



OECD Guidelines for Multinational Enterprises on
Responsible Business Conduct

**National Contact Point for
Responsible Business Conduct
Peer Reviews
PORTUGAL**



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Foreword

The OECD Guidelines for Multinational Enterprises on Responsible Business Conduct (the Guidelines) are recommendations addressed by governments to multinational enterprises operating in or from adhering countries. They provide non-binding principles and standards for responsible business conduct in a global context consistent with applicable laws and internationally recognised standards. The Guidelines are the only multilaterally agreed and comprehensive code of responsible business conduct that governments have committed to promoting.

Adhering governments to the Guidelines are required to set up a National Contact Point for Responsible Business Conduct (NCP) that operates in a manner that is visible, accessible, transparent, accountable, impartial and equitable, predictable, and compatible with the Guidelines. During the 2011 update of the Guidelines, NCPs agreed to reinforce their joint peer learning activities, in particular with respect to conducting voluntary peer reviews. The 2023 update of the Guidelines reinforced peer reviews of NCPs by making them mandatory and periodic, subject to modalities to be approved by the Working Party on Responsible Business Conduct (WPRBC). The commitment to undergo this peer review was made by Portugal while the 2011 version of the Procedures was in effect. The basis for this peer review is the 2011 version of the Guidelines (including the Implementation Procedures).

The peer reviews are led by representatives of 2 to 4 other NCPs who assess the NCP under review and provide recommendations. The reviews give NCPs a mapping of their strengths and accomplishments, while also identifying opportunities for improvement. More information can be found online at <https://mneguidelines.oecd.org/ncppeerreviews.htm>.

This document is the peer review report of the Portuguese NCP. This report was prepared by a peer review team made up of reviewers from the NCPs of Chile, and Spain and with the support of the OECD Secretariat. The NCP of Chile was represented by Felipe Henríquez. The NCP of Spain was represented by Gracia Dueñas Vinuesa. The OECD Centre for Responsible Business Conduct was represented by Nicolas Hachez and Emily Halstead. The report was informed by dialogue between the peer review team, the NCP of Portugal and relevant stakeholders during an in-person fact-finding mission on 23-25 May 2023. The peer review team wishes to acknowledge the NCP for the quality of the preparation of the peer review. The NCP of Portugal was represented by Fernanda Ferreira Dias, Marta Lima Basto, Rita Araújo, Carla de Sousa Pinto, Filipa Andrade, Lúcia Farropas, Pedro Marques, Pedro Pinheiro, Fernando Quintas, Constança de Matos. This report also benefited from comments by delegates to the WPRBC and institutional stakeholders (BIAC, OECD Watch, TUAC). It was discussed by the WPRBC at its 8 November 2023 meeting and declassified by the Investment Committee on 13 December 2023.

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Key findings and recommendations

Institutional arrangements

The Portuguese NCP has an interagency structure involving the Ministry of Economy and Maritime Affairs, represented by the Directorate-General for Economic Activities (DGAE), and the Ministry of Foreign Affairs, represented by the Portuguese Agency for Investment and Foreign Trade (AICEP Portugal Global). The NCP Secretariat is shared between the two entities. Resourcing of the NCP involves six staff members, four from DGAE and two from AICEP Portugal Global, spending 10-40% of their time on NCP functions. An additional three senior members of DGAE and AICEP Portugal Global are involved in the NCP's hierarchy, providing final decisions on NCP matters and supporting when necessary. The NCP also has a legal advisor available on an *ad hoc* basis. The NCP does not have an advisory body and does not include stakeholders in its institutional arrangements. Feedback from NCP staff and stakeholders indicated that the NCP did not always have access to sufficient human and financial resources to address its mandate.

The interagency structure, located in government entities with economic focuses, could contribute to real or perceived conflict of interest or lack of impartiality. As the NCP also does not incorporate stakeholders into its structure, stakeholder and NCP feedback raised concerns for sufficient access to expertise, and the ability of the NCP to meaningfully engage with stakeholders across business, trade unions, and civil society.

The basis for the structure of the NCP rests on internal dispatches within the Ministry of Economy and Maritime Affairs. The structure and interactions between the members of the interagency staff are not always clear, and stakeholders have indicated a challenge to understand the institutional arrangements of the NCP. The formalisation of the NCP structure through a legal document could help to clarify the structure and function for stakeholders, and also increase the authority of NCPs as it communicates with other actors, notably in other government areas.

	Findings	Recommendations
1.1	<p>The NCP staff show a clear commitment to the NCP and its continued improvement, evidenced by the increased work on the NCP in recent years. However, NCP staff and stakeholders have flagged both financial and human resources as a challenge for the NCP. NCP staff work part-time on the NCP function and have many other duties. Obtaining sufficient financial resources for promotion and other aspects of the NCP function, such as for mediation should the need arise, has proved difficult.</p>	<p>The NCP Secretariat teams working both at DGAE and AICEP Portugal Global should have access to sufficient budget to fulfil its responsibilities relating to promotion and handling specific instances. The NCP should also seek to incorporate dedicated full-time staff members to the NCP function, possibly by designating current staff as full-time.</p>
1.2	<p>The current NCP structure presents challenges related to perception of impartiality, due its location in government bodies with an economic focus, access to expertise, and stakeholder engagement. General stakeholder feedback suggested that stakeholders were ready and willing to engage further with the NCP. The NCP structure divided between DGAE and AICEP allows for ease of access to relevant business stakeholders. While the structure allows for some access to other stakeholder groups, engaging with trade unions and civil society remained a challenge.</p>	<p>The NCP should consider incorporating more entities into its interagency structure or via an interagency advisory body. The NCP should consider creating a multi-stakeholder advisory body, composed of representatives from business, trade unions, and civil society, to address real or perceived concerns of impartiality, increase access to expertise, and enhance stakeholder engagement.</p>

1.3	The Structure of the NCP is complex and not always well-understood by stakeholders. While it is mentioned in internal dispatches, the NCP function is not formalised in a legal instrument.	The Government could formalise the NCP structure and function in a legal instrument. This could improve the authority of the NCP, support communication around the NCP, and facilitate engagement with other actors, including other parts of government.
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Promotional activities

Starting in 2022, the Portuguese NCP has greatly increased its promotional activities. However, prior to 2022, the NCP had gone several years without reporting promotional activities. As a result, many of the relationships that the NCP has developed with stakeholders are new and underleveraged. As the Portuguese NCP location provides it privileged access to Portuguese businesses, raising awareness among trade unions and civil society stakeholders has been slower. Visibility of the NCP has remained limited, but stakeholders have thus far shown an eagerness to engage further with the NCP in the future. This is especially important given the need for NCP visibility in order to attract and encourage submitters of specific instances, which the NCP has not received since 2004.

The Portuguese NCP adopted its first promotional plan in 2023, covering promotional activity from 2023-2024. The NCP indicated that the new promotional plan could help maintain the momentum created by the recent increase in NCP promotional activity.

The NCP fosters policy coherence in RBC work being conducted in the Ministries in which the NCP is located, such as relating to the EU Draft Directive on Corporate Sustainability Due Diligence (CSDDD) and the upcoming National Action Plan on Responsible Business Conduct (NAP on RBC). However, the NCP lacks connections with other key ministries working in RBC-related areas, such as the Ministry of Labour, Solidarity and Social Security, or the Ministry of Environment.

	Findings	Recommendations
2.1	The NCP has shown clear improvements in the last few years concerning its promotional activity, which had previously been very limited. The NCP showed initiative and creativity in its promotional efforts, despite sometimes facing resource constraints.	The NCP should continue increasing promotional efforts in line with recent improvements. Relationships with stakeholders should be leveraged to enhance further promotion, for example by partnering with multiplier organisations and the Southern European NCP Network to increase promotion while considering staff and financial resource constraints.
2.2	Although promotion has increased, visibility of the NCP remains low, particularly with stakeholders from trade unions and civil society. Promotional activity has additionally not equally targeted stakeholder groups, with more promotion being conducted towards business.	The NCP should work to foster relationships with relevant stakeholders, paying particular attention to enhancing the relationships with stakeholders from trade unions and civil society. Work could include stakeholder mapping to identify priority connections and strategise promotion.
2.3	The team working on the NCP function is well-positioned to support policy coherence given they also work on other RBC policy areas such as the CSDDD and the NAP on RBC. However, there is little awareness of the NCP among other parts of government.	The NCP should work to promote the Guidelines and OECD Recommendation on the Role of Government in Promoting RBC to other parts of government, particularly those in other key ministries, such as the Ministries of Labour and Environment. An expanded interagency NCP structure or advisory body could be instrumental in this regard.

Specific instances

The NCP has received one specific instance since its inception in 2000. The specific instance, received in 2004, was handled by previous NCP staff under the former NCP structure within a different agency, and the current NCP staff does not have knowledge of the case-handling details. A lack of experience dealing with specific instances in turn leaves the NCP with a lack of expertise in case-handling practicalities, such as mediation, should the need arise. Stakeholders suggested that a lack of specific instance submissions

could be due in part to low visibility of the NCP and possible perceptions of a lack of impartiality based on the NCP structure.

While stakeholder feedback was appreciative of the availability of the NCP's Rules of Procedure (RoP) in both Portuguese and English, feedback indicated that the document was not always clear and contained some inconsistencies with the Guidelines. The document was at times overly complex and could be made more accessible to users of the specific instance mechanism.

The NCP has made clear efforts recently to clarify the procedures and practices of the specific instance mechanism, through the development of infographics on the procedure including an indicative timeline, an online submission form, and a dedicated FAQ on their webpage. Promoting awareness of the mechanism will therefore be key to attract new submissions, as noted in the section on promotion above.

	Findings	Recommendations
3.1	The NCP has created a variety of materials to aid submitters in accessing the specific instance mechanism. However, the NCP's RoP remains overly complex and is not always aligned with the Guidelines.	The NCP should revise its Rules of Procedure to ensure they are easily understood by potential submitters of specific instances. The NCP should consider the 2023 revision of the Guidelines and align its RoP accordingly.
3.2	The NCP has not received a specific instance since 2004 and the current NCP team was not engaged in the case-handling. Should the NCP receive a specific instance, they may lack certain expertise to handle the submission, particularly in the case of mediation.	The NCP should work to build expertise relating to possible incoming specific instances, including building technical and mediation-related skills within the NCP team.

1 Introduction

The Portuguese NCP at a glance

Established: 2000

Structure: Interagency without advisory body

Location: **Directorate-General for Economic Activities** (Ministry of Economy and Maritime Affairs) & **AICEP Portugal Global** (Ministry of Foreign Affairs)

Staffing: The NCP has six part-time staff members dedicating between 10-40% of their time to the NCP function

Webpage:

<https://www.dgae.gov.pt/servicos/sustentabilidade-empresarial/national-contact-point-for-responsible-business-conduct.aspx> (English)

<https://www.dgae.gov.pt/servicos/sustentabilidade-empresarial/ponto-de-contacto-nacional-para-as-diretrizes-da-ocde-para-as-empresas-multinacionais.aspx> (Portuguese)

Specific instances received: One concluded

The implementation procedures of the Guidelines require NCPs to operate in accordance with the core criteria of visibility, accessibility, transparency and accountability. In addition, the guiding principles for specific instances recommend that NCPs deal with specific instances in a manner that is impartial, predictable, equitable and compatible with the Guidelines. This report assesses conformity of the Portuguese NCP with the core criteria and with the Implementation Procedures to the 2011 version of the Guidelines, which were in effect as of the time of the on-site visit. It is the view of the peer review team that the recommendations made also align with the Implementation Procedures of the 2023 version of the Guidelines, which entered into effect between the on-site visit and the presentation of this report.

