

SPECIFIC INSTANCE

“AIRBNB IN FRANCE”

14 December 2020

Initial Assessment Statement of the French National Contact Point

Upon completion of its initial assessment, the NCP accepts the specific instance. Airbnb refuses the NCP’s offer of good offices. The NCP moves to the conclusion phase of the referral.

The French National Contact Point for the implementation of the OECD Guidelines for Multinational Enterprises (NCP) was referred on 11 March 2020 by the “Association pour un Hébergement et un Tourisme Professionnels”¹ or AhTop to a specific instance concerning the multinational company Airbnb in France. The specific instance raises issues about Airbnb France SARL’s compliance with the recommendations of the OECD Guidelines on responsible business conduct in relation with taxation.

The NCP recalls that acceptance of the referral does not determine whether or not the company acted in compliance 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 endeavour 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 the admissibility of the referral (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 Association for a Professional Accommodation and Tourism addressed this specific instance to the President of the NCP by letter dated 11 March 2020. As a result of the lockdown in force from 17 March 2020 in France, the President of the NCP and the NCP Secretariat received it on 14 May 2020. The Secretariat acknowledged receipt of the complainant’s referral on 14 May 2020 and forwarded it to the NCP members.

1.2. Formal admissibility of referral. The NCP secretariat informed the U.S., UK and Irish NCPs of the existence of the referral on 3 June 2020 (see 3. Coordination of NCPs). On 4 June 2020, the NCP found the formal admissibility of the referral was met and adopted a statement announcing its receipt. It began the initial assessment of the specific instance. The NCP informed the parties of its decision on 8 June 2020 and send them the reception statement for information. It transmitted the referral to Airbnb France SARL with information on the NCP and the procedure and invited the company to reply to it as from now. The reception statement was issued on 3 July 2020². The referral was then notified to the OECD, which added it to the NCP database³.

¹ Association for a Professional Accommodation and Tourism

² <https://www.tresor.economie.gouv.fr/Articles/2020/07/03/saisine-du-pcn-francais-airbnb-en-france> and [here](#)

³ <https://mneguidelines.oecd.org/database/instances/fr0031.htm>

1.3. Initial assessment of the specific instance. The initial assessment began on June 4, 2020. The PCN asked the complainant to provide additional information on its interest in submitting the referral (status, mandate), on Airbnb France SARL annual accounts (accessible at the Registry of the Paris Commercial Court) and the BEPS final report of 2015. These supplementary documents were received on June 4 and 5, 2020 and forwarded to the NCP and to the company. On 8 June 2020, the NCP Secretariat offered to meet separately with each parties to present the procedure. These meetings took place on 18 August 2020 (Airbnb) and 4 September 2020 (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 are under the responsibility of the French tax administration and that it gives “*we must prioritise engagement with the French 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. It offered them its good offices and asked them to respond by August 21, 2020. This period was been extended by a few days. The NCP invited the complainant to sign the commitment to respect the confidentiality and secrecy of discussions.

On 27 August 2020, AhTop *confirmed* the acceptance of the NCP good offices and transmitted its commitment to respect the confidentiality and secrecy of discussions. On 28 August 2020, Airbnb France SARL replied that “*we must respectfully decline to participate in the NCP process*” (see 2.5 Company Response). On the basis of the reception statement communiqué⁴, the NCP secretariat contacted the tax administration Directorate-General for Public Finance (“DGFIP”) in order to inform the NCP on the administrative and legal framework surrounding tax issues raised by the referral. The NCP finalised the initial assessment of the referral at its meeting on 8 September 2020 (see 5. Conclusion).

The NCP adopted a draft initial assessment statement on November 23, 2020 and consulted with the complainant, the company and the three supporting NCPs. The NCP took comments into account. The NCP adopted this statement on 14 December 2020. It forwarded it to the parties and to supportive NCPs prior to its publication on its website. The statement was then published and notified to the OECD. DGFIP was also informed of this publication.

2. Presentation of the Specific Instance

2.1. Presentation of the Complainant.

The referral is submitted by a French employers’ organisation in the tourism sector. The Association for a Professional Accommodation and Tourism was created in July 2015. It has 30 000 members and aims 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 PCN issues concerning the taxation of transfer prices charged by Airbnb in France.

