

SPECIFIC INSTANCES

RULES OF THE PROCEDURE



NATIONAL CONTACT POINT FOR THE PROMOTION AND IMPLEMENTATION OF GUIDELINES FOR MULTINATIONAL ENTERPRISES OF THE ORGANIZATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT (OECD)

The OECD Guidelines for Multinational Enterprises of the Organization for Economic Co-operation and Development (the Guidelines) are government recommendations addressed to multinational companies.

The aim of the Guidelines is to ensure that multinational companies comply with government policies, strengthen the foundations of mutual trust between companies and the communities in which they operate, contribute to improving the climate for foreign investment and encourage multinational companies to contribute to sustainable development.

The recommendations of the Guidelines are listed in 11 chapters and cover topics such as general policies, disclosure of information, human rights, employment and industrial relations, combating bribery, bribe solicitation and extortion, the environment, and consumer interests, as well as three areas - science and technology, competition and taxation.

The Guidelines are addressed to all the entities within the multinational enterprise (parent companies and/or local entities), and their scope of application covers company activities and activities related to the company through business relationships.

The Guidelines are recommendations jointly addressed by governments to multinational enterprises. They provide principles and standards of good practice consistent with applicable laws and internationally recognised standards. Observance of the Guidelines by enterprises is voluntary and not legally enforceable. Companies decide whether to comply with the Guidelines on a voluntary basis and are not legally obliged to comply with them. Nevertheless, some matters covered by the Guidelines may also be regulated by national law or international commitments.

Obeying domestic laws is the first obligation of enterprises. The Guidelines are not a substitute for nor should they be considered to override domestic law and regulation. While the Guidelines extend beyond the law in many cases, they should not and are not intended to place an enterprise in situations where it faces conflicting requirements. However, in countries where domestic laws and regulations conflict with the principles and standards of the Guidelines, enterprises should seek ways to honour such principles and standards to the fullest extent which does not place them in violation of domestic law.

To further the effectiveness of the Guidelines by undertaking promotional activities, handling enquiries and contributing to the resolution of issues that arise relating to the implementation of the Guidelines in specific instances, adhering countries are obliged to set up National Contact Points.

In order to effectively implement the Guidelines, adhering countries are obliged to establish National Contact Points that will promote the Guidelines and acts as a forum for discussion of all matters relating to the Guidelines.

CROATIAN NATIONAL CONTACT POINT (NCP)

The Republic of Croatia established its National Contact Point on 23 May 2019 by the Government Decision establishing the National Contact Point as a Permanent Mechanism for the Promotion and Implementation of the Guidelines for Multinational Enterprises of the Organization for Economic Co-operation and Development (OECD).

The Croatian National Contact Point (NCP) consists of two bodies: the Secretariat and the External Body.

The Secretariat of the National Contact Point is responsible for coordinating all activities of the National Contact Point, providing administrative support to the work of the External Body, drawing up an annual report on the activities of the National Contact Point to be submitted to the OECD Investment Committee and participating in annual meetings of the OECD Working Group on Responsible Business Conduct.

The NCP Secretariat is made up of:

- one official of the Ministry of Foreign and European Affairs: Vjekoslav Juričić and
- one official of the Ministry of Economy and Sustainable Development: Ana Čulo.

The External Body of the National Contact Point is tasked with assisting parties in resolving issues related to the application of the Guidelines in Specific Instances as well as for other activities regarding promotion and implementation of the Guidelines in coordination with the Secretariat of the National Contact Point.

The NCP External Body consists of one representative from:

- Ministry of Foreign and European Affairs:
- Ministry of Economy and Sustainable Development: Slavko Čolak,
- Ministry of Labour, Pension System, Family and Social Policy: Anita Zirdum,
- Croatian Chamber of Economy: Marija Šćulac Domac,
- Croatian Employers' Association: Milka Kosanović,
- Croatian Business Council for Sustainable Development: Mirjana Matešić,
- Autonomous Trade Unions of Croatia: Boris Feis,
- Independent Union of Research and Higher Education Employees of Croatia: Matija Kroflin,
- Non-governmental organizations dealing with the protection of human rights: Srđan Šimac,
- Non-governmental organizations dealing with environmental protection: Roberto Kramarić.

