



**CORE TEMPLATE FOR VOLUNTARY PEER REVIEWS OF
NATIONAL CONTACT POINTS**

ANNEX 2: QUESTIONNAIRE FOR STAKEHOLDERS¹

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Introduction

Adherent governments have to set up a National Contact Point (NCP) tasked with furthering the effectiveness of the Guidelines by undertaking promotional activities, handling enquiries, and providing a mediation and conciliation platform for resolving issues that arise from the alleged non-observance of the Guidelines.²

Core criteria

NCPs are expected to operate in accordance with the core criteria of visibility, accessibility, transparency and accountability to further the objective of functional equivalence.

- How do you assess the NCP's performance on achieving each of the four core criteria of visibility, accessibility, transparency and accountability? For example:

- Are stakeholders sufficiently aware of the NCP and its functions?

No. Visibility of of the NCP is low beyond trade unions in Berlin/the Federal level and at shop floor level.

- Are the means used by the NCP to promote the Guidelines appropriate? Please explain.

The German NCP has a good web site, in German, English and French, and has translated key documents, but could do more in terms of holding training/promotional events. It should provide training events for business including SMEs, which in the context of the German economy are global market leaders.

¹ This Questionnaire is taken from the Core Template for Voluntary Peer Reviews DAF/INV/RBC(2014)12/FINAL

² Please see Part II of the booklet on the Guidelines for key provisions on core criteria and functioning of NCPs www.oecd.org/daf/inv/mne/48004323.pdf.

- Are the NCP facilities easily accessible to stakeholders? If not, how can the NCP be more accessible?

The German NCP is accessible for international and national trade unions in Germany in that trade unions are represented within the NCP structure; and the web site provides clear information in international languages, English and French, as well as German.

However, language and travel costs present real barriers to access for trade unions in other countries, even if they are supported by German or international trade unions. We welcome the fact that the German NCP had made use of video-conferencing in the past, for example, to allow the participation of Indonesian unions in the Heidelberg Cement specific instance. But we also know that language was a major challenge for the same Indonesian unions participating in the process.

In relation to the filing of specific instances, a major impediment to accessibility is the position of the German NCP on confidentiality and campaigning. This could act as significant disincentive for trade unions to file specific instances at the German NCP. Our understanding of the Procedural Guidance is that parties must uphold confidentiality during the mediation process. There is no basis in the Procedural Guidance on which to restrict public campaigning. This issue is discussed further in relation to the guiding principle of ‘equitability’.

Note on confidentiality: The NCP asks all the parties involved to ensure confidentiality from the very beginning of the process. **This includes refraining from waging campaigns against the other party and/or using the media for any such purpose.**

3. Mediation process

This is also why the NCP will insist on the parties’ abiding by the principles set out in the procedural guidance, which means that, throughout the process, **they must uphold confidentiality and refrain from campaigning against the other party and/or using the media for any such purpose.**

- Does the NCP respond to legitimate requests for information in a timely manner?

Yes.

- Does the NCP provide relevant information, e.g. on NCP activities and functions, in national languages?

Yes.

- Do you consider the NCP adequately reports on its activities?

The German NCP provides regular reports to external stakeholders represented in its Working Group. It also publishes its Annual Report to the OECD in English on its web site, together with its reports to the German Bundestag in German and English.

- In your view, how can the NCP improve its performance on each of the core criteria?

TUAC welcomes the improvements made in 2017 in terms of both structure and the allocation of financial and human resources. We consider that the German NCP could be further improved through:

Accountability: re-location to the Chancellor’s office; adoption of an inter-Ministerial structure. creation of an oversight committee (Steering Board);

Transparency: limit confidentiality provisions to the mediation process only; lifting restrictions on public campaigning; publishing Initial Assessments in line with the good practice of other NCPs;

Accessibility: limit confidentiality provisions to the mediation process and lift restrictions on public campaigning; to support participation in specific instances provide an on-line form for submitting complaints; interpretation to support participation in mediation; and provide for participation of complainants in the host country either through videoconferencing or use of embassies or development agencies for mediation.

- In your view, what are the most significant challenges faced by NCP in terms of achieving the core criteria?

The German NCP should change its position on confidentiality and campaigning if it is to encourage and not discourage trade unions from filing specific instances. The total case-load for the NCP network is low. All G7 NCPs have made a commitment to lead by example in providing effective NCPs. This includes making them accessible.

Institutional arrangements

- Do you consider that the current structure enables the NCP to meet the core criteria of visibility, accessibility, transparency and accountability? Please elaborate.

What are the advantages and disadvantages of the NCP’s structure?

