provided information on current practices in relevant areas of tax policy.

### ◆ 1<sup>st</sup> step: Admissibility and initial assessment of referral (May to September 2020)

**1.1. Receipt of the referral.** The Association for a Professional Accommodation and Tourism addressed this specific instance to the NCP by letter dated 11 March 2020. As a result of the lockdown in force as off 17 March 2020 in France, the NCP received the referral on 14 May 2020. The NCP secretariat informed the U.S., UK and Irish NCPs of the referral on 3 June 2020 (see 3. Coordination of NCPs).

**1.2. Formal admissibility of referral.** On 4 June 2020, the NCP found that formal admissibility of the referral was met and adopted a statement announcing its receipt. It forwarded the referral to Airbnb France SARL and invited it to respond to it now. The NCP informed the parties of its decision on 8 June 2020 and provided them with the Reception Statement for information. The [Reception Statement](#) was published on 3 July 2020<sup>3</sup> and notified to the OECD<sup>4</sup>.

**1.3. Initial assessment of the specific instance.** The NCP began the initial assessment of the specific instance on 4 June 2020. On 4 and 5 June 2020, the complainant provided additional information on its interest in submitting the referral and on its content. The NCP secretariat met with the parties separately to present the proceedings on 18 August 2020 with Airbnb and 4 September 2020 with AhTop.

Airbnb France SARL acknowledged receipt of the referral by letter dated 24 June 2020. The company indicated that, according to it, the issues raised by the referral were the responsibility of French tax administration and

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<sup>2</sup> Art. 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; (...).”

<sup>3</sup> <https://www.tresor.economie.gouv.fr/Articles/2020/07/03/saisine-du-pcn-francais-airbnb-en-france>

<sup>4</sup> <https://mneguidelines.oecd.org/database/instances/fr0031.htm>

that it gave “*priority to its interaction with the privileged interlocutor of the tax administration*”.

At its meeting on 30 June 2020, the NCP decided to accept the referral. It informed the parties of its decision on 28 July 2020 and offered them its good offices. On 27 August 2020, AhTop confirmed the acceptance of the good offices and transmitted its commitment to respect the confidentiality and secrecy of the exchanges. On 28 August 2020, Airbnb France SARL stated that “*we must respectfully decline to participate in the NCP process*”. On the basis of the [Reception Statement](#)<sup>5</sup>, the NCP Secretariat contacted the Directorate-General for Public Finance (“DGFIP”). The NCP finalised the initial assessment of the referral at its meeting on 8 September 2020.

The NCP adopted a draft Initial Assessment Statement on 23 November 2020. It then consulted with the complainant, the company and the three supporting NCPs. The NCP took their comments into account and adopted the [Initial Assessment Statement](#) on 14 December 2020, which was subsequently published and notified to the OECD. DGFIP has been informed of this publication.

*For more details about the Initial Assessment → See [NCP Statement of 14 December 2020](#)*

#### ◆ 2<sup>nd</sup> step: Conclusion of Specific Instance (October 2020 to May 2021)

The NCP wished to carry out a several consultations to prepare the final statement of this referral. It carried out a hearing with the Directorate-General for Public Finance (DGFIP) on 12 November 2020 in the form of a video conference. It met with the complainant on 19 November 2020 in the form of a video conference. The NCP consulted the OECD Secretariat’s for Tax Policy and Administration on 9 March 2021, with the participation of the OECD Centre for Responsible Business Conduct. The OECD points out, however, the role of the Secretariat to “) *serve as a central point of information for NCPs that have questions on the promotion and implementation of the Guidelines*”<sup>6</sup> is limited to providing information of a general nature on the Guidelines and does not extend to interpreting the Guidelines in specific case”.

At its internal meeting on 9 March 2021, the NCP requested the Secretariat to prepare a draft final statement. The draft final communiqué was adopted by the NCP on 4 May 2021. It was then send for consultation to the complainant, the company and the three supportive NCPs. The NCP wished to inform the company of about the draft statement and invite it to comment on the draft statement, although it refused its good offices. The complainant, the AhTop, validated the draft statement by thanking the NCP “*for the work carried out despite the lack of dialogue with the opposing party.*” The company, Airbnb France SARL, validated the draft statement and wished “*to thank the PCN for the efforts made to keep Airbnb informed at each stage of the procedure*”. The NCP took into account comments received and adopted the final communiqué on 1<sup>st</sup> June 2021. The Statement was sent for information to the parties and supportive NCPs and was published in 7 June 2021. The NCP Secretariat then notified the OECD in order to update the NCP database ([here](#)).

