



The Specific Instance Procedure of the the Netherlands’ National Contact Point for Responsible Business Conduct (NCP)

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General

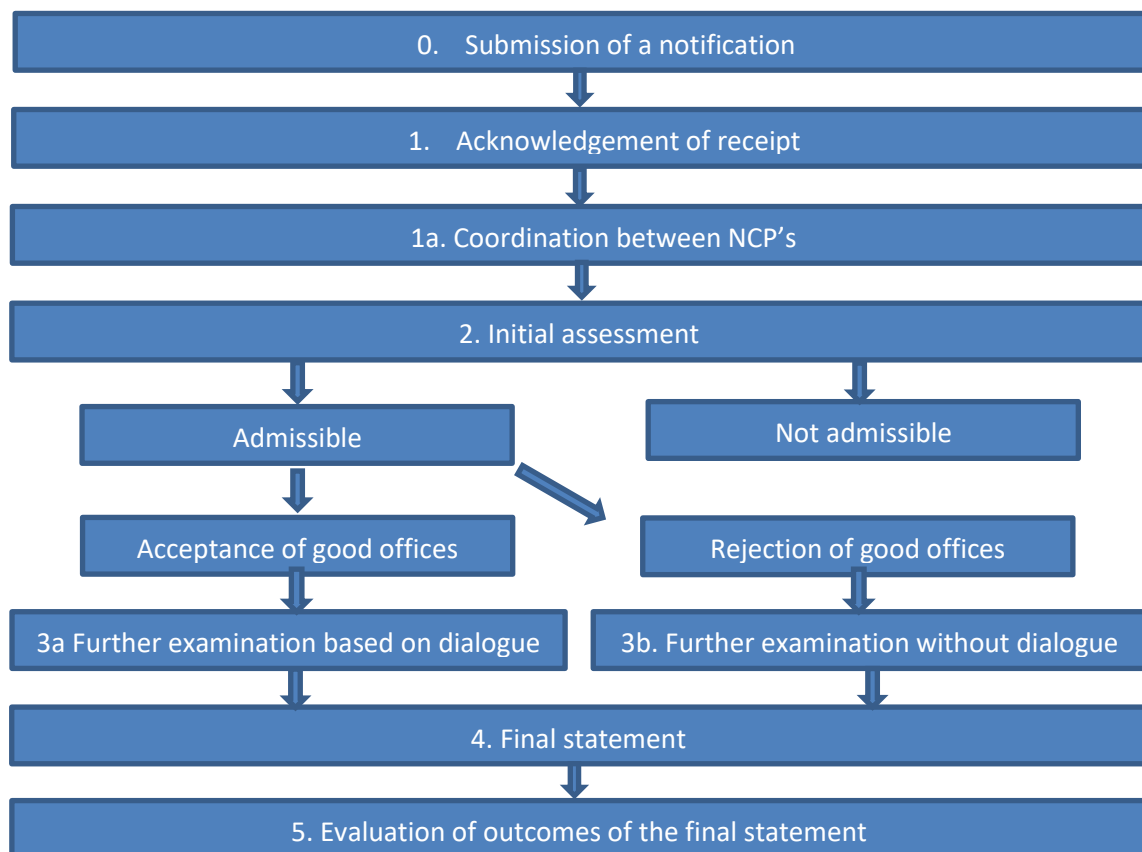
All NCPs, serving as a non-judicial grievance mechanism, contribute to the resolution of issues that arise relating to the implementation of the Guidelines in specific instances upon the request of one or more stakeholders or stakeholder groups (below: “submission”). In doing so, all NCPs are expected to act in a manner that is visible, accessible, transparent, accountable, impartial and equitable, predictable and compatible with the Guidelines.

Every specific instance of alleged non-observance of the Guidelines that is reported to an NCP follows, in principle, the same procedure. This procedure is outlined in the [Implementation Procedures of the OECD Guidelines for MNEs on RBC \(Procedures\), Part II of the OECD Guidelines for Multinational Enterprises for Responsible Business Conduct](#). However, each NCP functions in a different context and may adapt its procedure accordingly.

This document describes the procedure applied by the Dutch NCP upon receipt of a submission. This procedure is based on and coherent with the aforementioned Implementation Procedures. Concerning its commitment to impartiality the Dutch NCP has drafted a separate [document](#). The three documents complement each other, meaning that the combination of these documents provides the complete overview of the Specific Instance procedure before the Dutch NCP.

