



National Contact Point

OECD Guidelines for Multinational Enterprises

NCP Establishment Order 2014

Order of the Minister for Foreign Trade and Development Cooperation of 1 July 2014, no. MinBuZa.2014.303289, establishing the National Contact Point for the OECD Guidelines for Multinational Enterprises

1st July 2014

ArgentinaAustraliaAustriaBelgiumBrazilCanadaChileColombiaCzechRepublicDenmarkEgyptEstoniaFinlandFranceGermanyGreeceHungaryIcelandIrelandIsraelItalyJapan

The Minister for Foreign Trade and Development Cooperation, acting in accordance with the views of the Minister of Economic Affairs, the Minister of Social Affairs and Employment and the Minister for the Environment; Orders as follows:

Article 1

The following definitions are used in this Order:

- a. *the Minister*: the Minister for Foreign Trade and Development Cooperation;
- b. *the NCP*: the National Contact Point (NCP) for the OECD Guidelines for Multinational Enterprises;
- c. *the other ministers concerned*: the Minister of Economic Affairs, the Minister of Social Affairs and Employment and the Minister for the Environment.

Article 2

1. There is a National Contact Point (NCP) for the OECD Guidelines for Multinational Enterprises.
2. The tasks of the NCP are:
 - a. to promote and interpret the content and meaning of the OECD Guidelines for Multinational Enterprises, so as to encourage enterprises to observe them;
 - b. to deal with notifications of alleged instances of non-observance of the Guidelines (or parts thereof) and to facilitate a dialogue in order to resolve alleged instances of non-observance of the Guidelines (or parts thereof).

Article 3

1. The NCP consists of a chairperson and a maximum of four other members.
2. The members are appointed by the Minister for a maximum period of four years and may be reappointed. The NCP proposes a chairperson from among its own members.
3. The Minister must ensure that vacancies at the NCP are published.
4. After consultation with the other ministers concerned and with representatives of enterprises and civil society organisations, the members are appointed on the basis of their expertise in the area of the OECD Guidelines for Multinational Enterprises, their mediation skills and their knowledge and experience of society.
5. The members must offer their knowledge and experience in a personal capacity and must not act as representatives of any specific interest group.
6. The chairperson and the other members may be suspended and dismissed by the Minister, after consultation with the other ministers concerned, on the grounds of unsuitability or incompetence or other compelling reasons concerning the person in question. The chairperson and the other members may also request termination of their own appointment.
7. The remuneration of the chairperson and members of the NCP must be laid down in a separate remuneration order.

Article 4

1. The NCP also consists of at least four advisory members.
2. The advisory members represent in any event the Minister and the other ministers concerned. Advisory members who represent one of the other ministers concerned are appointed by the Minister, acting on a proposal by the other minister concerned.
3. The NCP must regularly provide representatives of the Dutch interested parties, i.e. employers, employees and civil society, with the opportunity to give it advice.

Article 5

The Minister must provide the secretariat of the NCP.

Article 6

1. The NCP must establish its own working methods, subject to the provisions in the OECD Guidelines for Multinational Enterprises concerning those methods. The NCP must ensure that its working methods are published.
2. The working methods set out how notifications are handled by the NCP and include in any event indications of the time limits for processing them, as well as a description of how the various parts of an NCP procedure are separated, how information is obtained and how such information is dealt with.
3. If it is deemed necessary for the proper processing of a notification, the NCP may make use of external mediators, to be nominated by itself.
4. Records concerning the activities of the NCP are to be managed in accordance with the procedures in place at the Ministry of Foreign Affairs. Once the NCP's activities are completed, the records are to be kept in the archive of that ministry.

Article 7

1. Unless effective application of the Guidelines would be best served by confidentiality, the NCP must draw up a statement after a notification has been dealt with and send it to the Minister.
2. Within one month of its receipt, the Minister must add his or her findings to the statement, after consultation with the minister or ministers concerned, and inform the NCP of those findings.
3. The NCP must send the statement and the Minister's findings to the parties involved in the notification and publish them.

Article 8

1. Every year the NCP must draw up a work plan and a budget for the following year and submit them no later than 1 October to the Minister for approval.
2. The NCP must draw up an annual report of its activities, findings and results in accordance with OECD instructions. The NCP must send this report to the Minister, who will present it to the OECD.
3. At the Minister's request, the chairperson must report orally on the NCP's activities.

Article 9

Every four years the Minister must send a report to the House of Representatives of the States General so that the NCP's functioning may be assessed.

Article 10

The NCP Establishment Order 2011 is revoked.

Article 11

This Order enters into force on the day after the date of publication of the Government Gazette in which it appears.

Article 12

This Order may be cited as the NCP Establishment Order 2014.

This Order and the explanatory notes will be published in the Government Gazette.

