



OECD Guidelines for Multinational Enterprises: National Contact Point of Switzerland

Information on Specific Instances Procedure

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The OECD Guidelines for Multinational Enterprises (OECD Guidelines) provide for the setting up of 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 when it is suspected that an enterprise has breached the Guidelines. This is known as a "specific instances procedure". This document describes how this procedure works and what it intends to achieve. This information is based on the Procedural Guidance for OECD Guidelines and its Commentary on the Implementation Procedures, with some additional information on how the Swiss NCP deals with specific instances.

1 The OECD Guidelines

The OECD Guidelines are recommendations addressed by the governments of the OECD states and other adhering countries to their multinational enterprises operating in or from other countries. They provide principles and standards for responsible business conduct, but 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 make sure that the Guidelines are known and to assist in resolving any problems arising when the Guidelines are implemented.

Individuals as well as organizations can raise an issue with the NCP in writing if they believe that a multinational enterprise has acted in breach of the OECD Guidelines. They should do this 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.

Under the OECD Guidelines, the adhering countries have a certain degree of flexibility in the way they set up their NCP, as long as the NCP functions in a visible, accessible, transparent and accountable manner. The NCP is also expected to cooperate in an adequate manner with the various stakeholders (primarily the business community, worker organisations and other non-governmental organisations).

3 The Swiss National Contact Point

3.1 Structure

In Switzerland, the NCP 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 (in the Federal Department of Economic Affairs FDEA).

A contact group open to all Swiss stakeholders (in particular the business community, worker organisations and other non-governmental organisations) and other relevant administrative offices is informed by the NCP of its activities at least once a year. The contact group can comment on the work of the NCP and make suggestions. Where necessary, it also acts as a consultative body, e.g. during the update of the OECD Guidelines 2010/11. Each year in June, the NCP draws up an annual report on its activities, which is submitted to the OECD. The report is also presented to the contact group and published on the NCP website.

Whenever a specific instance is raised with the Swiss NCP, an internal ad hoc working group is formed which supports 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.¹ Country representatives from the Bilateral Economic Relations Division at SECO and the Swiss embassy or representation in the country concerned are also involved.

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 parties are not obliged to take part in this dialogue, but are actively encouraged to do so by the NCP.

The Swiss NCP is neither a quasi-legal authority nor an investigative authority. Its task is to encourage discussion between the parties involved rather than establish whether or not a breach of OECD Guidelines has taken place. 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.

3.3 Specific Instances Procedure

Step 1: Confirmation and Information

When an 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: Initial Assessment

In a second 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 having been submitted.

The NCP assesses the specific instance according to the following criteria:

¹ e.g. SECO/Labor Directorate for issues relating to international labor, FDFA/Political Directorate IV for issues relating to human rights, FDF/FTA for tax-related issues, FDFA/Political Directorate V for corruption, environment and tax issues, DETEC/FOEN for environment issues.

- **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 what their motivation was. If the party raising the specific instance does not reveal its identity or does not have any legitimate interest in the issue at hand, the NCP reserves the right not to further pursue the specific instance.
- **Responsibility of the NCP:** A specific instance must be raised in the country in which the alleged breach occurred. If this country does not have an NCP, the issue should be raised in the country where the multinational company has its headquarters. The Swiss NCP is therefore responsible for cases in which multinational companies from other signatory states have allegedly acted in breach of the Guidelines. It is also responsible in cases where a Swiss enterprise abroad is involved in a country which does not have its own NCP. If the Swiss NCP is not responsible for a particular case, it forwards the specific instance to the responsible NCP and informs the party that has raised the issue. If the specific instance concerns more than one NCP (e.g. if the company involved is owned by several multinational enterprises or in the case of holding companies), the NCPs concerned decide which of them will assume the lead for the specific instance.
- **Scope of application of the OECD Guidelines and materiality of the specific instance:** The NCP ascertains whether or not the specific instance raised falls within the scope of the OECD Guidelines and was raised in good faith (*bona fide*). Sufficient evidence related to the alleged breach of the Guidelines must also be given in the specific instance.
- **Legal context and parallel procedures:** Even if the company has respected all 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, giving reasons for its decision, and informing the parties accordingly. If the NCP decides to pursue the issue, this does not mean that a conclusive assessment has been made of the issue raised and that a breach of the OECD Guidelines has been ascertained.

The Swiss NCP treats the Initial Assessment as confidential and does not publish the corresponding report. 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 3: Providing a platform for dialogue to the parties

When the NCP decides to pursue an issue, it offers its help in finding a solution to the parties involved. If the parties accept this offer, the NCP initiates an informal conciliation 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 plays a neutral role, giving the parties the opportunity to express their position and address any unresolved issues. The NCP may lead the discussions itself or engage an external mediator.

The parties are not obliged to participate in discussions. Before discussions begin, the NCP may agree with the parties involved the form that they will take and record this in writing. In order for frank discussions to take place, it is essential that they can be conducted confidentially and informally. No minutes will therefore be taken of the discussions.

Discussions normally take place in Switzerland, at the premises of the NCP in Bern. The language spoken during the proceedings is determined by the NCP in advance. The NCP cannot provide the parties taking part in the discussions with any financial assistance (e.g. travel expenses, translation or interpreting fees).

Step 4: Publishing the Results

If the parties reach an agreement and find a solution to the dispute or a further means of resolving the dispute, the NCP makes publically available a final statement with the results of the proceedings. Information regarding the contents of the discussions and the agreement will only be 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 information publically available in a final statement. The NCP may draw up recommendations for implementation of the OECD Guidelines, which are also included in the statement. The latter may also set out the reasons why an agreement was not reached.

Final statements are published on the NCP website and in the annual report by the Chair of the OECD working group 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 a draft statement. If there is no agreement between the NCP and the parties about the wording of the statement, the NCP makes the final decision.

3.4 Confidentiality

The NCP procedures remain confidential during the mediation process. The parties involved must also respect this confidentiality and may not make public any information during proceedings. If no agreement on the issues raised is reached between the parties at the end of the proceedings, they may comment publically on these issues. However, any information or opinions expressed by the other party during the NCP proceedings remains confidential, unless the other party expressly states that it may be made public.

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 put a halt to proceedings if one or other of the parties does not respect this confidentiality. The NCP recommends that the parties involved restrict their communication with the public from the outset, as public campaigns running parallel to the NCP proceedings may impair confidentiality and restrict the willingness of a company to engage in dialogue.

The Swiss NCP and other representatives of the Swiss federal authorities do not provide any information on ongoing proceedings.

4 Contact and queries

The Swiss NCP is ready to answer questions:

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