



OECD Guidelines for Multinational Enterprises on Responsible Business Conduct: National Contact Point of Switzerland

Procedural guidance for dealing with specific instances ('Specific Instances Procedure')

Berne, June 2024

The OECD Guidelines for Multinational Enterprises on Responsible Business Conduct (OECD Guidelines) provide for setting up National Contact Points (NCPs), one of whose tasks is to assist in resolving issues arising from the implementation of the Guidelines. Under the OECD Guidelines, issues can be raised with the NCP in writing if it is suspected that an enterprise has breached the Guidelines. This is known as the 'Specific Instances Procedure'. This document describes how this procedure works with the Swiss NCP and what it intends to achieve. The document is based on the procedural rules of the OECD Guidelines and the Commentary on the Implementation Procedures.¹

1 The OECD Guidelines

The OECD Guidelines are recommendations addressed by the governments of the OECD states and other adhering countries to multinational enterprises from their respective countries. They lay down principles and standards for responsible business conduct, but these are not legally binding.

2 National Contact Points under the OECD Guidelines

All states which sign up to the OECD Guidelines are required to set up an NCP. The NCP's task is to encourage multinational enterprises based or permanently settled in the state's territory to implement the Guidelines and the OECD Due Diligence Guidance. The NCP also assists in resolving any problems that arise when the Guidelines are implemented. Both individuals and interest groups can raise an issue with the NCP in writing if they believe that a multinational enterprise has acted in breach of the OECD Guidelines.

Under the OECD Guidelines, the signatory states have a certain degree of flexibility in the way they set up their NCP, but under the procedures of the Guidelines, they must adhere to the core effectiveness criteria of the NCP. These include operating in a manner that is: visible, accessible, transparent, accountable, impartial, equitable and predictable. In addition, the NCPs develop and maintain meaningful relations and engage with the various interest groups (especially business associations, trade unions, NGOs, etc.).

In furthering the effectiveness of the OECD Guidelines, NCPs may, where appropriate and in coordination with the competent government agencies, support efforts by their government to develop, implement, and foster coherence of policies aimed at promoting responsible business conduct.

¹ OECD Guidelines for Multinational Enterprises on Responsible Business Conduct; Part II: Implementation Procedures of the OECD Guidelines for Multinational Enterprises on Responsible Business Conduct (2023)

The signatory states undertake periodic peer reviews of the NCPs organised by the OECD Secretariat. The peer reviews serve to increase effective implementation of the Guidelines, share best practices, and foster NCP effectiveness and functional equivalence.

3 The Swiss National Contact Point

3.1 Structure

In Switzerland, the NCP Secretariat is part of the International Investment and Multinational Enterprises Unit of the Foreign Economic Affairs Directorate, located in the State Secretariat for Economic Affairs (SECO; part of the Federal Department of Economic Affairs, Education and Research EAER).

The NCP is advised on its strategy and on the application of the OECD Guidelines and the procedural guidance by the Federal Commission advising the National Contact Point for the OECD Guidelines for Multinational Enterprises (NCP Advisory Board). The NCP Advisory Board has 14 members. They comprise the Director of SECO and three additional members from the Federal Administration, along with two members each from the employers' federations, the trade unions, trade associations, NGOs and academia.

Whenever a specific instance is raised with the Swiss NCP, an internal ad hoc working group is formed to support the NCP in addressing the issue. The members of the working group are selected according to the issue at hand, i.e. representatives from other relevant government agencies who can contribute the required expertise and country-specific knowledge.²

At the end of each year, the NCP draws up an annual report on its activities, which is submitted to the OECD. The report is also published on the NCP website.

3.2 Role

When dealing with specific instances, the Swiss NCP provides a platform for dialogue and mediation to take place between the parties involved, thus helping to find a solution to the dispute. The NCP actively encourages the parties to take part in the mediation, even though it is voluntary. The Swiss NCP's task is to encourage discussion between the parties involved in order to develop forward-looking solutions rather than establish whether or not a breach of OECD Guidelines has taken place. If doing so is important for finding a solution, the NCP can also support the parties in clarifying past conflicts. It is essentially up to the parties to state clearly what the specific instance involves and to take an active part in the dialogue. However, the NCP may seek to clarify questions in connection with the issue either on its own or with the help of internal experts. When dealing with any specific instance, the NCP observes the core effectiveness criteria (see section 2).

