

OECD GUIDELINES AND THE NATIONAL CONTACT POINTS FOR RESPONSIBLE CONDUCT

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What's in a name?

CSR, BHR, **RBC**, SDGs, ESGs....

Contents...

Part I: OECD Guidelines

Part II: OECD National Contact Points

Part III: Specific Instances

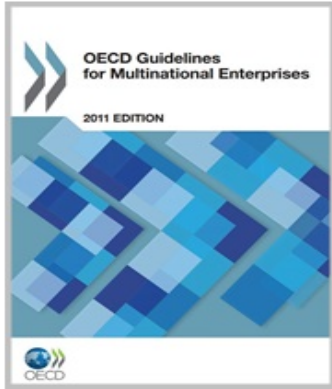
Part IV: NCP Peer Reviews



I. OECD Guidelines: The OECD

- ❑ The Organisation for **Economic Co-operation and Development** (1961)
- ❑ Global intergovernmental organization – 38 MSs, Costa Rica latest member (2021).
- ❑ Working relationships with non-members through the “global reach” policy.
- ❑ Maintains relationships with civil society:





The OECD Guidelines for Multinational Enterprises are recommendations addressed by governments to multinational enterprises operating in or from adhering countries. They provide non-binding principles and standards for responsible business conduct in a global context consistent with applicable laws and internationally recognised standards. The Guidelines are the only multilaterally agreed and comprehensive code of responsible business conduct that governments have committed to promoting.

Versions

Arabic | Chinese | Czech | Dutch | English (official) | Finnish | French (official) | German | Indonesian | Italian | Norwegian | Polish | Portuguese | Russian | Slovak | Slovenian | Spanish | Swedish | Turkish

Credit : OECD.org

- ☐ First adopted in 1976, but revised and updated five times (latest 2011) to ensure their continued relevance...
- ☐ Aligned with other international standards on RBC ...
- ☐ Reflected in emerging domestic/regional laws and regulations...
- ☐ A comprehensive approach to risk-based due-diligence...
- ☐ Recognition of supply chain obligations...
- ☐ Includes a unique national implementation mechanism.



I. OECD Guidelines: Legal Nature

➤ Binding procedure to implement non-binding substance:

- ❑ Substantive provisions of the Guidelines addressed at enterprises are *not* legally binding.
- ❑ The implementation procedure of the Guidelines addressed to States is binding on adhering countries.

Les *Principes directeurs* sont des recommandations que les gouvernements adressent conjointement aux entreprises multinationales. Ils énoncent des principes et des normes de bonnes pratiques conformes aux législations en vigueur et aux autres normes internationalement admises. Le respect des *Principes directeurs* par les entreprises est volontaire et n'est pas juridiquement contraignant. Néanmoins, certains sujets abordés dans les *Principes directeurs* peuvent également être réglementés par des législations nationales ou des engagements internationaux.

Guidelines, Ch. I, para I

I. OECD Guidelines: The General Scope

- ✓ **Universal territorial scope** - apply to the conduct of corporations *wherever they operate* - *Guidelines, Chapter I, para 3.*
- ✓ **Addressed at multinational enterprises** - *Guidelines, Chapter I, paras 4, 5 & 6.*
 - ❑ Companies or other entities established in more than one country and operate in all sectors of the economy...
 - ❑ Ownership may be private, State or mixed...
 - ❑ [Based on the principle of non-discrimination] apply to both multinational and domestic enterprises...
 - ❑ Including SMEs – recognizing they may not have the same capacities as larger enterprises...

I. OECD Guidelines: Contents

- Part I: Substantive Provisions – addressed at enterprises
 - ✓ disclosure,
 - ✓ human rights,
 - ✓ labour relations and employment practices,
 - ✓ environment,
 - ✓ bribery,
 - ✓ consumer interests,
 - ✓ science and technology,
 - ✓ competition
 - ✓ taxation.
- Individual chapters are accompanied by a detailed commentary...