*The Minister for Foreign Trade and Development Cooperation,
E.M.J. Ploumen*

EXPLANATORY NOTES

General

The Guidelines for Multinational Enterprises of the Organisation for Economic Co-operation and Development ('the OECD Guidelines' or 'the Guidelines') set out what the authorities of the countries which endorse those Guidelines expect in terms of conduct from enterprises that operate internationally. The OECD Guidelines contain recommendations for responsible business conduct, covering areas such as information disclosure, employment, environment, corruption, consumer interests, science and technology, competition and taxation.

To facilitate the implementation of the OECD Guidelines, each country that has endorsed the Guidelines has to establish a National Contact Point for the OECD Guidelines for Multinational Enterprises (NCP). Each country is free to decide how to organise their own NCP, within the parameters set out in the OECD Guidelines. The NCPs work to improve the effectiveness of the OECD Guidelines. The core criteria for functional equivalence in the activities of the NCPs are visibility, accessibility, transparency and accountability.

The Dutch NCP was first established in 2000. At the time it consisted of an interministerial civil-service committee. After a thorough policy evaluation, the decision was made in December 2006 to reorganise the NCP. It became more independent, with a chairperson from outside the civil service and a maximum of four non-civil-service members. Measures were also taken to improve the NCP's performance.

At the request of the House of Representatives, a study was carried out in 2013 to establish how the functioning of the Dutch NCP could be further enhanced. The way several other NCPs (in Denmark, Norway and the United Kingdom) were organised was studied and discussions were held with various stakeholders and the NCP itself. In order to create a sound, future-proof NCP Establishment Order 2014 that ties in with international developments, as well as with the Netherlands' ambitious agenda in the area of international corporate social responsibility, the non-civil-service NCP members, the advisory civil-service NCP members and representatives of Dutch stakeholders were all involved in the drafting of this new Establishment Order. The new Order and the accompanying explanatory notes provide for the following.

- The possibility of a more explicit role for the NCP in interpreting the OECD Guidelines, for instance for the purpose of CSR agreements, and the option for the government to ask the NCP to conduct sector-wide assessments.
- Room for the NCP to facilitate a dialogue on the Guidelines, even if that dialogue is not prompted by a formal notification of an alleged instance of non-observance of the OECD Guidelines.
- Formalisation of the consultations with stakeholders.
- The possibility for the NCP to obtain advice on a regular basis from other line ministries, in addition to the current role of the advisory civil-service members from the Ministries of Foreign Affairs, Economic Affairs, Social Affairs & Employment, and Infrastructure & the Environment.

Establishment of the NCP and its tasks

The NCP was established to meet an international obligation. As set out in the OECD Guidelines, the NCP's tasks are to promote and interpret the Guidelines and to deal with notifications it receives of alleged instances of non-observance of the Guidelines or parts thereof.

The NCP actively promotes the OECD Guidelines to encourage Dutch enterprises to observe them. This includes making the purpose and procedures of the NCP known among businesses and other stakeholders. The NCP can answer enquiries about compliance with the OECD Guidelines and serves as a knowledge base for the interpretation of the Guidelines.

If done with parties' – voluntary – cooperation and on the basis of public sources, the NCP can conduct and initiate its own assessments, within the context of its tasks. The OECD expects NCPs to be proactive. NCPs are encouraged to participate in broadly supported initiatives to identify and respond to risks to certain products, regions, sectors or industries. If serious abuses continue and no such initiatives are taken, the government can take the initiative and ask the NCP to conduct a sector-wide assessment. This concerns serious circumstances in which the Netherlands is involved (through Dutch enterprises or enterprises in their supply chain). The assessment, which should also be conducted with the voluntary cooperation of parties and on the basis of public sources, serves to clarify and interpret the Guidelines for a particular situation or sector and is intended to provide recommendations to prevent abuses in the future. It also serves to support a social dialogue. Such sector-wide assessments are therefore a particularly appropriate task for the NCP. To help maintain a level playing field, the results of the assessments are shared with international partners. Also in line with the OECD's proactive agenda is the role the NCP can play in drawing up ICSR agreements. Parties working on such an agreement can call on the NCP for assistance in interpreting the

arrangements to be made in the light of the Guidelines. In handling notifications of alleged instances of non-observance of the OECD Guidelines, the NCP contributes to settling disputes that arise from the application of the Guidelines. The NCP serves as a platform for consultation and helps businesses, employees' organisations and other stakeholders reach common solutions.

Composition of the NCP

The NCP consists of non-civil-service members and advisory civil-service members. There are a maximum of five non-civil-service members. Decision-making, for instance on the performance of tasks and the organisation of working methods can only be done by the non-civil-service members, who nominate a chairperson from among themselves. The chairperson and the members receive a fixed remuneration, which is laid down in a separate remuneration order and depends on the scope of the expected activities. They also receive an additional travel allowance in accordance with the Domestic Travel Decree and the Foreign Travel Decree.

