

PROCEDURE FOR SUBMITTING SPECIFIC INSTANCES TO LUXEMBOURG’S NATIONAL CONTACT POINT FOR THE OECD GUIDELINES FOR MULTINATIONAL ENTERPRISES

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BACKGROUND

The OECD Guidelines for Multinational Enterprises (“[the Guidelines](#)”) are recommendations on responsible business conduct addressed by governments to multinational enterprises. They provide principles and standards of good practice for all types and sizes of enterprises in all sectors.¹ The Guidelines contain substantive recommendations on topics such as disclosure; human rights; employment and industrial relations; the environment; bribery and extortion; consumer interests; science and technology; competition, and taxation.

OECD member countries and countries adhering to the Guidelines are required to establish national contact points to promote the awareness and uptake of the Guidelines and to contribute to the resolution of issues that arise concerning the implementation of the Guidelines in specific instances (i.e. complaints alleging the non-observance of the Guidelines by enterprises) lodged by an interested party, as defined below.²

To this end, the national contact points act as unique non-judicial grievance mechanisms to contribute to the resolution of the issue in a manner that is consistent with the core effectiveness criteria set out in the [Procedures to the Guidelines](#), including:

- visibility,

¹ The Guidelines (2011), Chapter I, para 4.

² The terms “specific instance” and “complaint” are used interchangeably throughout this document.

- accessibility,
- transparency,
- accountability,
- impartiality and equitability,
- predictability, and
- compatibility with the Guidelines.

The present document sets the procedure for handling specific instances by Luxembourg’s NCP (the “NCP”) under the Guidelines. It describes publicly and *ex-ante* the stages of the specific instance procedure, namely the indicative time frames, the assistance that may be provided to the parties, the good offices and remedy proposals, as well as the approach of the NCP to the potentially conflicting requirements of confidentiality and transparency. Links to useful information and contacts are included at the end of the document.

The specific instance procedure of the NCP may evolve, taking stock of experience gathered through the OECD NCP network, the NCP’s own practice, and the work of the Working Party for Responsible Business Conduct.

STAGES IN THE SPECIFIC INSTANCE PROCEDURE

INTRODUCING A SPECIFIC INSTANCE

Any interested party, including individuals, local communities, NGOs, and worker organisations, can file a specific instance with the NCP alleging a breach of the Guidelines by a multinational enterprise operating in or from Luxembourg, including not-for-profit legal entities.

An [ad-hoc questionnaire](#), designed to help the complainant introduce a specific instance, is available on the NCP’s website.

The complaint may also be introduced by post or by email addressed to the NCP at the Ministry of the Economy, L-2937 Luxembourg, or pcn@eco.etat.lu with the mention “**Complaint to the Luxembourg OECD National Contact Point**”.

The complainant may meet in person with the NCP to introduce or substantiate a specific instance.

The Luxembourg NCP will assist the complainant in complying with fundamental requirements to meet the criteria of materiality and substantiation of the complaint, whether the available ad-hoc questionnaire is used or the specific instance is introduced in free form.

ACKNOWLEDGEMENT OF RECEIPT

The NCP will send an acknowledgement of receipt of the specific instance to the complainant(s) by email and/or post within five working days. The acknowledgement of receipt does not imply that the specific instance is accepted for further examination unless stated otherwise by the NCP.

The acknowledgement of receipt will confirm that the complaint, and any further material complementing it thereafter, will be sent to all involved party(ies) and that the NCP may inform or share the material with any authority or expert deemed relevant and appropriate for handling the case.

The NCP will forward the complaint and any additional material provided to the enterprise within five working days.

Normally, written statements or responses from any party involved in the specific instance will be shared with the other party(ies) within five working days.

INITIAL ASSESSMENT

During the initial assessment phase, the NCP will decide on the admissibility of the complaint, which can lead to further examination of the case. As a first step, the NCP will assess whether it has the competency to take up the specific instance, either by itself or with other NCPs, or whether it needs to direct the case to another NCP.

