



OECD Guidelines for Multinational Enterprises  
**National Contact Point Peer Reviews**  
**SPAIN**



**Please cite as:**

OECD (2022), *OECD Guidelines for Multinational Enterprises National Contact Point Peer Reviews: Spain*, <https://mneguidelines.oecd.org/national-contact-point-peer-reviews-spain.pdf>

© OECD 2022

This document, as well as any data and any map included herein, are without prejudice to the status of or sovereignty over any territory, to the delimitation of international frontiers and boundaries and to the name of any territory, city or area.

# Foreword

The OECD Guidelines for Multinational Enterprises (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 OECD 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 (NCP) that functions in a visible, accessible, transparent and accountable manner. 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 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/ncpeerreviews.htm>.

This report presents the peer review of the Spanish National Contact Point (NCP) for Responsible Business Conduct. The peer review report was prepared by a peer review team made up of reviewers from the NCPs of Morocco, the Netherlands and Slovenia, and with the support of the OECD Secretariat. The NCP of Morocco was represented by Assia Ben Saad and Ghizlane Kabbaj. The NCP of the Netherlands was represented by Sylvia Tuin and Joris Oldenzel. The NCP of Slovenia was represented by Jan Sitar. The OECD Centre for Responsible Business Conduct was represented by Nicolas Hachez and Maria Xernou. The report was informed by dialogue between the peer review team, the NCP of Spain and relevant stakeholders during an on-site fact-finding mission on 5-7 April 2022. The peer review team wishes to acknowledge the NCP for the rich material provided during the preparatory phase and its efforts to ensure participation from all stakeholder groups both through written contributions and during the on-site visit. The NCP of Spain was represented by Aize Azqueta; Vicente Toledano, and Maria De Gracia Dueñas Vinuesa. This report also benefited from comments by institutional stakeholders (BIAC, OECD Watch, TUAC). It has been discussed by the Working Party on Responsible Business Conduct during its 24 October ad hoc meeting and declassified by the Investment Committee for publication.

# Table of contents

Foreword	3
<b>1 Key findings</b>	<b>6</b>
Institutional arrangements	6
Promotional activities	7
Specific instances	8
<b>2 Introduction</b>	<b>10</b>
Economic context	11
<b>3 Institutional arrangements</b>	<b>12</b>
Legal basis	12
NCP Structure	12
NCP Advisory Board	17
<b>4 Promotion of the Guidelines</b>	<b>20</b>
Promotional plan	20
Information and promotional materials	20
Promotional events	21
Webpage	22
Promotion of policy coherence	23
Requests for information	25
Cooperation amongst NCPs	25
<b>5 Specific instances</b>	<b>27</b>
Overview	27
Rules of Procedure	27
Analysis of NCP statements	31
Timeliness	36
Confidentiality and transparency	37
Impartiality and avoidance of conflicts of interest in the handling of specific instances	39
Parallel proceedings	40
Cooperation among NCPs	40
Request for clarification	41

6 Annex Documents	42
Annex A. List of organisations submitting responses to the NCP peer review questionnaire	43
Annex B. List of organisations that participated in the NCP peer review	44
Annex C. Promotional events	45
Annex D. Overview of specific instances handled by the NCP as the leading NCP	46

## FIGURES

Figure 3.1. The current members of the Spanish NCP's IMCB	13
Figure 3.2. Structure and composition of the Spanish NCP	14

## TABLES

Table 5.1. Specific instances where the Spanish NCP has coordinated with other NCPs	41
Table A.1. Questionnaire submitters for the Spanish NCP peer review by stakeholder group	43
Table B.1. Participants of the Spanish NCP peer review by stakeholder group	44
Table C.1. Events in 2019 participated in by the NCP	45

# 1 Key findings

## Institutional arrangements

The Spanish NCP has an interagency structure. It is composed of four entities: the inter-ministerial collegiate body (IMCB), the President, the Vice-President, and the Secretariat. The IMCB is composed of eight representatives from four ministries. The NCP President, Vice-President, and Secretariat moved to the Ministry of Industry, Trade and Tourism in 2019 from the Ministry of Economy and Competition. The Secretariat is currently composed of one full-time and two part-time members, including two members for administrative support. A Ministerial order established the NCP in its current form in November 2014. The Ministerial order does not reflect changes in the NCP's location, membership and decision-making since then.

The NCP has an advisory body to support its functioning since 2014: the Advisory Board. The Advisory Board is a multi-stakeholder body with seven organisations in total. The two business organisations and three trade unions are highly representative of companies and workers in Spain. The two civil society organisation (CSO) members cover issues related to transparency and corporate social responsibility. Under the Ministerial order, the function of the Advisory Board is to disseminate the NCP's work, cooperate in promotion, collaborate with the NCP on specific instances, and receive the annual report of the NCP to the OECD. In practice, the Advisory Board has contributed the views of its stakeholder members, in particular on ongoing specific instances.