⁴<https://www.tresor.economie.gouv.fr/Articles/2020/07/03/saisine-du-pcn-francais-airbnb-en-france> and [here](#)

2.2. Allegations of violations of the Guidelines.

The referral questions one of the aspects of the tax policy of a company in the digital economy in the country where it carries out its activities. It questions Airbnb's compliance with "*the letter and spirit of the tax laws and regulations of the countries in which they operate*" in this case in France and respect for the "*arm's length principle*" as said in the Guidelines. The referral is about Airbnb's transfer prices practices for activities carried out in France. It questions the compliance with several OECD standards: the OECD Guidelines for Multinational Enterprises and the OECD Transfer Pricing Guidelines— see Annexes I and II.

The complainant considers that the French company Airbnb France SARL would not comply with Recommendation No. 1 of Chapter XI on taxation of the OECD Guidelines. It 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"⁵.

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.

*Cf. Annex I. Recommendations of the 2011 Guidelines referred to in the referral
Cf. Annex II. Abstracts 2015 Final Report « Aligning Transfer Pricing Outcomes with Value Creation », actions 8 - 10 OECD/G20 project on Base Erosion and Profit Shifting*

2.3. Other elements reviewed for the Initial Assessment of the Specific Instance

Rule 25 of its rules of procedure of the NCP provides that "*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*

⁵See 2015 Final Reports 2015 on Transfer Pricing Outcomes with Value Creation (BEPS Actions 8-10 [here](#)). The referral refers in particular to the chapter on low-value-adding intra-group services (page 141 - 153) which replaced the earlier provisions of Chapter VII of the OECD Transfer Pricing Guidelines [Aligning Transfer Pricing Outcomes with Value Creation, Actions 8-10 - 2015 Final Reports | READ online \(oecd-ilibrary.org\)](#)

proceedings, or cause a contempt-of-court situation. It may then decide either to pursue or to renounce its consideration of the specific instance”.

In the case at hand, the NCP takes into account regulations (French, OECD) and proceedings (administrative, judicial) that may affect its action. The NCP has taken into account the following additional elements to carry out this initial assessment:

- **Taxation in France**

The NCP is competent to discuss and engage with parties on issues covered by the Guidelines. It notes that some issues raised by the referral could be subject to tax control in France and that tax control is under the responsibility of the Directorate-General for Public Finance of the Ministry of Economy, Finance and Relance. It notes that some issues raised by the referral may be subject to tax secrecy in France.

→ *In accordance with its Bylaws, the NCP has decided to consult competent authorities of the Ministry of Economy, Finance and Relance.*

- **OECD Guidelines for Transfer Pricing for Multinational Enterprises and Tax Administrations**

The specific instance refers to the OECD and G20 final report on Base Erosion and Profit Shifting (BEPS). This report covers notably the implementation of BEPS actions 8 to 10 on transfer pricing⁶.

The referral relates in particular to the chapter on low-value-adding intra-group services - see Annex II. The NCP notes that the provisions of this chapter have been incorporated into Chapter VII of the “Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations”⁷. The NCP notes that the OECD sets out a simplified approach for transfer prices on low value-adding intra-group services and that the OECD addresses issues related to these low value-adding intra-group services, including their definition (§ 7.45). It notes that the OECD specifies activities to which this simplified approach does not apply (§7.47) and that the OECD applies a 5% margin rate for these services.

→ *In accordance with its Bylaws, the NCP decided to consult the relevant OECD authorities.*

- **Judicial Proceedings brought to the attention of the NCP**

The referral refers to three proceedings initiated by AhTop in France and before the EU Court of Justice. The first case is a complaint against X against platforms for illegal practice of the real estate profession filed in November 2015. A judicial inquiry was reportedly opened. The second case is a complaint against Airbnb France and Airbnb Ireland filed on 24 January 2017 before the Tribunal de Grande Instance in Paris. After being interrogated in May and July 2017, the two companies were reportedly placed under assisted witness status. Finally, the third case is a reference for a preliminary

⁶Aligning Transfer Pricing Outcomes with Value Creation, 2015 - [here](#)
[Aligning Transfer Pricing Outcomes with Value Creation, Actions 8-10 - 2015 Final Reports | READ online \(oecd-ilibrary.org\)](#)

⁷ OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations, 2017
<https://www.oecd.org/ctp/transfer-pricing/oecd-transfer-pricing-guidelines-for-multinational-enterprises-and-tax-administrations-20769717.htm>

ruling before the EU Court of Justice concerning Airbnb Ireland. The Court delivered its judgment on 19 December 2019⁸.