NCPs need to strike a balance in specific instance procedure between transparency and confidentiality. Accordingly, the NCP strives for optimal transparency regarding its procedural steps, but will, in principle, treat other aspects of the procedure as confidential. The NCP attaches importance in particular to protection of the parties and of sensitive information. See “Procedural arrangements to facilitate the process” for more information. In addition to this, any personal data provided will be handled in accordance with the General Data Protection Regulation (GDPR), which lays down the main rules governing the treatment of personal data.

Steps in the procedure



0. Submission of a specific instance

Notifiers can submit specific instances using the [contact form on the NCP website](#).

1. Acknowledgement of receipt

After receiving a submission, the NCP sends an acknowledgement of receipt to the notifier within seven working days, informs the enterprise concerned about the submission, and forwards a copy of

the submission to the enterprise. A description of the procedure is sent to the notifier and the enterprise.

1a. Coordination between NCPs, if applicable

As the Guidelines are addressed by Adherents to enterprises operating “in or from” their territory, NCPs may receive specific instances regarding issues taking place in their country or alternatively regarding issues concerning enterprises established in their country. NCPs may also receive specific instances regarding operations by multiple enterprises, some of which may not be established in their country. 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 NCP will keep parties informed on this process.

2. Initial assessment

The NCP conducts an initial assessment of the submission to determine whether it is admissible, i.e. whether it warrants further examination. This initial assessment is limited to an examination on the basis of the admissibility criteria described below. At the initial assessment stage of the procedure, the NCP does not comment on whether the information provided by the parties is correct or whether the company has observed the Guidelines.

In the initial assessment, the NCP takes into account the following elements, laid down by the OECD in its Commentary on the Implementation Procedures of the [OECD Guidelines for Multinational Enterprises on RBC](#), specifically in paragraph 33:

- The identity of the person or organisation that submitted the specific instance and its interest in the matter. A party can have a legitimate interest if, for example, it is directly impacted by the business activities of the enterprise. A third party representing the party that is directly impacted may also have an interest. Organisations whose objectives are related to the problem may likewise have an interest;
- Whether the issue is material (i.e. relevant to the implementation of the Guidelines) and substantiated, (i.e. supported by sufficient and credible information);
- Whether the enterprise is covered by the Guidelines;
- Whether there seems to be a link between the enterprise’s activities and the issue raised in the specific instance;
- The extent to which applicable law and/or parallel proceedings limit the NCP’s ability to contribute to the resolution of the issue and/or the implementation of the Guidelines (see paragraph 35 of the Procedures);
- Whether the examination of the issue would contribute to the purposes and effectiveness of the Guidelines.

The NCP takes as its point of departure the principle that both sides to the specific instance must be heard. The NCP conducts separate, confidential discussions with each party concerning the submission and accompanying considerations, unless the NCP has, on the basis of the criteria in the procedural guidance, already come to the conclusion that the submission is inadmissible and for that reason has decided not to pursue it. The NCP can also decide to declare the submission inadmissible after the discussions with the parties.

After this initial assessment, the NCP informs the parties concerned in writing of its provisional conclusions and the grounds on which they are based.

If the NCP declares a submission admissible it will, in principle, publish the initial assessment. If it decides against publication, it will inform the parties of the reasons for its decision not to publish. In the event that a submission is declared inadmissible, publication is mandatory.

If a submission is declared admissible, the NCP will offer its 'good offices'. This means that it will offer to serve as a mediator to facilitate a dialogue between the parties, with a view to seeking an agreed solution. If the submission is declared inadmissible, the NCP will not offer its good offices and the procedure will end after the initial assessment is published.

The NCP bears full responsibility for its initial assessment of admissibility. If the NCP decides to publish the initial assessment, the parties concerned will have two weeks to respond to the draft version. It is up to the NCP to determine whether there are grounds for amending the text on the basis of the parties' observations. The text will subsequently be finalized and published on the NCP's website: www.oecdguidelines.nl.

3. Further examination

If in its initial assessment the NCP has determined that the case is admissible, the subsequent course of action will partly depend on whether its good offices are accepted by the parties. If they are accepted, a further examination based on a dialogue that is to be initiated between the parties will follow (3a). If its good offices are rejected or the dialogue fails, further examination without dialogue will follow (3b). In either case, the NCP will draw up a final statement (4).