Portugal adhered to the OECD Declaration on International Investment and Multinational Enterprises (Investment Declaration) in 1976. The OECD Guidelines for Multinational Enterprises on Responsible Business Conduct (the Guidelines) are part of the Investment Declaration. The Guidelines are recommendations on responsible business conduct (RBC) addressed by governments to multinational enterprises operating in or from adhering countries. The Guidelines have been updated five times since 1976; the most recent revision took place in 2023. As indicated above, at the time of the on-site visit, the 2011 version of the Guidelines were still in effect and served as the basis for the review.

Countries that adhere to the Investment Declaration are required to establish National Contact Points for Responsible Business Conduct (NCPs). NCPs are set up to further the effectiveness of the Guidelines and

adhering countries are required to make human and financial resources available to their NCPs so they can effectively fulfil their responsibilities, taking into account internal budget priorities and practices¹.

NCPs are “agencies established by adhering governments to promote and implement the Guidelines. The NCPs assist enterprises and their stakeholders to take appropriate measures to further the implementation of the Guidelines. They also provide a mediation and conciliation platform for resolving practical issues that may arise.”²

The 2011 Procedural Guidance covers the role and functions of NCPs in four parts: institutional arrangements, information and promotion, implementation in specific instances and reporting. In 2011, the Procedural Guidance was strengthened. In particular, a new provision was added to invite the OECD Investment Committee to facilitate voluntary peer evaluations. In the commentary to the Procedural Guidance, NCPs are encouraged to engage in such evaluations.

The objectives of peer reviews as set out in the “Revised core template for voluntary peer reviews of NCPs”³ are to assess that the NCP is functioning and operating in accordance with the core criteria set out in the implementation procedures; to identify the NCP’s strengths and possibilities for improvement; to make recommendations for improvement; and to serve as a learning tool for all NCPs involved.

This report was prepared based on information provided by the NCP and in particular, its responses to the NCP questionnaire set out in the revised core template⁴ as well as responses to requests for additional information. The report also draws on responses to the stakeholder questionnaire which were received by eight organisations representing enterprises, trade unions, civil society and academic institutions (see Annex A for a complete list of stakeholders who submitted written feedback) and information provided during the country visit. BIAC, TUAC, and OECD Watch have also provided feedback on the NCP.

The peer review of the NCP was conducted by a peer review team made up of reviewers from the NCPs of Chile and Spain, along with representatives of the OECD Secretariat. A fact-finding mission took place on 23-25 May 2023. This visit included interviews with the NCP, other relevant government representatives and stakeholders. A list of organisations that participated in the virtual visit is set out in Annex B. The peer review team wishes to acknowledge the NCP for the quality of the preparation of the peer review, the extensive supportive information provided, and successful efforts to ensure broad participation in the visit.

The specific instances considered during the peer review date back to 2004. The methodology for the peer review is that set out in the core template.⁵

¹ Amendment of the Decision of the Council on the OECD Guidelines for Multinational Enterprises, para I(4).

² OECD Guidelines for Multinational Enterprises (2011), Foreword

³ OECD (2019), Revised Core Template For Voluntary Peer Reviews Of National Contact Points, <http://mneguidelines.oecd.org/national-contact-point-peer-reviews-core-template.pdf>

⁴ Ibid.

⁵ OECD (2019), Revised Core Template For Voluntary Peer Reviews Of National Contact Points, <http://mneguidelines.oecd.org/national-contact-point-peer-reviews-core-template.pdf>

Economic context

The following section includes information consulted by the OECD unless otherwise indicated.⁶

The Portuguese economy is dominated by the service sector, representing 80% of GDP.⁷ The top three sectors in Portugal's economy, as measured by percentage of GDP, are manufacturing (14%), real estate activities (13%), and wholesale and retail trade (13%). Regarding foreign direct investment (FDI), the inward stock of FDI, which represents the accumulated value of FDI in the Portuguese economy over time, was USD 177 billion in 2021,⁸ equivalent to 71% of Portugal's GDP. The outward stock of FDI was USD 61 billion in 2021, representing 24% of Portugal's GDP.⁹ In 2022, Portugal's exports of goods were USD 80 billion and exports of services were USD 46 billion¹⁰ while imports of goods were USD 108 billion and imports of services were USD 24 billion.

The main investors in Portugal in 2021 are the Netherlands, Spain, Luxembourg, France, and the United Kingdom.¹¹ The main destinations for outward investment from Portugal in 2021 are Spain, the Netherlands, Brazil, Angola, and Mozambique.¹² The most important partner countries for exports of goods are Spain, France, Germany, the United States, and the United Kingdom, while the most important source countries for imports of goods are Spain, Germany, France, the People's Republic of China, and the Netherlands. The most important destinations for exports of services in 2021 are France, Spain, the United Kingdom, Germany, and the United States,¹³ and the most important sources for imports of services are Spain, the United Kingdom, the United States, Germany, and France.

As measured by employment at foreign-owned firms in Portugal in 2019, the most important investors are Spain, Germany, the United States, the Netherlands, and the United Kingdom. As measured by employment at the overseas affiliates of Portuguese MNEs, the most important destination countries are Poland, Angola, Spain, Brazil, and Mozambique.

⁶ Data retrieved from OECD.stat and eurostat

⁷ Banco de Portugal, Central Bank of the Portuguese Republic. <https://www.bportugal.pt/en>.

⁸ Portugal indicates that the inward stock of FDI was USD 179 Billion in 2022.

⁹ Portugal indicates that the outward stock of FDI was USD 64 Billion, representing 26% of Portugal's GDP, in 2022.

¹⁰ Portugal indicates that exports of services were USD 47 Billion in 2022.

¹¹ Portugal indicates that the main investors in 2022 are Spain, the Netherlands, Luxembourg, France and the United Kingdom.

¹² Portugal indicates that the main destinations in 2022 are Spain, the Netherlands, Angola, and Brazil.

¹³ Portugal indicates that the most important destinations for exports of services in 2022 are the United Kingdom, France, Spain, Germany, and the United States.

2 Institutional arrangements

Legal basis

Portugal adhered to the OECD Investment Declaration in 1976. The exact date of establishment of the NCP is not known, though there is a record of the NCP's creation following the 2000 update of the Guidelines.

The NCP has not been established through a legal instrument that defines its structure and functions. However, a basic overview of the NCP structure and functions is included in an Ordinance from the Ministry of Economy and Finance.¹⁴

NCP Structure

The NCP is an 'interagency NCP' composed of representatives from the Directorate-General for Economic Activities (DGAE) within the Ministry of Economy and Maritime Affairs (more in particular the Sustainable Development Unit (DDS) within the Directorate for Corporate Sustainable Responsibility (DSSE)), and from the Portuguese Agency for Investment and Foreign Trade (AICEP Portugal Global) within the Ministry of Foreign Affairs. The NCP does not have an advisory or oversight body. The NCP therefore does not include stakeholders in its institutional arrangements. Civil society stakeholder feedback indicated a concern for the NCP's real or perceived impartiality given its limited structure and location in government ministries relating to economics, trade and investment. Feedback indicated a concern for decreased accessibility, impartiality, and accountability with the current NCP structure. Trade union stakeholder feedback raised concerns over the NCP location, considering the proximity of businesses to the entities which compose the NCP.

Feedback additionally raised concerns relating to access to expertise with only two entities included in the structure and no advisory body. Business stakeholder feedback noted that the NCP's structure allowed for close contact with businesses, increasing its ability to communicate on RBC and due diligence. Feedback suggested the NCP involve stakeholders in its institutional arrangements, either in the main body or in an advisory body, in order to improve the NCP's accessibility, accountability and visibility. Civil society stakeholder feedback further noted the opportunity for the advisory body to provide oversight on the NCP activities to ensure accountability.

The first date of establishment of the NCP is not known, but there is a record of the NCP's creation in 2000. Prior to its current structure and location, the Portuguese NCP was maintained under the sole entity, ICEP Portugal, until its 2007 merger with AP Portugal. The merger of the two investment and economic promotion agencies extinguished ICEP Portugal and the NCP function as it stood.¹⁵ The merger resulted

¹⁴ Ordinance No. 316/2015, of September 30, 2015 (not public)

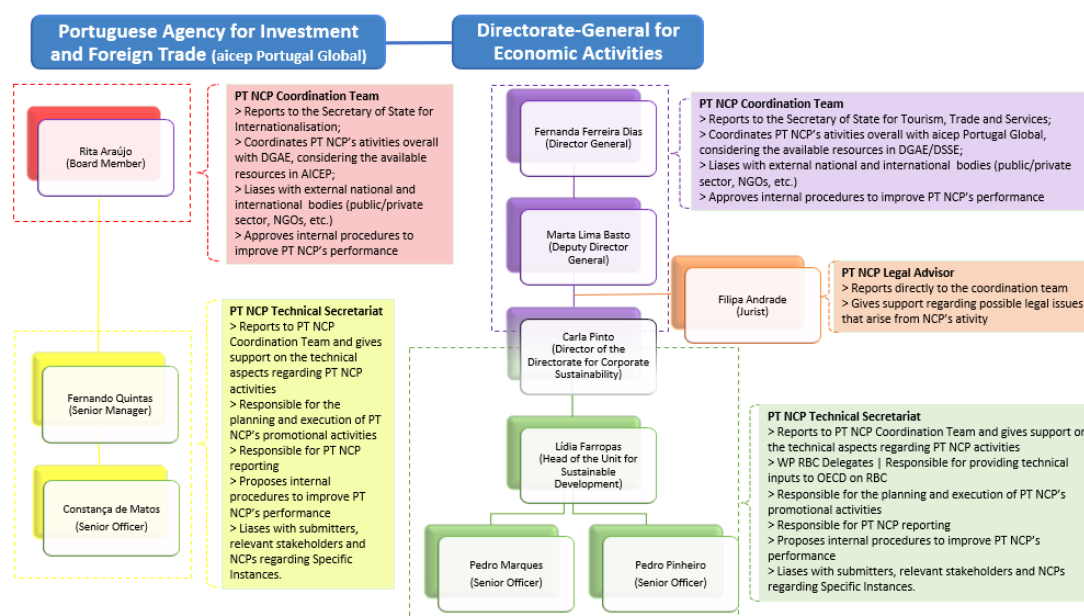
¹⁵ See: Decreto-lei 244/2007, <https://dre.tretas.org/dre/214391/decreto-lei-244-2007-de-25-de-junho>

in the creation of AICEP Portugal Global, which is one of the two entities that houses the NCP today. The DGAE joined the NCP in 2009.