<sup>5</sup> <https://www.tresor.economie.gouv.fr/Articles/2020/07/03/saisine-du-pcn-francais-airbnb-en-france> and [here](#)

<sup>6</sup> See Abstract, IMPLEMENTATION PROCEDURES OF THE OECD GUIDELINES FOR MULTINATIONAL ENTERPRISES, “II.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”.



### ◆ Coordination with foreign NCPs

The complainant referred only to the French NCP regarding Airbnb France SARL. The referral concerned, however, the relationship between the Airbnb Group's French subsidiary and other entities of the Group present in 3 countries that adhered to the Guidelines: the United States, Ireland and the United Kingdom. The French NCP therefore considered it necessary to inform the NCPs of these countries and to coordinate its action with them.

In June 2020, the NCPs decided that the French NCP lead the referral as it concerns a French company and compliance with the Guidelines in France. The U.S., UK and Irish NCPs have been designated as *supportive NCPs*.

The NCP Secretariat regularly briefed the three supporting NCPs on the progress of the procedure and about decisions taken by the French NCP during the proceedings. It organized several coordination meetings. It consulted with the supportive NCPs on the draft initial assessment and final statements. These projects had to be translated into English to allow for these consultations, which led to a certain delay in their finalisation.

This coordination is in line with the practice of the French NCP and [the OECD Guide for NCPs for coordination when handling specific instances](#)<sup>7</sup>. The NCP thanks the U.S., UK and Irish NCPs for this support.

## 3. Substantive analysis of issues on the OECD Guidelines effectiveness

The referral questions Airbnb France's compliance with the Guidelines which recommend companies to "*comply with both the letter and spirit of the tax laws and regulations of the countries in which they operate*" and "*conforming transfer pricing practices to the arm's length principle*" with regard to the taxation of activities carried out in France on behalf of Airbnb Group. The referral also refers to the OECD Transfer Prices Guidelines as revised by Actions 8 to 10 of the OECD on Base Erosion and Profits Shifting Project (BEPS).

During the proceedings, the French company Airbnb France provided little information to the NCP (two letters) and declined the NCP's invitation to participate in the good offices and indicated to the NCP "*we must prioritize engagement with [the privileged interlocutor of] the French Tax Administration where matter relate to the taxation of Airbnb France*". As a result, the NCP was unable to engage in a dialogue with Airbnb France about its activities and fiscal policy in France to discuss its compliance with the Guidelines in France. Nor has the NCP been able to contribute establish a dialogue between Airbnb France and AhTop, which is a stakeholder in the accommodation and tourism sector in France.

The Guidelines for Multinational Enterprises incorporate the principle of arm's length into the establishment of transfer prices. It notes that the arm's length principle is explained by the OECD Transfer Pricing Guidelines<sup>8</sup>, which have been revised and enriched in the context of actions 8 to 10 "*Aligning Transfer Pricing Outcomes with Value Creation*" of the OECD Base Erosion and Profits Shifting Project ("BEPS")<sup>9</sup>. These

<sup>7</sup> "[Les PCN et l'OCDE](#), [www.pcn-france.fr](http://www.pcn-france.fr) and [here](#)

<sup>8</sup> OECD Transfer Pricing Principles for Multinational Enterprises and Tax Administrations 2017, <https://www.oecd.org/fr/fiscalite/prix-de-transfert/principes-de-l-ocde-applicables-en-matiere-de-prix-de-transfert-a-l-intention-des-entreprises-multinationales-et-des-administrations-20769723.htm>

<sup>9</sup> <https://www.oecd.org/fr/fiscalite/beps/actions-beps.htm>

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guidelines fall under so-called “soft law”. It is up to States to integrate these standards, guides and good practices into their tax regulations and tax control processes. The OECD is not empowered to monitor its proper implementation by companies or States. However, the OECD organises “peer reviews” of States involved in the BEPS. However these peer reviews do not concern transfer pricing but other aspects of BEPS. Today, more than 125 States are participating in the BEPS inclusive framework.