In addition, AhTop informs the NCP that it has been the subject of proceedings initiated by Airbnb Ireland under Article 145 of the Code of Criminal Procedure in October 2018 in order to obtain the seizure of documents at the headquarters of two bodies, including AhTop. After having authorized the seizure, which occurred on 25 October 2018, the Tribunal de Paris, seized by the AhTop, revoked its decision on 27 September 2019. The revocation order would have become enforceable on 26 June 2020 following the withdrawal of the appeal filed by Airbnb Ireland.

In addition, the referral refers to the Public Interest Judicial Agreement of 12 September 2020 concerning the Google France SARL and Google Ireland Limited which closes a tax dispute⁹.

- **NCP's Specific Instances relating to Taxation**

The NCP is informed of several specific instances regarding the implementation of the “taxation” chapter of the Guidelines. It is currently handling a specific instance which also questions taxation of intra-group transfer prices (“Starbucks Coffee in France”¹⁰).

2.4. Complainant's Requests

AhTop contacts the French NCP in order to open a dialogue with Airbnb. AhTop states that it had engaged in a dialogue with other digital platforms in the accommodation sector and stresses that it had failed to enter into such a dialogue with Airbnb. AhTop hopes to achieve this through the intervention of the French NCP.

The complainant asked the NCP “to handle the referral by putting its good offices at the service of the parties”. It also requests the NCP to “assess” Airbnb’s compliance with the Guidelines.

2.5 Response from the Company

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

⁸EU Court of Justice, 19 December 2019, C-390-18,

Press release : <https://curia.europa.eu/jcms/upload/docs/application/pdf/2019-12/cp190162fr.pdf>

[Judgment of the Court](#)

⁹Agence Française Anticorruption : <https://www.agence-francaise-anticorruption.gouv.fr/fr/convention-judiciaire-dinteret-public>

Decision [ENGLISH TRANSLATION - GOOGLE CJIP.pdf \(agence-francaise-anticorruption.gouv.fr\)](#)

Communiqué de presse : [COMMUNIQUÉ DE PRESSE \(agence-francaise-anticorruption.gouv.fr\)](#)

¹⁰<https://www.tresor.economie.gouv.fr/Articles/2020/07/22/pcn-francais-saisine-starbucks-coffee-en-france> and [here](#)

French Tax Administration “It states “priority to its interaction with the privileged interlocutor of the tax administration “.

As a result, Airbnb France declines any participation in the proceedings with the French PCN.

3. Coordination with foreign NCPs

The complainant referred only to the French PCN regarding Airbnb France SARL. The NCP notes that the referral concerns the relationships between the French subsidiary of Airbnb Group and several other entities of the Group present in 3 countries that adhere to the Guidelines: Ireland, United Kingdom and United States.

The French NCP therefore considered it necessary to inform the NCPs of these countries what the complainant agreed to. The NCP Secretariat regularly updated these three NCPs on the progress of the procedure and decisions taken during the initial assessment.

On 29 May 2020, it organised a coordination meeting to inform the NCPs of the referral and to formalize coordination arrangements for the four NCPs. The meeting took place on 3 June 2020. NCPs decided that the French NCP would lead the referral as it concerns a French company and the respect of the Guidelines in France. The British, Irish and U.S NCPs have been designated as *supportive NCPs*. The NCP secretariat informed them of the formal admissibility of the referral, of the beginning of the initial assessment and forwarded to them the reception statement for information.

On 3 July 2020, the NCP secretariat informed supportive NCPs of the acceptance of the referral. It provided them with the English version of the referral, translated by the complainant. It requested their support to forward the reception statement and the referral on a confidential basis to Airbnb entities in the United States and Ireland mentioned in the referral. The NCP secretariat organised a coordination meeting on 4 September 2020 to discuss the initial assessment and to prepare for the French NCP meeting scheduled for 8 September 2020. Supportive NCPs were then consulted on the draft initial assessment statement.

This coordination is in line with the practice of the French NCP [and the OECD Guide on the Coordination of NCPs](#)¹¹. The French NCP will continue this coordination until the closing of the referral.

The NCP thanks the British, Irish and U.S. for this support.