3a. Further examination based on dialogue

During this phase, the NCP will serve as a mediator, to facilitate a dialogue between the parties, with a view to seeking an agreed solution that is compatible with the Guidelines. At the outset of the dialogue, the NCP will encourage agreements between the parties concerned about the subsequent steps in the procedure, for example regarding the desired goal, scope, timetable, dialogue participants, confidentiality and public comments. The NCP will actively inform the dialogue with its expertise on the Guidelines. The Dutch NCP prefers to mediate the dialogue itself. However, in specific circumstances the NCP may decide, in consultation with the parties concerned, to appoint an external mediator and/or engage external expertise if it deems this necessary during the course of the good offices phase. The procedure for engaging an external mediator can be found [here](#).

This phase ends when the parties arrive at an agreed solution, when one of the parties decides to withdraw from the dialogue, or when the NCP concludes that it will not be possible to arrive at an agreed solution within a reasonable period of time. In case of an agreed solution, the NCP will proceed to step 4. In case of a failure of the dialogue, the NCP will proceed to step 3b.

3b. Further examination following rejection of good offices or failure of dialogue

If the NCP's good offices are rejected or if the dialogue fails, the NCP will, in principle, independently undertake further examination to determine whether the enterprise concerned failed to observe the Guidelines on the grounds put forward in the submission. This may entail asking the parties to provide additional information, consulting external parties or independent experts, carrying out or commissioning research on location, and/or requesting information from other parties involved in the submission. The outcome of the NCP's examination is shared with the parties by means of the draft final statement. If the NCP decides not to examine the case further, it will inform the parties and explain why.

4. Conclusion of the proceedings / Final statement

The NCP concludes the procedure by drawing up and publishing a final statement. Confidential information made available during mediation is not disclosed in the final statement. If the parties have reached an agreement, the NCP refers to it in the final statement. The text of the agreement, or a summary of it, is appended to the final statement, unless one of the parties objects.

If the parties have rejected the good offices of the NCP or have not reached agreement on a resolution of the issues concerned, the NCP describes the process in the final statement. If the specific instance has been examined further by the NCP, the outcome of this examination will be included.

In the final statement, the NCP offers conclusions on the observance of the Guidelines. The NCP may mention information on good faith engagement, or absence thereof, of the parties with the procedure. It may also include in the final statement a determination on the extent to which the enterprise has adhered to the Guidelines with respect to the issues raised in the submission.

In keeping with the future-oriented nature of the NCP procedure, positive conduct may be explicitly mentioned in the final statement. The final statement may also contain the NCP's recommendations concerning future observance of the Guidelines.

The NCP bears full responsibility for its final statement. The parties will have two weeks to respond to the draft version of the final statement before it is published. It is up to the NCP to determine whether there are grounds for amending the text on the basis of the parties' observations. The text will subsequently be finalized and published on the NCP's website: www.oecdguidelines.nl.

5. Follow up on the final statement

As a rule, one year after issuing its final statement, the NCP publishes an abridged evaluation of the implementation of the agreement reached between the parties and/or the NCP's recommendations on the NCP website. To this end, the NCP asks the parties involved to share information about any progress made before drawing up its draft evaluation. After the assessment of the information received, the NCP informs the parties concerned in writing of its provisional conclusions and the grounds on which they are based.

The NCP bears full responsibility for its evaluation. If the NCP decides to publish the follow-up, the parties will have two weeks to respond to the draft version of the evaluation before it is published. It is up to the NCP to determine whether there are grounds for amending the text on the basis of the parties' observations. The text will subsequently be finalized and published on the NCP's website: www.oecdguidelines.nl.