The location of the NCP and the interagency structure of the IMCB add value in terms of visibility and access to expertise. Stakeholders recognise the strong expertise of the IMCB and the Advisory Board on responsible business conduct (RBC) issues. They noted opportunities for participation in the Advisory Board of CSOs specialised in other thematic areas under the Guidelines. Although stakeholders recognise the integrity and impartiality of the officials active in the NCP, concerns were also expressed in relation to the Secretariat's location in the Ministry of Industry, Trade and Tourism and the strong representation of that ministry in the IMCB (five out of eight IMCB members). CSO and trade union stakeholders have in this regard asked for more public information on the decision-making process of the NCP and impartiality safeguards.

The NCP Secretariat faced significant staff turnover in the past few years, including in particular in 2019-2020. Although the current NCP Secretariat has access to documentation and contact with previous staff, the turnover impacted the knowhow and experience of the NCP, as well as the continuity of its work.

	Finding	Recommendation
1.1	The NCP's interagency structure and the Advisory Board represent important opportunities for the NCP's visibility, impartiality and access to expertise. However, the NCP Secretariat's location in the Ministry of Industry, Trade and Tourism and strong representation of that Ministry in the inter-ministerial collegiate body (IMCB) raise questions with some stakeholders regarding perception of impartiality. The current membership of the IMCB and decision-making rules are not reflected in a formal document, and rather rely on practice.	The NCP and Spain should consider ways to address concerns by some stakeholders regarding its location and composition, and in particular increase the transparency of its operations and better communicate about measures taken to foster its impartiality. Examples of actions in this regard may include communicating on the autonomy of the NCP with respect to decision-making, including the fact that decisions are taken by consensus, and decision-making rules when consensus is not reached, making public the NCP's annual reports, reflecting in an official document the current membership of the IMCB, role of the Secretariat, and creating a 'firewall' around the Secretariat and the IMCB in respect of the Ministry of Industry, Trade and Tourism to avoid and address conflicts of interest, in case they potentially arise. The NCP and Spain should also ensure balanced representation of different Ministries in the IMCB.
1.2	The membership and long experience of the Advisory Board offer many opportunities for stakeholder confidence, access to expertise, visibility and accessibility, but CSO representation does not cover the full scope of the Guidelines. Likewise, the Advisory Board does not consistently contribute to the promotion of the Guidelines by the NCP. Stakeholders would welcome more information on the role of the Advisory Board.	The NCP should consider ways of further engaging the Advisory Board. This could, for example, include agreeing terms of reference of the Advisory Board to clarify the nature of its role and its functions, notably regarding promotion. The membership of the Advisory Board could also be expanded to include CSOs active in a broader range of areas covered by the Guidelines, including human rights and environment-related issues.
1.3	The NCP has recently resumed its promotional activities and its workload has increased as a result of new specific instances. However, the NCP Secretariat has faced significant staff turnover and its resources were reduced relatively recently. Advisory Board members and stakeholders note that more resources are needed to allow for stronger promotional activities and timely handling of specific instances.	The human resources of the NCP Secretariat should be at least maintained at their current level, and ideally reinforced. Financial resources should also be increased, notably to increase promotional activities, potential hiring of experts and external mediator(s) where needed. The NCP should further strengthen its institutional memory through a handover strategy involving the Advisory Board to minimise the impact of regular staff turnover.

## Promotional activities

The overall visibility of the NCP is low. The current team of the NCP is in the process of increasing its promotional activity after two years with no promotional events. A flagship event co-organised by the NCP in March 2022 offered an opportunity to raise the NCP's visibility, including by identifying new stakeholders.

Further opportunities to increase promotion could be explored through the NCP's structure, in particular by leveraging the IMCB and the Advisory Board. As noted before, the role of the Advisory Board members in disseminating information on the NCP and engaging in joint promotional activities can be further leveraged.

Likewise, collaboration with 'multiplier' organisations could increase the reach of the NCP to new target audiences without requiring significant additional resources. Stakeholders also indicated a need for more information, promotional materials and online resources on the NCP. Finally, the NCP could develop an active social media presence.

On policy coherence, the NCP operates in a context whereby several other parts of the government are active on RBC. The Spanish government notably published recently a proposal for a law for public consultation requiring Spanish transnational companies to undertake human rights and environmental due diligence in their supply chains. In this context, the NCP should play a role in ensuring that RBC initiatives across the government align with the Guidelines and further disseminate them in ongoing consultation processes.

	Finding	Recommendation
2.1	The visibility and accessibility of the NCP could be further strengthened. Stakeholders noted a need for more dissemination of information on the NCP, and thematic promotional activities, including on the NCP mechanism and sectoral guidance, in particular for high-risk sectors. The recent high-level event co-organised by the NCP relaunched its promotional activities after two years of inactivity. However, the IMCB and the Advisory Board are not consistently leveraged for promotion and the NCP is not active on social media.	The NCP should increase its promotional activities in order to strengthen its visibility and accessibility. This can be done through (i) a promotional plan that includes a stakeholder mapping, identification of priority sectors for promotion, and topics of interest for different stakeholder groups; (ii) the production of information and promotional material for dissemination; (iii) active social media presence. The promotional plan should leverage key actors and relationships, including the IMCB, Advisory Board, embassies and diplomatic staff posted abroad, and stakeholder networks.
2.2	The NCP operates in a context where several other parts of the government are active on RBC issues. The NCP currently engages through its membership, e.g. through the Vice-Chair on export credits.	The NCP should position itself more visibly and affirmatively in the broader policy framework relevant to RBC in Spain, so as to promote policy coherence. The ongoing consultations on mandatory due diligence are an opportunity for the NCP to further strengthen its role and visibility in respect of policy coherence.