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I. OECD Guidelines: Contents

➤ Part II: Implementation Procedures: IC + NCPs

- ❑ *The OECD Investment Committee (IC)*: Responsible for overseeing the functioning of the Guidelines ...
- ❑ *National Contact Points (NCPs)*: Authorities established by governments to implement the Guidelines at the national level.

The OECD Investment Committee (IC) - Responsible for overseeing the functioning of the Guidelines and all elements of the OECD Declaration on International Investment and MNEs...

- ✓ Can consider substantiated submissions [...]
 - ❑ “on whether an NCP is fulfilling its responsibilities with regard to its handling of specific instances”... *PG, Part II, 2(b)*
 - ❑ “whether the NCP has correctly interpreted the Guidelines in specific instances”... *PG, Part II, 2(c)*
 - ❑ Can make recommendations “to improve the functioning of NCPs and the effective implementation of the Guidelines”... *PG, Part II, 2(d)*
- ✓ Cannot review “the findings and the statements made by the NCP (other than interpretations of the Guidelines)” ... *PG, Commentary, para 44.*
- ✓ Cannot reach conclusions on the conduct of individual enterprises. – *PG, Commentary, para 44.*

II. National Contact Points

➤ NCPs are responsible for ...

- ❑ Promoting the Guidelines and related due diligence guidance
- ❑ Handling enquiries
- ❑ Contributing to the resolution of issues that arise relating to the implementation of the Guidelines in *specific instances*.

Home | OECD Guidelines | Due Diligence | National Contact Points | Global Forum | Resources | Global Partnership

What are National Contact Points for RBC ?

National Contact Points for Responsible Business Conduct (NCPs for RBC) are agencies established by governments. Their mandate is twofold: to promote the OECD Guidelines for Multinational Enterprises, and related due diligence guidance, and to handle cases (referred to as "specific instances") as a non-judicial grievance mechanism. To date, 51 governments have an NCP for RBC.

All 51 governments adhering to the OECD Guidelines have the legal obligation to set up an NCP. Today, NCPs make up a network and a community of practitioners, dealing with a wide array of impacts involving companies either through their operations or their supply chains. In 2020, NCPs celebrated 20 years as non-judicial grievance mechanisms.

Find out more about NCPs | Browse resources on NCPs

Meet the National Contact Points

There is an NCP in all **50 COUNTRIES** that currently adhere to the Guidelines

Watch on YouTube | Register to video on France | More or video on Spain

In focus

The OECD is looking for dispute resolution professionals to include in its roster of mediators to assist in the specific instance procedure.

Events

- 7 June 2022 - The Croatian NCP hosted a Conference on Responsible Business Conduct (RBC) in Zagreb. The event, entitled **Responsible Today, Sustainable Tomorrow** was co-organised with the OECD Centre for RBC. For further information, please contact OECD.nact@mgp.org
- 7 June 2022 - Peer-learning event: Second generation of National Action Plans and effectiveness of a smart mix of voluntary and mandatory human rights due diligence.
- 2 June 2022 - The Moroccan NCP held a webinar on the following theme: 'For sustainable and responsible agro-industrial sector'. [Read more](#)

NCPs as grievance mechanisms

Got a grievance related to the non-observance of the OECD Guidelines? The 'specific instance' procedure is designed to facilitate the resolution of disputes related to the implementation of the Guidelines by companies. Any person that can demonstrate an interest (broadly defined) in reporting issues can file a case with an NCP.

Browse the NCP database | Find out how NCPs handle cases

NCP capacity building

While all NCPs are different, they need to achieve 'functional equivalence', meaning that they must function with an equivalent degree of effectiveness. To stay effective and to align to the forthcoming RBC content, NCPs constantly need to build capacity.

Find out more about how NCPs address the requirements of functional equivalence and build capacity

Meet the NCPs

Learn more about the different National Contact Points on the country links below.

Download contact details for NCPs

<http://mneguidelines.oecd.org/ncps/>

II. National Contact Points

NCPs and “functional equivalence”

- Core criteria of *visibility*, *accessibility*, *transparency* and *accountability*.
- Discretion to the individual states in regards to the institutional arrangements of the NCPs meaning that the *form and structure of the NCPs vary* [...]