As indicated above, the NCP role is shared between DGAE and AICEP Portugal Global with both bodies taking on specific functions for the NCP. See the overview of the NCP structure in Figure 2.1. DGAE and AICEP Portugal Global both have an NCP coordination team composed of NCP members, which are responsible for coordinating aspects of the NCP role such as approving internal procedures. The NCP does not have a centralised Secretariat, but DGAE and AICEP coordination teams both have NCP technical secretariats, which are responsible for the daily operation of the NCP, as well as promotional activity. The NCP indicated that communication between the two entities was not always frequent in the NCP context as each had their own mandate of responsibilities to be addressed. The NCP acknowledged that it could benefit from improved articulation on the coordination between DGAE and AICEP. The NCP expressed an openness to developing internal rules to clarify the relationship between the entities, particularly concerning their coordination in the context of handling a specific instance. There are no specified provisions in the NCP's operations relating to NCP meetings. The NCP indicated that they meet on an *ad hoc* basis when issues arise.

Details of the responsibilities of NCP members in DGAE and AICEP Portugal Global can be found in the Functions and operations section. The NCP is additionally supported by a legal advisor from DGAE.

Figure 2.1. Institutional arrangements of the Portuguese NCP



Source: Portuguese NCP (2023)

Functions and operations

The responsibilities of the two member entities of the NCP are distinct. As reported by the NCP, the responsibilities of DGAE for the NCP function are to:

- Ensure coordination with the Secretariat of the Working Party on Responsible Business Conduct (WPRBC), including the submission of the NCP annual reporting questionnaire, and ensuring the NCP's representation in relevant OECD fora;

- Promote the OECD Guidelines and the NCP mechanism with relevant stakeholders, including other areas of government and The Ombudsperson;¹⁶
- Support the liaising with other NCPs relating to the handling of specific instances;
- Publish informative content related to the OECD Guidelines on its institutional website;
- Together with AICEP Portugal Global, support the handling of specific instances submitted to the Portuguese NCP, in accordance with the Guidelines.

The Directorate-General for Economic Activities (DGAE) is an entity that belongs to the Direct State Administration. DGAE is part of the Ministry of Economy and Maritime Affairs and integrates 5 departments, the Corporate Sustainable Department (DSSE), the Trade, Services and Restaurants Department, the Business Policy Department, the International Trade Department, and the European Affairs Department. DSSE is further divided into two Units, one dedicated to Sustainable Development (DDS) and the other dedicated to the Circular Economy (DEC).¹⁷ In particular, beyond its responsibility as NCP (see above), DDS follows several areas regarding responsible business conduct, such as the elaboration of the draft of the first National Action Plan for Responsible Business Conduct and Human Rights, the leading role concerning the negotiation of the draft EU Directive on Corporate Sustainability Due Diligence (CSDDD), the representation of the Ministry of Economy and Maritime Affairs in the National Commission for Human Rights¹⁸ and also the responsibility to coordinate the participation of the Ministry of the Economy and Maritime Affairs in the National Implementation Plan of the Global Compact for Migration (PNIPGM) (see also Promotion of policy coherence). In addition, DDS is, in Portugal, the Competent Body for the EU Ecolabel and contributes to several subjects in the context of the area of energy and climate, in particular issues related to climate change.

As reported by the NCP, the responsibilities of AICEP Portugal Global relating to the NCP function are to:

- Produce content targeted to the business sector relating to the OECD Guidelines and the NCP mechanism;
- Ensure the dissemination of content relating to the OECD Guidelines and NCP Mechanism within the Portuguese business community and identify and stimulate appropriate communication channels;
- Ensure coordination with other relevant stakeholders within the national business context;
- Publish informative content related to the OECD Guidelines on its institutional website;
- Together with DGAE, support the handling of specific instances submitted to the Portuguese NCP, in accordance with the Guidelines.

Outside of the NCP function, AICEP Portugal Global is responsible for investment promotion and helping companies to internationalise. It is under the remit of, but independent from, the Ministry of Foreign Affairs. NCP staff in the organisation noted that they had close links with companies and, due to the large size of the organisation, were sometimes able to dedicate more financial resources to the NCP function than DGAE, which generally has a larger umbrella of responsibility.

As it is part of the Public Administration in Portugal, the Portuguese NCP is subject to national laws relating to transparency in Public Administration. This includes the principle of open administration in which citizens

¹⁶ The Ombudsman is a State Body appointed by Parliament and mandated to receive complaints of all persons relating to harm caused by the acts of public administration or relating to a violation of fundamental human rights. See: <https://www.provedor-jus.pt/>

¹⁷ Dispatch N.º 11218/2015. See: <https://diariodarepublica.pt/dr/detalhe/despacho/11218-2015-70471237>

¹⁸ The National Commission for Human Rights is an inter-ministerial coordination body, which aims for an integrated approach to human rights and the cooperation of the action of the public and private entities competent in this matter. See: <https://direitoshumanos.mne.gov.pt/en/the-pnhrc/mandate>

have the right to access administrative files, archives and records.¹⁹ Law 26/2016 additionally regulates the access to administrative documents and to administrative information.²⁰

In terms of perception of impartiality and avoiding conflicts of interest, NCP staff have to follow the General Labour Law in Public Functions,²¹ which defines the conditions under which citizens may perform public duties, including how a public worker may avert potential conflicts of interest. The Portuguese NCP is additionally considering alternative changes to its structure to further increase transparency and impartiality. Such changes might include the development of an advisory body made up of representatives from other areas of government, civil society, and academia.

The need to clarify how the NCP responds to potential conflicts of interest was raised by stakeholders. The NCP indicated awareness that both locations that coordinate the NCP have economic or investment-related interests, which could lead to issues relating to perceptions of impartiality. The NCP noted that the location can also be advantageous as it allows for a privileged channel with enterprises, which can support the promotion of the OECD Guidelines. For example, AICEP Portugal Global's close contact with Portuguese businesses enables it to understand current and future challenges for creating sustainable business in Portugal. The NCP noted, through these communication channels, that Portuguese SMEs for example were more and more willing to address these issues and acknowledge how they could positively impact company business activities. The NCP indicated that it also had channels to connect with civil society, NGOs, and academia, through its work in corporate social responsibility, but lacked sufficient channels to engage with trade union stakeholders, which is notable as they have experience also working in Portuguese-speaking African countries. Feedback from trade union stakeholders indicated an interest in the NCP's work and a willingness to engage with it more in the future.

The NCP sees the interagency structure as advantageous to share the responsibilities for maintaining the NCP function. The NCP further reported that its technical team is considering the possibility to add another relevant Ministry to the NCP structure with an aim to improve its performance and perception of impartiality. Considerations for another Ministry include the Ministry of Labour, Solidarity and Social Security, which would allow the NCP a direct relationship with workers' representatives. The considerations for a new NCP structure would therefore allow for privileged contact with, or direct involvement of, business, trade unions and civil society stakeholders. The NCP considered that these structural updates could ensure the NCP's access to expertise on relevant topics, although the NCP noted some hesitation on the part of other government actors to engage with, and possibly join, the NCP. The NCP considered that it was in part due to an inability to articulate the Guidelines with other instruments being promoted in the Portuguese government, a lack of resources in other government departments, and a lack of willingness to take on additional responsibilities. NCP staff from AICEP Portugal Global noted that the NCP team could count on support from all departments and divisions within AICEP and leverage these connections to ensure the NCP is fit to support Portuguese businesses and investors relating to international trade and investment matters.

Resources

In 2022, the NCP did not have a dedicated budget. The NCP indicated that financial resources were provided by DGAE on an ad hoc basis when requested by the NCP to conduct promotional activity. NCP

¹⁹ Constitution of the Portuguese Republic, Article 268-2. See: <https://dre.pt/dre/legislacao-consolidada/decreto-aprovacao-constituicao/1976-34520775>, Code of Administrative Procedure, Article 17. See: <https://dre.pt/dre/legislacao-consolidada/decreto-lei/2015-105602322>

²⁰ Law no. 26/2016. See: <https://dre.pt/dre/legislacao-consolidada/decreto-lei/2015-105602322>

²¹ Law no. 35/2014. See: <https://dre.pt/dre/legislacao-consolidada/lei/2014-57466875>

staff from AICEP Portugal Global informed that it has allocated a budget to general promotional activities related to the entirety of their work, which included providing support for the NCP promotional work. In 2022, the NCP reported that it did have sufficient financial and human resources to attend NCP meetings at the OECD and attend events organised by stakeholders. The NCP noted that its low levels of activity in previous years (see Promotion of the Guidelines) were largely due to a lack of staff and dedicated budget. Some civil society stakeholder feedback recommended the NCP publish information on its budget and spending streams on its website. General feedback further called for an increase in financial resources attributed to the PT NCP, in addition to a dedicated team to fulfil the NCP mandate.

Prior to December 2019, the Portuguese NCP consisted of five members, four from DGAE and one from AICEP Portugal Global. The NCP has undergone staff turnover in recent years, with incoming staff having varying levels of expertise relating to responsible business conduct. The three newest staff of the Portuguese NCP joined in 2021, 2022, and 2023, one from DGAE and two from AICEP Portugal Global. The new staff had backgrounds related to RBC and all joined the NCP on a part-time basis. The NCP now consists of four staff from DGAE and two from AICEP Portugal Global. All six staff work part-time on the NCP function. Three NCP staff spend 10% of their time on the NCP function, one staff spends 20%, and two staff dedicate 40% of their time to the NCP function. The NCP indicated that DGAE staff are selected from DDS, taking into consideration backgrounds and skills that could support the NCP's activities. The NCP noted that AICEP Portugal Global NCP staff have a combination of institutional and business backgrounds, with understanding of relevant national and international laws and regulations relating to MNEs. The remaining four members of the NCP, belong to the senior management of AICEP Portugal Global (one member) and DGAE (two members), and the legal service of DGAE. They contribute to the NCP as needed, including by making final decisions on NCP matters, and are not involved in daily operations.

While the NCP's human resources have increased in recent years, the NCP still notes related challenges as the current staff still lack skills and training for handling specific instances, and all staff are working on the NCP function on a part-time basis. The NCP noted particular concern for a lack of staff with mediation training should the need arise in the context of handling a specific instance. Beyond this, NCP staff had to share their expertise with other teams within government working on RBC-related issues, pulling time from some NCP operations, such as work to promote the Guidelines among different stakeholder groups. The NCP noted that it would be difficult to justify an increase in human and financial resources while the NCP is not actively handling a specific instance. However, low levels of human and financial resources make it more difficult to adequately promote the NCP and thus decrease the likelihood of it receiving a specific instance submission. The NCP highlighted the overall difficulty to guarantee human resource stability in the Portuguese public administration, which often contributes to high rates of staff turnover. The NCP clarified that these barriers did not exist for AICEP Portugal Global, allowing them more freedom in staffing. Civil society stakeholder feedback considered that human resource levels, particularly given the lack of a full-time staff member, were not sufficient and had the potential to expose the PT NCP to conflicts of interest.

The NCP indicated that its current method for maintaining access to institutional memory in the case of staff turnover is provided via the documents and information available on the NCP website. The NCP additionally noted that it files all NCP-relevant documents on an internal server accessible by staff. The NCP further specified that all leaving staff are required to report on any pending activities and ensure any necessary knowledge transfer. The NCP indicated plans to develop a Welcome Guide for new NCP staff with the most relevant resources and documentation to ease the transition process.