## Specific instances

Since its establishment in 2001, the NCP has received ten specific instances. Three of those had been concluded, five not accepted, and two were ongoing as of the date of the on-site visit. Among the concluded specific instances, one resulted in agreement outside the specific instance process. No case has led to agreement facilitated by the NCP.

The Rules of Procedure of the NCP (RoP) are available on the NCP's webpage in Spanish. The NCP noted its plans to review and clarify its RoP in the short term, following demands from stakeholders on such issues as timeliness of the process, transparency and confidentiality, and conflicts of interest.

Some parties to concluded specific instances shared positive feedback regarding communications with the NCP Secretariat. Some also welcomed the impact, clarity and scope of the recommendations made by the NCP in its statements. In view of demand expressed by stakeholders, the NCP could clarify conflict of interests and recusal provisions applicable on NCP and Advisory Board members as a way to bolster its perception of impartiality.

Trade union and CSO representatives also noted the need to clarify confidentiality rules and practices, in particular with respect to the NCP's decisions to grant anonymity to the parties in some of its statements. Certain substantive interpretations of the Guidelines were also questioned. Finally, the NCP can further align the timeliness of the specific instance process with the Procedural Guidance and take steps to strengthen the predictability of the process in case of delays.



	<b>Finding</b>	<b>Recommendation</b>
3.1	<p>The NCP has detailed and clear Rules of Procedures, though stakeholders and parties to specific instances noted the need for more clarity on some issues to further build trust and strengthen the predictability of the specific instance process. Such issues include the review of whether a company falls into the scope of the Guidelines, thresholds and consultations with parties in initial assessments, level of detail in older statements, frequent extensions of indicative timelines, and publication of statements in every closed case. The NCP has noted its plans to review its Rules of Procedure.</p>	<p>When undertaking its review of the Rules of Procedure, the NCP should focus on:</p> <ul style="list-style-type: none"> <li>- aligning its definition of multinational enterprise with that of the Guidelines;</li> <li>- ensuring clarity on thresholds in the initial assessment phase, to strengthen the accessibility and predictability of the process;</li> <li>- ensuring clarity and transparency regarding timelines;</li> <li>- publishing statements in non-accepted specific instances and considering publishing statements in accepted specific instances, ensuring clarity on the issues and reasons for the NCP's decision;</li> <li>- following up consistently on recommendations and agreements, and setting a timeline in the final statement;</li> <li>- clarifying the application and scope of provisions on conflict of interests and recusal.</li> </ul> <p>In handling specific instances in practice, the NCP should then ensure clearer and more timely communication with the parties.</p>
3.2	<p>The NCP grants anonymity of the parties in the majority of specific instances. Trade union and CSO representatives have questioned some of these decisions and have requested better justifications. Some stakeholders also requested more clarity on reasons to withhold information submitted by one party from the other, as well as on rules restricting campaigning during the specific instance process.</p>	<p>In order to further strengthen the transparency and equitability of the specific instance process, the NCP should consider consistent rules on campaigning, and communication about sharing information submitted by one party with the other, and in case sensitive information should be protected, providing a non-confidential version of such information to the other party. The NCP should also ensure that requests for anonymising statements are granted as an exception rather than the rule and duly justified based on specific reasons.</p>

# 2 Introduction

## The Spanish NCP at a glance

**Established:** 2001

**Structure:** Inter-agency

**Location:** Ministry of Industry, Trade and Tourism

**Staffing:** One full-time and four part-time staff

**Website:** <https://comercio.gob.es/InversionesExteriores/PNCLD/Paginas/default.aspx> (available in Spanish only)

**Specific instances received** as of the date of the virtual visit: 10

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 Spanish NCP with the core criteria and with the Procedural Guidance contained in the implementation procedures.

Spain adhered to the OECD Declaration on International Investment and Multinational Enterprises (Investment Declaration) in 1976. The OECD Guidelines for Multinational Enterprises (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 2011.

Countries that adhere to the Investment Declaration are required to establish National Contact Points (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 practices.<sup>1</sup>

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.”<sup>2</sup>

The 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.

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

<sup>2</sup> OECD Guidelines for Multinational Enterprises (2011), Foreword.

The objectives of peer reviews as set out in the “Revised core template for voluntary peer reviews of NCPs”<sup>3</sup> 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 template,<sup>4</sup> as well as responses to requests for additional information. The report also draws on responses to the stakeholder questionnaire which was completed by 14 organisations representing government agencies, 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 on-site visit on 5-7 April 2022.