Norges OECD-kontaktpunkt for ansvarlig næringsliv
Kontaktpunktet skal bidra til å løse saker om etterlevelse av OECDs retningslinjer, og til å gjøre Retningslinjene kjent.

Mer informasjon om Norges nasjonale kontaktpunkt



OECD Ulusal Temas Noktası (UTN/NCP)



DANMARKS KONTAKTPUNKT FOR ANSVARLIG VIRKSOMHEDSADFÆRD



Main NCP structures

Mono-agency	Inter-agency	Multipartite	Expert-based
<ul style="list-style-type: none"> • Composed of one or more representatives of a single Ministry. • <i>Argentina, Costa Rica, Greece, Iceland, Ireland, Lithuania, Luxembourg, Mexico, New Zealand, Poland, Slovak Republic, Turkey</i> 	<ul style="list-style-type: none"> • Composed of representatives of two or more Ministries. • <i>Brazil, Canada, Germany, Japan, Morocco, Portugal, Slovenia, Switzerland, the United Kingdom</i> 	<ul style="list-style-type: none"> • Composed of representatives of one or more Ministries, business associations, trade unions, and NGOs. • <i>Tripartite: Belgium, France, Latvia, Sweden, Tunisia</i> • <i>Quadripartite: Czech Republic, Finland, Slovak Republic, Kazakhstan</i> 	<ul style="list-style-type: none"> • Composed of independent experts and usually benefiting from a supporting secretariat attached to a Ministry. • <i>Denmark, Korea, Lithuania, the Netherlands, Norway</i>

➤ States can also establish **multi-stakeholder advisory or oversight bodies** to assist the NCPs, e.g.; the UK NCP's Steering Board.

Point de contact national luxembourgeois (PCN Lux)

- Based, managed and coordinated in and by



THE GOVERNMENT
OF THE GRAND DUCHY OF LUXEMBOURG
Ministry of the Economy

- The NCP Lux

- ☐ Promotes awareness of the Guidelines among all relevant stakeholders;
- ☐ Seizes and processes specific instances;
- ☐ Responds to inquiries from the public and local businesses;
- ☐ Shares and exchanges good practices with other NCPs;
- ☐ Reports annually to the Investment Committee;
- ☐ Manages and maintains the [website](#) of the NCP - (currently being updated!).