Indicative timeframes

| Stage | Step | Indicative timeframe |
|-------|--|----------------------|
| 0 | Receipt of submission | |
| 1 | Acknowledgement of receipt of submission | Seven working days |

| Stage | Step | Indicative timeframe |
|-------|---|---|
| 1a | Coordination between NCPs, if applicable | Two months (timeframe recommended by OECD) |
| 2 | Conclusion of initial assessment | Three months after receipt of submission, or five months in the case of coordination between NCPs (timeframe recommended by OECD) |
| 3 | Conclusion of assistance to the parties / Further examination | Six months after conclusion of the initial assessment (timeframe recommended by OECD) |
| 4 | Conclusion of procedure, publication of final statement | Three months after conclusion of assistance to the parties (timeframe recommended by OECD) |
| 5 | Follow up on final statement | One year after publication of the final statement |

Unforeseen circumstances may necessitate extensions of the recommended timeframes. In such cases, the NCP will inform the parties in a timely manner.

Procedural arrangements to facilitate the process

It is important for the parties and the NCP to clarify a number of procedural arrangements in order to ensure the specific instance procedure goes smoothly.

The NCP expects of the parties that they treat each other with respect and make an effort to reach a Guidelines-compatible outcome. Parties are expected to give serious consideration to any offer of good offices made by the NCP. Parties should furthermore at all times refrain from mischaracterising the process and/or retaliating against the other party involved.

The NCP attaches great importance to protecting the parties and any sensitive information that may be shared during the procedure. Upon request, the identity of persons involved in the procedure may be kept secret for safety reasons. Should the NCP become aware of the threat or existence of reprisals directed at a person involved in a specific instance, or at the NCP or one of its members, it will within its capacities take steps, as appropriate, with the aim of ensuring that the person(s) or entity at risk has adequate protection and that the proceedings can continue in a safe, accessible, equitable and impartial manner.

In principle, the NCP will not disclose any information provided in the context of the submission and the subsequent procedure and expects from the parties that they also refrain from doing so. If the parties involved fail to agree on a resolution after conclusion of the procedure, they are free to discuss and comment on this. However, the information provided and views expressed by another party during the procedure must remain confidential, unless the other party agrees to their disclosure or continued confidentiality would contravene provisions of national law.

The parties should furthermore be aware of the influence of any public statements or public acts in relation to the substance of the procedure on the eventual success of the procedure, even if such statements or acts do not violate the NCP's expectation in relation to confidentiality. In particular,

seeking publicity with respect to a complaint while a dialogue is taking place can have a negative impact on the dialogue process and on efforts to arrive at an agreed resolution. The NCP therefore advises the parties to refrain from any publicity regarding the submission.

Exceptions to the principle of confidentiality are:

- The aforementioned statements (initial assessment, final statement, follow-up on the final statement) by the NCP. When publishing these statements the NCP will take appropriate measures to protect sensitive information, as stated above.
- Factual information on the existence of the specific instance and the stage of the process, unless agreed otherwise.
- If the party that provided the information has consented to public disclosure or has explicitly designated the information as non-confidential.
- Information that is already legally accessible to the public or has been legally obtained outside the bounds of the NCP procedure.
- Information that the parties themselves provided prior to the dialogue phase, such as the content of the submission and their own statements.

With respect to sharing information between parties and in the interest of an equitable process, the NCP will in principle make parties aware of all the relevant facts and arguments brought forward to the NCP by the other party during the proceedings (in particular during the good offices phase). If a party makes a reasonable request not to share a submission in full with the other party, notably to protect sensitive information or the interests of other stakeholders, the NCP should work with the party submitting that information to redact any sensitive content in order to facilitate sharing. The NCP will as much as possible avoid basing fundamental aspects of its decisions on information that is not available to both parties.

The NCP points out to all parties that it is a non-judicial grievance mechanism and that a procedure may become overly juridified if a party engages an external lawyer to represent it in the procedure. The NCP therefore advises against this.

Useful information and background documents

The NCP would like to inform parties of the following procedures:

1. In the event that a party is of the opinion that the NCP is not fulfilling its responsibilities with regard to the handling of specific instances, there is the possibility for an Adherent, an advisory body or OECD Watch to file a substantiated submission to the Investment Committee, see the Guidelines p. 61, II.2.b.
2. Adherents, advisory bodies and OECD Watch can request the Investment Committee for a clarification of the interpretation of the Guidelines, see the Guidelines. P. 61, II.2.c.

The NCP recommends to check the [OECD website with all relevant information on Responsible Business Conduct](#), *i.a.* the official [OECD Guidelines for Multinational Enterprises on Responsible Business Conduct](#), available in multiple languages, and the [Due diligence guidance and sectoral guidances](#).

The Hague, May 2024