



Trade Union  
Advisory Committee  
to the OECD  
*Commission  
syndicale consultative  
auprès de l'OCDE*

## Briefing #2

Businesses and Trade Unions have a common interest in promoting harmonious industrial relations, which can be achieved when they collaborate to implement the OECD Guidelines for Multinational Enterprises (“MNEs”) and respect the good offices of National Contact Points (“NCP”).

When enterprises and trade unions collaborate to implement the Guidelines, they can create best practices for inclusive workplaces, resilient business operations, and individual well-being.

**Briefing#2: Implementing the OECD Guidelines Part II for Constructive NCP Trade Union Relations** takes stock of workers’ experiences with the NCP and exposes the challenge of NCPs retaining confidence and maintaining relations with trade unions.

# Implementing the OECD Guidelines Part II for Constructive NCP Trade Union Relations

Paris, 1 December 2021



The OECD Guidelines for Multinational Enterprises (the “OECD Guidelines”) Part II describes the structure and functions of the national contact point (“NCP”) in domestic governments that adhere to the OECD Guidelines.

The main function of the NCP is to promote the positive impacts enabled by the OECD Guidelines and assist parties with issues and impacts arising in the course of business activities. In this way, the NCP serves as the only government authority for achieving positive social and environmental impacts under the OECD Guidelines. The mechanism is a potential resource for workers, unions and global unions. It is also a serious benchmark by responsible investors.

However, over the twenty-year history of the NCP has been marred by a lack of trade union confidence and NCPs have not always maintained trade union relations. More than two million workers at the MNEs named in trade union cases saw the NCP confirm what they already knew, the MNE did not want trade union dialogue.

## NCP Institutional Arrangements are essential for maintaining trade union relations

As part of the NCP institutional arrangements the NCP is expected retain confidence of social partners and maintain stakeholder relations.<sup>1</sup> Governments have a wide variety of institutional arrangements to accomplish this objective. NCPs can be structured so that the trade union relations are more inclusive or less inclusive.

Those that are more inclusive tend to be European while those that are less inclusive tend to be outside of Europe. It should be self-evident that NCPs with more inclusive arrangements are more likely to retain confidence and maintain relations with trade unions than those NCPs with less inclusive arrangements. In NCPs where trade unions are included in a formal advisory committee, meetings are not taking place (Figure 1).

Figure 1:

Official/ Operational (10)	Tripartite (5)	External Advisory Board (21)	Not Included (13)
Belgium	Estonia	Argentina	Brazil
Czech Rep	Germany	Australia	Canada
Denmark	Hungary	Austria	Egypt
Finland	Iceland	Chile	Greece
France	Romania	Colombia*	Ireland
Latvia		Costa Rica	Jordan
Netherlands		Croatia	Kazakhstan
Norway		Israel	Lithuania
Slovak Republic		Italy	Mexico
Sweden		Japan*	Morocco
		Korea*	Peru
		Luxemburg	Portugal
		New Zeland	Tunisia
		Poland	
		Slovenia	
		Spain	
		Switzerland	
		Turkey*	
		UK	
		Uruguay	
		Ukraine	
		USA*	
◀ More Inclusive			Less Inclusive ▶

### Measuring NCP effectiveness

Unless NCPs themselves are respected as the government authority for implementing responsible business standards, it will be difficult for members of the OECD to promote positive impacts and assist parties resolve OECD Guidelines issues.

For example, when companies are not willing to participate in the process or mediation, there are few, if any consequences. Few NCPs offer findings on the merits of the claims and, when findings are issued, there are no consequences for failure to adhere to the recommendations or change conduct.

\* Trade unions report no NCP Advisory meetings have occurred in the most recent calendar year.

## Examples

**Active inclusion** – *Deutsche Post, International Transport Workers Federation (ITF) and UNI Global Union, German NCP.* In 2016, a protocol between UNI Global Union, the International Transport Federation (ITF) and the German multinational, Deutsche Post DHL was reached with the assistance of the German NCP.

*VEON, UNI Global Union, Netherlands NCP.* Even where an NCP institutional arrangement includes trade unions, 33% of MNEs rejected NCP assistance. After VEON declined to participate in NCP assisted mediation, the Netherlands NCP concluded the company was “not acting in line” with OECD Guidelines expectations.