NCP operates in accordance with the core criteria of visibility, accessibility, transparency and accountability to further the objective of functional equivalence.

PROCEDURE IN SPECIFIC INSTANCES

One of the NCP's tasks is to contribute to the resolution of issues that arise relating to implementation of the Guidelines in Specific Instances in a manner that is impartial, predictable, equitable and compatible with the principles and standards of the Guidelines.

The NCP will offer a forum for discussion and assist the business community, worker organisations, other non-governmental organisations, and other interested parties concerned to deal with the issues raised in an efficient and timely manner and in accordance with applicable law.

The guiding principles applied in Specific Instances include:

- impartiality - impartiality in the resolution of specific instances;
- predictability - predictability by providing clear and publicly available information on the NCP's role in the resolution of specific instances, including the provision of good offices, the stages of the specific instance process including indicative timeframes, and the potential role they can play in monitoring the implementation of agreements reached between the parties;
- equitability - the parties can engage in the process on fair and equitable terms;
- compatibility with the Guidelines - compatibility with the principles and standards contained in the Guidelines.

1 FIRST STEP – RAISING AN ISSUE – SUBMITTING THE SPECIFIC INSTANCE

In accordance with the Guidelines, any interested party may submit the Specific Instance. The Applicant may for example be individuals or communities directly impacted by enterprise activity at issue, organisations which represent impacted individuals or communities, such as trade unions or in some instances NGOs or other representatives, as well as organisations with mandates or objectives related to certain RBC themes. The Applicant may also act on behalf of other identified parties.

1. The Specific Instance may be submitted:

- In electronic form, to the NCP's Secretariat's email address:
nkt-oecd@mvep.hr
- In paper form, in person or by post to the NCP's Secretariat's address:
Ministry of Foreign and European Affairs
Attn.: OECD - National Contact Point
Trg N.Š. Zrinskog 7-8, HR-10000 Zagreb

2. The Specific Instance must include at least:

- Information on the basis of which the parties can be identified as well as the Applicant's legitimate interest in submitting the specific instance
- Sufficient information on the basis of which it can be determined whether the issue falls under the Guidelines and which chapter, and whether the NCP is competent in the matter
- An indication of what result the Applicant wants to achieve by submitting the specific instance
- An indication of whether any of the submitted information is confidential (due to for example legal restrictions or personal security reasons)

2 SECOND STEP - ADMINISTRATIVE ASSESSMENT (INDICATIVE DEADLINE FOR COMPLETION - 1 MONTH FROM the RECEIPT OF the specific instance)

The NCP's Secretariat will check whether it is competent for reviewing the issue in accordance with the scope of the Guidelines, and especially:

- whether the identity of the Applicant and the party to which the specific instance relates can be established
- whether the issue falls under the scope of the Guidelines
- whether the NCP is competent in the matter.

During the administrative assessment, the NCP's Secretariat does not deal with the substance of the matter. The NCP's Secretariat may request from the Applicant to submit within a reasonable time frame additional explanations in order to determine that the NCP is competent in the matter.

If the NCP's Secretariat establishes that the matter does not relate to subjects covered by the Guidelines or that it is not competent in the matter, it shall notify the Applicant thereof. No statement/report will be issued.

If the Secretariat establishes that the matter does relate to subjects covered by the Guidelines and that it is competent in the matter, it shall notify the other concerned party that a specific instance has been submitted and request its response within 14 days from the day of submission of the specific instance. If necessary, the NCP's Secretariat may hold a meeting with the other party in order to explain to them the Guidelines and the prescribed rules of procedure.

Upon receipt of the other party's response, the NCP's Secretariat will submit all the documents to the NCP's External Body for review as part of the initial assessment. The other party's response will also be delivered to the Applicant.