In making the initial assessment of whether the issue raised merits further examination, the NCP will consider the following criteria as set out in the Implementation Procedure of the Guidelines:

- the identity of the party concerned and its interest in the matter,
- whether the issue is material and substantiated,
- whether there seems to be a link between the enterprise's activities and the issue raised in the specific instance,
- the relevance of applicable law and procedure, including court rulings, how similar issues have been or are being treated in other domestic or international proceedings,
- whether the consideration of the specific issue would contribute to the purposes and effectiveness of the OECD Guidelines for Multinational Enterprises.

Judicial or non-judicial, international or domestic parallel proceedings that have been conducted, are underway or are available to the parties concerned do not preclude the NCP from offering good offices to the parties. The NCP will evaluate whether an offer of good offices could make a positive contribution to the resolution of the issues raised and/or the implementation of the OECD Guidelines going forward and would not create serious prejudice for either of the parties involved in these other proceedings or cause a contempt of court situation.

The parties may ask to meet the NCP during the initial assessment. Should any party meets with the NCP, the other party(ies) will be informed

After considering the above issues, if the NCP decides that the issues raised do not merit further examination, the NCP will reject the case and inform the parties accordingly. During the initial assessment, the NCP may ask parties to provide additional material. If the NCP decides that the raised issues merit further examination, it will instigate dialogue between the parties by offering its good offices in the second phase of the proceedings. Either way, the NCP will draft an initial assessment which will be sent to the parties for their comments within ten working days. The NCP has the discretion whether or not to incorporate comments received. The initial assessment will be sent to the parties and published on the NCP's website within 15 working days.

If, at any moment during the initial assessment phase, the parties reach an agreement or the complaint is withdrawn, the NCP will conclude the examination of the complaint.

Accepting a case for further examination does not mean that the issues raised have been given final consideration and does not imply any finding as to whether or not a company has acted in accordance with the Guidelines.

Normally, the NCP will strive to conclude the initial assessment within three calendar months. However, the parties may request additional time to seek external advice or scrutiny, which may be added to 3 months if the NCP deems the extension request reasonable.

There will be no recourse against the NCP's decision to dismiss or accept a specific instance for further examination.

OFFERING GOOD OFFICES

If the NCP accepts the specific instance, it will offer its good offices to contribute to the resolution of alleged issues. Participation of the parties in good offices is voluntary and dialogue based.

Making available good offices entails offering or facilitating access to consensual and non-adversarial procedures, such as conciliation or mediation, in order to assist the parties in finding an agreed solution. In consultation with the concerned parties, the NCP may carry out the mediation or engage external mediators to do so.

During good offices, the NCP may seek external advice from relevant authorities and representatives of the business community, labour organisations, other non-governmental organisations, and experts. NCP may also consult with NCPs in other countries or seek guidance from the OECD Secretariat and /or the Working Party on Responsible Business Conduct on issues related to the interpretation of the Guidelines.

The parties themselves may propose alternative ways to resolve the issues at any time.

During the good offices as well as throughout the specific instance process, the NCP expects parties' commitment to participate in good faith during the procedure, including responding in a timely fashion, maintaining confidentiality where appropriate, refraining from misrepresenting the process and from threatening or taking reprisals against parties involved in the procedure, and genuinely engaging in the procedures to find a solution to the issues raised in accordance with the Guidelines.

If the good offices are rejected, or the dialogue fails, the NCP will undertake further examination to assess whether the enterprise concerned failed to observe the Guidelines. Further examination will entail information gathering, seeking advice and guidance from relevant stakeholders, or seeking independent expert advice. In addition, in order to better determine the facts on the ground, the NCP may engage in fact-finding activities through field visits.

CONCLUSION OF THE PROCEDURE

The specific instance procedure is concluded with the publication of a final statement. The NCP may issue recommendations or determinations in the final statement concluding the specific instance. It may express its views on whether the OECD Guidelines were observed or if an enterprise acted in good faith and had a constructive approach to solving the issues raised, or has a policy consistent with the Guidelines. If relevant, the NCP will issue recommendations to the enterprise on how to improve its conduct in accordance with the Guidelines.

The final statement will be sent to the parties for comments with a deadline of ten working days. The NCP will, at its discretion, decide whether to incorporate any changes before sending the finalised statement to the parties and publishing it on the NCP's website.