The NCP also has advisory civil-service members, generally officials from the Ministries of Foreign Affairs, Economic Affairs, Social Affairs & Employment, and Infrastructure & the Environment. These members advise the non-civil-service members in the performance of their tasks on matters like the interpretation and promotion of the Guidelines. If the non-civil-service and/or advisory members deem it desirable, representatives from other ministries may also be asked for advice.

In the interests of transparency, the Establishment Order contains various provisions on the appointment and dismissal of non-civil-service members, including the applicable criteria. Besides expertise in the area of the OECD Guidelines, the non-civil-service members are also required to have mediation skills. The Establishment Order also indicates that members are appointed for a maximum of four years, that they can be reappointed (also for a maximum of four years) and that appointments are always made in consultation with the Minister of Economic Affairs, the Minister of Social Affairs & Employment, and the Minister for the Environment, and that stakeholders must also be consulted.

The NCP regularly consults with representatives of stakeholders, including employers, employees and civil society. They advise the NCP and act as a focus group concerning the interpretation of the OECD Guidelines, the NCP's working methods and other matters arising from the NCP's tasks. These consultations tie in with the recommendation in the OECD Guidelines that NCPs should work with stakeholders. Meaningful consultations with these stakeholders are held at least four times a year.

Article 5 stipulates that the NCP is supported by a secretariat, provided by the Minister. The Minister ensures that there is skilled secretarial support and an appropriate budget for the NCP's activities. The NCP is involved in the appointment and assessment of secretariat staff.

Working methods and procedures

The NCP establishes its own working methods for the performance of its tasks. In doing so it will take the provisions of the OECD Guidelines on Procedural Guidance on Information and Promotion, and on Implementation in Specific Instances, as its starting point.

In order to fulfil its promotional tasks, the NCP is expected to actively provide enterprises, investors, trade associations, employers' and employee's organisations and other relevant civil society organisations with information on the OECD Guidelines and their implementation. The aim in this respect is to encourage Dutch enterprises to observe the Guidelines. The NCP will actively inform the relevant parties of its working methods and procedures.

NCP statements on the interpretation and applications of the OECD Guidelines or parts thereof will be made known to stakeholders and published on the NCP's website (www.oecdguidelines.nl). If the OECD Investment Committee makes agreements on the interpretation of the OECD Guidelines, the NCP is required to follow that interpretation. In the preparatory phase of such agreements, the Dutch representative on the Investment Committee (an official from the Ministry of Foreign Affairs) will consult with the NCP. One of the independent members of the NCP will also be part of the Dutch delegation at the meeting of National Contact Points at the OECD.

For the purpose of its dispute settlement task, the NCP will in any event draft a description of its working methods, including the procedural rules, and make it publicly accessible to stakeholders. The Establishment Order stipulates that the working methods must meet a number of criteria. For instance, they must be organised in such a way that mediation in the event of alleged non-observance of the OECD Guidelines is separate from assessments for the purpose of a final statement. The working methods must also give a clear indication of the time limits for processing notifications. If it is deemed necessary for the proper processing of a notification, the NCP may make use of external mediators, whom it appoints itself.

When handling a notification of alleged non-observance of the OECD Guidelines, the NCP will help the party submitting the notification and the enterprise in question to find a common solution. After the

procedure following the notification, the NCP will draw up a final statement on the observance of the OECD Guidelines and make recommendations if appropriate. The NCP will also publish a final statement if the parties do not find a solution, if a party has been unwilling to cooperate with the procedures or if a notification is withdrawn after the NCP has offered its 'good offices'. Article 7 provides for publication of the NCP's final statements. The article stipulates that the final statement, together with the minister's findings on the statement, must be sent to the parties involved and made public. As final statements can be of interest to, for instance, major institutional investors, they must be actively brought to the attention of stakeholders.

Reporting and evaluation

Every year the NCP must draw up a work plan and a budget for the following year and submit them no later than 1 October to the Directorate-General for Foreign Economic Relations (DGBEB) for approval. This increases the NCP's own responsibility. It also gives a clearer picture of the NCP's expected activities. As stipulated in the OECD Guidelines, all NCPs will meet to share experiences and report to the OECD Investment Committee. For this purpose, the NCP will send an annual report of its activities, findings and results to the Minister, who will present it to the OECD. A report on the NCP's functioning will be sent to the House of Representatives every four years.

*The Minister for Foreign Trade and Development Cooperation,
E.M.J. Ploumen*

The role of National Contact Points (NCPs) is to further the effectiveness of the OECD Guidelines.

The Dutch government has chosen to establish an independent NCP which is responsible for its own procedures and decision making, in accordance with the Procedural Guidelines section of the Guidelines. In line with this, the Netherlands NCP consists of four independent members, supported by four advisory government officials from the most relevant ministries. The NCP Secretariat is hosted by the Ministry of Foreign Affairs. The Minister for Foreign Trade and Development Cooperation is politically responsible for the functioning of the Dutch NCP.

More information on the OECD Guidelines and the NCP can be found on www.oecdguidelines.nl

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