Action Plan to Strengthen National Contact Points for Responsible Business Conduct

2022- 2024

OECD

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1 Introduction

National Contact Points for Responsible Business Conduct (NCPs) are government offices responsible for furthering the effectiveness of the Guidelines through promotion and the handling of specific instances. NCPs make the Guidelines the only international RBC standard with a dedicated implementation mechanism and, as such, are considered one of the Guidelines' greatest assets. There is an NCP in each of the 50 countries adhering to the Guidelines.

An important characteristic of NCPs is functional equivalence. In short, there is no prescribed model of NCP structure, and the general principle is that governments have flexibility in organising their NCPs (Procedural Guidance, I.A.). Such flexibility should however be consistent with the objectives of functional equivalence and furthering the effectiveness of the Guidelines, namely, all NCPs should be able to function and fulfil their mandate with an equivalent degree of effectiveness.

Functional equivalence is measured according to four 'core criteria': visibility, accessibility, transparency and accountability (Procedural Guidance, para. I, and Commentary, para. 9). More precisely regarding specific instances, NCPs must operate in a way that is impartial, predictable, equitable and compatible with the Guidelines (Procedural Guidance, para. I.C.). The Implementation Procedures also contain practical requirements on how NCPs should be set up and operate:

- *Resources*: Making available necessary human and financial resources (Decision on the Guidelines, para. 1.4);
- *Expertise*: Composing and organising their NCP in a way that provides an effective basis for dealing with the broad range of issues covered by the Guidelines (Procedural Guidance, para. I.A.1.)
- *Impartiality*: Enabling the NCP to operate in an impartial manner (Procedural Guidance, para. I.A.1.)
- *Senior leadership*: Having senior officials or experts lead the NCP (Procedural Guidance, para. I.A.2. and Commentary, para. 10)
- *Stakeholder engagement and confidence*: Seeking the active support of social partners (Procedural Guidance, I.), developing and maintaining relations with stakeholders and retaining their confidence (Procedural Guidance, para. I.A.3., Commentary, paras. 10, 11 and 12)

In light of the diversity of institutional arrangements among NCPs, and of the variety of national contexts and realities, functional equivalence must be actively pursued, and therefore the Council Decision on the Guidelines provides that NCPs should meet regularly to share experiences (para. I.3.). Furthermore, the Procedural Guidance tasks the Secretariat with 'facilitat[ing] peer learning activities, including voluntary peer evaluations, as well as capacity building and training', so as to foster functional equivalence (para. II.5.c.).

Functional equivalence is necessary for the NCP network to further the effectiveness of the Guidelines in a balanced and impactful manner. It is essential for the legitimacy of the NCP system as an equally accessible mechanism and for maintaining all stakeholders' trust in the NCP system, but has proven a challenge so far. Therefore, strengthening NCPs has become a strong priority of adherent governments. For example, NCPs featured significantly in the June 2015 G7 Leaders Statement: 'We commit to

strengthening mechanisms for providing access to remedies including the National Contact Points (NCPs) for the OECD Guidelines for Multinational Enterprises. In order to do so, the G7 will encourage the OECD to promote peer reviews and peer learning on the functioning and performance of NCPs. We will ensure that our own NCPs are effective and lead by example.'

Two years later, in June 2017, the OECD Ministerial Council Meeting (MCM) made the following commitments with regards NCPs: 'We commit to having fully functioning and adequately resourced National Contact Points and to undertake a peer learning, capacity building exercise or a peer review by 2021, with the aim of having all countries peer reviewed by 2023. We call for a report on progress made to the MCM in 2019.' In July of the same year, NCPs were recognised in the G20 Leaders Statement: 'We support access to remedy and, where applicable, non-judicial grievance mechanisms, such as the National Contact Points for the OECD MNE Guidelines (NCPs).'
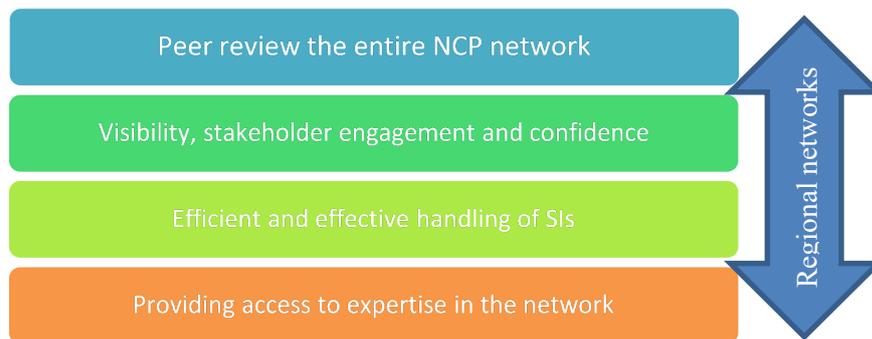
Since 2020, the Working Party on Responsible Business Conduct (WPRBC) has engaged in a stocktaking exercise on the OECD Guidelines.[1] In this context, NCPs have been highlighted as a key achievement of the Guidelines, but challenges have also been highlighted, in particular in respect of achieving functional equivalence across the NCP Network.