In addition to dealing with specific instances, the NCP promotes the implementation of the OECD Guidelines by companies based or permanently settled in Switzerland through measures including training, public outreach, participation in dialogue forums and the provision of instruction manuals. To increase the effectiveness of the OECD Guidelines, the NCP, in coordination with the relevant government agencies, supports measures to promote policy coherence with regard to responsible business conduct. In addition, the NCP undergoes periodic OECD peer reviews and participates in such reviews of other NCPs.

3.3 Raising issues with the NCP

When raising specific instances with the NCP, the written submission should provide details of the party raising the issues and of the multinational enterprise concerned. It should name

² See [document](#) 'Treatment of specific instances: role and mandate of the ad hoc working groups'

the relevant chapter of the OECD Guidelines and explain why, in the opinion of the party raising the specific instance, the multinational enterprise has breached the OECD Guidelines. If a submission is incomplete, the NCP can return it for revision. The NCP provides the submitting parties with a checklist for the submission of specific instances.³

3.4 Specific Instances Procedure

Step 1: Confirmation and Information

When a specific instance issue is raised, the Swiss NCP confirms receipt of the submission in writing within ten working days and notifies the company concerned. The company is then given the opportunity to respond and is informed that the answer given will be communicated to the party that has raised the specific instance.

The NCP invites the parties involved to take part in a meeting with the NCP, either individually or with the other party, in order to discuss how to proceed and explain the role of the NCP. It also makes it clear that, for the sake of transparency, all written information received will be passed on to the other parties involved, unless there are valid reasons for information to be retained (e.g. company confidentiality).

Step 2: Coordination between NCPs and clarification of responsibilities

A complaint must generally be filed in the country in which the alleged violation took place. If there is no NCP in that country, the issue should be raised in the country in which the multinational enterprise has its headquarters. The NCP of Switzerland is therefore responsible in cases where a Swiss enterprise abroad is involved in a country that does not have its own NCP. It is also responsible for cases in which multinational companies from other signatory states have allegedly acted in breach of the Guidelines.

In certain cases, e.g. if a specific instance concerns parts of a company or business activities in several signatory states, several NCPs may be responsible for a specific instance. In such situations, the NCP(s) that received the specific instance(s) will inform and coordinate with all other concerned NCPs at the outset with the goal of designating the lead and supporting NCPs and adopting coordination arrangements.

The lead NCP is responsible for all aspects of the specific instance process and its case-handling procedures will be applicable to the process. Throughout the specific instance process, supporting NCPs will be kept informed of developments and may lend their support by, for example, reviewing statements/reports, providing translation services, supporting joint meetings with parties, and other practical assistance. All NCPs involved observe the confidentiality requirements when using information and materials received from other NCPs.

The identification of the lead NCP and the supporting NCP(s) must be completed no later than two months after receipt of the submission.

Step 3: Initial Assessment

In the next step, the Swiss NCP makes an initial assessment of the matter in accordance with the OECD Guidelines. It decides whether it should pursue the matter and offer the parties involved its good offices. Where possible, the Swiss NCP concludes this phase within three months of the specific instance being submitted.

The NCP assesses the specific instance according to the following criteria; if these criteria are not met, the NCP does not consider the issue raised or returns it to the party raising the issue for modification:

³ See [Checklist](#) for the Submission of a Specific Instance

- **Identity of the party raising the specific instance and its interest in the case:** It is necessary to ascertain who has raised the specific instance and with what motivation the submission was made and whether it was made in good faith (bona fide). The party raising the specific instance is required to disclose its identity and its legitimate interest in the issue at hand.
- **Materiality of the specific instance:** Under this point, the NCP ascertains whether the issue is material, i.e. relevant to the implementation of the OECD Guidelines, and substantiated, i.e. supported by sufficient and credible information.
- **Applicability of the OECD Guidelines to the enterprise:** Under this point, the NCP ascertains whether the enterprise concerned by the specific instance is a multinational enterprise within the meaning of the OECD Guidelines.
- **Link to enterprises' activities:** Under this point, the NCP ascertains whether there is a link between the activities of the multinational enterprise concerned by the specific instance and the issues raised in the submission.
- **Legal context and parallel procedures:** Even if the multinational company has met all the legal requirements, the NCP may still pursue the specific instance, as the OECD Guidelines are internationally recognised standards which may be more stringent than local law. The NCP also ascertains whether the issue has already been dealt with in local proceedings or if proceedings are pending (so-called parallel proceedings). If parallel proceedings have already been concluded or are ongoing, this will not necessarily prevent the NCP from pursuing a specific instance. However, in each individual case the NCP assesses whether or not an offer to mediate would make a positive contribution to the resolution of the issues raised or if it would prejudice either of the parties involved in other proceedings.
- **Contribution to the effectiveness of the OECD Guidelines:** The NCP assesses whether pursuing the issue would contribute to the effectiveness of the OECD Guidelines.