- Do you consider that the current arrangements are adequate to avoid potential conflict of interest in the functioning of the NCP (e.g. between attracting foreign investors, promoting the interest of domestic enterprises abroad versus those of relevant stakeholders, etc., and promoting observance of the Guidelines)?

We think the NCP should be re-located and that an oversight committee should be created. There is a perception of partiality arising from its location in the Ministry of Economy and its perceived proximity to business. We note, however, that trade unions that have been involved in cases have reported that the German NCP was impartial in handling specific instances.

- Do you consider that the NCP’s structure enables it to carry out its functions in an impartial manner? Please elaborate.

Trade unions have reported that the German NCP was impartial in handling specific instances.

- Do you consider that the NCP adequately reaches out to or takes into account the views of stakeholders?

Don’t know.

Main functions and activities of NCPs

a) *Information and promotional activities*

- Do you consider that the communication tools or avenues being used by the NCP (website, brochures, leaflets, participation in public events, etc.) are adequate? Please elaborate.

The German NCP could hold more promotional and training events for business, including SMEs, as well as for trade unions.

- What other communications tool would be useful for raising awareness of the Guidelines?

The German NCP/Government should consider how to promote the Guidelines abroad as well as at home in Germany, including through its embassies and development agencies.

- Do you consider that the Guidelines are sufficiently known and used by enterprises and integrated into their decision-making processes? Please elaborate.

No

- Do you consider that the Guidelines are sufficiently known by key stakeholders (business, trade unions and civil society organisations)? Please elaborate. How can the NCP and stakeholders further cooperate in raising understanding of the value of the Guidelines with businesses?

No.

b) *Implementation in specific instances*

According to the Procedural Guidance, NCPs are expected 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.

Consideration of a specific instance may involve three stages (initial assessment of the merits of a specific instance, the provision of good offices such as mediation or conciliation, and the conclusion of the procedures, including the publication of the main results). As a general principle, NCPs should strive, to the extent possible, to conclude the procedure within 12 months from the receipt of the specific instance with the publication of the results at the end of the procedure. Sensitive business and stakeholder information should be protected.

- How do you assess the NCP performance in handling the specific instances in a manner that is consistent with the guiding principles (impartial, predictable, equitable and compatible with the Guidelines)? For example,
 - Does the NCP adequately inform stakeholders on how to raise specific instances?
 - **Diagrams: There is a textual description of the specific instance process on the web site, which could be made clearer through the use of diagrams – the diagram**

provided at the end of the document on Procedures, could be included on the web site.

- **Visibility:** The link to the Procedures Document is quite hard to find. It is only visible at the bottom of the page on procedures.
- **On-line Form:** it would be useful for the NCP to provide an on-line form for submitting complaints. This would make it far simpler for complainants to submit specific instances, especially for those working in a foreign language. Moreover, the on-line form could easily be made available in multiple languages, especially if other NCPs share the same on-line form. G7 NCPs could take the first step by sharing multilingual on-line forms.
- Does the NCP deal with specific instance in an efficient and timely manner?

The timescales have been exceeded in a number of cases.

- Does the NCP act in an impartial manner in the resolution of specific instances?

Trade unions involved in specific instances at the German NCP have reported that the German NCP acted impartially in the handling of cases.

- Does the NCP provide clear and publicly available information on its role in the resolution of specific instances?

Yes.

- How does the NCP ensure that parties engage in the process in a fair and equitable manner?

TUAC's main concern with the German NCP is that it has conditioned acceptance of specific instance on the complainant's agreement to stop all public campaigning. TUAC considers that this is neither fair nor equitable:

- **First, it makes requests of the complainant to stop public campaigning without making corresponding demands of the company (for example to stop firing or intimidating workers). This is not equitable.**
- **Secondly, requiring complainants to stop public campaigning reduces the bargaining power of the complainant, and indeed the likely effectiveness of the NCP process, as it takes away the carrot/stick of the complainant offering to stop/continuing the campaign if the company comes to the table.**

The majority of trade union cases filed under the Guidelines take place in the context of a campaign. As far as TUAC is aware, trade unions generally stop public campaigning once the companies agree to mediation. But this should be part of the negotiation that takes place between the parties and not a pre-condition imposed by the NCP.

- How does the NCP balance the need for transparency with confidentiality of specific instance proceedings and sensitive business information?

TUAC welcomes the fact that the Procedures of the German NCP provide for the confidentiality of the names of individuals involved in the complaint, if necessary:

“The NCP will take appropriate steps to ensure that sensitive business data is protected. Furthermore, it can prove necessary for other information, such as the identity of individuals involved in the process, to be treated as confidential.”

Overall, however, we consider that the German NCP has prioritised confidentiality over the core criteria of transparency in the handling of specific instances and should make revisions to achieve a better balance in line with the core criteria of transparency.