**Advisory role** – *British American Tobacco, Farm Workers Organizing Committee (FLOC) and IUF, UK NCP.* MNE refused mediation despite the UK NCP it having regular advisory board meetings and active trade union participation. Concerns about the final statement became the subject for the OECD Investment Committee, which issued a formal clarification of the importance of trade unions for meaningful due diligence.<sup>1</sup>

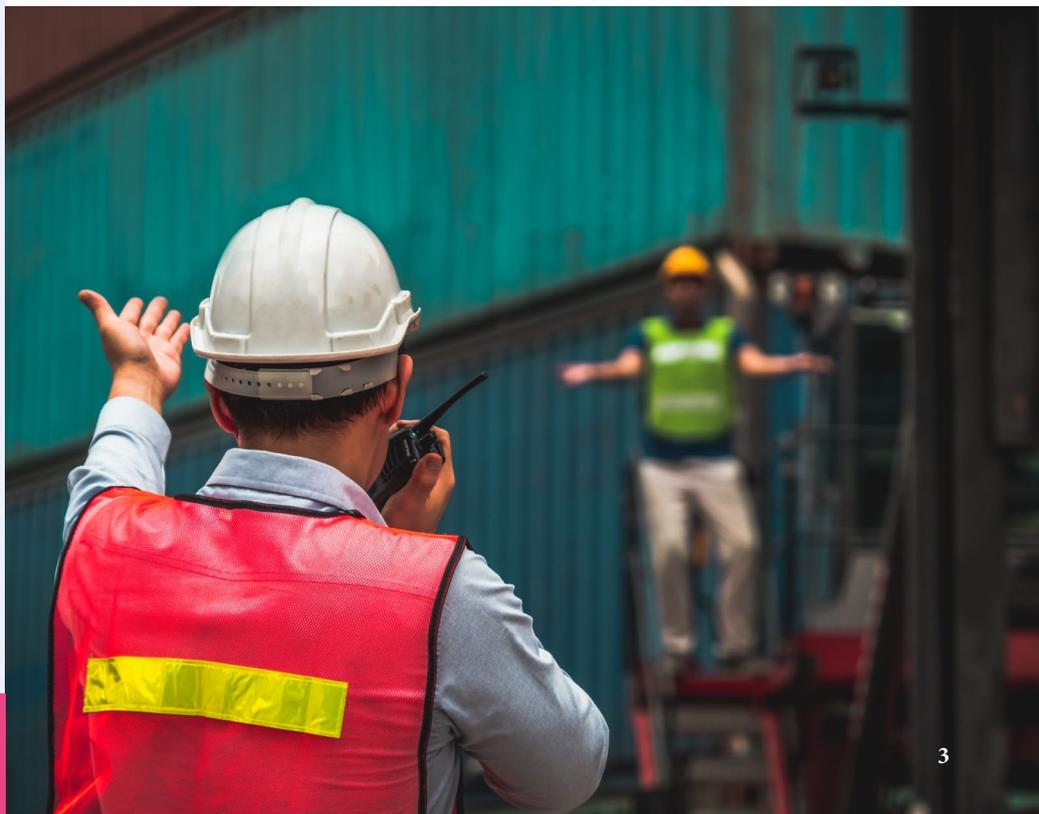
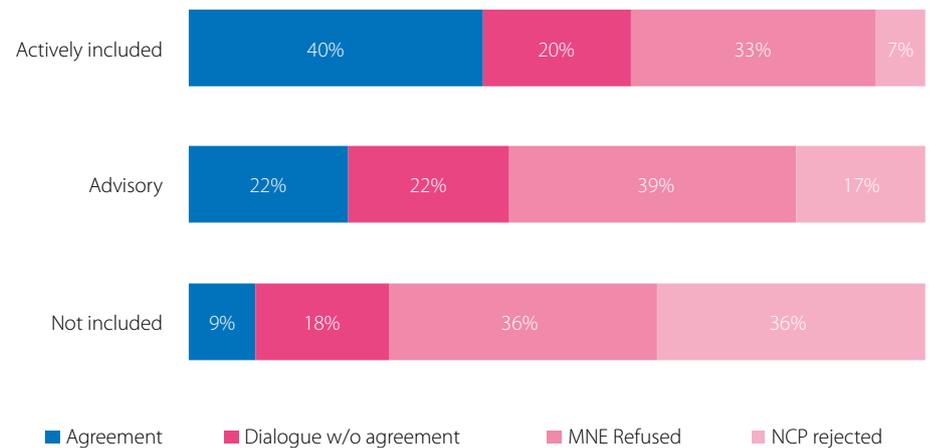
**Not included** – In the most extreme example, the Mexico NCP has not resolved a specific instance submitted by trade unions. Five were rejected. In the only specific instance accepted, the MNE refused to participate in dialogue.