If required, the NCP can carry out further clarifications in connection with the matter with the parties involved or invite the parties to respond to the issue raised.

Once the Initial Assessment phase has been completed, the NCP provides a written report stating whether or not the specific instance will be pursued. In the decision, the relevant chapter of the Guidelines is mentioned and confirmation is given of whether the specific instance falls within the Guidelines. The NCP does not comment on whether the Guidelines have been breached or not. It expressly states that the decision does not mean that a conclusive assessment has been made of the issues raised or that a breach of the OECD Guidelines has occurred.

If the Swiss NCP comes to the conclusion that it cannot pursue a specific instance, the NCP Advisory Board is consulted in writing on the draft report on the Initial Assessment. Individual NCP Advisory Board members can comment on the draft in writing within two weeks. If members of the NCP Advisory Board are biased in connection with the specific instance (see 3.6.), they shall not comment on the draft. The comments are forwarded to the ad hoc working group of the NCP. The ad hoc working group makes the final decision on whether or not to pursue the specific instance.

The report on the Initial Assessment is published on the NCP website. If the Swiss NCP decides not to pursue an issue, it publishes an explanation and a summary of the main reasons for its decision on the NCP website.

Step 4: Conducting a mediation

When the NCP decides to pursue a specific instance, it offers its help in finding a solution to the parties involved. If the parties accept this offer, the NCP initiates a mediation procedure. The aim here is for the parties to agree on the essential facts of the case, consider them according to the OECD Guidelines and discuss possible solutions.

The NCP's main task is to facilitate communication between the parties and provide a discussion forum, i.e. the NCP is impartial, giving the parties the opportunity to express their position and address any unresolved issues. The NCP can conduct the mediation itself or engage an external mediator.

Before the mediation begins, the NCP may define the framework and modalities in writing in a mediation agreement ('Terms of Reference') together with the parties involved. In order for frank discussions to take place, it is essential that the mediation be conducted confidentially (see 3.5). The results of the mediation are recorded in writing and made available to the parties.

Mediation normally take place in Switzerland, at the premises of the NCP in Bern. If physical mediation is not possible for all participants, the mediation can also be conducted in a virtual or hybrid format. The language spoken during the proceedings is determined by the NCP in advance. The working languages of the NCP are German, French, Italian and English. The NCP cannot provide the parties taking part in the discussions with any financial assistance (e.g. travel expenses, translation or interpreting fees). In well-founded exceptional cases, the NCP can at its own discretion consider providing financial assistance to the parties.

Step 5: Conclusion of the procedure

If the parties reach an agreement and find a solution to the dispute or a further means of resolving the dispute, the NCP publishes a final statement. Information on the results of the discussion is only recorded with the express consent of the parties involved.

If no agreement is reached or one of the parties is not willing to take part in the proceedings, the NCP also makes this publicly available in a final statement. The statement includes a summary of the reasons why no agreement was reached.

The NCP may draw up recommendations for implementation of the OECD Guidelines, which are also included in the statement. In addition, in consultation with the parties, it can envisage specific follow-up activities, for which the NCP will provide support following completion of the specific instance procedure (see 6).

Final statements are published on the NCP website and in the annual report of the OECD Committee responsible for the Guidelines. Unless there is good reason not to do so (e.g. protection of individuals), the NCP publishes the names of the parties involved in its written statement. Before the statement is issued, the NCP gives the parties the opportunity to comment on the draft statement with regard to factual errors. If there is no agreement between the NCP and the parties about the wording of the statement, the NCP makes the final decision.

As a general principle, NCPs should strive to conclude the procedure within 12 months (14 months if coordination to determine a lead NCP is needed) from receipt of the specific instance to its conclusion. This timeframe may be extended if circumstances warrant. Such situations include, but are not limited to, situations when the issues arise in a non-adherent country, when the specific instance involves multiple enterprises, multiple specific instances and multiple NCPs, or when translations are necessary. Whenever delays are to be expected or experienced in the handling of a specific instance, the NCP keeps the parties informed in a timely manner, so that the proceedings remain predictable. The NCP may decide at its own discretion to issue public updates on the status of specific instances.