- If the NCP has received no or very few submissions for specific instances – what can explain this?
- **Trade unions have other means of raising issues with the companies.**
- **Overall lack of awareness**
 - What are the most significant challenges facing the NCP in fulfilling its mandate?
- **Raising awareness of the Guidelines among business, including SMEs; as well as trade unions;**
- **Increasing public confidence/trust;**
- **Strengthening the system so that companies participate in the mediation process.**
 - Are there opportunities to improve NCP’s performance under each of criteria for handling specific instances?
- **Increasing equitability by revising the German NCP’s position on confidentiality and campaigning;**
- **Strengthening perceptions of impartiality by re-locating from the Ministry of Economy to the Chancellor’s Office;**
- **Strengthening the system by introducing determination and consequences.**
 - If you have been involved in a specific instance, please provide feedback on your experience. Please use the above questions to guide you in providing feedback.

International trade unions have had successful outcomes in recent years in using the German NCP. They have reported participating in processes which they considered to be robust and where they were treated impartially.

They also reported innovative practices such as:

- **the use of video-conferencing to facilitate access of participants in the host country;**
- **a protocol under which the parties were required to meet for a period of two years after the close of a case.**

Their major concern is the German NCP’s overly restrictive rules on confidentiality and the requirement to stop public campaigning. These have been already been discussed.

On mediation, trade unions report a preference for joint mediations, which bring the parties together, rather than separate meetings. This is envisaged in the Procedures. There is also a preference for an external mediator.

“The preferred course of action is to bring the parties together for joint mediation sessions. It can, however, prove useful for the mediator to talk to the parties separately.”

c) *Reporting*

NCPs report annually to the Investment Committee on the nature and the results of their activities, including their implementation activities in specific instances. This information is included in the Annual Report on the OECD Guidelines for Multinational Enterprises. Most NCPs make their annual reports publically available.

- Does the NCP sufficiently report on its promotion and implementation activities? Please elaborate.
- Are reports on the functioning of the NCP, including on the handling of specific instances, easily available to all stakeholders? Please elaborate.

The German NCP publishes Final Reports/Statements on its web site. It should also publish Initial Assessments in line with the core criteria of transparency and the good practices of other NCPs.

Other Points

- **Mediation**: adopt the good practice of other NCPs in having Terms of Reference for the mediation agreed between the parties.
- **Determination**: in the past the German NCP has stated its willingness to make a finding on whether companies have violated the Guidelines in the event that mediation is refused or fails, but it is not clear from its current Procedures whether it will do this. In the Final Statement of the specific instance involving the Korean MNE Hyundai Motor Europe Technical Center GmbH (HMTEC) – HMTEC refused to participate in mediation – the NCP only concludes that “the Guidelines may be affected” by HMTEC’s conduct.
- **Consequences**: the German National Action Plan (NAP) on Business and Human Rights provides for consequences in terms of participation in the NCP process being linked to access to export credits and other instruments that support foreign trade and investment.
- **Use of the Term ‘Voluntary’**: the German NCP should remove reference to the “voluntary” nature of the Guidelines in its Procedures as this undermines the strength of its message regarding the expectation that companies comply with the OECD Guidelines. The Guidelines are non-binding – they are not optional. It is also contrary to the recent commitment made in the German NAP to stress the voluntary nature of the OECD Guidelines in relation to the NCP informing government departments about outcomes of the NCP process.
- **Follow-up**: the German NCP has been innovative for providing for continued dialogue between the parties after a trade union case but it should be routinely involved in follow-up of agreements and this should be reflected in the procedures.

. “The NCP will inform the government-owned entities providing export and investment guarantees about the Final Statements and issue them with reports on the process. It will point out to them the voluntary nature of the OECD Guidelines.”

d) *Contribution to the proactive agenda*

The introduction of the “proactive agenda” is one of the major innovations found in the revised Procedural Guidance. Under the proactive agenda, the Investment Committee is expected, in cooperation with NCPs and stakeholders, to support the positive contributions that enterprises can make and assist them identify and respond to risks of adverse impacts associated with particular products, regions, sectors or industries with a view of helping them observe the Guidelines.³

- How do you assess the NCP’s role in contributing to and promoting the proactive agenda under the Guidelines?

TUAC is not aware of actions taken by the NCP to promote the proactive agenda.

- Does the NCP provide information to stakeholders about ongoing projects under the proactive agenda, and does it seek stakeholder inputs?

Does the NCP promote the outcomes of these processes?

Not as far as we know. We think the German NCP should do more to further understanding of due diligence particularly in the context of the commitments/targets set out in the German NAP on Business and Human Rights.

³ Information on projects under the proactive agenda is available on the OECD website <http://mneguidelines.oecd.org/implementation>.