<sup>1</sup> OECD GLs Part II Institutional Arrangements 10 and 12.

## Trade Union Inclusion/Exclusion correlates to NCP effectiveness

How much trade unions are included in an NCP directly correlates to effectiveness of an NCP in assisting the parties resolve industrial relations issues. A review of trade union filed specific instances from 2011 – 2020 revealed the NCPs that actively included trade unions in their structures were 2 times more effective at generating dialogue and 4.4 times more effective at generating agreements than those NCPs that exclude trade unions from their structure (Figure 2). Trade unions had less than a 1 in 10 chance of industrial relations issues being resolved at NCPs where trade unions are not included in the NCP institutional arrangement.

**Figure 2:**  
Specific Instance Outcomes by Trade union role at recipient NCP





## Updates in 2011 reduced NCP effectiveness in dialogue and remedy

Between 2000-2010 there were 102 total cases filed by trade unions, of which 48 cases were accepted and mediated (47%) using the NCP good offices. Of those cases that had NCP assistance, 27 resulted in some form of agreement between the MNE and trade union, (56%). In the remaining 21 instances (44%) the NCP assistance was unable to assist the parties resolve the issues raised.

Since the Guidelines were updated in 2011, there have been 63 total cases concluded that involved trade unions, with 28 accepted and mediated (44%) and 15 resulting in an agreement (54%). This reflects a 3% decline in dialogue. Moreover, reduced NCP effectiveness at generating agreements means there has been a 2% increase in unresolved workplace issues since the 2011 update.

## NCPs fail to assist parties resolve freedom of association issues

The right to join a trade union is the issue most often raised by trade unions, making it the lead indicator for NCP effectiveness. Trade union relations depends upon the NCP assisting parties with freedom of association.

Trade unions filed 31 specific instances involving issues with freedom of association. NCPs assisted parties to resolve in only 6 of these instances since the OECD Guidelines were updated in 2011. The enterprise rejected the NCP assistance with freedom of association 16 times.

## Examples of NCPs struggle to assist parties with industrial relations

The TUAC analysis confirms only 6 trade union cases successfully addressed and clarified Chapter V issues, while the other 25 did not. It is important to note the following cases cited by the OECD in its stocktaking of the Guidelines were actually not successful in resolving industrial relations issues:

- Drummond Ltd (Colombia) the NCP declined to address industrial relations issues.
- Maersk Container (Chile) did not participate in NCP dialogue.
- British American Tobacco (UK) rejected NCP dialogue and the issues were only clarified after a formal review of the Guidelines interpretation was conducted by the OECD Investment Committee.
- BHP Billiton, SAMARCO, and Vale (Brazil) rejected the offer of NCP assistance and dialogue. No solutions were produced, and there has been no known follow-up to several NCP recommendations on the industrial relations issues that were raised in the context of dam safety and meaningful due diligence.

## The Trade Union Advisory Committee to the OECD

The TUAC is informed by real-time experiences by national and global trade unions with combined representation of 300 million workers taking steps to implement the Guidelines every day.

Under the OECD Guidelines, governments are expected to establish national contact points to promote and defend responsible business. Companies are expected to undertake due diligence in order to identify, prevent, mitigate and account for how they address actual and potential adverse impact in their own operations, as well as in their global supply chains and other business relationships.

The Guidelines implementation is not optional for businesses in order to:

- Support and not oppose core labour rights;
- Increase bargaining coverage;
- Extend responsible business practices through supply chains;
- Secure jobs with retention and reemployment.

## What we ask



The TUAC recommends **OECD delegates support text improvements to implement the OECD Guidelines and NCP Procedures to achieve positive industrial relations**

The TUAC encourages **Governments to modernize trade, investment and procurement policies to promote positive industrial relations and respect for the NCP**



The TUAC calls on **business, government and institutional investors to acknowledge the National Contact Points as the authority for the Guidelines**



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