The peer review of the NCP was conducted by a peer review team made up of reviewers from the NCPs of Morocco, the Netherlands and Slovenia, along with representatives of the OECD Secretariat. A list of organisations that participated in the on-site visit is set out in Annex B. The peer review team wishes to acknowledge the NCP for the rich material provided during the preparatory phase and its efforts to ensure participation from all stakeholder groups both through written contributions and during the on-site visit. The basis for this peer review is the 2011 version of the Guidelines. 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.<sup>5</sup>

## Economic context

Spain’s economy is dominated by the service sector, representing 74% of GDP. Regarding foreign direct investment (FDI), the inward stock of FDI, which represents the accumulated value of FDI in the Spanish economy over time, was USD 782 billion in 2021, equivalent to 55 percent of Spain’s GDP. The outward stock of FDI was USD 567 billion in 2021, representing 40 percent of Spain’s GDP. In 2021, Spain’s exports of goods were USD 379 billion and exports of services were USD 119 billion while imports of goods were USD 403 billion and imports of services were USD 73 billion.

The main investors in Spain are the United States, the United Kingdom, France, Germany and Italy, and the main inward investment sectors are finance and insurance followed by private purchase and sale of real estate and manufacturing. The main destinations for outward investment from Spain are The United Kingdom, the United States, Brazil, Mexico and France, and the most important sectors are finance and insurance activities followed by manufacturing and professional, scientific and technical activities. The most important partner countries for exports of goods are France, Germany, Italy, Portugal and the United Kingdom while the most important source countries for imports of goods are Germany, China, France, Italy and the United States. The most important destinations for exports of services are the United Kingdom, France, Germany, the United States and Switzerland and the most important sources for imports of services are the United Kingdom, France, Germany, the United States and Ireland. As measured by employment at foreign-owned firms in Spain in 2019, the most important investors are France, Luxembourg, Germany, the United States and the United Kingdom. As measured by employment at the overseas affiliates of Spanish MNEs, the most important destination countries are Brazil, Mexico, the United States, Argentina and the United Kingdom.

---

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

<sup>4</sup> *Ibid.*

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

# 3 Institutional arrangements

*Under the Procedural Guidance of the Guidelines, Section I (A): “Since governments are according flexibility in the way they organise NCPs, NCPs should function in a visible, accessible, transparent and accountable manner.”*

## Legal basis

Spain adhered to the OECD Investment Declaration in 1976. The Spanish NCP was formally established in 2001.

The NCP was established in its current form in November 2014 by Ministerial order PRE/2167/2014 (Ministerial order). The Ministerial order outlines the structure of the NCP as an inter-ministerial collegiate body, the public bodies composing its membership at the time, its composition and functions.<sup>6</sup> The Ministerial order is now available at the webpage of the NCP.<sup>7</sup> Changes in the NCP’s membership since then are not reflected in a legal instrument (see also below). The NCP noted its willingness to reflect its membership in official documentation and take steps as soon as administrative constraints are addressed.

## NCP Structure

The NCP is an interagency NCP composed of representatives of four ministries. Since 2019, the Secretariat of the NCP is located at the Ministry of Industry, Trade and Tourism, in the General Directorate for International Trade and Investments. The NCP has an Advisory Board composed of seven member organisations.

### Composition

The NCP is composed of four entities: the inter-ministerial collegiate body (IMCB), the President, the Vice-President, and the Secretariat. The President, Vice-President and three out of five members of the Secretariat are also members of the IMCB. The NCP has an Advisory Board since 2014.

Inter-ministerial collegiate body: The IMCB is currently composed of eight members from four different ministries:

- five representatives of the Ministry of Industry, Trade and Tourism:
  - the Secretary of State for Trade, acting as President;
  - the General Director of International Trade and Investment, acting as Vice-President;

<sup>6</sup> Article 2, Ministerial order PRE/2167/2014 (published in the Official Gazette on 20 November 2014) (Ministerial order).

<sup>7</sup> [https://comercio.gob.es/InversionesExteriores/PNCLD/Punto\\_Nacional\\_Contacto\\_Espa%C3%B1a/Documents/Orden-PRE\\_2167\\_2014-creacion-regulacion-PNC-directrices-OCDE-1.pdf](https://comercio.gob.es/InversionesExteriores/PNCLD/Punto_Nacional_Contacto_Espa%C3%B1a/Documents/Orden-PRE_2167_2014-creacion-regulacion-PNC-directrices-OCDE-1.pdf)

- three representatives of the General Directorate of International Trade and Investment, also acting as NCP Secretariat;
- a representative of the Ministry of Employment and Social Security;
- a representative of the Ministry of Foreign Affairs, European Union and Cooperation;
- a representative of the Ministry of Justice.

**Figure 3.1. The current members of the Spanish NCP's IMCB**



Note: the questionnaire is provided by the NCP under review during the peer review preparatory phase  
Source: Peer review questionnaire for the Spanish NCP (2022)

The Ministry of Justice joined the NCP as a member in 2017, but is not listed in the Ministerial order. The Secretary of State of Trade invited the Ministry of Justice following expression of interest at the time by the Ministry. The representatives from the Ministries besides the Ministry of Industry, Trade and Tourism have served as IMCB members for one and a half to five years.