Reporting

The NCP reports to the OECD. The Portuguese NCP submitted its annual report to the Investment Committee regularly during the past few years. These reports have been made public on the PT NCP website since 2020. The NCP does not report to Parliament. The NCP does report once a year to the executive on its activities.

Following the publication of the NCP's Promotional plan, the NCP expects to be able to receive a dedicated budget from DGAE. The budget would be disclosed in an Annual Public Activity Report, published in English and Portuguese, and distributed among relevant national stakeholders and other national government bodies, and future advisory body members if applicable. The NCP further indicated that the report would be available on the NCP website. Some civil society stakeholder feedback indicated an interest in more public reporting from the NCP on its activities.

	Findings	Recommendations
1.1	The NCP staff show a clear commitment to the NCP and its continued improvement, evidenced by the increased work on the NCP in recent years. However, NCP staff and stakeholders have flagged both financial and human resources as a challenge for the NCP. NCP staff work part-time on the NCP function and have many other duties. Obtaining sufficient financial resources for promotion and other aspects of the NCP function, such as for mediation should the need arise, has proved difficult.	The NCP Secretariat teams working both at DGAE and AICEP Portugal Global should have access to sufficient budget to fulfil its responsibilities relating to promotion and handling specific instances. The NCP should also seek to incorporate dedicated full-time staff members to the NCP function, possibly by designating current staff as full-time.
1.2	The current NCP structure presents challenges related to perception of impartiality, due its location in government bodies with an economic focus, access to expertise, and stakeholder engagement. General stakeholder feedback suggested that stakeholders were ready and willing to engage further with the NCP. The NCP structure divided between DGAE and AICEP allows for ease of access to relevant business stakeholders. While the structure allows for some access to other stakeholder groups, engaging with trade unions and civil society remained a challenge.	The NCP should consider incorporating more entities into its interagency structure or via an interagency advisory body. The NCP should consider creating a multi-stakeholder advisory body, composed of representatives from business, trade unions, and civil society, to address real or perceived concerns of impartiality, increase access to expertise, and enhance stakeholder engagement.
1.3	The Structure of the NCP is complex and not always well-understood by stakeholders. While it is mentioned in internal dispatches, the NCP function is not formalised in a legal instrument.	The Government could formalise the NCP structure and function in a legal instrument. This could improve the authority of the NCP, support communication around the NCP, and facilitate engagement with other actors, including other parts of government.

3 Promotion of the Guidelines

Promotional plan

In its 2022 annual report, the NCP indicated that it did not have a promotional plan for the coming year. However, the NCP has since begun the development of a promotional plan with a commitment to improve the visibility of the NCP. The NCP expects that the updated promotional plan can build upon the momentum of its recent activities to improve the promotional level of the NCP. The NCP indicated that the publication of its first promotional plan could assist the NCP in acquiring a dedicated state budget.

The first promotional plan developed by the Portuguese NCP will run through 2023-2024. The plan is publicly available.²² The document begins with an introduction that provides basic background on the NCP, the NCP mandate on promotion and the importance of promotion. The next section of the plan, 'Framework', contains a state of affairs of the Portuguese NCP promotion and justifies the need for more promotion. This includes discussion on the NCP's lack of specific instances, an overview of recently conducted promotional activity, resource constraints, prioritisation strategies, resources from the OECD Secretariat, and assumptions on which the plan is based. The plan further contains two tables. The first, the Activity Identification Table, contains a list of promotional activities including the activity title, the topic, the target audience, the format (online / in person), identified partners, and estimated work hours. The second, the activity timetable, includes estimated timings of the promotional activities. The plan does not include specific goals of the NCP for their promotional work. Civil society stakeholder feedback noted that the plan did not currently contain any exact dates for the upcoming promotional activities. Feedback encouraged the PT NCP to provide this information as soon as possible so that stakeholders had sufficient notice to follow and join the events. Feedback additionally encouraged promotional work targeted towards relevant sectors and areas in Portugal, such as agriculture, tourism, IT and crypto currency, migrant workers, and the digital and energy transition.

Promotional activity of the NCP has been low in recent years. The NCP has shown an increase in activity starting at the end of 2022 and continuing through the moment of the on-site visit. This increase in activity has included the development of promotional materials and the organisation of promotional events. An overview of promotional activities completed through the end of 2022 can be found in Annex C. Civil society stakeholder feedback considered that the NCP could further enhance its visibility by developing its online presence, including through the publication of reports, activities and blog posts on its website, and through active promotion of its activities on social media and via contact with the press. Feedback further suggested the development of a newsletter to circulate to stakeholders on NCP activities and relevant information.

The NCP does not currently monitor and measure the level of awareness or the use of the Guidelines and related due diligence guidance by enterprises. Feedback from civil society stakeholders indicated an interest in how awareness and implementation of the Guidelines were being monitored in Portugal. Trade union stakeholder feedback further noted the utility of monitoring such awareness in order to better target

²² See: <https://www.dgae.gov.pt/servicos/sustentabilidade-empresarial/national-contact-point-for-responsible-business-conduct/promotional-plan.aspx>

and balance promotion from the NCP among stakeholder groups. The NCP indicated having strategies in place to help the development of such monitoring, including:

- The DGAE is involved in the development of the National Action Plan for Responsible Business Conduct and Human Rights (see Promotion of policy coherence), which proposes the development of instruments that would allow the continuous assessment of the level of knowledge and use of the Guidelines and related due diligence guidance by companies, and stakeholders and
- AICEP Portugal Global plans to follow up on information sent to Portuguese enterprises, associations, and confederations seeking feedback on NCP activities and events. The NCP would use the feedback to inform its outreach strategy and adjust as necessary,
- The NCP finally considered that the development of a multi-stakeholder advisory body could be an asset in understanding awareness of the Guidelines,

Civil society stakeholder feedback noted recent efforts by the NCP to increase promotional activity. Feedback suggested that promotional activity remained limited and encouraged the NCP to continue to enhance its promotional efforts, particularly relating to promoting the role of the NCP as a non-judicial grievance mechanism, and targeting a wider-range of stakeholder audiences. Business stakeholder feedback additionally noted the relevance of the NCP and due diligence guidance promotion to exporters and investors in Portugal, though feedback noted the importance of the NCP communicating targeted messages to different types of business stakeholders on the relevance of RBC and the Guidelines to their work. Business stakeholder feedback further noted the importance of communicating the Guidelines and RBC practices in a digestible and manageable way for businesses, specifically as they related to often lower-resourced SMEs. General feedback from stakeholders noted the perception that the importance and relevance of the NCP was increasing, particularly given Portugal's fast-growing export sector.

Information and promotional materials

The NCP indicated developing or promoting the following materials in an effort to inform companies and other relevant stakeholders of the Guidelines, the NCP and its role as a non-judicial grievance mechanism:

- The webpages dedicated to the NCP on both DGAE²³ and AICEP Portugal Global's²⁴ institutional websites provide information on the Guidelines and filing specific instances;
- A one page flyer with concise information on the Guidelines and NCP;²⁵
- The Portuguese translation of the OECD's video on the Guidelines and the role of the NCPs;²⁶
- The Video on Responsible Business Conduct, OECD Guidelines, the NCP's role and the Portuguese NCP, which was exhibited at a promotional event in 2022;²⁷

²³ See: <https://www.dgae.gov.pt/servicos/sustentabilidade-empresarial/national-contact-point-for-responsible-business-conduct.aspx>

²⁴ See: <https://portugalglobal.pt/PT/Internacionalizar/Paginas/conduta-empresarial-responsavel-ponto-contacto-nacional-ocde.aspx>

²⁵ See: <https://portugalglobal.pt/PT/Internacionalizar/Documents/ocde-one-pager.pdf> (Portuguese), <https://portugalglobal.pt/EN/InvestInPortugal/Documents/OCDE-CER-ONE-PAGER.pdf> (English)

²⁶ See: https://www.youtube.com/watch?v=e_xDinpEVUc

²⁷ See: <https://www.youtube.com/watch?v=hK4OV7EYMUk>

- The Portuguese NCP presentation of the Guidelines Chapter VII, as presented at the 2022 Anti-Corruption International Congress.²⁸

The NCP developed a four-page downloadable promotional flyer, released on the new English version of the NCP website.²⁹ The flyer contains information on the mission and mandate of the NCP, an overview of the Guidelines and due diligence guidance, an overview of the specific instance process, and contact information for the NCP.

Members of the Portuguese NCP have additionally created three informative pieces on the Guidelines:

- One, providing general information on the Guidelines and the current updates process, published in AICEP Portugal Global's newsletter³⁰ on 16 February 2023;
- One, providing information on the Guidelines and the role of the PT NCP, published in AICEP Portugal Global's monthly magazine³¹ in March 2022;
- And one, providing information on the Guidelines and a broad overview on the importance of RBC for Portuguese businesses, published in Portugal Exporta,³² a digital platform on AICEP Portugal Global's website dedicated to the Portuguese business community, on 4 April 2023.

The publications are available for free online.

Promotional events

The NCP showed limited promotional activity in recent years with no promotional events reported in 2020 or 2021, and two promotional events reported in 2022. The NCP has cited staff and financial resource constraints as barriers to conduct more promotion, which impacted the NCP's visibility and relations with stakeholders. Trade union stakeholder feedback noted a lack of awareness of efforts made by the NCP to develop and maintain relations with stakeholders. Some trade union stakeholder feedback noted that its awareness of the NCP mechanism stemmed from its relationship with TUAC, rather than the NCP. General feedback from trade union stakeholders demonstrated an eagerness to engage further with the NCP in pursuit of common goals to defend worker's rights.

The NCP did not organise, co-organise, or participate in promotional events in 2020 or 2021. The NCP planned the organisation of two events which took place in 2023:

- A webinar targeted at a variety of stakeholder groups introducing the Guidelines and the activities of the NCP,³³ which had a turnout of almost 100 participants, and
- An event dedicated to the Portuguese entrepreneurial community with inputs from enterprises on their responsible and sustainable business conduct. Following the webinar, participants noted that

²⁸ See: https://www.dgae.gov.pt/gestao-de-ficheiros-externos-dgae-ano-2023/dd_apresentacao-pcn-pt_corrupcao-pdf.aspx

²⁹ Available: <https://www.dgae.gov.pt/gestao-de-ficheiros-externos-dgae-ano-2023/flyer-pcn-print-en-pdf.aspx>

³⁰ See: <https://portugalglobal.pt/pt/portugalnews/paginas/newdetail.aspx?newid=c857a20c-9e4a-4567-ae7a-514fde02bebe>

³¹ See: <http://www.revista.portugalglobal.pt/AICEP/PortugalGlobal/portugalglobal-n151-mar22/>

³² Available : <https://www.portugalexporta.pt/noticias/responsabilidade-social-empresarial>

³³ Available: <https://www.youtube.com/watch?v=Uort1GAed2I>

they were able to provide feedback on the event and subscribe to further communications from the NCP.³⁴

Stakeholder feedback considered that these events were positive developments for the NCP and encouraged more events in the future, targeting a broader range of stakeholders. Business stakeholder feedback additionally noted that it was necessary to continue to increase the NCP's visibility by promoting its activities with employer and business and associations. Additional feedback suggested the NCP work to promote its unique role as a non-judicial grievance mechanism, and how it fits in the landscape of arbitration and courts of law that would often handle international business disputes.