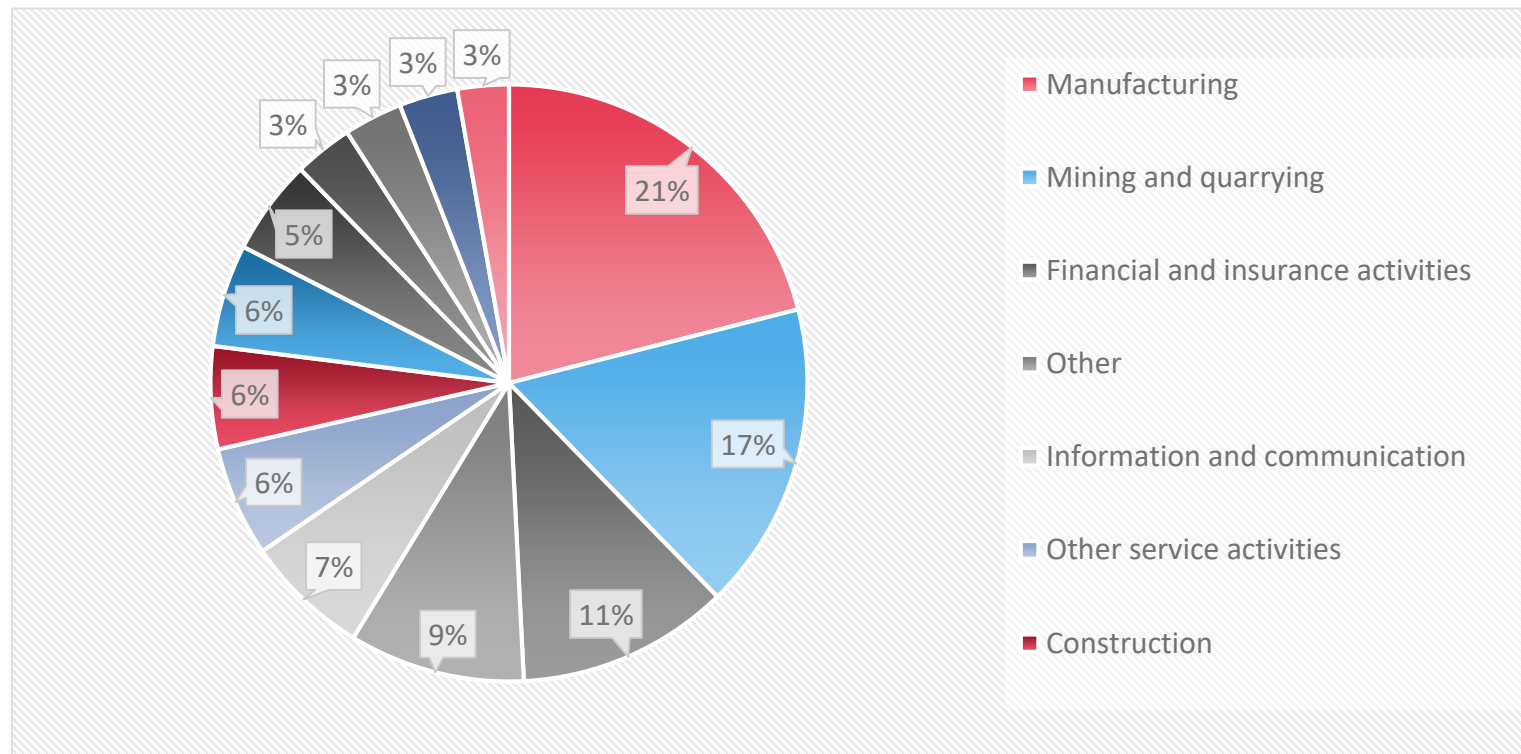
III. Specific Instances - *A state-based non-judicial grievance mechanism...*

- ❑ A **unique built-in grievance mechanism** of the OECD Guidelines.
- ❑ Requirements to be **impartial, predictable, equitable, and compatible with the principles and standards of the Guidelines**.
- ❑ Specific instances are **not legal cases** and **NCPs are not judicial bodies**.
- ❑ NCPs **focus on problem-solving by offering good offices** and facilitating access to **consensual and non-adversarial procedures** (conciliation or mediation).