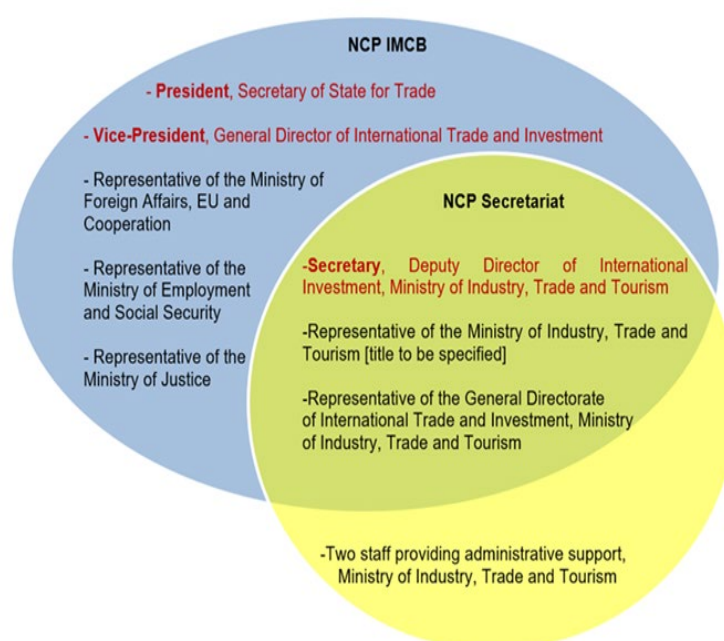
The Ministerial order provides that the members of the NCP's IMCB will have at least the rank of Deputy Director General. The Secretary of State for Trade is the President of the NCP and its most senior official. The Ministerial order specifies the positions of some IMCB members (e.g. General Director on Corporate Social Responsibility on behalf of the Ministry of Employment and Social Security). Each member of the NCP may designate an alternate from the same unit or body, who should at least have the status of public official (Article 2).

The NCP Secretariat is currently located in the Ministry of Industry, Trade and Tourism. The NCP Secretariat was initially located at the Deputy General Directorate for International Trade, Services and Investment under the General Directorate for International Trade and Investment, in the Ministry of Economy and Competition (Article 3). In late 2019, the Secretariat moved to the Support Unit of the General Directorate of International Trade and Investment, in the Ministry of Industry, Trade and Tourism. The move was due to organisational reasons. It resulted in an upgrade for the NCP Secretariat from Deputy Directorate to the Director's Office. According to the NCP, the move raised its visibility within government.

The NCP Secretariat is currently composed of one full-time and two part-time staff. Two additional part-time staff from the Ministry of Industry, Trade and Tourism provide administrative support.

The location of the NCP President also changed. The Secretary of State for Trade, initially located in the Ministry of Economy and Competition, moved as well to the Ministry of Industry, Trade and Tourism in 2019. The above changes are not reflected in a formal document. The NCP Vice-President's other duties cover international investment, export credits, issues related to commercial offices abroad, and internationalisation of companies. The Vice-President is also involved in institutions related to public investment funds and holds regular contacts with diplomatic staff, other members of government and business.

**Figure 3.2. Structure and composition of the Spanish NCP**



Note: the questionnaire is provided by the NCP under review during the peer review preparatory phase  
Source: Peer review questionnaire for the Spanish NCP (2022)

### ***Functions and operations of the NCP***

Article 5 of the Ministerial order defines the main functions of the NCP as:

- promoting the Guidelines through appropriate means, including by informing, where appropriate, potential investors wishing to invest in Spain or abroad about the Guidelines. The NCP's function is also to improve knowledge of the Guidelines and their application procedures. This is achieved, among others, through cooperation with business, trade unions, civil society organisations and any other interested citizens (Article 5, para.1(a-b));
- responding to enquiries about the Guidelines from other NCPs, stakeholder groups, citizens and governments on non-Adherent countries (Article 5, para. 2);
- contributing to the resolution of specific instances (Article 5, para. 3).

The functions of the NCP Secretariat, President and Vice-President are briefly mentioned in the Ministerial order. The Secretariat acts as the public administrative body supporting the NCP's activities in line with

the legislation on the administrative process (Article 3; Law 30/1992). The President chairs the NCP's meetings (Article 6, para. 5). The Vice-President replaces the President in case of vacancy, absence, illness or other cause. In practice, the President's duties are delegated to the Vice-President. The Vice-President is supported and informed on the daily work of the NCP by the Secretariat. The Secretariat informs the Vice-President of NCP-related developments before discussion in NCP meetings. Based on the hierarchical relationship within the Ministry of Industry, Trade and Tourism, the Vice-President supervises the NCP Secretariat's work.

The NCP holds its regular meetings at least once a year, but extraordinary meetings can be called on the initiative of the President or proposal of the majority of its members (Article 6, para. 1). The NCP also meets one month after the receipt of a specific instance.