3 THIRD STEP – INITIAL ASSESSMENT (INDICATIVE DEADLINE FOR COMPLETION - 2 MONTHS FROM THE SUBMISSION OF DOCUMENTATION TO THE ncp'S EXTERNAL BODY)

In making an initial assessment of whether the issue raised merits further examination, the NCP's external Body will determine whether the issue is *bona fide* and relevant to the implementation of the Guidelines. In this context, the NCP's external Body will take into account:

- the identity of the Applicant and its interest in the matter in question;
- whether the issue is material and substantiated;
- whether there seems to be a link between the enterprise's activities and the issues 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 instance would contribute to the purposes and effectiveness of the Guidelines; and
- whether the consideration of the specific instance would seriously harm parties participating in other proceedings or cause a contempt of court situation.

During the review, the NCP's External Body will hold a hearing with both parties and may also hold separate, confidential meetings with each party.

When reviewing the matter the NCP's External Body may consult the OECD, other national contact points, relevant institutions and parties.

Following its initial assessment the NCP's External Body will decide whether the issue raised merits further examination

If the NCP's External Body decides that the issue does not merit further consideration, it will inform the parties of the reasons for its decision. The Applicant may submit a new specific instance related to the issues the NCP's external body has rejected if the new information means that the reasons for refusal are no longer valid.

If the NCP's External Body decides the issue merits further examination it will offer "good offices" to the parties involved in an effort to contribute informally to the resolution of issues.

The offer of "good offices" means that the NCP's External Body considers it has enough information to justify further examination of the specific instance based on the Guidelines. It does not mean that the External Body has concluded that the Guidelines have been violated.

4 FOURTH STEP – GOOD OFFICES (INDICATIVE DEADLINE FOR COMPLETION - 6 MONTHS FROM THE BEGINNING OF GOOD OFFICES)

If the parties accept the good offices from the NCP's External Body as assistance in resolving the issue, together with the parties the NCP's External Body will set a time table for all the steps to be taken as part of the process and what the good offices procedure will include in order to resolve the issue within a reasonable time-frame.

All parties have to be clear what their desired resolutions of the process are and what their expectations are.

During the provision of good offices the NCP's External Body may consult with the parties included and, if needed:

- seek the advice of relevant authorities, as well as representatives of the business community, workers' organisations, other non-governmental organisations, and experts;
- hold consultations with NCPs in other relevant country or countries;
- seek guidance from the OECD Investment Committee (Committee) on issues related to the interpretation of the Guidelines in specific instances.

In order to prompt an open discussion, the good offices procedure will be informal and confidential. The parties agree to respect confidentiality, except in the degree necessary for seeking expert advice or guidance within their organisation. In those circumstances, those who are offering advice are expected to respect confidentiality.

If the parties involved do not reach an agreement on the issue raised or the NCP's External Body concludes that one or more parties involved in the specific instance are not ready to act or participate in good faith, the NCP's External Body will consult the parties on the usefulness of continuing the process and if the parties and/or the NCP's External Body conclude that continuing the process has no more benefit, they will terminate the process.

5 FIFTH STEP – REPORTING ON THE PROCEDURE (INDICATIVE DEADLINE FOR COMPLETION - 1 MONTH FROM THE CONCLUSION OF THE PROCEDURE)

At the conclusion of the procedures and after consultation with the parties involved, the NCP will make the results of the procedures publicly available, taking into account the need to protect sensitive business and other stakeholder information. If the NCP concludes, based on the initial assessment, that it would not be fair to publicly disclose the identity of any of the parties in the Statement/Report, it may issue a Statement/Report without revealing the party's identity.

The NCP's External Body will prepare and publish on the NCP's web-page:

- a statement when the NCP decides that the issues raised in the specific instance do not merit further consideration. The statement will at a minimum describe the issues raised, include the date of submission of the specific instance to the NCP and the reasons for the NCP's decision;
- a report when the parties have reached agreement on the issues raised. The report will at a minimum describe the issues raised, include the date of submission of the specific instance to the NCP, the procedures the NCP initiated in assisting the parties and when agreement was reached. Information on the content of the agreement will only be included insofar as the parties involved agree thereto;
- a statement when no agreement is reached or when a party is unwilling to participate in the procedures. This statement will at a minimum describe the issues raised, include the date of submission of the specific instance to the NCP, the reasons why the NCP decided that the issues raised merit further examination and the procedures the NCP initiated in assisting the parties, all the recommendations the NCP gave, as appropriate, and all the reasons that agreement could not be reached in the procedure which the NCP considers as appropriate to be included in the statement.

