

Annex 1

Introductory document on the Dutch National Contact Point for the OECD Guidelines for Multinational Enterprises

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1. Background of the NCP Peer Review

At the annual NCP meeting at the OECD in Paris in 2008 the Dutch NCP indicated, on the repeated suggestions of OECD Watch, that it would be willing to subject itself to a peer review. The peer review system is widely used at the OECD, but to date it had never been used to evaluate the performance of a specific NCP. The outcomes of this peer review process will be used for the evaluation report for the Dutch Parliament.

The peer review also fits in well with the increasing demand – at both the national and international level – for effective NCPs. An example of this demand can be found in the reports dated April 2008 and April 2009 by UN Special Representative for Business and Human Rights, Prof. John Ruggie, in which he writes that NCPs are potentially an interesting vehicle for complaints.¹ Given that there has also been a great deal of criticism of how NCPs operate, this review fits in well with the discussion in the OECD Investment Committee about how to improve the operation and effectiveness of NCPs.

¹ Ruggie report, April 2008, paragraph 98.

2. The Dutch NCP until July 2007

In the year 2000, the Dutch NCP was established in the Trade Policy Department at the Ministry of Economic Affairs. This department also provides the Dutch input to the OECD Investment Committee. Given the broad scope of the Guidelines, other ministries were also involved, more specifically of Foreign Affairs, of Housing, Spatial Planning and the Environment, and of Social Affairs and Employment. These other ministries were involved on an ad-hoc basis in the handling of specific instances, depending on the content of the issue. The NCP focussed mainly on handling issues and less on promoting the Guidelines.

Increasing dissatisfaction

After the first five years, during which the NCP was involved in 14 issues (see Annex 1) either as the primary handler or in an assisting role for other NCPs, the NCP increasingly received some criticism from civil-society organisations and trade unions in particular, who complained that the NCP was ineffective and slow and that its procedures were insufficiently transparent. These complaints alleged bias on the part of the government in favour of the business community, a lack of investigative and supervisory possibilities and insufficient general resources for handling issues. It was also felt that the information and the explanations given about the NCP and the OECD Guidelines were not up-to-date and were not clear or powerful enough.

In 2003, the Ministry of Economic Affairs deemed the structure of the NCP to be constitutionally debatable because of the tension between, on the one hand, the administrative hierarchy with a politically accountable member of the government at the top, and, on the other hand, the task of the acting official who has to issue independent advice after the closure of an specific instance procedure. For these reasons, the Ministry launched an internal review in June 2005 into how the NCP was operating, the aim being to draw up recommendations for revising the organisation of the NCP. This process would also boost awareness of the OECD Guidelines in the business community.

Internal review

The review of five years of the National Contact Point of the Netherlands included the following review questions:

Regarding the *role and operation* of the NCP:

1. **Role of the NCP:** What is the opinion of stakeholders regarding the original function for which the NCP was established – namely a future-oriented conciliation platform focussed on solutions that brings together parties with opposing interests – compared, for example, to a different, more administrative role?
2. **Effectiveness:** What is the opinion of stakeholders regarding the effect of raising a specific instance with the NCP compared to other, more publicity-oriented channels such as the media or politicians, for example?
3. **Scope:** What is the opinion of stakeholders regarding the clarity of the criteria for determining the admissibility of issues, the investment nexus and the fact that the OECD position – for the time being – is that questions about a purely trade relationship will not be taken in consideration?
4. **Efficiency:** What is the opinion of stakeholders about the speed and transparency of the NCP procedures, from the intake through to any subsequent statement?

Regarding the *structure of the NCP*:

5. To what extent is the current structure constitutionally desirable, given that there is a relationship of dependence between the member of the government and an NCP composed of government officials?
6. How do other OECD countries tackle this point? What is the most common composition of the NCP?
7. What might a reformed NCP be like? Would it be desirable to put more distance between the NCP and politicians by e.g. appointing an independent, external chairman?