The NCP ensures access to expertise through its membership and *ad hoc* requests to external experts. The NCP notes the strong expertise of NCP member representatives on legal, international business, sustainable investment, and corporate social responsibility issues. Indicatively, the Ministry of Employment and Social Security is the focal point within government on corporate social responsibility (CSR). The Ministry of Justice provides expertise on issues related to the OECD Anti-Bribery Convention,<sup>8</sup> criminal and human rights law, and access to information (see also section on Policy coherence below). The Ministry of Foreign Affairs contributes with expertise on issues related to international human rights law, developments under the United Nations (UN) Working Group on Business and Human Rights. The same Ministry also facilitates contact with Spanish companies operating abroad, and diplomatic staff posted abroad where needed in ongoing specific instances. The NCP notably consulted the Ministry of Foreign Affairs in a recent specific instance regarding issues of public international law (see also Chapter below on Specific Instances). Stakeholder representatives also welcome the input of the Advisory Board on due diligence issues as well as in the respective areas of expertise of its members (e.g. labour issues, anti-corruption, and transparency) (see also below).

Although they recognise the strong expertise of the IMCB and Advisory Board, stakeholders overall agree on the need for further access to expertise on human rights and environment issues. CSO, trade union representatives and Advisory Board members for example suggested increased contributions by the Ministry of Social Rights and 2030 Agenda<sup>9</sup> in human rights and social dialogue-related issues. The NCP notes that it seeks regular exchanges with the Ministry of Social Rights and 2030 Agenda. Indicatively, one NCP Secretariat member participated in an inter-ministerial body on the 2030 Agenda. In light of the above, the NCP recognises the benefits of further integrating other ministries in its structure, including the Ministry of Social Rights and 2030 Agenda and the Ministry of Agriculture. To further strengthen its access to expertise, the NCP can invite experts to assist with specific instances upon approval of the President. Approval concerns the related costs. The experts participate in NCP meetings but do not vote (Article 6, para. 2 of the Ministerial order). Experts are contracted if they provide a service. The NCP has not contracted experts in specific instances so far.

According to the NCP, its interagency structure and location contribute to raising its visibility and accessibility, particularly within government. Indicatively, the IMCB members disseminated the latest promotional event organised by the NCP among their contacts. The move of the President and Secretariat to the Ministry of Industry, Trade and Tourism also further increased the NCP's visibility for three main reasons. Firstly, the President's high-ranking position as Secretary of State for Trade raises the status of the NCP. Secondly, the Vice-President also promotes the NCP's work among investment and export credit-related authorities through other activities under her position. Thirdly, the NCP notes that its location ensures strong links with the business community, as NCP members deal with issues involving

---

<sup>8</sup> Convention on Combating Bribery of Foreign Public Officials in International Business Transactions [[OECD/LEGAL/0293](#)].

<sup>9</sup>The 2030 Agenda Secretary of State operates in the Ministry of Social Rights and 2030 Agenda (see also Section 5 on Policy Coherence below).

multinational enterprises on a daily basis. Stakeholders highlighted that the interagency structure allows the NCP to conduct its work efficiently.

Stakeholders indicated a desire for more public information on the decision-making process of the NCP. Under the Ministerial order and the Rules of Procedure (RoP), decisions are taken by simple majority (Article 6, paras. 3-4, Section 10 RoP). All NCP members have one vote (Article 2). The meeting quorum is half of the members, including the President and Secretary or their substitutes. According to the Rules of Procedure (RoP), the quorum also requires the presence of three out of five 'components' of the NCP (Section 10 RoP). The NCP reports that, although voting is the applicable decision-making model for collegiate bodies, in practice the NCP makes decisions by consensus. This practice is not reflected in an official document. IMCB members indicated that the decision-making process ensures an appropriate balance of different views. In this regard, it may be useful to further clarify the decision-making process when consensus is not reached, as some stakeholders reported lacking information and understanding on the decision-making rules.

The transparency of the NCP is guaranteed by the relevant legal framework, which applies to the NCP's operations and members, and which is overseen by the Ministry of Justice. The NCP notably reports that the national legal framework on access to documents applies on the Ministry of Industry, Trade and Tourism and the General Directorate of International Trade and Investments (Law 19/2013). According to the NCP, any citizen can hence request information held by the Spanish NCP, as a public authority, although no such requests have yet been made (see also below on Confidentiality and transparency).

The NCP also reported that its interagency structure and broad representation of ministries offered guarantees of impartiality. Additionally, the national legislation applicable to public officials allows to address any conflicts of interests. However, the Ministerial order only provides for substitutes in cases of vacancy, absence, illness or other cause. Some stakeholders also recognised the added value of the interagency structure, the technical focus of NCP members with expertise in due diligence issues, and the function of the Advisory Board (see below) for the NCP's impartiality. Despite this, while not disputing the integrity and impartiality of the officials active in the NCP, several stakeholders raised concerns regarding the strong representation of the Ministry of Industry, Trade and Tourism within the NCP. Five out of eight IMCB members, including its President and Vice-president, currently represent this Ministry. The NCP indicated that this strong representation resulted from the move of 2019, but that the comparatively stronger weight of the Ministry of Industry, Trade and Tourism may be somewhat offset in practice through decision-making by consensus. More balanced representation of different Ministries would however more effectively enable each member to express conflicting positions with a view to reaching consensus. Half of the stakeholders who provided written contributions also noted the need to reinforce measures to guarantee the NCP's impartiality. Trade union and CSO stakeholders notably mentioned risks linked to the NCP's location within government and close links to the business community.<sup>10</sup> For example, the President's other mandate as Secretary of State for Trade covers the national policy on domestic and international trade, exports, international transactions, as well as promotion and internationalisation of Spanish companies.<sup>11</sup>