EVALUATION AND FOLLOW-UP

If the parties accept the good offices offered by the NCP, or if the parties have themselves proposed and agreed on measures to solve the issues under the supervision or the monitoring of the NCP, the NCP will release a follow-up statement after 12 months addressing the state of compliance with the agreement or with the recommendations of the NCP.

INDICATIVE TIMEFRAMES

STAGE	ACTIVITY	TIME FRAME
Initial Assessment	Confirmation of the receipt of a specific instance and forwarding it to the enterprise.	Within five working days after receipt of the specific instance.
	Initial assessment and decision on whether the complaint merits further consideration.	Within three months after receipt of the specific instance, with a possibility of extension if the parties submit a reasonable request.
Good Offices	Dialogue, or further examination of the complaint if the dialogue is rejected or fails.	Within 12 months, with a possibility of extension to obtain facts.

Final Statement	Drafting the final statement, receiving comments from the parties and publishing the final statement.	Within three months.
Follow-up	Releasing follow-up statement on the implementation of the commitments or on the NCP's recommendations.	Within a year after the publication of the final statement.

ASSISTANCE TO THE PARTIES

The NCP will assist the complainant in fulfilling the requirements to meet the criteria of materiality and substantiation of the complaint while remaining neutral and in no way prejudging on the merits of the specific instance brought before it.

The NCP will assist the other parties involved, if required, to be in a position to assess properly and fairly the specific instance.

The NCP will not provide financial assistance to parties involved in the specific instance. However, costs of carrying out procedures deemed appropriate for helping the resolution of issues may be borne by the NCP, including mediation, conciliation, supervision, investigation, and fact-finding missions carried out by the NCP or by an expert or any ad-hoc entity commissioned by the NCP.

TRANSPARENCY AND CONFIDENTIALITY

The acknowledgement of receipt informs the complainant that the complaint and any further material complementing it thereafter will be sent to all involved party(ies) and that the Luxembourg NCP may inform or share the material with any authority or expert it deems appropriate for handling the case.

The Luxembourg NCP, when submitted a Specific Instance, will inform NCPs of other countries involved or potentially involved and share the material with them in a timely manner.

Written statements or responses from any party(ies) involved by the Specific Instance, irrespective of kind or form, will be sent by the Luxembourg NCP to the other party(ies) involved. Should any party meet in person with the NCP, the other party(ies) will be informed.

However, exceptionally, the parties may request a specific document to remain confidential, in which case the Luxembourg NCP may grant this request if it appears that this could facilitate the resolution of the issues or help reach a positive outcome.

In order to facilitate the resolution of the issues raised, the Luxembourg NCP – and any authority or expert it has shared the material of the complaint with – as well as the parties involved by the Specific Instance, pledge to maintain the confidentiality of the proceedings until the Luxembourg NCP's statement concluding the initial assessment of the Specific Instance.

When the Luxembourg NCP's statement concludes that the issues raised merit further consideration and offers its good services, confidentiality will be maintained as deemed appropriate by the parties if this offer of good services is accepted. If the Luxembourg NCP's offer of good services is rejected by any party, or if the parties involved fail to agree on a resolution of the issues as part of the good offices provided by the Luxembourg NCP, the party(ies) are free to communicate about and discuss these issues publicly.

A draft of the statement concluding the initial assessment and a draft of the final statement concluding the Specific Instance will be sent to the parties involved by the Specific Instance to allow them to address remarks, disagreements or any commentary to the Luxembourg NCP.

Thereafter, the Luxembourg NCP will proceed with its statement concluding the initial assessment or its final statement concluding the Specific Instance, both being then publicly available.

USEFUL INFORMATION AND CONTACTS

- [OECD Guidelines for Multinational Enterprises](#)
- [Trade Union Advisory Committee to the OECD \(TUAC\)](#)
1, rue Viala
75015 Paris - France
tuac@tuac.org
- [Business at the OECD \(BIAC\)](#)
13/15, Chaussée de la Muette
75016 Paris – France
biac@biac.org
- [OECD Watch](#)
KNSM-iaan 17
1019 LA Amsterdam - The Netherlands
info@oecdwatch.org