The review was carried out based on desk research, analysis of the files on a number of issues, interviews with several other NCPs, open interviews with the various stakeholders and a roundtable meeting. The review showed that the various stakeholders had wide-ranging opinions regarding the role and operation of the NCP. NGOs wanted NCPs to tackle issues in a more proactive manner, whereas employers' organisations were more focussed on promoting the Guidelines and would only handle issues on a reactive basis. As regards the effectiveness of the NCP, the respondents differentiated between the promotional task and the mediation task. It was found that the NCP was not adequately performing its promotional task because of insufficient visibility (the website was not up to date, for example). The Ministry

itself indicated on this point that promotion of the Guidelines was one of the first areas to be cut back if the overall workload of its officials was high. As regards the handling of specific instances, some stakeholders felt that the government was too much on the side of the business community, that it had no review capacity of its own, that the government had too few personnel to handle the number of issues raised appropriately, and that the government was not able to monitor compliance with agreements. The trade unions and NGOs in particular felt that the confidentiality of the specific instance procedure reduced the effectiveness of the procedure.

Recommendations for a new NCP

The above observations resulted in a number of recommendations, first of all as regards the tasks of the NCP:

- *Promoting the Guidelines:*
 - Draw up a communication plan (including updating and improving the website, promotional activities by all stakeholders, etc.);
 - show political support by focussing on embedding them in political and trade missions and instruments;
 - implement targeted preventive awareness-raising campaigns, including about risks in the corporate supply chain.
- *Handling of specific instances:*
 - Clarification of procedures, including working methods, the setting of deadlines and the criteria for determining the investment nexus;
 - the possibility of preliminary advice for parties who may consider raising a specific instance;
 - implementation in practice of the confidentiality provisions;
 - possibility of and budget for local fact finding;
 - drawing up a final statement, including an assessment of the alleged breaches and agreements regarding supervision and evaluation.
- *Networking with other NCPs:*
 - Establish contacts with other NCPs and compare working methods; based on similarities in working methods and/or intentions:
 - present action plans to the OECD IC secretariat.

- *Consultations:*
 - Organise separate meetings with NCP stakeholders, 1x in the run-up to the annual NCP meeting, 1-2x at other times;
 - organise consultations prior to IC meetings for interested stakeholders.
- *Structure of the NCP:*
 - A more independently positioned NCP, with independent members who must be recognisable for each of the various stakeholder groups;
 - the official decree establishing the NCP must include a clear description of tasks and the *possibility* for the NCP to consult with the government – i.e. the ministries concerned – regarding the official interpretation of the Guidelines when handling an issue that has been raised;
 - the authority to issue statements independently.

The Commentaries in the Guidelines set four core criteria for the functional equivalence of all NCPs: visibility, accessibility, transparency and accountability. The efficient and timely handling and settlement of issues is considered part of accessibility. The criteria apply to the two main tasks of an NCP, namely providing information about/promoting the OECD Guidelines and handling the issues that are raised.

OECD Watch's Model NCP

These recommendations were broadly in line with the Model NCP document that was published later by OECD Watch in September 2007 (see Annex 3).

The Model NCP document includes the following proposals:

- An NCP should be independent, well informed and authoritative, possibly based on an interdepartmental, a tripartite or an independent model, for example.
- All parties should have confidence in the NCP and the NCP should have sufficient financial resources and training to carry out its tasks properly.
- The Model NCP should be involved in a range of promotional activities and training, supplemented by other government initiatives such as: publishing a booklet on the Guidelines and the NCP procedure; maintaining an informative website; drawing up and implementing a communication strategy; training people inside and outside the government regarding the content and meaning of the Guidelines; organising

stakeholder meetings, certainly in the run-up to the annual NCP meeting in Paris; and promotion of the Guidelines by embassies and during trade missions; the Model NCP should take on a more proactive role in checking compliance with the OECD Guidelines by companies that receive government subsidies for their activities. The process of handling issues, such as the statement of admissibility, the local investigation of the facts and the mediation phase should be completed within 12 months.

- The investment nexus should be interpreted broadly.
- The content of the specific instance procedure can be considered confidential information, but the bare procedural steps cannot.

In short, OECD Watch recommends that the Model NCP should consistently work through the procedure if an issue is raised, should treat and inform the parties equally and should deliver a substantiated final statement at the end of the procedure.

3. The new Dutch NCP after July 2007

The decree establishing the NCP

On 16 February 2007, the then Minister for Foreign Trade signed the decree establishing the updated NCP for a three-year term ending on 1 April 2010. The decree confirmed once again the two tasks of the NCP, specified how they should be implemented and named the people and departments that would be involved in implementing the NCP's tasks and at what times. The decree also stated that the NCP would establish its own, more detailed procedural guidance and would send an evaluation report to the Minister at the end of the aforementioned three-year period. See Annex 4 for the full text of the decree.