In 2023, the NCP, via its AICEP staff, promoted the Guidelines and RBC to a selection of top Portuguese companies and associations via direct mailing, the publication of more articles and other informative pieces that refer to the Guidelines and NCP activities, the promotion of workshops on RBC and the Guidelines, and the elaboration of an annual outlook on the results of dissemination and communication strategies at the end of the year. Stakeholder feedback suggested that the PT NCP additionally consider focusing on the promotion of the OECD Due Diligence Guidance, and particularly on the OECD-FAO Guidance for Responsible Agricultural Supply Chains, as it has high relevance for Portugal. The NCP noted that the currently proposed NAP on RBC and HR included actions specifically to promote this guidance. NCP AICEP staff additionally noted that it had reposted the FAO's newsletter, *Responsible Business Conduct Quarterly*, in its daily newsletter, *Portugal News*, on 26 April 2023.³⁵

Civil society stakeholder feedback suggested that the PT NCP organise more events in collaboration with other NCPs from the same or nearby regions, such as with Spain or France. Feedback further noted that it would be essential to create a network of stakeholders to be kept apprised of NCP activities. While many stakeholders indicated a lack of visibility of the NCP, general feedback noted a willingness to engage with the NCP in the future.

Stakeholder feedback noted academia as an opportunity for the NCP in terms of building relationships and presenting on the NCP mechanism within related existing frameworks. In particular, feedback noted that the Guidelines were taught at prominent universities in Portugal, and instructors of such courses ought to be informed of developments of the PT NCP. Stakeholders from academia further noted their ability to disseminate this information to individual citizens, helping them to understand how the Guidelines can improve their lives. Additionally, the NCP could seek opportunities to contribute to the blog series on 'National Contact Points for Responsible Business Conduct: the road ahead for achieving effective remedies'³⁶, maintained by one of those institutions.

Webpage

In the months leading up to the on-site visit for the peer review of the NCP, the NCP undertook a project to develop a new website based on good practices identified across the NCP Network. The NCP indicated that the previous website had not been updated frequently. The updated website is provided in English and Portuguese, though the website had previously only been available in Portuguese with select pages and downloadable materials in English. The NCP noted that providing the webpage in both languages could help to improve its accessibility. It is noted that, as these changes were taking place in the weeks

³⁴ See the communication posted by the Portuguese Commerce and Services Confederation: <https://ccp.pt/2023/04/ponto-de-contato-nacional-portugues-pcn-pt/>

³⁵ See: https://www.portugalglobal.pt/PT/PortugalNews/Paginas/NewDetail.aspx?newId=%7b13B16FDD-C17A-4E31-9188-10F9C2F55A61%7d&utm_source=pt-news&utm_medium=newsletter

³⁶ See: <https://novabhre.novalaw.unl.pt/category/national-contact-points-for-responsible-business-conduct-the-road-ahead-for-achieving-effective-remedies/>

leading up to the peer review of the PT NCP, some stakeholders were consulting the website while it was under construction and may not have accessed the most up-to-date information available.

In addition to a main website provided by the DGAE, the PT NCP has a dedicated webpage on the website of AICEP Portugal Global.³⁷ The website provides a basic overview of the Guidelines, the NCP mechanism, and the PT NCP. The webpage provides an overview of the specific instance process, including relevant downloadable materials, and points the user to the DGAE website to learn more. Contact information is provided for DGAE, as it is the entity that manages the NCP's correspondence. In this section, only the DGAE website is discussed as it is the one that can be considered the website of the NCP.

The NCP website is easily identifiable with a basic internet search. Other webpages, such as those for the National Contact Points for Horizon Europe, additionally appear in searches and may lead to confusion for interested parties. This remains an issue for a number of NCPs in the Network.

The content of the English and Portuguese websites is largely aligned. Both webpages begin with a brief explanation of the OECD Guidelines, and the NCP and its mandate. In the form of links to subpages, the website landing page contains links to information to submit a complaint, information on the OECD Guidelines, information on the OECD due diligence guidance, a page dedicated to specific instances handled by the NCP, the promotional plan, promotional materials, activities of the NCP, and NCP reports. The website additionally contains contact information for the NCP, including a dedicated NCP email,³⁸ and invites readers to make contact for clarifications, questions, or promotional engagement. Business stakeholder feedback noted the perception that the NCP provided relevant information in an accessible manner on both the DGAE and AICEP Portugal Global websites.

Below is an overview of the main sections of the website.

Submitting a complaint

The dedicated webpage on submitting a specific instance provides a basic overview of the specific instance process with relevant supporting documents. See more on the process to submit a specific instance in the section on the Reception of the specific instance.

The page additionally provides a list of frequently asked questions with answers. The included questions are:

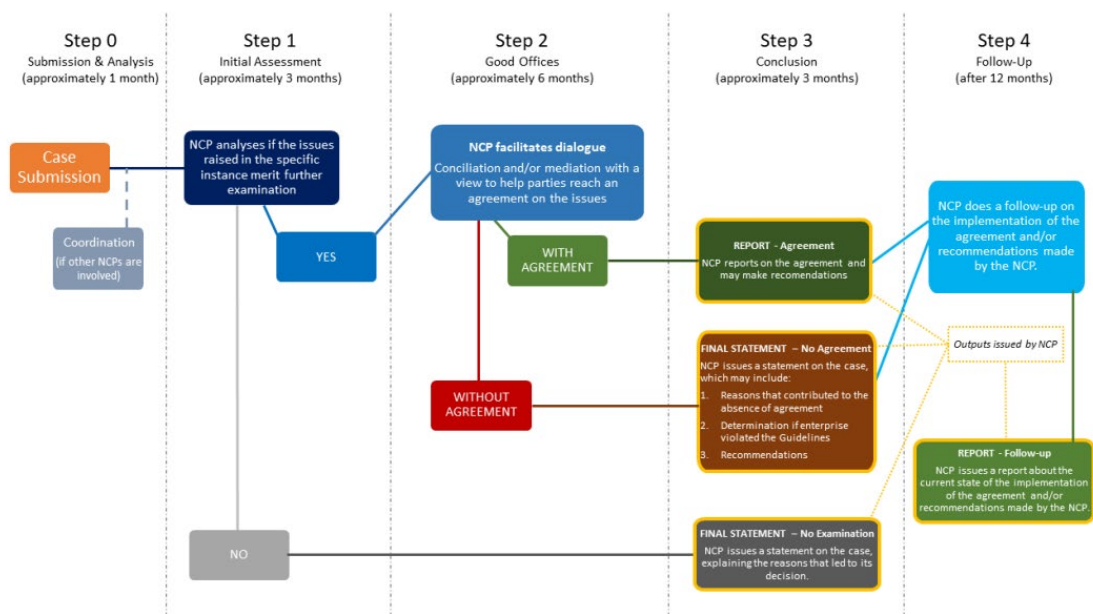
- 'Who can file a complaint?'
- Which NCP to contact?
- What is the geographic reach of the NCPs?
- How do I file a complaint with the NCP?
- Is legal representation required?
- Are there any costs for submitting a complaint?
- What to expect from submitting a complaint to an NCP?
- What if there are suspicions of retaliation?
- What are the steps for handling a specific instance?
- Are the cases public?'

³⁷ See: <https://portugalglobal.pt/EN/InvestInPortugal/infrastructure/Pages/responsible-business-conduct.aspx>

³⁸ pcn.portugal@dgae.gov.pt

The FAQ on the steps for handling a specific instance includes a diagram produced by the NCP on its process. See the diagram in Figure 4.1 below

Figure 3.1. PT NCP diagram on steps involved in handling a specific instance






Source : www.dgae.gov.pt/gestao-de-ficheiros-externos-dgae-ano-2023/diagram-pcn-pdf.aspx

The OECD Guidelines for Multinational Enterprises

The page dedicated to the Guidelines includes a basic overview of the history and purpose of the Guidelines, including a link to the publication. The page further provides a brief presentation of the 11 chapters included in the Guidelines. See examples from Chapters 1-3 in Figure 3.2.

Figure 3.2. Overview of Chapters 1-3 of the Guidelines provided on the PT NCP website

	<p>Chapter I. Concepts and Principles</p> <p>The Guidelines pillar: identifies fundamental ideas that contextualize the following chapters. The Guidelines are a set of recommendations that establish principles and standards of good practice, whose adoption is voluntary.</p>
	<p>Chapter II. General Policies</p> <p>It contains recommendations addressed to companies, including provisions such as implementing due diligence, addressing adverse impacts and engaging stakeholders.</p>
	<p>Chapter III. Disclosure</p> <p>It promotes greater transparency in the operations of companies, in order to respond to society's growing demands in terms of information. Companies must ensure the disclosure of information related to their activities, structure, financial situation, performance, etc. Companies' disclosure policies should be adapted to the nature, size and location of the company, taking due account of costs, the confidentiality of its business and other concerns relating to competitiveness.</p>

Note: The page includes an overview of all eleven chapters of the Guidelines.

Source : <https://www.dgae.gov.pt/servicos/sustentabilidade-empresarial/national-contact-point-for-responsible-business-conduct/guidelines.aspx>

The Due Diligence Guides for Responsible Business Conduct

The page dedicated to the OECD due diligence guidance provides a brief overview of due diligence followed by dedicated sections for each thematic topic of the OECD due diligence guidances. It is noted that the names used for the included documents do not always correspond to the standard language for those publications in English (i.e. 'guides' v. 'guidance') The webpage has a dedicated description for each thematic areas and includes links to the following OECD publications:

- OECD Due Diligence Guidance for Responsible Business Conduct
- Responsible Business Conduct for Institutional Investors
- Due Diligence for Responsible Corporate Lending and Securities Underwriting
- Responsible Business Conduct Due Diligence for Project and Asset Finance Transactions
- OECD Due Diligence Guidance for Meaningful Stakeholder Engagement in the Extractive Sector
- OECD Due Diligence Guidance for Responsible Supply Chains in the Garment and Footwear Sector
- OECD-FAO Guidance for Responsible Agricultural Supply Chains

- OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas
- Practical Actions for Companies to Identify and Address the Worst Forms of Child Labour in Mineral Supply Chains

Database of Specific Instances Coordinated by the PT NCP

The page dedicated to specific instances handled by the PT NCP currently contains one entry from the only specific instance handled by the NCP in 2004. The entry contains similar information to that provided on the OECD NCP database of specific instances.³⁹ See the entry as published on the NCP website in Figure 3.3. The webpage does not provide information for specific instances on which the NCP is acting as support.

The specific instance entry on the PT NCP website states that the specific instance was ultimately not accepted by the NCP, though it is listed as concluded in the OECD NCP database on specific instances. The differences may be due to differences in reporting at the time the case was handled, which was prior to the 2011 update of the Guidelines.