4. Summary of the Initial Assessment of the Specific Instance

The referral fulfils the formal admissibility criteria laid down in Article 16 of the NCP’s Bylaws (see Reception Statement of 4 June 2020 - here).

4.1. The referral fulfils the admissibility criteria laid down in rules 22, 23 of the rules of procedure of the French PCN.

The referral is sufficiently precise and documented enough for consideration by the NCP (Article 23). The referral appears to be in good faith (art. 22). The complainant, an employer organisation, is correctly identified and has an interest in taking action (art. 23) which, as far as this specific instance is concerned, corresponds to the objectives of the Guidelines (see 2.1).

¹¹“ [The NCPs and the OECD](#) “, www-pcn-France.fr



The NCP wished to ensure that the confidentiality of the proceedings was respected (arts. 38, 39 and 40). The complainant signed the commitment to respect the confidentiality and secrecy of discussion on 27 August 2020. 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.

4.2 The referral raises significant issues about the effectiveness of the Guidelines (arts. 18 and 23). At this stage of the procedure, the NCP identifies the following issues related to the Guidelines:

- The referral questions tax policy of a digital company in the country where it operates. It questions Airbnb's compliance with "*the letter and spirit of the tax laws and regulations of the country where in which [enterprises] operate s operate*" in this case in France" and respect for the "*arm's length principle*" as outlined by the Guidelines.
- The referral questions the taxation of transfer prices between Airbnb France and Airbnb Ireland applied to intra-group services in France. It questions their compliance with the OECD Guidelines and the OECD Guidelines for Transfer Pricing as revised by the BEPS in 2015.
- The referral questions the relationship between the Guidelines, BEPS Actions 8 to 10 and the OECD Guidelines for Transfer Pricing (BEPS Actions 8 to 10). The referral also questions the link between tax law and tax control in France and the OECD recommendations and Guidelines about taxation.

4.2. The referral creates an opportunity to contribute positively to the resolution of issues raised (Article 25). The action of the NCP provides a platform for dialogue for the parties to conduct discussions on the issues raised by AhTop on the Guidelines effectiveness. It therefore offered its good offices to the parties.

The NCP notes that Airbnb France SARL "*must respectfully decline to participate in the NCP process*" of dialogue proposed to it.

5. Conclusion of the Initial Assessment of the Specific Instance

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

At its meeting on 8 September 2020, the NCP finalised the initial assessment of the referral. It noted that the company did not wish to participate in the dialogue procedure it proposed to it and indicated that it preferred to interact with tax administration as a matter of priority. **In this particular context, in accordance with its Bylaws, the NCP is now moving to the conclusion phase of the specific instance. It will examine the issues raised and prepare a final statement, which it will publish on its website.**

The NCP also made following decisions:

- The NCP will consider issues raised by the referral on tax policy and transfer pricing and the OECD Guidelines in order to contribute to the effectiveness of the Guidelines ;
- The NCP reserves the opportunity to consult with the competent authorities¹² in tax matters at the Ministry of Economy, Finance and Recovery (DGFIP) and the OECD

¹²See rule 27 of the rules of procedure of the French PCN.



- (Centre for Tax Policy and Administration). These consultations will in particular seek to determine whether the issues raised by the referral fall strictly within the scope of tax control. In the event, the NCP will not examine them and, after discussion with the complainant, may decide to forward them to competent French tax authorities.
- The NCP will take into account relevant international laws, regulations and standards applicable to the case at hand, the BEPS and any eventual parallel procedures to its action.

The NCP procedure is confidential. In accordance with its Bylaws and the Procedural Guidelines 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.

Annex I. Recommendations of the May 2011 Guidelines referred to in the referral

Annex II. Abstracts 2015 Final Report « Aligning Transfer Pricing Outcomes with Value Creation », actions 8 - 10 OECD/G20 Base Erosion and Profit Shifting Project

Annex III. Outline of the procedure for handling a specific instance by the French NCP

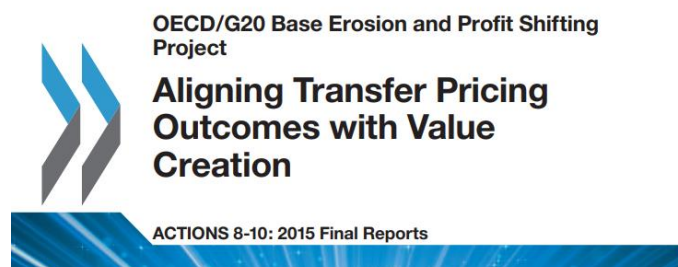
Annex IV. Abstract from the French NCP Bylaws

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. 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

7.46 (...)