To support these commitments, consolidate achievements of the NCP network and address challenges, two Action Plans to Strengthen National Contact Points were approved, respectively for the period 2016-2018 and 2019-2021. The Action Plans identify a number of activities to be conducted by the NCP network with the support of the Secretariat, organised into different pillars, namely peer reviews and capacity building, building functional equivalence, building and improving tools, and promoting policy coherence (added in the second Action Plan).

This document sets out the third Action Plan, running for the period 2022-2024. The Actions listed below reflect the discussions of NCPs at the June 2021 meeting of the NCP Network.

2 Structure, actions and priorities

The new Action Plan is structured around four broad objectives that correspond to areas where action is needed to foster functional equivalence of NCPs. For each objective, the plan identifies specific actions to be undertaken by the NCP network with the support of the OECD Secretariat. Actions can take the form of activities (peer learning, workshops, research, etc.) or the development of tools (papers, databases, etc.). Each action is assigned a timeline that reflects both its level of priority as defined by NCPs, and the time needed to complete it. Additionally, actions will be supported by the creation and expansion of regional networks of NCPs (see Figure 2.1). This section introduces the plan's objectives and actions, which are then presented in full in Table 3.1 below.

Objective #1: Delivery of the 2017 MCM commitment

The MCM committed in 2017 was to have all NCPs peer reviewed by 2023. Peer reviews are the main mechanism whereby individual NCPs can assess their performance and receive recommendations to progress towards functional equivalence criteria. Peer reviews have also been shown to be the main lever for change as regards institutional arrangements and resources at individual NCPs, which are consistently flagged as the main challenge to functional equivalence. NCPs also report that peer reviews are an excellent opportunity to increase the profile and visibility of the NCP within government and with stakeholders. The plan therefore continues to give peer review a central role towards achieving functional equivalence.

So far 18 NCPs have been peer reviewed, three reviews are ongoing, and 18 more are committed by 2023, thereby moving closer to the objective. Moreover, in 2019, the WPRBC revised the Core Template for voluntary NCP peer reviews to integrate learnings from reviews conducted until then and stakeholder suggestions on how to improve the process.

The end of the first cycle of review will also be the occasion for evaluating the strengths and weaknesses of the peer review process, as certain aspects of procedure, the time needed to finalise reports, and the effectiveness of recommendations could be scrutinised with a view to determining modalities for a possible second round of reviews.

Actions to achieve this objective are:

- Governments delivering on committed peer reviews and the WPRBC presenting a strategy for its discussions of the increased number of peer reviews by 2023
- Governments providing commitments and related resources, so as to contribute towards the MCM objective of having all NCPs peer reviewed by 2023
- Engage in an evaluation on strengths and weaknesses of the peer review process at the end of the first cycle.

Objective #2: Visibility, stakeholder relations and confidence

Visibility is the first core criterion for functional equivalence according to the Procedural Guidance (Para. I.), and NCPs seek to achieve it through various means, such as their website, active promotion, social media presence or press exposure. Additionally, the Procedural Guidance (para. I.A.3.) and its Commentary (paras. 10-12) point to the need for NCPs to maintain relations with stakeholders, and to retain their confidence. Stakeholder relations and confidence is necessary for NCPs to be able to effectively deliver their mandate, in particular when facilitating remedy through specific instances.