If the NCP's External Body makes recommendations to the parties, it will subsequently request feedback from the parties on these recommendations. If the NCP's External Body deems it appropriate to follow-up on its recommendations, the timeframe for doing so will be addressed in the statement of the NCP.

The NCP's External Body will provide an opportunity for the parties to comment on a draft Statement/Report within fourteen days from the day of delivery of the draft. However, the Statement/Report is that of the NCP and it is within the NCP's discretion to decide whether to change the draft Statement/Report in response to comments from the parties.

The NCP will notify the OECD Investment Committee in due time of the results of procedures conducted to resolve specific instances.

6 SIXTH STEP – FOLLOW-UP OF THE AGREEMENT'S IMPLEMENTATION

If the parties have reached an agreement they may request from the NCP to carry out a follow-up of the implementation of the agreement.

One year after the agreement has been reached, the NCP's Secretariat will, on its own initiative, request from the parties that they submit a report on whether the agreement is being implemented.

There are also other instances in which the NCP may request from the parties a report on the implementation of the agreement and/or recommendations.

TRANSPARENCY AND CONFIDENTIALITY OF THE SPECIFIC INSTANCES PROCEDURE

Transparency is recognised as a general principle for the conduct of NCPs in their dealings with the public.

However, with the aim of resolving the submitted specific instances, the NCP will take appropriate steps to protect sensitive business and other information and interests of parties involved in the specific instances in the interests of the effective implementation of the Guidelines.

While the specific instances are underway, confidentiality of the proceedings will be maintained. At the conclusion of the procedures, if the parties involved have not agreed on a resolution of the issues raised, they are free to communicate about and discuss these issues. However, information and views provided during the proceedings by another party involved will remain confidential, unless that other party agrees to their disclosure or this would be contrary to the provisions of national law.

INSTRUCTIONS FOR SUBMITTING PARTIES - APPLICANTS

In accordance with the Guidelines, any interested party may submit the Specific Instance. The Applicant may for example be individuals or communities directly impacted by enterprise activity at issue, organisations which represent impacted individuals or communities, such as trade unions or in some instances NGOs or other representatives, as well as organisations with mandates or objectives related to certain RBC themes. The Applicant may also act on behalf of other identified parties.

When submitting first instance the Applicant may use the questions below as a guide for submitting all relevant information to the NCP.

1 PART: BASIC INFORMATION

- Date of submission
- Name of submitting party-Applicant, title/position, organisation
- Contact information (name, phone number, email address, postal address)

2 PART: SPECIFIC INSTANCE MATTER

- Name of multinational enterprise mentioned in the specific instance
- Location of the enterprise (including data on the location of the headquarters and the location to which the specific instance pertains)
- Description of enterprise and corporative structure (if known)
- Chapters and paragraphs from the Guidelines that the Applicant claims have been breached by the enterprise
- As short and to the point as possible, accompanied by relevant dates, locations and parties, provide facts or detailed examples of situations in which it is presumed certain chapters and sections of the Guidelines have been breached.
- Provide detailed information and/or evidence supporting the above allegations and whether any of that information is confidential (due to for example legal restrictions or personal safety reasons).
Note: unsubstantiated allegations are insufficient.
- Whether the Applicant has contacted the enterprise and at what time and who did he/she attempt to contact.
- Recommendation for a contact person as the enterprise's representative to be contacted by the NCP.

3 PART: GOALS AND RESULTS

- What is the Applicant's goal when submitting the enquiry?
- What are the desired results from the specific instance?
- What actions does the Applicant think the enterprise should take in order to resolve the problem?

All additional details the Applicant wishes to point out to the NCP.

THE SPECIFIC INSTANCE MAY BE SUBMITTED:

- In electronic form, to the NCP's Secretariat's email address:
nkt-oecd@mvep.hr
- In paper form, in person or by post to the NCP's Secretariat's address:
Ministry of Foreign and European Affairs
Attn.: OECD - National Contact Point
Trg N.Š. Zrinskog 7-8, HR-10000 Zagreb