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

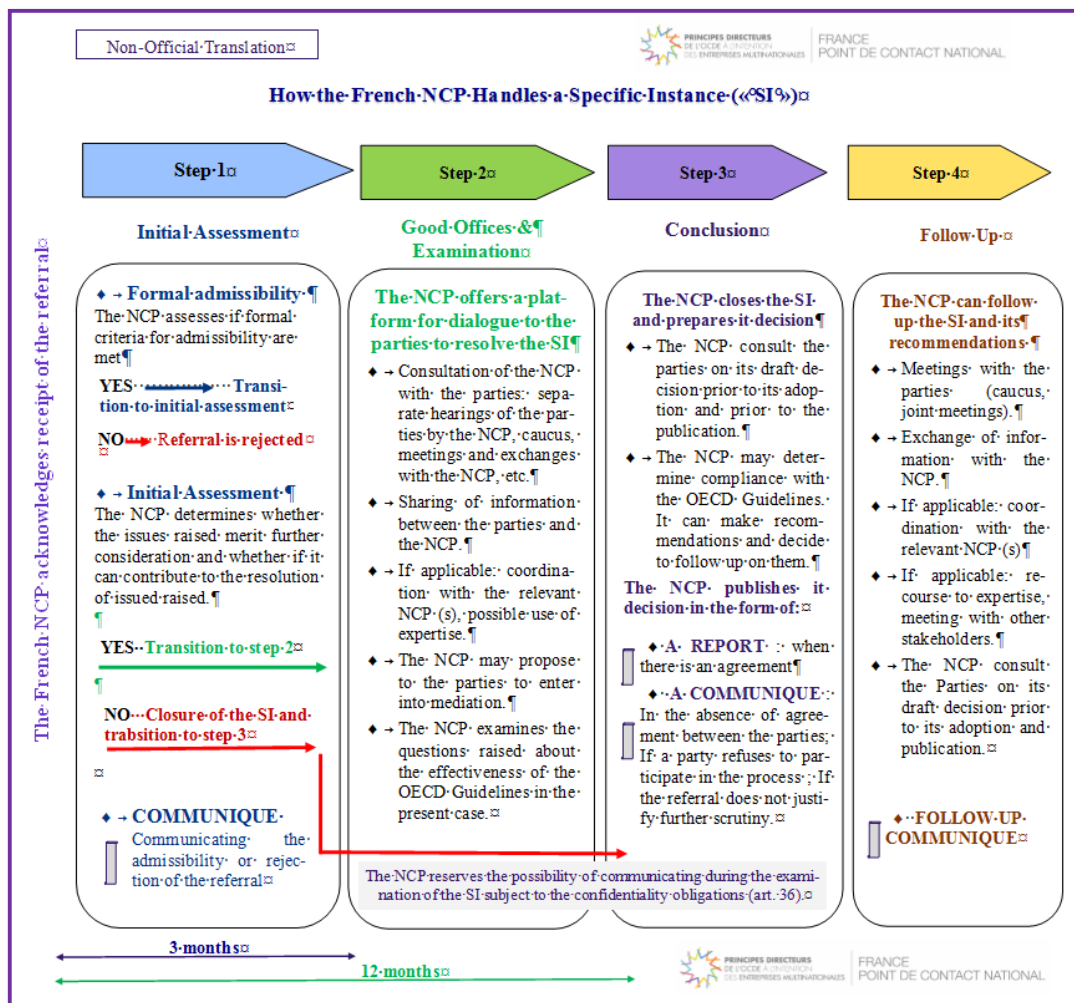


- purchasing activities relating to raw materials or other materials that are used in the manufacturing or production process
- sales, marketing and distribution activities
- financial transactions • extraction, exploration, or processing of natural resources
- insurance and reinsurance
- services of 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).

7.48 (...)

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: (...).

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





ANNEX IV. Abstract from 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 principal(s) of the decision taken by the NCP with regard to admissibility.*
- **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;*
 - *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.*