

## **Annex 2: Procedure for dealing with specific instances**

Individuals and groups with an interest in an issue raised (including NGOs, communities, workers, trade unions, associations, etc.) may submit a written request for review to the NCP if they believe that a multinational enterprise (MNE) has violated the OECD Guidelines. The request is generally filed in the country where the issues have arisen. If the issues have arisen in a country that does not have an NCP, the request should generally be filed in the country where the head office of the targeted company is located.

According to point I of the Procedural Guidance, NCPs must operate in accordance with essential criteria of functional equivalence (visibility, accessibility, transparency, accountability, impartiality, predictability, fairness and compliance with the Guidelines). They must also ensure sufficient cooperation with the various interest groups (mainly business associations, trade unions and NGOs).

All requests to the NCP for an examination must include a certain amount of essential information, as set out in Annex 3 of the NCP's internal rules of procedure. If a submission is incomplete, the NCP may return it to the submitting party with a request to reformulate it.

Any request should generally be filed in the country where the issue(s) have arisen. If the country in question does not have an NCP, it should generally be filed in the country where the head office of the multinational enterprise concerned is located. Consequently, the Belgian NCP is competent to deal with a request for examination alleging that a multinational enterprise from another country that has adhered to the OECD Guidelines has violated one of their provisions on Belgian territory. The Belgian NCP is also competent to deal with requests relating to the activities of a Belgian enterprise established in a country where there is no NCP. If several NCPs are competent to handle a request (e.g. for companies belonging to several multinationals or holding structures), after consultation with the NCPs concerned, one of them is designated as responsible for handling the request for examination. If it is not competent to process a request, the Belgian NCP will forward it to the competent NCP, informing the party that submitted it. If the MNE has a link with Belgium, the Belgian NCP will provide appropriate support at the request of, or offer assistance to, the competent NCP of the host country.

### **1. The Assessment Committee**

When a request for examination is submitted to it, the Belgian NCP consults the Assessment Committee as indicated in Article 21 of the Internal Rules. The purpose of

the assessment committee's opinion is to determine the admissibility of the application on the basis of a draft initial written assessment.

## 2. Role

When dealing with requests, the Belgian NCP offers a platform for dialogue and exchange between the parties involved, with a view to helping them resolve the conflict between them.

Participation in this dialogue is not compulsory, but the NCP strongly encourages it.

The NCP's role is to encourage dialogue between the parties, to facilitate finding agreements between the parties and/or issuing recommendations, not to establish whether the OECD Guidelines have been breached. It is primarily the responsibility of the parties concerned to explain the substance of the request for review and to engage actively in the dialogue. However, the NCP may itself carry out clarifications or call on experts from among the members of the NCP or the NCP's network of experts. Consequently, when processing requests, the NCP takes into account the essential criteria of functional equivalence and respects the principles specified in paragraph 10 of the Commentary<sup>1</sup> on the procedures for implementing the OECD Guidelines (visibility, accessibility, transparency, accountability, impartiality, predictability, fairness and compliance with the OECD Guidelines).

### ***Step 1 : confirmation and information***

When a request for review is submitted to the NCP, the latter confirms receipt in writing within ten working days.

The NCP invites the company concerned to a meeting to present the Guidelines and to hand over the specific case.

The NCP offers the parties involved an individual or joint meeting to define the next steps in the procedure and to explain the NCP's means of action. He will also draw their attention to the fact that, for reasons of transparency, all written information received by each of the parties will be communicated to the other parties, insofar as there are no convincing reasons to the contrary (e.g. company secrecy). Depending on the circumstances, the identity of the person making the referral may be kept confidential.

### ***Step 2 : initial assessment***

In a second step, in accordance with the provisions of the OECD Guidelines, the Belgian NCP makes an initial assessment of the request for examination. As part of this assessment, the Belgian NCP considers whether it should proceed with the case in question by offering its good offices to the parties involved. As far as possible, the Belgian NCP concludes this first phase within three months of receiving the request. Then, the NCP must publish its initial assessment only after consulting the parties and giving them 10 working days to respond. In this context, the NCP examines the following criteria (if these are not met, it does not enter into the matter or returns the request to the party that submitted it):

- **Identity of the party concerned and its interest in the matter:** this involves clearly identifying the author and the reason for the request for examination. The applicant must give his name and state his interest in the case in question.
- **Whether the issue is material and substantiated:** this involves determining whether the issue is relevant to the implementation of the Guidelines and

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<sup>1</sup> Page 73 of the revised version of the OECD Guidelines for Multinational Enterprises

whether it was made in good faith (bona fide). The NCP also needs to determine whether the issue is substantiated, this means whether it is supported by sufficient and credible information.