**At the end of the proceeding, the NCP takes stock of the following with regard to the issues raised by the referral:**

■ **About tax policy on transfer pricing**

During the initial assessment, Airbnb France SARL informed the NCP that “(...). Accordingly, the Airbnb Group implements its Transfer Pricing policy in accordance with the arm’s length principle outlined in the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations, as embodied in Article 57 of the French tax code and as well as Article 5 of the Double Tax Taxation Treaty between Ireland and France”.

The NCP understands from DGFIP hearing that any company is free to transmit or publish elements of its tax policy. The NCP is therefore competent to examine elements of Airbnb France’s tax policy as provided for in the Guidelines. Airbnb France could have participated in the good offices proposed by the NCP. The NCP notes the lack of information on Airbnb France’s tax policy on its website.

→ *Since Airbnb France refused the NCP’s good offices, its tax policy on transfer pricing could not be discussed either with the NCP or with the complainant. The NCP regrets this attitude, which is contrary to the spirit of the Guidelines.*

■ **About tax control of transfer prices**

The NCP investigated how OECD standards were taken into account in the “letter and the spirit” of French tax legislation on the issue of transfer pricing. The NCP conducted a hearing with DGFIP to inform its understanding of tax issues raised by the referral. It understands from this hearing that:

- [Article 57 of the French General Tax Code](#) is the legal basis for the tax administration to establish recalls in respect of transfer pricing, in particular by characterizing an abnormal act of management or renunciation of revenue (see Annex);
- French tax administration takes into account the guidelines and good practices established by the OECD and the BEPS in its verification exercises. For example, controlling corporate tax incorporates the verification of the arm’s length principle of intra-group transfer prices via several analytical techniques based on the methodology proposed by the [OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations 2017](#)<sup>10</sup>;
- France makes mandatory the *country by country reporting* promoted by the OECD;
- The French tax administration is exclusively competent to carry out the tax control of a particular company. This exercise of control is covered by fiscal secrecy.

The NCP notes that the spirit and the letter of French tax legislation take into account the standards and good practices promoted by the OECD. It notes that the French tax administration is exclusively competent to the

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<sup>10</sup> [OECD Transfer Pricing Principles for Multinational Enterprises and Tax Administrations 2017](#) and [PDF](#)

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exercise tax control verification of a particular company and that this exercise of control is covered by fiscal secrecy.

→ *In the case at hand, the NCP is not in a position to carry out an analysis of the compliance of Airbnb France's transfer pricing as expected by the complainant as this would amount to a tax control verification which is exclusively the responsibility of the tax administration. The NCP therefore decided to forward the specific instance to the DGFIP. It notes that it will not be informed of the follow-up that DGFIP may make to this transmission.*

#### 4. Conclusion

Airbnb France SARL did not wish to participate in the dialogue framework proposed by the French NCP. The NCP recalls that the Guidelines should be respected in France by multinational companies. The NCP forwards the specific instance to the DGFIP, which is the only competent body to assess the compliance of a company's transfer pricing with the OECD Guidelines in the framework of a tax control.

AhTop thanked the NCP "for the work carried out by the NCP despite the lack of dialogue with the opposing party" and "took note of the forthcoming transmission of the file to French tax authorities". Airbnb informed the NCP that "we also note of the conclusions made by the NCP and we will engage with DGFIP to answer any questions that it may have concerning Airbnb taxation in France".

The NCP makes the following recommendations to Airbnb France:

*RECOMMENDATION 1: The referral raises issues only on the scope of implementation of the Guidelines in France. The NCP reminds Airbnb France that the Guidelines should be respected in France by multinational companies.*

*RECOMMENDATION 2: The referral raises issues only on the scope of implementation of the Guidelines in France. In accordance with recommendation 1 of chapter XI, the NCP recommends that Airbnb France "comply with both the letter and the spirit of the tax laws and regulations" applicable in France "by making timely payment of their tax liabilities" and emphasizes that "tax compliance includes such measures as (...) and conforming transfer pricing practices with the arm's length principle".*

*RECOMMENDATION 3: In accordance with Chapter III, recommendation 3a, which states that "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", the NCP recommends that Airbnb France provide information on its taxation, which is addressed in the Guidelines in Chapter XI.*

Since Airbnb Inc. is a U.S. group with major subsidiaries in Ireland, the U.S and Ireland having adhered to the OECD Guidelines, the French NCP points out that the company should ensure compliance with the Guidelines worldwide.