Figure 3.3. Specific instance overview as provided on the PT NCP website

Case of 2004 (handled by ICEP, I.P.)	
Support NCPs	N/A
Case Summary	Complaint filed by a trade union about the activities of a multinational company operating in Portugal.
Focused themes	Employment and industrial relations
Date of receipt	3 May 2004
Country(ies) involved	Portugal
Type of Applicant	Trade union
Industry Sector	Not identified
State point	Concluded
NCP outputs	Final Declaration - Non-acceptance
Case Description	In May 2004, the PT NCP received an allegation from a union informing that a multinational company failed to observe the provisions relating to Cap. V. Employment and Labor Relations of the Guidelines, in connection with a factory closure in Portugal. After an initial assessment, PT NCP concluded that there was no non-compliance with the Guidelines and, subsequently, concluded the specific instance, by agreement of the parties involved.

Source : <https://www.dgae.gov.pt/servicos/sustentabilidade-empresarial/national-contact-point-for-responsible-business-conduct/si-database.aspx>

³⁹ See: <https://mneguidelines.oecd.org/database/>

PT NCP Promotional Plan

This page is dedicated the NCP's promotional plan as described in the above section on the NCP's Promotional plan.

Promotional Materials

On this page, the NCP provides links to all video promotional materials produce by the PT NCP, the OECD, or other NCPs where relevant. See included materials in the section on Information and promotional materials.

The videos are all available on the NCP's dedicated YouTube channel.

PT NCP activities

This page is dedicated to promotional activities conducted or participated in by the PT NCP. At the time of writing, the page did not also include future promotional activities: it included overviews and photos from the NCP's participation in the 'Portugal Exportador' event, the PT NCP's participation in the peer review of the NCP of Peru, and the NCP's participation in the Anti-Corruption International Congress (See Information and promotional materials).

The Portuguese NCP has additionally promoted its work using the DGAE LinkedIn account,⁴⁰ including by promoting the public consultation for the targeted updates of the Guidelines.⁴¹ Civil society stakeholder feedback encouraged the PT NCP to further develop its presence on social media in order to increase the NCP's visibility and reach a wider audience.

Promotion of policy coherence

The NCP highlighted the general increase of awareness concerning the topic of responsible business conduct. The NCP further noted the expectation that there will be a higher level of commitment of the Portuguese government to the NCP activity following Portugal's participation in the Ministerial Meeting on RBC in February 2023. This increased government engagement could contribute to a boost in the NCP's performance, although it was not stated whether this would come through additional resources. The NCP noted that it helped to prepare and brief the Portuguese delegation of the Ministerial Meeting. However, feedback from other government actors indicated a low awareness of the Guidelines and the NCP outside of the Ministry of Economy and Maritime Affairs and Ministry of Foreign Affairs. Other ministries, such as the Ministry of Labour, were not clear on how their expertise could be complementary to the NCP function. Government representatives did indicate a willingness to learn more about the Guidelines and the NCP, and possibly to engage with the NCP in the future. General feedback from government representatives questioned where the Guidelines fit among other international standards and mechanisms on RBC such as the ILO focal point for the ILO Tripartite Declaration on Multinational Enterprises and Social Policy, and how the NCP could communicate on this point.

The Ministry of Economy and Maritime Affairs is represented in the Portuguese National Human Rights Committee (PNHRC) through representatives of the DSSE that also contribute to the NCP function. The PNHCR has a working group on business and human rights, which follows the work of the UN Working Group on Business and Human Rights, publicises and disseminates the UN Guiding Principles and UN

⁴⁰ See: <https://www.linkedin.com/company/dire%C3%A7%C3%A3o-geral-das-atividades-econ%C3%B3micas>

⁴¹ See: <https://www.dgae.gov.pt/comunicacao/destaques/consulta-publica-sobre-exercicio-de-avaliacao-das-diretrizes-da-ocde-para-as-empresas-multinacionais-a-decorrer-ate-14092021.aspx>

Framework on the Implementation of the UN Guiding Principles, and works on other related standards. The PNHCR additionally works with the Ministry of Economy and Maritime Affairs to elaborate a NAP on BHR. The PNHCR has included provisions for its representatives from the Ministry of Economy and Maritime Affairs to promote the OECD Guidelines in its Annual Plan for 2022 and 2023.

In its 2022 annual report, the NCP indicated that a National Action Plan on Responsible Business Conduct and Human Rights was in development and the NCP had played a coordinating role and participated in its development. The NCP indicated that the plan contained provisions that would contribute to the NCP's promotional efforts and require broader engagement of other national bodies, which would support policy coherence.

Portugal was one of the first countries to prepare a National Implementation Plan of the Global Compact for Migration (PNIPGM).⁴² The NCP reported that the next version of the PNIPGM, as proposed by the Ministry of Economy and Maritime Affairs, involved activities for the PT NCP. The NCP shared a document, as sent to the High Commissioner for Migration, with the peer review team, detailing the expected roles for the NCP. The document proposed that the NCP play a role in disseminating recommendations such as on the human rights and employment and industrial relations chapters of the Guidelines to relevant companies operating in Portugal and which frequently use migrant labour. Promotion would emphasise RBC in relation to fair and ethical recruitment and measures to ensure decent work. The NCP would additionally play a role in informing relevant stakeholders, in particular those that assist and support the migrant population in Portugal, about the specific instance mechanism.

The DGAE is the Portuguese entity leading the negotiation of the European Commission's proposal for the Due diligence Directive for Corporate Sustainability. The NCP was therefore able to inform related discussions of the Guidelines and potential role of the NCP. The Ministry of Environment is additionally part of the team working on the CSDDD and noted the possibility of cooperation in this area with the NCP in the future to address the goals of the directive. The Ministry of Environment further noted that their work on the EU taxonomy for sustainable activities additionally required companies to be compliant with the Guidelines, although they did not specify conducting their own promotion or liaising with the NCP in this regard.

Requests for information

The NCP has their contact details listed on the webpage (email, telephone, and mailing address). It invites users to contact for any enquiries. Following the April 2023 promotional webinar, the NCP received three requests for information. The requests related to stakeholder expectations, the voluntary nature of the specific instance mechanism, and the positives of RBC for business. The questions and responses are publicly available in the NCP's website FAQ page.⁴³ The NCP additionally noted that it had received a request from a business association concerning the NCP's support in implementing aspects of the Guidelines. Civil society stakeholder feedback had indicated previous attempts to contact the PT NCP relating to an invitation to attend a promotional event, which was never replied. Feedback further noted

⁴²

See:

https://portaldiplomatico.mne.gov.pt/images/noticias/2020/PDF/Tradu%C3%A7%C3%A3o_Resoluc%C3%A7%C3%A3o_CM_141-2019_-_Plano_Nacional_de_Implementac%C3%A7%C3%A3o_do_Pacto_Global_das_Migrac%C3%A7%C3%A3es.Final_Limpa_002_002.pdf

⁴³ Available: <https://www.dgae.gov.pt/servicos/sustentabilidade-empresarial/national-contact-point-for-responsible-business-conduct/submit-a-complaint.aspx>

similar issues attempting to contact the PT NCP via the phone number listed on their website. The feedback noted the importance of regularly checking contact lines to ensure the accessibility of the NCP.

Cooperation amongst NCPs

The NCP had been invited to participate in a peer learning exercise in Brazil in January 2022 but was unable to attend as it was not provided the time necessary to secure resources for the mission. The NCP was able to attend the peer review of the Peruvian NCP in October 2022, which allowed the Portuguese NCP to better understand the gap between its responsibilities and its capacities.

The Portuguese NCP has expressed interest in continuing its participation in future peer learning events. The NCP additionally noted its intention to engage with the NCP regional network of Southern European NCPs to assess the possibility of developing capacity-building initiatives.

	Findings	Recommendations
2.1	The NCP has shown clear improvements in the last few years concerning its promotional activity, which had previously been very limited. The NCP showed initiative and creativity in its promotional efforts, despite sometimes facing resource constraints.	The NCP should continue increasing promotional efforts in line with recent improvements. Relationships with stakeholders should be leveraged to enhance further promotion, for example by partnering with multiplier organisations and the Southern European NCP Network to increase promotion while considering staff and financial resource constraints.
2.2	Although promotion has increased, visibility of the NCP remains low, particularly with stakeholders from trade unions and civil society. Promotional activity has additionally not equally targeted stakeholder groups, with more promotion being conducted towards business.	The NCP should work to foster relationships with relevant stakeholders, paying particular attention to enhancing the relationships with stakeholders from trade unions and civil society. Work could include stakeholder mapping to identify priority connections and strategise promotion.
2.3	The team working on the NCP function is well-positioned to support policy coherence given they also work on other RBC policy areas such as the CSDDD and the NAP on RBC. However, there is little awareness of the NCP among other parts of government.	The NCP should work to promote the Guidelines and OECD Recommendation on the Role of Government in Promoting RBC to other parts of government, particularly those in other key ministries, such as the Ministries of Labour and Environment. An expanded interagency NCP structure or advisory body could be instrumental in this regard.

4 Specific instances

Overview

As of the date of the on-site visit, the NCP had received one specific instance that was received and concluded in 2004. This is low in comparison to similarly resourced NCPs and the Portuguese NCP is one of ten NCPs that have not received a specific instance in the last five years, not including the NCPs of the countries that adhered to the Guidelines during that period. The one specific instance was concluded by the NCP.

The specific instance handled by the NCP concerned the manufacturing sector. It was submitted by a trade union and dealt with issues concerning the Employment and Industrial Relations chapter of the Guidelines. The specific instance was received when the Portuguese NCP function was handled under ICEP Portugal, an entity which was extinguished in 2007. The current Portuguese NCP does not have access to any documents relating to the handling of the specific instance.

The Portuguese NCP noted that the lack of specific instances could be due to a variety of factors, including lack of exposure and promotional activity until recently, lack of political involvement, lack of rules of procedure until 2020, lack of effective information handover relating to staff turnover, and lack of dedicated budget. The NCP has been working on steps to address the identified issues, such as staff training to ensure continuity, and increasing the visibility of the NCP as noted in the promotional section above.

General stakeholder feedback noted a perception that a lack of specific instances received by the NCP indicated a lack of interest, awareness, and confidence in the NCP by potential submitters. Feedback further suggested that the main barriers preventing further submissions were a lack of visibility and transparency of the NCP, primarily caused by a lack of promotional activity.

An overview of the specific instance handled by the NCP is available in Annex D.

Rules of Procedure

Overview

The Rules of Procedure (RoP) of the PT NCP were first published in May 2020, exclusively in Portuguese.⁴⁴ An English language version, on which this review is based, was published in April 2021. The RoP are structured as follows:

1. Glossary
2. Structure and Mission of the National Contact Point
3. Initial considerations on the mediation role of the PT NCP
4. Steps in the process of analysing specific instances

⁴⁴ https://www.dgae.gov.pt/gestao-de-ficheiros-externos-dgae-ano-2021/procedural-guidance_english-version-pdf

- a. 1st step: Reception and initial assessment of the specific instance
 - i. Article 2. Admission Check of Specific Instance Application
 - ii. Article 3. Preparation and submission of the initial assessment report on the admissibility of the specific instance
 - b. 2nd step: Admission of the specific instance by the PT NCP Final Declaration
 - i. Article 4. Mediation process
 - c. 3rd step: Preparation and publication of the PT NCP Final Declaration
 - i. Article 5. Final Declaration of agreement between the interested parties
 - ii. Article 6. Final Declaration without agreement between the interested parties
 - iii. Article 7. Publication of cases analysed by the PT NCP
5. General Provisions
 6. PT NCP internal liaison

The NCP has expressed awareness of improvements that could be made to its current rules of procedure. The NCP noted that it has drafted internal documents identifying priority areas for updates, also considering the NCP evaluation done by OECD Watch.⁴⁵ The NCP aims to follow up on the process and update the rules of procedure accordingly. The NCP further indicated possible plans to develop a ‘user-friendly guide’ to the RoP, to ensure the clarity of the process for any potential submitter.