In this regard, it may be useful for Spain and the NCP to strengthen and better publicise measures taken to foster the transparency and impartiality of the NCP, and how it takes into consideration different views based on its structure and composition. This could, for example include building a 'firewall' around the NCP to avoid interference between the NCP's work on implementing the Guidelines and other agendas such as trade or investment promotion, or formalising decision-making rules to account for the practice and consensus and clarifying what happens in case of no consensus, and updating the Ministerial order with recent developments such as (i) the move of the President, Vice-President and two IMCB and NCP Secretariat members to the Ministry of Industry, Trade and Tourism, (ii) the move of the NCP and NCP

---

<sup>10</sup> OECD Watch, [NCP Spain](#).

<sup>11</sup> Article 2, para. 1 of [Decree 998/2018](#) published on 4 August 2018.



Secretariat location to the same Ministry, (iii) the addition of the Ministry of Justice as new IMCB member, (iv) the fact that the Secretariat members also act as IMCB members (see Figure 3.2 above).

## NCP Advisory Board

Engagement with stakeholders takes place on a regular basis through IMCB members and the Advisory Board. The NCP consults the Advisory Board before making a final decision on any topic. In practice, the NCP and the Advisory Board usually meet together (see also below). The NCP also reports that the Secretariat exchanges regularly with stakeholders. Overall, stakeholders agreed that the NCP structure allows it to effectively reach out to and take into account the views of stakeholders. One CSO representative welcomed the open communication and flexibility of the NCP in the engagement process. One business organisation representative highlighted opportunities for the NCP to reach out to broader audiences.

### **Composition**

The Spanish NCP is supported by an Advisory Board that contributes to the proper functioning of the NCP. The Advisory Board is a multi-stakeholder body with seven organisations:

- two business organisations:
  - the Spanish Chamber of Trade, Industry and Navigation;
  - the Spanish Confederation of Business Organisations (CEOE);
- three trade unions:
  - the General Union of Workers (UGT);
  - the Trade Union Confederation of Workers' Commissions (CCOO);
  - the Worker Trade Union (USO), and
- two CSOs:
  - Transparency International Spain, and
  - the Corporate Social Responsibility Observatory.

The Advisory Board has been operating since 2014. Each Advisory Board member has one representative on the Board. Advisory Board members have overall long experience. Two representatives stated that they have participated since its establishment. Two representatives joined in 2015-2016. The more recent members also have two to three years of experience in the Advisory Board. Stakeholders agree that business organisations and trade unions cover broadly the respective stakeholder groups. The two CSO members provide further expertise on transparency, integrity, anti-corruption and corporate social responsibility. There is a demand for wider participation of CSOs specialised in other key topics (e.g. human rights, environment). This approach would allow the Advisory Board to boost its expertise in thematic areas covering the full scope of the Guidelines.

### **Functions and operations**

The Ministerial order defines the function of the Advisory Board as assisting with the effective functioning of the NCP by helping to disseminate its work, cooperating in the promotion and dissemination of the Guidelines, considering the requests for collaboration made by the NCP on the procedures to be followed in specific instances, and receiving the annual report that the NCP prepares to the OECD (Article 4).

The RoP, in effect since 2015, further elaborate the role of the Advisory Board. According to the RoP, the Advisory Board meets to consider decisions on specific instances. It can also meet at the initiative of the President or ask for a meeting at its own initiative. Under the last scenario, the Advisory Board needs to

state the reasons of the request. In practice, the Advisory Board is invited by the Secretariat in every NCP meeting, including with the parties in ongoing specific instances, and receives draft statements on specific instances, but does not have voting rights. Its views are taken into account by NCP members in decision-making, but they do not participate as such in forming the consensus (see also Chapter below on Specific Instances).

In the past few years, Advisory Board members report that discussion focused exclusively on ongoing specific instances. The Advisory Board did not meet during two years (2019-2020) when no specific instances or promotion were ongoing. One CSO representative noted that the Advisory Board would need to meet at least twice a year and be consulted on issues beyond specific instances, including promotional activities and the review of the RoP. The Advisory Board recently took the initiative to provide internal proposals on the review of the RoP. Advisory Board members note that the NCP provides adequate information and ensures regular exchanges in practice. They further note that their perspectives are taken into account to the extent possible in view of different views expressed on complex issues.

Stakeholders expressed strong support for the role of the Advisory Board. They welcomed its active role in ensuring stakeholders' engagement and noted its substantive expertise on due diligence issues. In view of the long experience of its members, the Advisory Board also contributes to the NCP's institutional memory. Representatives of government, business and trade unions asked for the Advisory Board to take a stronger role. Several stakeholders asked for a decision-making role for the Advisory Board or inclusion of stakeholder representatives in the NCP's structure.