III. Specific Instances

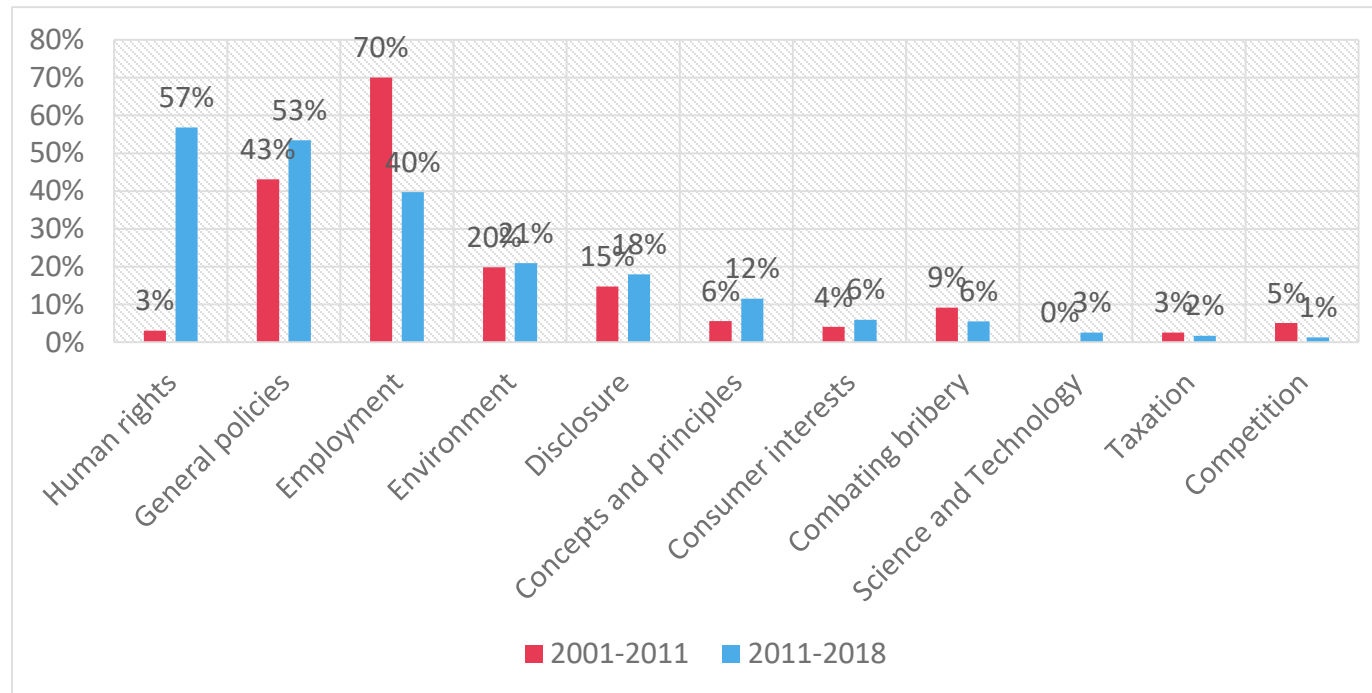
- Since 2000, NCPs have handled **more than 500 cases** relating to company operations in over 100 countries and territories.
- These cases/SIs are profiled in three main databases:
 - ❑ [OECD specific instance database](#)
 - ❑ [OECD Watch's database](#)
 - ❑ [TUAC's database](#)

III. Specific Instances



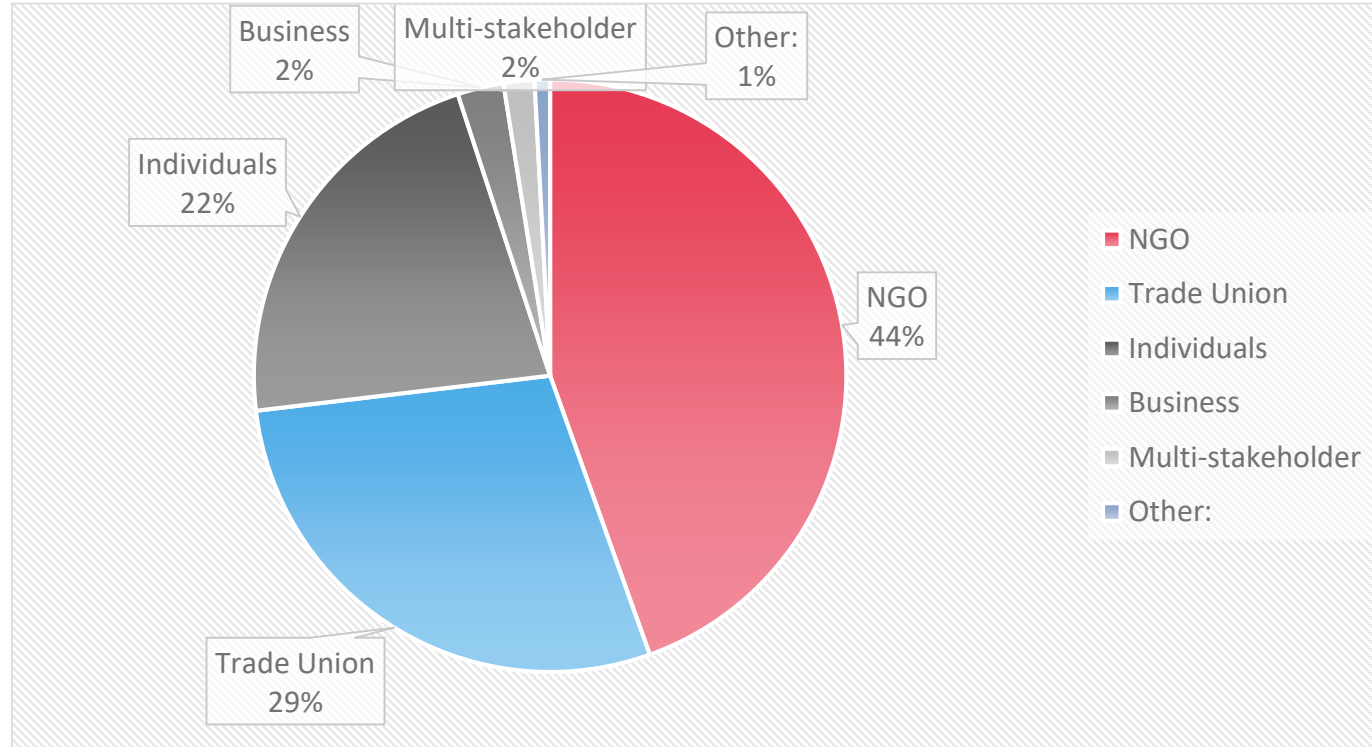
Data retrieved from OECD online database of specific instances up to 2019.