Glossary

The glossary provided in the RoP contains plain language definitions for the Guidelines, Multinational Enterprises (MNEs), Specific instance, Stakeholder, NCP, PT NCP, Due Diligence, and Reporting Mechanism. Stakeholder feedback indicated some concern for providing a precise definition of MNEs, written as ‘Companies or other entities established in more than one country and linked together to coordinate their activities.’

The definitions are not aligned with standard language used in the Guidelines and Procedural Guidance, which could reduce the predictability of the process and the extent to which the NCP operates in a way compatible with the Guidelines.

Structure and Mission of the National Contact Point

This section of the RoP contains an overview of the NCP structure and function (see NCP Structure). The section further specifies the NCP’s role in handling specific instances, including the NCP’s responsibility to act in accordance with the Guidelines. Relating to handling specific instances, the section explains which criteria an MNE might meet to be relevant to the PT NCP specific instance process. General stakeholder feedback indicated confusion around the description of MNEs that are concerned by this process, particularly as it could be over-restrictive, and noted it would be helpful to clarify.

Initial considerations on the mediation role of the PT NCP

This section of the RoP notes that the PT NCP is governed by the principles of ‘visibility, accessibility, transparency and responsibility.’ This is notably different from the Procedural Guidance, which includes ‘accountability’ rather than responsibility as a core criterion, and may result from the NCP using the Portuguese text as the basis for the English translation of its rules of procedures. The NCP further clarifies

⁴⁵ See: <https://www.oecdwatch.org/ncp/ncp-portugal/>

the mediation process involved in handling specific instances as voluntary and provides a definition for mediation, in accordance with the European Code of Conduct for Mediators.⁴⁶

Reception of the specific instance

The RoP states that requests to submit a specific instance must be made in writing using the standard form provided, as referenced above, and must be addressed to the PT NCP by letter or email (pcn.portugal@dgae.gov.pt).⁴⁷ The request includes the information noted in the submission form.

The dedicated NCP webpage on Submitting a complaint, which opens by inviting the reader to first consult the PT NCP Rules of Procedure, includes additional information on submitting a specific instance. The NCP then provides a link to an 8-page downloadable submission form.⁴⁸ The form contains basic information on the submission process, including links to the Guidelines, pointing to the Procedural Guidance on the treatment of specific instances. Links are provided to the document in both English and Portuguese. The form can be saved and submitted via email or sent by post. Relevant addresses are provided. Civil society stakeholder feedback considered that the submission form was helpful to the process and simple to understand.

The form requests that initial submissions for specific instances include: the name(s) of the submitting parties including contact information, name of the MNE including contact information, details of the allegations including chapter references, details of the facts and evidence identified to corroborate the allegations, details on any information that should be considered confidential during the process, authorisation for disclosure of the submitting party identity to the company, and any steps taken thus far to address the allegations of non-compliance including details on any parallel proceedings.

Following receipt of the specific instance request, the RoP state that the PT NCP will analyse the request to ensure that it meets the necessary conditions to be accepted by the NCP. If the submission is missing any information, the NCP will request it within 15 days of receiving the request. The claimant then has 15 days to provide the requested additional information. The RoP state that any submission without all the requested information within the timeframes specified by the NCP will be excluded from consideration.⁴⁹

Trade union stakeholder feedback reported confusion around the wording on initial assessments, noting that the wording could be perceived as over-restrictive or that a confirmed non-observance of the Guidelines was a prerequisite for submission. Stakeholders demonstrated concern that the wording as such created too high of barriers at the initial assessment stage. Feedback specifically noted confusion around the necessity to provide factual evidence, and to what degree such evidence needed to be substantiated. The NCP clarified that they had tried to create a balance in the initial assessment to also dissuade submissions that manifestly lacked merit, which could be overly burdensome on NCP staff resources.

Admission check of the specific instance application

Article 2 of the RoP outlines the assessment process for a specific instance request submitted to the PT NCP. It is understood that the PT NCP at times uses the phrasing 'Admission Check' in place of Initial Assessment. The language is not used continuously throughout the document. The PT NCP will assess the request to ensure it falls within the scope of the Guidelines, which may involve consulting with relevant

⁴⁶ PT NCP RoP, Initial Considerations on the meditation role of the PT NCP, page 5

⁴⁷ Article 1.2

⁴⁸ See: <https://www.dgae.gov.pt/gestao-de-ficheiros-externos-dgae-ano-2021/initial-request-for-contact-with-the-pt-npc-pdf.aspx>

⁴⁹ Article 1.7

authorities and other NCPs. It is noted that the RoP refers to the submission as the ‘specific body’,⁵⁰ which is not standard language provided for in the Procedural Guidance (‘specific instance’) and could lead to confusion for submitters.

The RoP provides assessment criteria for consideration of the specific instance, including:

- ‘Competence of the PT NCP to assess the alleged non-compliance in the implementation of the Guidelines;
- Identity of the claimant and assessment of the reasons for the legitimate interest in the proceedings submitted;
- Delimitation of the subject matter of the claim and presenting verifiable facts, evidence and circumstances;
- Relationship between the activities of the company, the subject of the complaint and the questions raised in the context of the application for alleged non-compliance;
- Application of the Guidelines to the specific instance presented.⁵¹

The listed criteria are not fully aligned with the language provided for in the Procedural Guidance. The assessment may also consider similar allegations and decisions from other NCPs.⁵²

Preparation and submission of the initial assessment report on the admissibility of the specific instance

Article 3 of the RoP outlines the process for preparing the initial assessment report on the admissibility of a specific instance to PT NCP.⁵³ It is noted that the RoP uses the term ‘report’, which would not typically cover the initial assessment publication per the Procedural Guidance. The initial assessment must contain the identification of parties involved, the alleged non-compliance with Guidelines, including issues raised and relevant chapters, the description of the steps taken by the NCP, and the rationale for acceptance or rejection.⁵⁴ The English version of the RoP additionally lists three of these steps twice. The error is not present in the Portuguese version of the RoP.

Article 3.3 provides guidance on when the PT NCP may decline to accept a specific instance. The RoP presents the following situations: if the reasoning for alleged non-compliance is insufficient, the claim is manifestly unfounded, or it does not fall within the scope of Guidelines. The inclusion of such criteria could potentially be confusing for submitters as a second set of criteria relating to the initial assessment of a specific instance.

The document with the proposed decision is sent to parties to the specific instance for comments and corrections, with an expected turnaround time of 15 days.⁵⁵ The PT NCP has a maximum of 15 days to consider the input. After the consultation period, the final version of the report is sent to the parties involved in the process. The section does not contain provisions for the publication of initial assessments.

⁵⁰ Article 2.1

⁵¹ Article 2.2.a-e

⁵² Article 2.3

⁵³ Article 3.1

⁵⁴ Article 3.2

⁵⁵ Article 3.4

Mediation process

Article 4 of the RoP describes the mediation process that takes place after the PT NCP ‘admits’ a specific instance. It is noted that the RoP use the term ‘admit’ in place of ‘accept’, which is the standard language used across the NCP network.⁵⁶ The mediation process is conducted by a mediator appointed by the PT NCP or a mediator appointed by the parties directly involved.⁵⁷ The NCP clarified that, if the parties chose to appoint a mediator directly, the cost of the mediator would not be covered by the NCP. Civil society stakeholder feedback indicated a concern for impartiality in the case of a party-appointed mediator. The mediator’s role is to facilitate communication between the parties to discuss the alleged non-compliance.⁵⁸ The RoP note that the mediation will not address any issues other than those already made in the submission.

The result of the mediation is expressed in a document called the “Mediation Agreement,” which should contain all relevant information except confidential information.⁵⁹ The mediation process must respect confidentiality, equality, and impartiality.⁶⁰ It is noted that the criteria for handling specific instances in the PT NCP’s RoP differ from those of impartiality, predictability, equitability, and compatibility with the Guidelines, as provided in the Procedural Guidance. If the mediation does not lead to agreement, the PT NCP may propose external mediation.⁶¹ If the parties refuse the PT NCP’s mediation process, the refusal and reasons for it will be included in the ‘final declaration’ on the specific instance.⁶²

Civil society stakeholder feedback indicated that the provisions around mediation were not clear and that the use of external mediators should be further emphasised in the text. Feedback additionally questioned the provision to allow the parties to independently appoint a mediator and how this would work in practice. Concerns were further raised as the RoP did not provide details on the competencies required for a mediator in the process.

Final Declaration of agreement between the interested parties

Article 5 of the RoP describes the preparation and publication of the ‘final declaration’ by the PT NCP when the parties reach an agreement. It is noted that this terminology diverges from the term ‘report’ used in the Procedural Guidance. The ‘final declaration’ must include a description of the issues raised in the submission and identification of relevant Guidelines’ chapters, identification of the parties involved, a description of the process used to handle the specific instance, the terms of the agreement and results achieved, specific recommendations to the company, and deadlines for implementing the recommendations.⁶³

The PT NCP sends the proposal of the final declaration to the parties for comments, with a requested turnaround time of 15 days.⁶⁴ The PT NCP then analyses the comments received and implements as

⁵⁶ Article 4.1

⁵⁷ Article 4.2

⁵⁸ Article 4.3

⁵⁹ Article 4.4

⁶⁰ Article 4.5

⁶¹ Article 4.6

⁶² Article 4.7

⁶³ Article 5.2

⁶⁴ Article 5.3

applicable.⁶⁵ The final declaration is sent to the parties and the Ministries in which the NCP sits.⁶⁶ The NCP noted that this would likely include the respective political cabinets that oversee DGAE and AICEP Portugal Global. Such communications are for information only and there are no provisions included to allow these cabinets to overturn the outcomes or provide comments on the final text.

Final Declaration without agreement between the interested parties

Article 6.1 of the RoP outlines the issuance of the ‘final declaration’ when the parties do not reach an agreement. It is noted that this terminology diverges from the term ‘final statement’ used in the Procedural Guidance. The ‘Final Declaration’ should include a description of the issues raised in the submission and identification of relevant Guidelines’ chapters, identification of the parties involved, a description of the process used to handle the specific instance, and any recommendations where applicable.⁶⁷ There is no provision for including a timeline for implementing recommendations when there has been no agreement between the parties, contrary to the provisions applicable in case of agreement.