Visibility, stakeholder engagement and confidence are closely linked, as efforts to increase the visibility for NCPs will often take the form of stakeholder engagement. Likewise, stakeholder engagement efforts will *de facto* increase the visibility of NCPs and, if done well, foster confidence in the process. On the other hand, uneven visibility or stakeholder confidence in NCPs can lead for example to some NCPs receiving a higher number of specific instances than others. In that regard, challenges and opportunities linked to stakeholder engagement, visibility and confidence were an important theme of the stocktaking of the Guidelines conducted in 2021 as regards NCPs, and inform the analysis done for the purposes of the Action Plan.

In particular, data and analysis show that important efforts have been made by NCPs in recent years to increase their visibility, e.g. by organising or participating to more promotional events across stakeholder groups. Likewise, many NCPs have adopted increasingly sophisticated stakeholder engagement strategies, such as revising their NCP structure to add a stakeholder advisory board, thereby improving visibility and confidence.

However, the same analysis shows that more can be done and that the NCP network would benefit from specific actions in this regard, notably as the increase in promotional activity is not evenly spread across the network and a significant number of NCPs does not have consistent stakeholder engagement. In addition, not all NCPs have strategies and rules to build and maintain impartiality. This leads to stakeholders reporting deficits of visibility and transparency, as well as a lack of confidence in some NCPs that impacts the entire network. These challenges may be compounded by the fact that some stakeholder groups have little knowledge of RBC or resources to devote to RBC, such as SMEs or indigenous communities.

Actions to achieve this objective are:

- Peer learning about NCP promotional plans;
- Organising joint promotional events with the support of the Secretariat at the level of the Network or in regional networks, where these can add value alongside events at national level;
- Mapping high visibility RBC events and strategising NCP participation in those events;
- Peer learning around NCP methodologies for stakeholder engagement, including stakeholder mapping, at the level of individual NCPs, at the level of the network or of regional networks, with a focus on key publics with particular needs, such as SMEs;

- Identify partnerships that could have an amplifier/multiplier effect on visibility with NCPs, such as business and stakeholder organisations that could signpost NCPs to their members;
- Research and analysis on NCP structures that lead to visibility and confidence with stakeholders, taking into account government flexibility in this regard, and tailored assistance to governments that seek to reflect on the structure of their NCP;
- Continued peer learning around impartiality and conflicts of interest;
- Providing NCPs with specific tools and trainings on communication.

Objective #3: Ensuring efficient and effective handling of specific instances

The Procedural Guidance tasks NCPs with 'contribut[ing] to the resolution of issues that arise relating to implementation of the Guidelines in specific instances in a manner that is impartial, predictable, equitable and compatible with the principles and standards of the Guidelines', and this in an 'efficient and timely manner' (para. I.C.).

Significant effort has already been devoted by the NCP network to strengthen this aspect of the NCP mandate, and data shows that good practices across the network are generalising, with acceptance rates for cases at initial assessment on the rise, more NCPs having Rules of Procedure (RoP), more statements including recommendations and follow up. Also, research has shown that, in a number of recent cases, NCPs were able to decisively contribute to remedy. As a result, the yearly average of cases received by NCPs have increased by 14% between 2016 and 2020.

However, the same data and research, including information collected in the context of the stocktaking of the Guidelines, also shows that there is room to further enhance the efficiency and effectiveness of the specific instance process, on four particular aspects. The first one is to continue ensuring that the specific instance process is as accessible, equitable, transparent and predictable as possible, and to recognise the challenges that particular groups or individuals may have in accessing NCPs. Related to this aspect is the fact that not all NCPs have published (RoP, and that existing RoP across the network can diverge significantly and create confusion, Second, timeliness remains an issue. A particular chokepoint in this regard is coordination among various NCPs. Likewise, enforcing timelines with the parties may prove challenging. Third, research indicates that many cases remain without a solution even despite the NCP's intervention. This may be due to the complexities of many cases and to the nature of NCPs as voluntary and non-judicial mechanisms, but may also signal that there is room for NCPs to better leverage their mandate to foster access to remedy. Finally, the issue of retaliation and pressures against case submitters remains very pressing. For example, in March 2020, the WPRBC issued a statement expressing deep concern regarding alleged incidents of undue pressure on applicants submitting specific instances to NCPs.[2]

Actions to achieve this objective are:

- Creating a more precise playbook for NCP coordination, and further templates to streamline the NCP process, as appropriate;
- Providing support to NCPs in making the handling of specific instances more consistent across the NCP network through assistance in creating and/or reviewing RoP, notably by designing model provisions for RoP to harmonise the process and increase predictability where needed. Needs for model clauses and the list of issues to address through model clauses will be discussed with NCPs prior to development. Issues can include rules and supporting documents to commit parties to respecting confidentiality, processes to keep timelines in check or procedures for providing support for weaker parties while respecting the principle of equitability. Model clauses will be based on existing good practice in the network or, where relevant, at other grievance mechanisms. Better consistency in the handling of specific instances can also help avoid "forum shopping";

- Peer learning on strategies to respond to situations of retaliation and pressure against case parties, and identifying processes for tailored guidance in concrete cases;
- Further capacity building on mediation and good offices (including with other grievance mechanisms) to ensure maximal leverage of the NCP mandate towards remedy, while managing expectations in line with the NCP mandate as a non-judicial mechanism. If necessary, update the mediation manual.

Objective #4: Increasing expertise within the Network

Governments have a responsibility to ensure that NCPs are 'composed and organised such that they provide an effective basis for dealing with the broad range of issues covered by the Guidelines' (Procedural Guidance, para. I.A.), meaning that they need to have access to the expertise needed to fulfil their mandate across all possible issues that may come up in promotion or specific instances. Recognising this need, many NCPs now have strategies to access such expertise when needed, through networks of experts from across government or advisory bodies, or through policies of hiring or consulting external experts. The Action Plan can support these efforts.

Over the last few years, the development of the RBC agenda has accelerated, with new instruments such as the OECD Due Diligence Guidance for RBC or domestic legislations on RBC being developed; new issues increasing in urgency and complexity such as digitalisation, climate change or indigenous peoples' rights; specific sectors becoming the subject of increasing attention for their role in RBC, such as the financial sector. Correspondingly, the topics on which NCPs are speaking in their promotion efforts, and the cases NCPs have to handle through specific instances are increasingly complex and require more and more substantive expertise. Beyond substantive expertise, the NCP role also requires access to technical skills in such fields as mediation or communication.

Biannual NCP meetings and the regional networks are good locations to build and share expertise and could be leveraged further for that purpose. The OECD RBC Centre also has expertise on substantive RBC issues, particularly through its sector programmes. Some NCPs are closely involved in these projects, but not all, and therefore this pool of knowledge could more consistently be made available to the network via the Action Plan. Priority in the Action Plan will be given to building and developing expertise within NCPs and across the network, to contribute to building the authority of NCPs as RBC experts and resources for stakeholders and across government. However, for specific advanced issues or to support knowledge acquisition by individual NCPs or across the network, processes could be put in place to rely on external experts, at collective level or individually.

Actions to achieve this objective are:

- Upgrades to the OECD NCP case database and systematic analysis of NCP statements by the Secretariat to build a substantive compendium of Guidelines' interpretations based on past cases;
- Regular workshops or webinars with members of the RBC Centre or external experts on aspects of ongoing projects that are of interest, either at the level of the network or in regional networks;
- Development of task forces of interested NCPs around cutting edge issues that could be consulted by others as appropriate. The list of cutting edge issues and the need for task forces will be discussed with NCPs prior to setting up to ensure relevance;
- Creation of list of experts available to NCPs to call upon when the need arises;
- Mapping of best practice for knowledge transfer in case of NCP staff turnover, and if necessary development of a handover playbook.

Regional networks of NCPs

NCPs from several regions have in recent years taken the initiative of creating regional networks, which have then been supported by the Secretariat on an *ad hoc* basis or through specific regional projects. Regional networks are regarded as a good practice, which enables a more agile format of peer learning and capacity building among NCPs from the same region. Under the Action Plan, regional networks will be created in every region, so that every NCP can join a regional network on a purely voluntary basis.

While actions under the Action Plan will be equally provided to the entire network, regional networks can support NCPs in meeting the abovementioned priorities, in combination with the activities under the plan. Newly established NCPs are particularly expected to benefit from this format. Activities of regional network will be planned and designed so as to adapt to the workload of NCPs and avoid creating an undue burden. To avoid fragmentation, regional networks will be invited to report periodically to the entire network about their activities, and to regularly invite members of other regional networks to their activities.