The NCP notes that Airbnb France SARL told it that "we also note the recommendations made by the NCP. As it has done in the past, Airbnb France continues to apply to Transfer Pricing guidelines in France and to adhere to the spirit and letter of the law by paying all the taxes applicable to it in France in a timetable and conforming with the arm's length principle. We will also consider carefully the NCP's recommendation

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*to provide information on Airbnb's taxation policy, in accordance with chapter III, recommendation 3a of the Guidelines. We recognise the merits of such actions and would like to thank the NCP for the recommendation”.*

The NCP is closing the referral. It thanks the complainant for its participation in the proceedings. It invites Irish, U.S. and British supportive NCPs to forward this statement to the company's business relationships within Airbnb Group Inc.

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**In the Annex:**

- I. Recommendations of the 2011 Guiding Principles referred to in the referral
- II. Article 57 of the French General Tax Code
- III. Abstract from the 2015 Final Report “Aligning Transfer Pricing Outcomes with Value Creation”, OECD/G20 Action 8 to 10 Base Erosion and Profit Shifting Project.
- IV. Outline of the procedure for handling a specific instance by the French NCP
- V. Abstract from the French NCP Bylaws

**ANNEX I. Recommendations to the May 2011 Guiding Principles referred to in the referral**

**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”.

**Annex II. Article 57 of the General Tax Code as amended by Act No. 2014-891 of 8 August 2014 – s. 19**

For the establishment of income tax payable by undertakings which are dependent or which have control over undertakings located outside France, profits indirectly transferred to the latter, either by way of increase or reduction in purchase or sale prices, or by any other means, shall be incorporated into the results charged by the accounts. The same applies to undertakings which are dependent on an undertaking or group which also has control over undertakings located outside France.

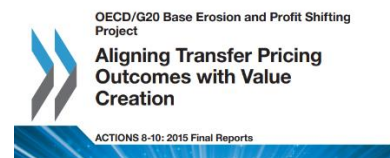
The condition of dependency or control shall not be required where the transfer takes place with undertakings established in a foreign State or in a territory outside France whose tax regime is privileged within the meaning of the second paragraph of [Article 238a](#) or established or constituted in a non-cooperative State or territory within the meaning of [Article 238\(0\)A](#).

In the event of failure to reply to the request made pursuant to Article L. 13 B of the Tax Proceedings Book or in the absence of production or partial production of the documentation referred to in Article L. 13 A.A. III and Article L. 13 AB of the same book, the tax bases concerned by the application shall be assessed by the administration on the basis of the elements at its disposal and following the adversarial procedure laid down in Articles L. 57 to L. 61 of the same book. In the absence of specific elements for making the corrections provided for in the first, second and third subparagraphs, taxable products shall be determined by comparison with those of similar undertakings normally carried on



**ANNEX III. Abstract from the 2015 Final Report “Aligning Transfer Pricing Outcomes with Value Creation», actions 8 - 10 OECD/G20 Base Erosion and Profit Shifting Project**

**LOW VALUE-ADDING INTRA-GROUP SERVICES**



**Revisions to Chapter VII of the Transfer Pricing Guidelines**

**Summary:**

Action 10 of the BEPS Action Plan instructs the G20 and OECD countries to develop transfer pricing rules to provide protection against common types of base eroding payments, such as management fees and head office expenses. This chapter of the Report introduces an elective, simplified approach for low value adding services. Besides that, it introduces some changes and clarifications to other paragraphs of Chapter VII of the Transfer Pricing Guidelines.

(...)

This approach aims to guarantee payor countries that the system through which the costs are allocated leads to an equal treatment for all associated enterprises that are operating in similar circumstances. Moreover, the approach aims to guarantee that no overpricing takes place due to general agreement on the categories of costs included in the cost base and general agreement on the moderate mark-up of 5% that should be charged.

**D. Low value-adding intra-group services**

**7.43.** This section provides specific guidance relating to a particular category of intragroup services referred to as low value-adding intra-group services. Section D.1 contains the definition of low value-adding intra-group services. (...)

