



The procedure for submitting specific instances to the Netherlands' National Contact Point for the OECD Guidelines for Multinational Enterprises (NCP)

Contents

General.....	1
Steps in the procedure.....	2
0. <i>Submission of a notification</i>	2
1. <i>Acknowledgement of receipt</i>	2
2. <i>Initial assessment</i>	2
3. <i>Dialogue and/or further examination</i>	4
4. <i>Conclusion of the procedure / NCP's final statement</i>	4
5. <i>Evaluation of outcomes of the final statement</i>	5
Indicative timeframes	5
Procedural agreements to facilitate the process.....	5
Useful information – background documents	6

General

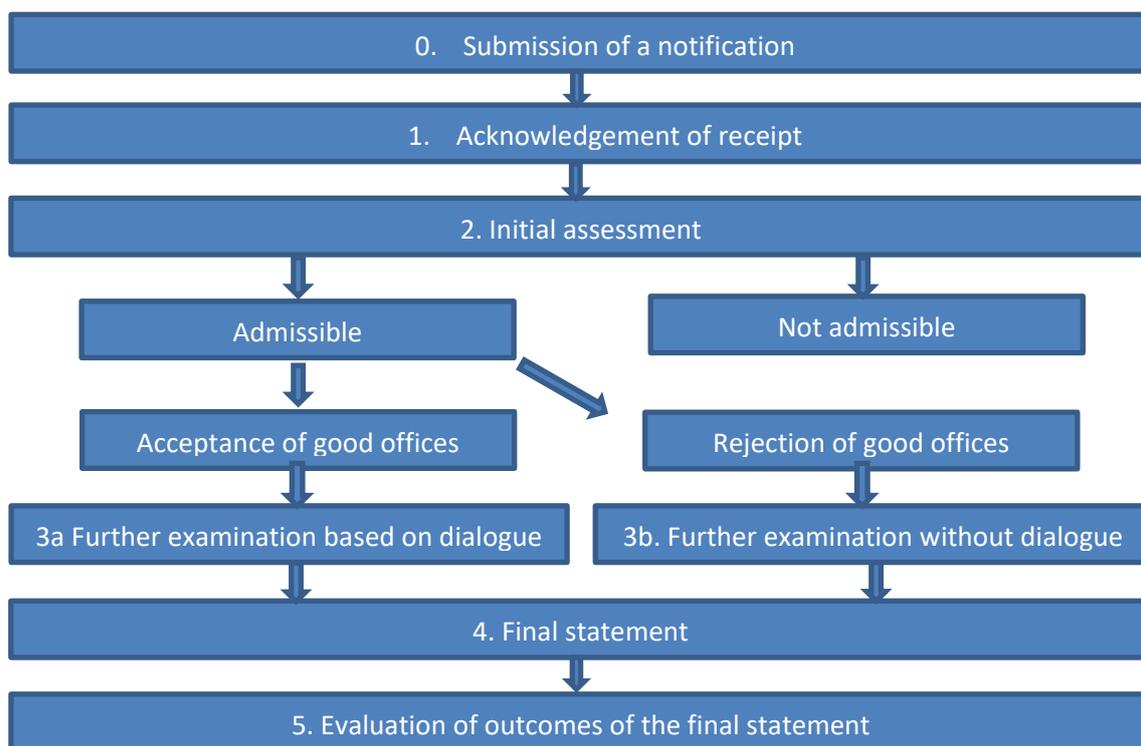
Every specific instance of alleged non-observance of the Guidelines (below: 'notification') that is reported to the NCP is, in principle, handled in the same way. The specific instance procedure consists of a number of steps.

Any personal data provided must be handled in accordance with the General Data Protection Regulation (GDPR), which lays down the main rules governing the treatment of personal data.

Each NCP functions in different circumstances and adapts its procedure accordingly. The Dutch NCP applies the following procedure, which is based on the [procedural guidance for NCPs](#) drafted by the OECD.



Steps in the procedure



0. Submission of a notification

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

1. Acknowledgement of receipt

After receiving a notification, the NCP sends an acknowledgement of receipt to the notifier within seven working days, informs the enterprise concerned about the notification and forwards a copy of the notification to that enterprise. A description of the procedure is also sent to both the notifier and the enterprise.

2. Initial assessment

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



During the initial assessment, the NCP takes into account the following elements, laid down by the OECD in the Commentary on the Implementation Procedures of the [OECD Guidelines for Multinational Enterprises](#), specifically in paragraph 25:

- the identity of the person or organisation that submitted the notification and its interest in the matter (A party can have a legitimate interest if, for example, its business activities are directly impacted. 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 and substantiated, plausible and related to the Guidelines;
- 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 procedures, 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 Guidelines.

In this regard, the NCP also considers the following:

- whether the Dutch NCP is the right entity to handle the notification;
- the identity of the enterprise and whether it is a multinational enterprise within the meaning of the Guidelines.

The NCP applies the principle that both sides must be heard. The NCP conducts separate, confidential discussions with each party concerning the notification and accompanying considerations, unless the NCP has, on the basis of the criteria in the procedural guidance, already come to the conclusion that the notification is inadmissible and for that reason has decided not to pursue it. The NCP can also decide to declare the notification 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 notification 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. In the event that a notification is declared inadmissible, publication is mandatory.