Composition of the new NCP

The decree establishing the NCP states that the NCP must be organised as a committee of four independent members, one of whom is the chairman. The members are appointed based on their knowledge and capacities acquired in one of the groups that have an interest in the work of the NCP. However, the NCP members do not represent these interest groups in their capacity as NCP members.

The current members are the chairman, Mr Frans Evers, who was a high ranking civil servant in environmental protection and real estate management and a CEO of a large environmental NGO, and three members, namely Professor Joske Bunders, who specialises in sustainability and innovation, Mr Herman Mulder, former head of group risk management of ABN AMRO bank and internationally known expert in CSR, and finally Mr Lodewijk de Waal, former chairman of FNV, the Netherlands' largest trade union.²

NCP membership is a part-time ancillary position. The members do not officially become government employees; they are paid on an hourly basis.

The independent members are supported by four advisory members who are officials from the director level of the Ministry of Economic affairs, the Ministry of Foreign Affairs, the Ministry of Housing, Spatial Planning and the Environment and the Ministry of Social Affairs and Employment. The independent NCP members can call on the specific knowledge of these officials in their status as members, especially when handling issues that have been raised. If a specific instance concerns an alleged breach of employment rights, for example, the Ministry of Social Affairs and Employment will be more closely involved in the handling of the issue and the formation of a judgment.

The four independent NCP members have a secretariat consisting of three people at their disposal. The secretariat's main office is at the Ministry of Economic Affairs, which provides the NCP with two full-time-equivalent policy officers. Economic Affairs has also appointed a senior communications officer to work at the Dutch knowledge centre for corporate social responsibility, which is known as CSR Netherlands. As an independent, government-financed organisation, CSR Netherlands focuses on the implementation of CSR in practice by spreading best practices and organising sector-specific information campaigns.

On 4 July 2007, the Minister for Foreign Trade published the names of the people appointed as members of the NCP in the Government Gazette.³ On 24 July of that year, the NCP held its first meeting with its new, independent members, chaired by Mr Evers.

² The NCP members' CVs can be found on the NCP website. Annex 5 provides for the weblink.

³ Government Gazette, 11 July 2007, no. 131, p.10.

Independent members	F.W.R. Evers (Chairman) H. Mulder L.J. de Waal Prof. J.F.G. Bunders
Officials who are NCP members (advice)	R.E. van Hell (Economic Affairs) H. von Mijenfeldt (Housing, Spatial Planning and the Environment) W.H. Bel (Social Affairs) R.J. Scheer (Foreign Affairs)
Secretariat & communications	J. van Wijngaarden T.D. van Hoolwerff M. van Yperen (CSR Netherlands)

Box: Composition of the Dutch NCP since 2007

The Dutch NCP in practice

Since 2000, the Dutch NCP has handled a total of nine specific instances itself and has been an assistant NCP on 14 other cases (see the overview in Annex X). The largest number of these complaints (19) alleged non-compliance with Chapter 4 Employment and Industrial Relations, which was followed by alleged breaches of Chapter 2 General Policies (5 cases). A small number of issues concerned breaches of the chapters on Environment (Chapter V), Disclosure (Chapter III) and Combating Bribery (Chapter VI); this information is included in the overview and the numbers are also in line with the numbers previously stated at the beginning of this document.

Out of the nine issues that the NCP itself has handled or is currently handling – at the time of writing there are two cases pending – a total of three have been settled with a joint agreement and a final statement; in three other cases the complaints were withdrawn following an agreement that was reached without the NCP being involved. The required investment nexus was lacking in a number of cases and the NCP was therefore unable to handle the cases concerned. Sometimes the NCP issued a number of recommendations to the company or sector in question, such as in the case of the issue concerning Chemie Pharmacie Holland BV and the issue raised against the tourism industry regarding travel to Burma.

The extent of cooperation with other NCPs differed from case to case as regards issues that were to be handled jointly. The decisive factors in such cases include the relationship between the (sometimes Dutch) parent company and the local company, the physical distance between

the Netherlands and the country where the circumstances underlying the issue occur, and the need for assistance experienced by the primary NCP handling the issue. The Dutch NCP does not deviate in this regard from the provisions of the OECD Guidelines in respect of the primary authority of the local NCP to handle an issue, but it does actively seek involvement therein, especially vis-à-vis the involved parent company.