III. Specific Instances



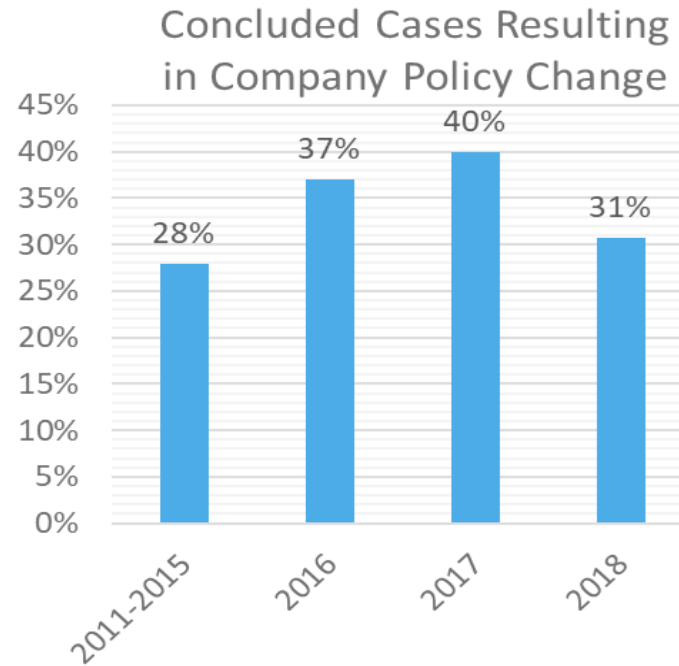
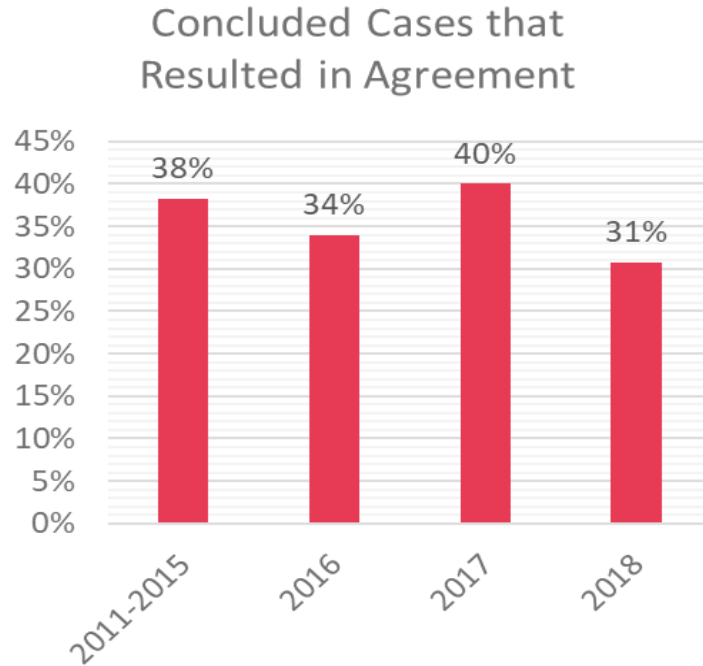
Data retrieved from OECD online database of specific instances up to 2019.

