

NCP BYLAW

17 MARCH 2014

The purpose of the present bylaw 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.¹

I. Missions

1. The National Contact Point contributes to reinforce 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”, 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 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, NCPs operates in accordance with the general principles of impartiality, predictability, equity, and compatibility with the Guidelines, as well as with core criteria of visibility, accessibility, transparency and accountability, as stipulated in the aforementioned OECD procedural guidance.

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 ministries:
 - Ministry for the economy and finance;
 - Ministry for labour and employment;
 - Ministry for foreign affairs;
 - Ministry for the environment.

¹ The Guidelines may be found in Annex 1 of the Declaration on International Investment and Multinational Enterprises, as amended on 25 May 2011.

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,² 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 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 ("*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.

² Decree of 21 April 2009 of the Ministry of Economics, Industry and Employment establishing the Directorate-General of the Treasury and Economic Policy, *Journal officiel de la République française* of 8 May 2009.

IV. Referrals to the NCP – Initial evaluation

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 plaintiff;
- 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 assessing the importance of the issues raised to ascertain whether they merit further examination.

19. Following its initial evaluation, 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 evaluation. With due regard to the confidentiality incumbent on the NCP, the plaintiff may inform its principal(s) of the decision taken by the NCP with regard to admissibility.

20. Should it decide that the issue does not merit further examination, the NCP shall inform the parties of its reasons and issue a statement. 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.

Admissibility criteria

21. A referral shall be declared admissible if it fulfils the formal conditions stated in paragraph 16.

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 the 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 evaluation 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

27. Where the issues raised merit further examination, the NCP shall offer its good offices to help the parties involved to resolve them. For this purpose, the NCP shall consult with these parties and, where appropriate:
 - 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;
 - 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.
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 referring to the NCP.
30. The NCP's examination of a specific instance may in no way be deemed a judicial proceeding 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 procedures underway in France and concerning the matters under review. If a referral is also the subject of a judicial or administrative procedure, the NCP shall pursue its examination only if its intervention provides real added value relative to those other procedures, 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.
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 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 shall be included only if the parties involved agree to.
 - 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, 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. NCP members share bound to respect the confidentiality of a referral while its examination is not closed.
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 opinion provided during the procedures by another party involved shall remain confidential, unless that other party agrees to their disclosure or this would be contrary to the provisions of national law.

This bylaw is published on the Internet site of the National Contact Point.

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