Notes

[1] See https://mneguidelines.oecd.org/public-consultation-stocktaking-study-on-the-oecd-guidelines-for-multinational-enterprises.htm

[2] Statement available at https://mneguidelines.oecd.org/ncps/working-party-on-rbc-statement-march-2020.htm

3 Action plan

The table below is the Action Plan to Strengthen NCPs (2022-2024). It includes actions by order of priority as defined by NCPs at their June 2021 meeting. Each action is linked to an objective, and comprises one or several deliverables spread over a timeline. The timeline was defined based on the assumption that, as of 2022, in-person NCP network meetings would resume, allowing for longer meetings than the four-hour virtual meetings organised during the pandemic. The contribution of the each action to the objective it belongs to is measured by an indicator of progress or target. For each action, possible funding arrangements are listed (see below Section Table 3.1 for a description of funding arrangements), and governments are invited to pledge funding for the actions they wish to support.

Table 3.1. Action Plan 2022-2024 in detail

Objective	Actions	Deliverables and timelines	Indicator of progress/targets to be achieved by plan's end	Funding arrangements (to be filled with pledges by governments)
Peer reviews	Peer reviews	Individual peer review reports published on OECD website according to peer review schedule[1]	All NCPs peer reviewed by 2023	Funded by government under review
	Seek commitments and resources from governments to have NCP peer reviewed	Commitment and arrangements for resources are communicated officially (**2023**)	All governments have committed to a peer review of their NCP by 2023	
	Evaluation of the strength and weaknesses of the current peer review process by NCPs after the first cycle of reviews, focusing on procedure, timelines, and recurrence.	Discussion on strengths and weaknesses of NCP peer reviews at NCP meeting (**2024**)	This evaluation feeds into WPRBC discussions on whether a new cycle of peer reviews should be launched and how	
Visibility, stakeholder engagement and confidence	Peer learning about promotional plans	Workshop on promotional plans during **June 2022** meeting of the NCP network	All NCPs report having a promotional plan in their annual report	
	Organising joint promotional events with the support of the Secretariat at the level of the Network or in regional networks, where these can add value alongside events at national level	Options note for organising joint promotional events (**2022**) Secretariat support for organisation of events (**2023-2024**)	At least one joint promotional event per year is organised at the level of the Network and of each Regional Network	
	Mapping high visibility RBC events at international and regional levels, and strategising NCP participation in those events	Mapping of high visibility events and strategy (**2023**)	At least two NCPs from different regions participate in each of the international events, and one NCP from the region	

Objective	Actions	Deliverables and timelines	Indicator of progress/targets to be achieved by plan's end	Funding arrangements (to be filled with pledges by governments)
			in the regional events.	
	Peer learning around NCP methodologies for stakeholder engagement, including stakeholder mapping, with focus on key audiences, such as SMEs	Peer learning workshop or series of workshop on stakeholder engagement and mapping methodolgies (**2023**)	NCPs report increased engagement with stakeholders in their annual report (more events organised, creation of Advisory Body, etc.)	
	Identify partnerships that could have an amplifier/multiplier effect on visibility with NCPs, such as organisations that could signpost NCPs to their members	Mapping of amplifier/multiplier organisations and strategy for partnerships (**2023**)	List/set of amplifier/multiplier organisations that engage with and communicate positively about NCPs	
	Research and analysis on NCP structures that lead to visibility and stakeholder confidence, taking into account government flexibility in this regard, and tailored assistance to governments that seek to reform their NCP	Methodological note for analysing NCP structures in light of visibility and confidence (**2023**) Guide for NCPs on maximising visibiliyt and confidence through institutional arrangements (**2024**)	NCPs perform self-analysis of institutional arrangements and start review of structure if warranted	
	Continued peer learning around impartiality and conflicts of interest	Review of the Guide for NCPs on building and maintaining impartiality and evaluation of actions taken by NCPs on impartiality (**2024**)	Each NCP has a policy on impartiality and conflicts of interest	
	Providing NCPs with specific tools and trainings on communication	Two workshops led by communication professionals on communicating about the Guidelines and the NCP mechanism (**2023 and 2024**)	NCPs report in their annual report having developed promotional materials and increased engagement with stakeholders (e.g. social media posts, etc.)	