III. Specific Instances



Data retrieved from OECD online database of specific instances 22 March 2019

III. Specific Instances



Data retrieved from OECD online database of specific instances 22 March 2019

III. Specific Instance Procedure: *Filing a complaint*

➤ Any interested party can submit a specific instance:

- ☐ Individuals
- ☐ local communities
- ☐ NGOs
- ☐ workers organizations...

➤ Forms to facilitate the submission of SIs. See, e.g. →

- ☐ SIs to NCP Lux can be submitted by mail/email.

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Ministry of the Economy

Luxembourg NCP
Ministry of the Economy
L-2937 Luxembourg

AD-HOC FORM (QUESTIONNAIRE) FOR SUBMITTING COMPLAINTS

Important note: Please send the completed form to the address in the header and/or by e-mail to christian.schuller@eco.atat.lu. Mark the envelope and e-mail with the mention "Complaint to the Luxembourg OECD National Contact Point".

This interactive form requires at least version 5.1.3 of Adobe Acrobat® Reader*. The latest version of Adobe Acrobat Reader for all operating systems (Windows®, Mac®, etc.) can be downloaded free of charge from the Adobe Systems [Adobe Systems Incorporated](http://adobe.com) website.

1. Information

Fields marked with a "*" are mandatory

About the complainant

Name(s) of the complainant(s)*:

Registration number:

Postal address:

Street address:

Website:

E-mail address*: Phone number*:

Contact person

Name*:

Position:

E-mail address*: Phone number*:

Second contact person

Name:

Position:

E-mail address: Phone number:

You are complaining* ☐ on behalf of your own members ☐ on behalf of others

If your organisation is filing a complaint on behalf of others, how would you describe your organisational mandate to represent the allegedly aggrieved party in this case?

What does your organisation hope to achieve by filing this complaint?

* Does not have to be an organisation. Can also be a private person, for instance. The term "organisation" is used for the sake of simplicity. Several organisations can also send in a joint complaint.

III. Specific Instance Procedure: *Initial Assessment*

- ❑ Concerns several interrelated decisions to determine if the issues raised merit **further examination**.
- ❑ If the criteria are met, the NCP may offer ‘**good offices**’ in an effort to contribute to the resolution of issues.
- ❑ NCPs can also issue a **statement based on the initial assessment**.

III. Specific Instance Procedure: *Offering “good offices”*

- Offer of **good offices** to help parties resolve the issue.
 - ❑ Based on the agreement of the parties, offer or facilitate access to **consensual and non-adversarial procedures**, such as **conciliation or mediation...**
- NCPs can engage in **fact-finding missions** but are not required to do so.

III. Specific Instance Procedure: *Conclusion*

- NCP issues a **final statement, including recommendations** to the parties.
- Opportunity to comment on the draft statement.
- NCPs are expected to make the results of SIs **publicly available**.
- NCP can conduct **follow-up** to determine whether the recommendations are followed.

III. Specific Instance Procedure: *Filing a complaint with NCP Lux*

- [Rules of procedure for handling specific instances.](#)
- NCP needs written and as specific and precise documentation as possible...
 - ❑ Contact information of the complainant;
 - ❑ Information about the complaint: the provision(s) in the OECD Guidelines alleged to have been breached • detailed account of the controversial practice • supporting evidence, if any • the remedy sought • and other relevant information...