**7.45** Low value-adding intra-group services for the purposes of the simplified approach are services performed by one member or more than one member of an MNE group on behalf of one or more other group members which

- are of a supportive nature ;
- are not part of the core business of the MNE group (i.e. not creating the profit-earning activities or contributing to economically significant activities of the MNE group) ;
- do not require the use of unique and valuable intangibles and do not lead to the creation of unique and valuable intangibles, and
- do not involve the assumption or control of substantial or significant risk by the service provider and do not give rise to the creation of significant risk for the service provider

**7.47.** The following activities would not qualify for the simplified approach outlined in this section:

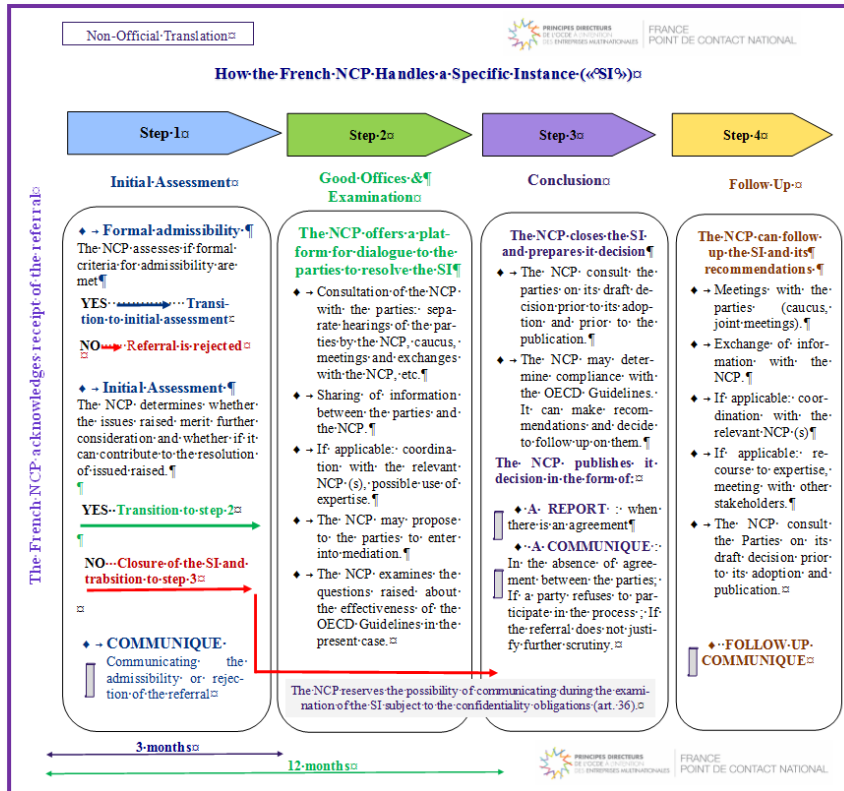
- services constituting the core business of the MNE group
- research and development services (including software development unless falling within the scope of information technology services in 7.49)
- manufacturing and production services
- purchasing activities relating to raw materials or other materials that are used in the manufacturing or production process
- sales, marketing and distribution activities
- financial transactions
- extraction, exploration, or processing of natural resources
- insurance and reinsurance
- services of corporate senior management (other than management supervision of services that qualify as low value-adding intra-group services under the definition of paragraph 7.45).

**7.49** The following bullet points provide examples of services that would likely meet the definition of low value-adding services provided in paragraph 7.45: (...).



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ANNEX IV. Outline of the procedure for handling a specific instance by the French NCP



ANNEX V. Abstract of the French NCP Bylaws

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
- **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.

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- **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.*

**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; 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.*

**Communication**

- **Article 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.*
- **Article 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.*

**Confidentiality**

- **Article 38.** *In accordance with the provisions of Article 40, the participation of NCP members in the consideration of a specific circumstance is a commitment on their part to respect the confidentiality of discussions, hearings and exchanged documents. NCP members must respect the confidentiality of the review of a referral until the referral is completed. Where the processing of a specific circumstance so requires, certain documents may be submitted to NCP members who formally acknowledge receipt.*
  - **Article 39:** *In order to facilitate the resolution of the issues raised, the NCP shall take appropriate measures to protect sensitive, commercial or other information, as well as the interests of other stakeholders involved in the specific circumstances.*
  - **Article 40:** *At the end of the proceedings, if the parties involved have not agreed on a resolution of the issues raised, they will be free to express themselves and discuss these issues. On the other hand, the information and opinions put forward during the work by another party shall remain confidential to the Parties and to the members of the NCP, unless that Party accepts that it is disclosed or contrary to the provisions of national law.*
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