- **Scope of the OECD Guidelines:** in this respect, the examination aims to determine whether the request falls within the scope of the OECD Guidelines. The request for review must also provide sufficient justification that the OECD Guidelines have been breached. The NCP also determines whether the enterprise is covered by the Guidelines.
- **Whether there seems to be a link:** The NCP examines whether there seems to be a link between the enterprise's activities and the issue raised in the specific instance.
- **Legal framework and parallel proceedings:** "Parallel proceedings" refer to legal or non-legal processes, either within a country or internationally, that deal with the same or closely related issues and could impact the ongoing specific instance. This includes, for example, specific cases handled by the same or another NCP. Even if parallel proceedings have taken place, are ongoing, or are available to the involved parties, it does not stop the NCP from offering assistance. The NCP will assess whether its involvement could positively contribute to resolving the issues and supporting the implementation of the Guidelines, without causing serious harm to any party involved in these other proceedings or leading to a contempt of court. In this assessment, the NCP may consider practices of other NCPs, think about partially accepting the specific instance, or pause its examination while the parallel proceedings are in progress. When necessary, the NCP may consult with the institutions handling those parallel proceedings. If needed, the NCP will seek input from the parties by requesting relevant information and opinions about the parallel proceedings.
- **Contribution to the effectiveness of the OECD Guidelines:** the NCP assesses whether the processing of the request and possible mediation are likely to contribute to the effective implementation of the OECD Guidelines. Where appropriate, the NCP may conduct further fact-finding with the parties concerned or invite them to comment on the issues raised. After completing the initial assessment in a report, the NCP will decide in writing whether to proceed with the request for examination. This decision refers to the relevant chapters of the Guidelines and establishes whether the request for review falls within their scope. The NCP does not rule on a possible breach of the Guidelines. It explicitly states that the decision to proceed does not imply an assessment of the substance of the requests for examination and does not imply that a breach of the OECD Guidelines has been found. The report on the initial assessment is published on the NCP website. If the NCP decides not to proceed, it publishes on its website an explanation and a summary of the main reasons for rejecting the request.

### ***Step 3 : encouraging dialogue***

When the NCP responds to a request, it offers the parties its support in resolving the issues raised. If the parties accept this proposal, the NCP will initiate an informal mediation procedure aimed at reaching an agreement that is mutually agreeable and compatible with the Guidelines between the parties involved on the substantive content of the request for examination with a view to assessing it against the provisions of the OECD Guidelines and discussing possible solutions.

The NCP's primary task is to facilitate dialogue between the parties and to provide them with a forum for discussion, which implies its neutrality and offers the parties the opportunity to put forward their point of view and clarify open questions. The NCP plays

an active role in guiding the mediation by using its expertise on the Guidelines. The NCP may conduct the dialogue itself or call on an external intermediary or mediator. Participation in the dialogue is not compulsory. Before starting the dialogue, the NCP may establish the framework and modalities in writing with the parties concerned. In order to allow an open discussion, it is essential that the dialogue can be conducted confidentially and informally. The results of the dialogue are communicated in writing to the parties concerned.

In principle, the dialogue takes place in Belgium (at the NCP headquarters in Brussels). However, in some cases, the NCP is open to offer mediation online where preferred. The working languages of the NCP documents are French and Dutch, and English on request. As a general rule, the NCP does not cover the costs incurred by the parties involved in taking part in the procedure (e.g. travel or translation costs). However, in duly substantiated exceptional cases, the NCP may freely assess the possibility of covering certain costs.

The NCP ensures that there is zero tolerance of retaliation against complainants or people working for the NCP and assesses and implements measures to prevent and respond to (risks of) retaliation. To this end, he or she may ask both parties to sign a document.

#### ***Step 4 : closure of the procedures***

When the parties reach an agreement and resolve their dispute or when the further course of the procedure can be established, the NCP will issue a final statement.

If no agreement can be reached or if one of the parties is not willing to take part in the procedure, the NCP also indicates this in the final statement, which is made public. The reasons why it was not possible to reach an agreement are summarized. The NCP makes a determination (when no agreement is reached) explaining how the company has/has not observed specific provisions of the Guidelines.

The NCP may also make recommendations regarding the implementation of the OECD Guidelines, which it includes in the statement. It also provides for a follow-up to its recommendations, determinations or agreements reached. The NCP publishes a follow-up statement.

Statements are published on the NCP website and in the annual report of the OECD Working Party on the Guidelines. Unless there are good reasons for not doing so (e.g. protection of individuals), the Guidelines NCP publishes the names of the parties concerned in its final written statements. Prior to publication, the NCP will give the parties concerned the opportunity to comment on its draft. If it proves impossible to reach agreement between the NCP and the parties involved on the content of the statement, the NCP will decide.

Wherever possible, the NCP tries to close a case within 12 months.

#### ***Step 5 : feedback to the NCP***

Once the procedure has been completed, the NCP may ask the parties involved for feedback. This enables the parties to assess the work carried out by the NCP and to make suggestions for improving the quality of the NCP's work.

#### ***Step 6 : follow-up of the NCP***

As per the Guidelines, the NCP carries out a follow-up on agreements they facilitate or recommendations made where it is relevant. In addition, the NCP publishes follow-up statements where relevant.

### **3. Confidentiality**

The NCP ensures public transparency during the complaint procedure in general, in particular by allowing complainants to publish their own complaint and to communicate on the stages of the procedure. The NCP only allows confidentiality on the personal identity of the parties for security/privacy reasons, on legitimately sensitive commercial information, and on documents exchanged and discussions held during the mediation phase, and/or has undertaken to do so.

If, at the end of the procedure, the parties concerned have been unable to reach an agreement on the issues raised, they are free to express themselves publicly on the subject. On the other hand, the information and positions put forward by the other party during the NCP procedure remain confidential unless that party expressly agrees to their disclosure. At the beginning of each procedure, the NCP draws the attention of the parties concerned to the principle of confidentiality enshrined in the OECD Guidelines and informs them that it reserves the right to suspend the procedure if one of the parties breaches this principle.

The Belgian NCP and its members do not, in principle, provide any information about ongoing proceedings other than the public information mentioned in the NCP's press releases.