III. Specific Instance Procedure: *Transparency and confidentiality*

- **Transparency** is recognized as a **general principle** for the conduct of NCPs when dealing with the public. However, there might be circumstances where the NCP would have to strike a **balance** between **transparency** and **confidentiality**.
- Generally, while the proceedings may be confidential, the results will be transparent.

III. Specific Instance Procedure: *Advantages / potential limitations*

➤ Advantages

- ☐ Can be pursued parallel to legal action (generally).
- ☐ No major costs involved (time?).
- ☐ Can cover a broad range of issues / extraterritorial questions.
- ☐ Will generate public attention - persuade decision makers / change company conduct.
- ☐ Variety of remedies.

➤ Limitations

- ☐ Not appropriate to address serious abuses / no substitute for legal action.
- ☐ Depends on the willingness of the company to engage.
- ☐ Lack of binding recommendations/enforcement.

III. Specific Instances: Selected Examples - For more, see →

- Pharmaceuticals: due diligence (Netherlands, 2015)
 - ❑ Case submitted by a concerned individual
 - ❑ NCP clarified the notion of due diligence
- Oil and gas: impacts on local communities and environment (UK, 2013)
 - ❑ Direct remedy: the company stopped operations
 - ❑ NCP addressed impacts abroad
- Renewable energy sector: local communities' rights, forced displacement (Sweden, 2012)
 - ❑ Case submitted by an indigenous community
 - ❑ Agreement reached



- 
- Banking and climate change (Netherlands, 2017)
 - ❑ Financial sector due diligence responsibilities
 - ❑ Case contributes to fighting climate change
 - Food and beverage industry: workers' rights (Netherlands, 2017)
 - ❑ Direct remedy: financial compensation
 - ❑ NCP case solves 17 year old issues
 - ❑ NCP facilitates mediation through embassies
 - Sports industry: migrant worker's rights (Switzerland, 2017)
 - ❑ NCP applies Guidelines to sporting federation
 - ❑ NCP case contributes to government policy change

- E-commerce: misleading advertisement and environmental protection (Poland 2018)
 - ❑ Digital sector impacts on consumers and environment
 - ❑ Over 16,000 wrongful and environmentally harmful ads taken down
 - ❑ Long term engagement between company and stakeholders

- Mining and management of a socio-economic fund (Luxembourg, 2011)
 - ❑ Mediation by an independent expert mediator
 - ❑ Extensive fact-finding missions
 - ❑ Mutually agreed outcome by the parties

IV. NCP peer reviews

- The objectives of the peer review are to:
 - Assess functional equivalence among the NCPs;
 - Identify the NCP's strengths & any gaps and possibilities for improvement;
 - Make recommendations for improvement; and
 - Serve as a learning tool for reviewed and participating NCPs.

➤ Elements of the peer review

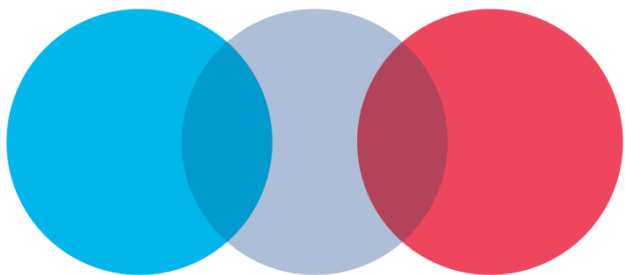
- ✓ Preparation of the review
- ✓ Sending of questionnaires
- ✓ Submission of information
- ✓ Preparation of initial review report
 - On-site visit
 - Preparation of final review report
 - Discussion and publication of the review
 - Public launch of the report
 - Follow up on the recommendations in the review



Review of NCP Lux

➤ On-site visit scheduled **21-22 September 2022**

➤ Peer review team:  OECD Secretariat,   



THANK YOU!



pcn@eco.etat.lu



[@oecd_ncp_lux](https://twitter.com/oecd_ncp_lux)