If a notification 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 with a view to seeking an agreed solution. If the notification is declared inadmissible, the NCP will not offer its good offices and the procedure will end after the initial assessment is published.

If the NCP decides to publish the initial assessment, the parties concerned will have two weeks to respond to the draft version. The NCP bears full responsibility for this initial assessment of admissibility. 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 published on the NCP's website: www.oecdguidelines.nl.



3. Dialogue and/or 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 dialogue between the parties will be initiated (3a). If its good offices are rejected or the dialogue fails, further examination will follow (3b).

3a. 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. The NCP will make agreements with the parties concerned about the subsequent steps in the procedure, for example regarding the desired goal, timetable, dialogue participants, confidentiality and public comments. Another option is to appoint an external mediator and/or engage external expertise, in consultation with the parties concerned.

This phase ends when the parties arrive at an agreed solution or when the NCP concludes that it will not be possible to arrive at an agreed solution within a reasonable period of time. In either case, the NCP will draw up a final statement (4).

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

If the NCP's good offices are rejected or the dialogue fails, the NCP will, in principle, undertake further examination to determine whether the enterprise concerned failed to observe the OECD Guidelines on the grounds put forward in the notification. This can 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 notification. The outcome is then shared with the parties by means of the final statement. If the NCP decides not to examine the case further, it will inform the parties and explain why.

4. Conclusion of the procedure / NCP's final statement

The NCP concludes the procedure by making the results publicly available in a final statement. Confidential information made available during mediation is not disclosed in the final statement. If the specific instance is examined further, the outcomes will be included in this document. The parties are involved in drafting the final statement, but the definitive version is the NCP's responsibility and contains its recommendations concerning future observance of the OECD Guidelines.

If the parties have reached an agreement, the NCP will refer to it in the final statement. The text of the agreement, or a summary of it, will be appended to the final statement, unless one of the parties objects. If the parties rejected the good offices of the NCP or did not reach agreement on a resolution, the NCP will provide a characterisation of the process and offer recommendations on observance of the OECD Guidelines, partly on the basis of any further examination.

The NCP can include in the final statement a determination of the extent to which the enterprise has adhered to the OECD Guidelines with respect to the underlying notification. It is not possible to determine that the enterprise adhered fully to the Guidelines. In keeping with the future-oriented nature of the NCP procedure, positive conduct may be explicitly mentioned in the final statement.

The parties concerned will have two weeks to respond to a draft statement. However, the NCP is responsible for the final statement, and it is up to the NCP to decide whether or not the parties' observations warrant any changes. The NCP will then publish its final statement on its website.



5. Evaluation of outcomes of the final statement

As a rule, one year after issuing its final statement the NCP publishes an abridged evaluation of the implementation of the agreements made and/or its recommendations on the NCP website <https://www.oecdguidelines.nl/>.

To this end, the NCP asks the parties involved to share information about any progress made in implementing the agreements reached and/or the NCP's recommendations.

Indicative timeframes

Stage	Step	Indicative timeframe
0	Receipt of notification	
1	Acknowledgement of receipt of notification	Seven working days
2	Conclusion of initial assessment	Three months after receipt of notification (timeframe recommended by OECD)
3	Conclusion of assistance to the parties (dialogue)	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	Evaluation of outcomes of the final statement	One year after publication of the final statement

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

Procedural agreements to facilitate the process

It is important for the parties and the NCP to make a number of procedural agreements in order to ensure the process goes smoothly.

The NCP must be able to rely on the parties to treat each other with respect and make an effort to reach agreement. The NCP attaches great importance to protecting the parties and sensitive company information. Upon request, the identity of persons, including notifiers, can be kept secret for security reasons. Parties must at all times refrain from mischaracterising the process and retaliating against the parties involved.

In principle, neither the parties involved nor the NCP will disclose any information provided in the context of the notification and the subsequent procedure. The parties should be aware of the influence of any public statements or acts on the eventual success of the procedure, even if such statements or acts do not violate the confidentiality of the NCP process. 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 urgently advises the parties to act in good faith during the dialogue phase and refrain from any publicity regarding the notification. Confidentiality should be preserved while the procedures are ongoing. 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.

Exceptions to the principle of confidentiality are:

- The aforementioned statements (initial assessment, final statement, evaluation of outcomes of the final statement) that the NCP publishes. In publishing these statements the NCP will take appropriate measures to protect sensitive information, as stated above. The parties are given an opportunity to respond to draft versions.
- 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 notification and their own statements.

In order to guarantee a transparent process, the parties are encouraged to share all their communications with each other. The NCP will ensure that information it receives from one party is communicated to the other party, unless this is explicitly prohibited by the party that provided the information.

The NCP points out to all parties that its complaint mechanism is extrajudicial and that a procedure is very likely to become overly juridical if a party engages an external lawyer to represent it in the procedure. The NCP therefore advises against this.

Useful information – background documents

[OECD Guidelines for Multinational Enterprises](#) officially drawn up by the OECD and available in multiple languages

[OECD information about Responsible Business Conduct](#)

NCP, 28 May 2021



Netherlands National Contact Point for the OECD Guidelines for Multinational Enterprises
www.oecdguidelines.nl / T +31 70 348 4200 / E ncpoecd@minbuza.nl