Civil society stakeholder feedback noted that the NCP’s RoP allowed it to make recommendations but did not include provisions for making determinations. The feedback encouraged the NCP to issue recommendations in future final statements and further encouraged the NCP to consider provisions for issuing determinations. The feedback additionally recommended that the RoP provide provisions for consequences from the Portuguese Government relating to poor faith engagement of MNEs in specific instances.

Publication of cases analysed by the PT NCP

Article 7 of the RoP requires the PT NCP to publish a summary description of the specific instance and the main points of the agreement reached on their website within three months of issuing the declaration.⁶⁸ It is not clear if this step additionally covers the publication of the relevant declaration itself. During the onsite visit, the NCP clarified their intention to publish all statements.

The RoP further note that the publication would not identify the parties involved in the process.⁶⁹ The inclusion of this provision gives the impression that confidentiality is used in all specific instance publications, without need for reason. Such a provision could decrease the perception of the NCP’s transparency and accountability. Civil society stakeholder feedback expressed concern for this provision as a challenge to the NCP maintaining transparency. Additionally, the three months timeline to complete this step could extend the process beyond the indicative timelines provided for in the Commentary to the Procedural Guidance.

Case follow-up

While Article 5.2.f notes the inclusion of a timeline for implementation of recommendations when agreement has been reached, there are no provisions for follow-up in any circumstances included in the RoP.

Civil society stakeholder feedback recommended the inclusion of an explicit commitment from the NCP to conduct a follow-up of recommendations and agreements reached in the specific instance process. The

⁶⁵ Article 5.4

⁶⁶ Article 5.5

⁶⁷ Article 6.2

⁶⁸ Article 7.1

⁶⁹ Article 7.2

NCP noted that they were considering including provisions for determinations and follow-up in their updated RoP.

General provisions

The 'General Provisions' section of the RoP describes the PT NCP internal liaison process. After receiving a specific instance, DGAE must meet with AICEP within 10 days to analyse the request. At the meeting, the parties will appoint a focal point to ensure the administrative and technical management process for the specific instance, which includes the activities involved in steps 1, 2, and 3 of the PT NCP process (See Overview).

The 'General Provisions' section of the RoP also describes the institutional collaboration between the PT NCP and other entities and NCPs. The PT NCP may consult other entities whose activities fall within the scope of the alleged non-compliance to obtain necessary clarifications during the instruction of the specific instance. Provisions on collaboration with other NCPs is included below.

In conclusion, the current version of the Portuguese NCP's RoP is not fully aligned with the 2011 Guidelines. The 2023 update of the Guidelines, in any case, necessitates a review of the RoP, as future versions should be aligned with the 2023 Guidelines.

Specific Instances in Practice

The Portuguese NCP received its first and only specific instance on 3 May 2004.

Details of the specific instance became available on the NCP website following the recent update. The box below provides an overview of the specific instance. Due to the change in competency of the NCP following the specific instance, as well as the time elapsed since the specific instance was handled and a lack of preservation of related information, there are no further details available on the specific instance.

Box 4.1. Details of the specific instance received by the Portuguese NCP

Portuguese trade union & Portuguese MNE

On 4 May 2004, a Portuguese trade union submitted a specific instance to the Portuguese NCP alleging that a Portuguese MNE had not observed the Employment and Industrial Relations provisions of the Guidelines relating to a factory closure in Portugal.

After an initial assessment, the Portuguese NCP concluded that the Guidelines had not been breached and the case was concluded in agreement with both of the parties.

Source : <http://mneguidelines.oecd.org/database/instances/pt0001.htm>

Timeliness

The 'General Provisions' section of the RoP describes the deadlines applicable in the analysis of specific instances. According to the RoP, the entire process must be completed within a maximum period of one year from the receipt of the specific instance until the preparation of the final declaration.⁷⁰ The first step,

⁷⁰ PT NCP RoP, General Provisions, page 12

the preparation of the initial assessment, should be completed within four months of receiving the allegation of non-compliance. The second step, the mediation process, should take no more than six months. The third step, the preparation of the final declaration, should be completed within two months. As Article 7 of the RoP allows for an additional three months to publish the results of the specific instance, the entire procedure would exceed twelve months, which is also the indicative timeline provided for in the Procedural Guidance. If there are any delays not attributable to the PT NCP, it will notify the parties involved and communicate the new deadline. The parties involved in the process must provide any requested information for the process within 15 days. It is noted that the timeline varies slightly from that provided in the Procedural Guidance, which notes a timeline of three months for the initial assessment phase and three months for the conclusion phase.

The exact timeline of the one specific instance handled by the NCP is not known. The case was received on 4 May 2004 and was concluded the same year.

Cooperation among NCPs

The ‘General Provisions’ section of the RoP describes the institutional collaboration between the PT NCP and other entities and NCPs.⁷¹ The PT NCP may collaborate with NCPs from other countries that are concerned by a specific instance, particularly when a multinational enterprise operates in another adherent country. If there is doubt about which NCP should lead on the specific instance, the respective NCPs will meet and determine which NCP is competent to lead the process.

In the context of the specific instance led by France, on which the Portuguese and other NCPs acted as support, the Portuguese NCP noted that it provided timely feedback to all requests made to support the French NCP. The French NCP and Portuguese NCP remained in contact and provided consultations for the drafting of relevant statements.

Table 4.1. Specific instances where the Portuguese NCP has coordinated with other NCPs

Specific instances	Lead NCP	Supporting NCP(s)
UNI Global Union & Teleperformance	France	Colombia, Greece, Mexico, Portugal, United Kingdom, United States
Liquidator & Tensa- EIP	Chile	Portugal, Spain

Source: OECD NCP Database (2022)

Confidentiality and parallel proceedings

Article 4.5 of the RoP outlines that the mediation process between parties must be carried out with the principles of confidentiality, equality, and impartiality. These criteria are notably not aligned with those provided for in the Procedural Guidance. The NCP’s RoP does not have a specific section dedicated to confidentiality and instead appears to apply confidentiality to the entirety of the proceedings. The one specific instance handled by the NCP did not identify the parties involved. Trade union stakeholder feedback noted the perception that confidentiality was imposed on the process, rather than present as an option to be consented to by the parties.

⁷¹ PT NCP RoP, General Provisions, page 13

The NCP requests that submissions inform on any relevant parallel proceedings but does not specify further how those proceedings will be considered when handling the specific instance.⁷²

While the Portuguese NCP has not led on the handling of specific instances involving parallel proceedings, it acted as a supporting NCP for a specific instance led by the Chilean NCP concerning a Portuguese-Spanish company. The specific instance involved parallel proceedings, though it was ultimately not possible to make contact with the company and the case was concluded. The Portuguese NCP noted that the experience in providing support allowed them to reflect on the provisions on parallel proceedings in their own rules of procedure.

Civil society stakeholder feedback indicated a general need for further clarification of the provisions concerning confidentiality, campaigning, and parallel proceedings.

Request for clarification

To date, the NCP has not submitted requests for clarification from the Investment Committee or the Working Party on Responsible Business Conduct.

	Findings	Recommendations
3.1	The NCP has created a variety of materials to aid submitters in accessing the specific instance mechanism. However, the NCP's RoP remains overly complex and is not always aligned with the Guidelines.	The NCP should revise its Rules of Procedure to ensure they are easily understood by potential submitters of specific instances. The NCP should consider the 2023 revision of the Guidelines and align its RoP accordingly.
3.2	The NCP has not received a specific instance since 2004 and the current NCP team was not engaged in the case-handling. Should the NCP receive a specific instance, they may lack certain expertise to handle the submission, particularly in the case of mediation.	The NCP should work to build expertise relating to possible incoming specific instances, including building technical and mediation-related skills within the NCP team.

⁷² Article 2.3

5 Annex Documents

- A. List of organisations submitting responses to the NCP peer review questionnaire
- B. List of organisations that participated in the NCP peer review on-site visit
- C. Promotional events
- D. Overview of specific instances handled by the NCP as the leading NCP

Annex A. List of organisations that submitted a response to the NCP peer review questionnaire

Table A A.1. Feedback submitters for the Portuguese NCP peer review by stakeholder group

Government	Ministry of Foreign Affairs
Business	BIAC
	COSEC (export credit agency)
	Portuguese Business Association
	Portuguese Commerce and Services Confederation
Civil Society	DECO
	NOVA School of Business and Economics
	NOVA School of Law
	Universidade Lusíada, Center for Legal Economic, and Environmental Studies (CEJEA)
	OECD watch
Trade Unions	General Union of Workers
	TUAC

Annex B. List of organisations that participated in the NCP peer review on-site visit

Table A B.1. Attendance of the Portuguese NCP peer review onsite visit

Government	
	Ministry of Agriculture and Food
	Ministry of Environment and Climate Action
	Ministry of Labour, Solidarity and Social Security
Business	
	Banco Português de Fomento S.A.
	Business Association of the Leiria Region (NERLE)
	Confederation of Portuguese Business (CIP)
	COSEC (export credit agency)
	Portuguese Business Association (AEP)
	Portuguese Association of Business Ethics
	Textile and Clothing Association of Portugal (ATP)
Civil Society	
	Amnesty International
	DECO (consumer association)
	NOVA School of Business and Economics
	Nova School of Law, NOVA Knowledge Centre for Business, Human Rights and the Environment
	The Ombudsperson
	Portuguese Confederation of Environmental Defense Associations
	Transparency International Portugal
	Universidade Lusíada, Center for Legal Economic, and Environmental Studies (CEJEA)
	Zero (environment association)
Trade Unions	
	General Confederation of Portuguese Workers (CGPT)
	General Union of Workers (UGT)
	Trade Union Advisory Committee to the OECD - TUAC

Annex C. Promotional events 2022

Table A C.1. Promotional activities in 2022 organised or co-organised by the NCP

Title	Date	Location	Size of Audience	Organised or co-organised	Targeted Audience
Feira Portugal Exportador	23 Nov. 2022	Antiga FIL (Lisbon)	>100	Co-organised	Business representatives, government

Source: NCP Annual Report (2022)

Table A C.2. Promotional activities in 2022 participated in by the NCP

Title	Date	Location	Size of Audience	Organiser	Targeted Audience
ANTI-CORRUPTION INTERNATIONAL CONGRESS	4 May 2022	Faculdade de Direito da Universidade Lusíada (Porto)	>100	Faculdade de Direito da Universidade Lusíada (Porto)	Academia, business representatives, government, NGOs

Source: NCP Annual Report (2022)

Annex D. Overview of specific instances handled by the Portuguese NCP as the leading NCP

Table A D.1. Overview of the specific instances handled by the Portuguese NCP

Enterprise	Submitter	Host Country	Chapter (s) of the Guidelines	Date of submission	Date of initial assessment	Date of conclusion	Outcome	Description	Follow-up
Portuguese MNE	Portuguese trade union	Portugal	Employment and Industrial Relations	03-05-2004	N/A	2004	Concluded	The NCP concluded that the Guidelines had not been breached and concluded the specific instance with agreement of the parties.	No

National Contact Point Peer Reviews: Portugal

Governments adhering to the OECD Guidelines for Multinational Enterprises are required to set up a National Contact Point (NCP) that functions in a visible, accessible, transparent and accountable manner.

This report contains a peer review of the Portuguese NCP, mapping its strengths and accomplishments and also identifying opportunities for improvement.