Objective	Actions	Deliverables and timelines	Indicator of progress/targets to be achieved by plan's end	Funding arrangements (to be filled with pledges by governments)
Effective and efficient specific instances	Creating a more precise playbook for NCP coordination, and further templates to streamline the NCP process, such as appropriate a more precise playbook for NCP coordination	Review of the Guide on NCP coordination and identification of remaining challenges (**June 2022**) Discussion of playbook on NCP coordination (**Nov. 2022**)	Coordination arrangements among NCPs are decided within one month of receipt of case, and do not lead to delays in indicative timelines	
	Peer learning on strategies to respond to situations of retaliation and pressure against case parties, and identifying processes for tailored guidance in concrete cases	Mapping situations where undue pressure or retaliation occurs (against a case party of the NCP itself) and options available to NCPs (**2022**), through peer learning and expert interviews Development of clear process for portecting parties or NCP officials from retaliation (**2023**)	NCPs are able to identify situations of retaliation and/or victims are comfortable reporting such situations. Each NCP has a policy to effectively respond to these situations and protect victims	
	Supporting NCPs in creating and /or reviewing RoP and designing model RoP provisions for Rules of Procedure based on existing good practice in the network or at other grievance mechanisms	List of issues to potentially be addressed through model RoP clauses discussed set up by NCPs (**2023**) Development of model clauses (**2024**)	All NCPs report having publicly available RoP that ensure an accessible, equitable predictable, transparent, and clear specific instance handling process	
	Further capacity building on mediation and good offices (including with other grievance mechanisms) to ensure maximal leverage of the NCP mandate towards remedy, and update of the mediation manual	Training programme on good offices and other mediation techniques (**2022** and **2023**) Update of the mediation manual (**2023-2024**)	Increase in ratio of cases leading to agreement or to an otherwise successful outcome (e.g. recommendation successfully followed up on)	

Objective	Actions	Deliverables and timelines	Indicator of progress/targets to be achieved by plan's end	Funding arrangements (to be filled with pledges by governments)
Expertise	Upgrade the OECD NCP case database and systematically analyse NCP statements to build a compendium of past cases	Upgrades to OECD NCP database (**2022**) Compendium of NCP specific instance statements (**2023-2024**)	The database analytics show that it is more consistently used by NCPs to inform their practice, and by external users to obtain information about NCP cases (academics, users, etc.)	
	Regular workshops or webinars with members of the RBC Centre or external experts on aspects of ongoing projects that are of interest, either at the level of the network or in regional networks	Yearly consultation with NCPs on emerging issues (**2022, 2023, 2024**) At least one workshop per year on a substantive issue organised within the network (**2022, 2023, 2024**) Support to regional networks for organising workshops on substantive issues	NCPs report in their annual report being increasingly consuted by government and stakeholders in their country as experts on RBC issues	
	Development of task forces of interested NCPs around cutting edge issues that could be consulted by others as appropriate	As part of yearly consultation above, decision made by NCP network to create task forces, with Secretariat support (**2022, 2023, 2024**)	Task forces effectively lead the development of knowledge and practice on emerging issues, and are regularly consulted by NCPs and other bodies	
	Creation of a list of experts for NCPs to call upon when the need arises	Identification of experts or organisations to be invited to be included in the list (**2023**) Experts invited and kick off meeting between experts and the NCP network	NCPs effectively rely on experts when needed and accordingly build expertise	

Objective	Actions	Deliverables and timelines	Indicator of progress/targets to be achieved by plan's end	Funding arrangements (to be filled with pledges by governments)
		organised (**2024**)		
	Identification of good practice on knowledge transfer, and development of a handover playbook if necessary	Peer learning session on knowledge transfer (**2023**) Handover playbook (if necessary, **2024**)	NCPs more effectively handle staff transitions and expertise is no longer lost due to turnover	
Regional networks	Creation of regional networks in all regions	Secretariat provides information to NCPs about regional networks and supports creation of networks (**2022**)	All NCPs join a regional network	
	Support for regional networks	Secretariat provides support to regional networks (agenda setting, background notes, organisation of events, participation in meetings, etc.) (**2022, 2023, 2024**)	Every regional network has at least two meetings per year	

Notes

[1] Available at http://mneguidelines.oecd.org/ncps/ncp-capacity-building.htm

mneguidelines.oecd.org

OECD