The NCP has made every effort to be more transparent in its activities since it started work in its current form. The website has been entirely updated, for example, and a working method has been published on the website for handling specific instances that are raised (see Annex 6 for details of the working method). In house, a more extensive working method has been established to determine who has what task and responsibility at what time. The aim of this working method is to be able to offer a homogeneous complaints procedure and to have a clear distribution of tasks in house at all times.

Communication and stakeholder dialogue

Specifically for the NCP's promotional task, a communication advisor has been appointed at the national CSR knowledge centre "MVO Nederland" (CSR Netherlands).

First activities focused on the development of a communication strategy, including the website, and a 'stakeholder tour' to introduce the new NCP and to explore cooperation on the outreach of the NCP and the Guidelines. In total 75 stakeholders were visited.

The NCP also works closely with the [Agency for International Business and Cooperation](#) (EVD) and the [Chambers of Commerce](#) in the areas of public relations and communications.

The communication strategy is based on the following concepts and principles:

- The OECD guidelines as CSR starting point for international enterprise and as basic expectation of the Dutch government towards corporate conduct in international business
- Emphasis both on small and medium-sized enterprises (SMEs) and large companies
- Communication via intermediary organizations for SMEs (sectors, Chambers of Commerce, EVD, financiers, embassies)
- Simultaneous raising of public awareness and explaining of practical application
- Inspiration, innovation and integration: concrete tools, practical examples and best practices

- Generic approach and sector-specific approach (e.g. textile industry, metal, chemical, ICT, flowers, agro-food, tourism);
- Development of website, flyers, factsheets, presentations, stakeholder meetings;
- Media approach focused on sector magazines and business magazines;
- Integration of the OECD guidelines in strategic policies such as:
 - The declaration on International CSR of the Dutch Social Economic Council (SER);
 - The export credit insurance policy of the Dutch government;
 - Trade missions;
 - The mission statement and practice of the [Agency for International Business and Cooperation](#) (EVD);
 - Dutch Sustainable Trade Initiative (IDH);
 - The [Chambers of Commerce](#); and
 - The Dutch cabinet vision on CSR (2007-2011).

Enterprises, sector associations, employer organisations, public information services, trade unions, civil society organisations and degree programmes can call on the NCP members or the communications manager to act as speaker or process consultant for training, workshops, forums, seminars, conferences, guest lectures and other meetings.

For the emerging markets: Brazil, China, India, Indonesia, Russia, South Africa, Ukraine, Morocco, Vietnam, Turkey and Romania, the NCP provided (potential) entrepreneurs with country specific information on the OECD Guidelines and the CSR challenges that may occur when trying to implement the Guidelines in these countries.

Regular stakeholder meetings

To enhance its effectiveness, the NCP seeks to organise two stakeholder meetings per year, to be attended by individual companies, business organisations, trade unions, OECD Watch and other NGOs, government agencies and consultants. Next to the regular consultation of the advisory members representing the other involved government departments, these public stakeholder meetings form an important part of the NCP's governance structure. Generally, these meetings consist of an update on the NCP's activities, including the handling of specific

instances⁴, and a thematic discussion, such as on the variety and coherence between international CSR codes. Through these meetings the NCP tries to create a common basis for its fulfilment of its promotional and mediatory tasks, or more broadly, to create a multi stakeholder dialogue on corporate social responsibility. The stimulation of such dialogue is an important policy goal of the Dutch government.

For more information please see the NCP procedural guidance, the 2009 annual report and the website of the NCP, in Dutch (www.oesorichtlijnen.nl) and in English (www.oecdguidelines.nl).

Annexes:

1. Overview of NL NCP cases until 2007*
2. Overview of NL NCP cases post-2007*
3. OECD Watch Model NCP (available at http://oecdwatch.org/publications-en/Publication_2223)
4. 2007 Decree Establishing the NCP (available at the <http://www.oecdguidelines.nl/ncp/organisation/>)
5. CVs of the NCP members (please click on the names at the <http://www.oecdguidelines.nl/ncp/organisation/>)
6. NCP procedural guidance (available at the <http://www.oecdguidelines.nl/ncp/filing-complaints/>)
7. Annual Report 2009 (available at the <http://www.oecdguidelines.nl/nieuws/annual-report-2009/>)

*These annexes can be found on the digital working space of the NCP-website.

⁴ Updates on specific instances only comprise of the procedural steps that have been taken and do not disclose the merits of a procedure.