Step 6: Follow-up

NCPs will carry out follow-up on agreements they facilitate or recommendations they make where relevant. Follow-up may involve, for example, requests for updates from the parties, or one or more meetings between the NCP and the parties (either separately, or together) to assess progress on the implementation of the agreements between the parties or on the NCP's recommendations. Follow-up may for example not be relevant in situations where parties decline such follow-up or agree that the issues have been fully resolved. In the final statement, the NCP sets out the deadlines for follow-up. Once the follow-up has been implemented, the NCP may publish a statement.

Step 7: Feedback to the NCP

On conclusion of the proceedings, the NCP provides the parties with a questionnaire so as to provide the NCP with feedback on the procedure. This allows the parties to assess the work carried out by the NCP and to suggest improvements.

3.5 Transparency and confidentiality

The NCP strives to achieve a balance between transparency as a general procedural principle and the confidentiality required for the trust of the parties involved in the proceedings. Transparency is an important criterion with respect to its contribution to the other core effectiveness criteria and in gaining the confidence of the parties involved in the proceedings and the public. The NCP informs the public upon receipt of a submission through the entry in the OECD database. The following reports will then be published on the NCP website: report on the initial assessment upon completion, final statement upon completion of the mediation and, if applicable, a follow-up report. Unless otherwise agreed, the parties involved in the proceedings and the NCP are generally permitted to provide information about the existence and stage of NCP proceedings.

However, the Guidelines also provide that steps should be taken to maintain confidentiality in the context of NCP procedures for greater effectiveness. This applies in particular with regard to facts and arguments that are not known to the public and that are presented during the procedure. In order for frank discussions to take place and for confidence to be gained, it is essential that the mediation can be conducted confidentially. At the beginning of the mediation, the NCP establishes a common understanding with the parties regarding transparency and confidentiality requirements for the mediation phase as part of the terms of reference.

If no agreement on the issues raised is reached between the parties at the end of the proceedings, they may comment publicly on these issues. However, any information or opinions expressed by a party during the NCP proceedings remains confidential, unless the communicating party agrees to the disclosure or the facts and arguments are already publicly known.

At the start of the proceedings, the NCP draws the attention of the parties involved to the need for confidentiality expressed in the OECD Guidelines. It informs the parties that it reserves the right to stop the proceedings if one or other of the parties does not respect this confidentiality.

3.6. Impartiality and equity

Being impartial and equitable are prerequisites for the continued confidence of stakeholders, parties to specific instances and the general public. The Swiss NCP ensures impartiality in the resolution of specific instances, including by actively seeking to prevent and address potential or perceived conflicts of interests of any person playing a role on behalf of the NCP in assisting the parties with the resolution of issues raised in a specific instance.

Employees of the NCP Secretariat, the ad hoc groups and members of the NCP Advisory Board shall recuse themselves if they are biased or appear to be biased. This is the case if (a) they are a representative of a party involved in the NCP procedure ('party') or have acted

for a party in the same matter; (b) are related to a party either by marriage or registered partnership or by cohabiting with of that party; (c) could be biased in the matter for other reasons or the impression of bias exists. Members of the NCP Secretariat, the ad hoc groups and the NCP Advisory Board undertake to disclose any conflicts of interest. A personal interest or another reason for bias is generally not given if a member of the NCP Advisory Board represents an organisation of which a party is a member. If the recusal is disputed, the NCP Advisory Board shall decide on the recusal, excluding the member concerned (majority decision).

External mediators are obliged to disclose possible conflicts of interest. On this basis, the NCP decides whether to propose them to the parties.

3.7. Good faith engagement

The good faith engagement by all parties involved in the proceedings is expected. This includes responding in a timely fashion, refraining from misrepresenting the issues and the process in public communications, and genuinely engaging in the proceedings with a view to finding a solution to the issues raised that is compatible with the OECD Guidelines.

3.8. Protection against reprisals

The threat or use of any reprisals against a party involved in the proceedings, external mediators or employees of the NCP during or after the conclusion of the proceedings is impermissible. The term reprisals includes, for example, threats of physical or psychological violence against the person concerned, their families or other individuals or organisations close to them, or unlawful threats of termination of employment or legal action. If necessary, the NCP, together with other relevant actors, can take appropriate measures to protect the parties involved, the mediators and the employees of the NCP within the framework of its procedural control and its capacities.

4 Contact and queries

The Swiss NCP is available to answer questions:

State Secretariat for Economic Affairs SECO
International Investment and Multinational Enterprises Unit
National Contact Point of Switzerland
Holzikofenweg 36
3003 Bern

Telephone: +41 58 464 15 03

email: nkp@seco.admin.ch

www.seco.admin.ch/nkp