The NCP could further clarify and leverage the role of the Advisory Board, in particular in ensuring stronger connection to relevant actors, and supporting the NCP's promotional activities. A more active role for the Advisory Board could help bolster the NCP's perception of impartiality and transparency of its functioning through dissemination of information on the NCP's work. This could, for example, be achieved by agreeing on terms of reference of the Advisory Board to clarify the consultative nature of its work, expand its role beyond specific instances and contribute to increasing its members' input and ownership with respect to promotion of the NCP's work.

## **Resources**

The NCP Secretariat staff was reduced relatively recently. The Secretariat consists today of one full-time and four part-time staff. Two part-time staff provide administrative support. In 2017, the NCP was supported by two part-time staff, in addition to two full time staff. In 2018, the NCP had two full-time and three part-time staff members. In 2019, following the move to the Ministry of Industry, Trade and Tourism, the Secretariat had one full-time and one part-time staff. At the end of 2019, one part-time staff member was added to deal with legal issues and liaise with legal offices across Ministries.

The NCP Secretariat faces significant staff turnover. The current NCP Secretariat took over in 2021: the part-time staff members joined in the first and second quarters of 2021. The full-time staff took over in September 2021 under an open-ended term. The NCP faced complete staff turnover in both 2019 and 2020. The NCP notes that the staff turnover resulted in loss of knowhow and experience. It further results in partial lack of continuity in the NCP's work. The staff turnover and ongoing pandemic notably impacted the NCP's communication strategy. The NCP reports that documentation on specific instances has been preserved. However, additional information, including on promotional activities, would have been useful. The NCP refers to access to documentation about past promotional activities and archives, as well as contact with previous NCP Secretariat staff as sources of institutional memory. To ensure smooth transitions, the NCP Secretariat updates new members on the NCP's work and main ongoing issues.

In terms of financial resources, the NCP does not have a dedicated budget. The NCP has access to *ad hoc* financial resources. The NCP states that, when requested, financial resources are provided. No financial resources were allocated to the NCP in 2021 and 2020 for promotional events or for the handling

of specific instances. In contrast, in 2018, the NCP reported that it had a dedicated budget for promotional events and responding to specific instances, and, in addition, received additional funds on an *ad hoc* basis, upon request. One trade union representative noted that the lack of financial resources may account for the NCP's reliance on internal mediation and limited information being available in English. Stakeholders note that limited resources do not allow for broad promotional activities or consistently translating documents in relevant languages. Publicly available translated material, including the Ministerial order and RoP, would reinforce accessibility among companies headquartered abroad and operating in Spain or potential submitters beyond Spanish speakers.

## Reporting

The NCP does not have a dedicated oversight body, and the Advisory Board does not have an oversight function.

The NCP reports annually to the OECD in line with the Ministerial order (Article 7). The NCP submits reports to the Advisory Board for information. Two stakeholders asked for publication of the annual reports on the NCP's website.

The NCP is not officially required to the government or the Parliament, but in practice, it reports to the executive on a regular basis, and twice a year to Parliament as part of the Ministry of Industry, Trade, and Tourism reporting on its activities and approval of the annual budget. Issues relating to Responsible Business Conduct broadly, and the NCP and its activities specifically, are generally included in the statements of the Secretary of State for Trade to Congress. The NCP's reporting to the executive, legislative and the OECD is currently not made available on its website.

	Finding	Recommendation
1.1	The NCP's interagency structure and the Advisory Board represent important opportunities for the NCP's visibility, impartiality and access to expertise. However, the NCP Secretariat's location in the Ministry of Industry, Trade and Tourism and strong representation of that Ministry in the inter-ministerial collegiate body (IMCB) raise questions with some stakeholders regarding perception of impartiality. The current membership of the IMCB and decision-making rules are not reflected in a formal document, and rather rely on practice.	The NCP and Spain should consider ways to address concerns by some stakeholders regarding its location and composition, and in particular increase the transparency of its operations and better communicate about measures taken to foster its impartiality. Examples of actions in this regard may include communicating on the autonomy of the NCP with respect to decision-making, including the fact that decisions are taken by consensus, and decision-making rules when consensus is not reached, making public the NCP's annual reports, reflecting in an official document the current membership of the IMCB, role of the Secretariat, and creating a 'firewall' around the Secretariat and the IMCB in respect of the Ministry of Industry, Trade and Tourism to avoid and address conflicts of interest, in case they potentially arise. The NCP and Spain should also ensure balanced representation of different Ministries in the IMCB.
1.2	The membership and long experience of the Advisory Board offer many opportunities for stakeholder confidence, access to expertise, visibility and accessibility, but CSO representation does not cover the full scope of the Guidelines. Likewise, the Advisory Board does not consistently contribute to the promotion of the Guidelines by the NCP. Stakeholders would welcome more information on the role of the Advisory Board.	The NCP should consider ways of further engaging the Advisory Board. This could, for example, include agreeing terms of reference of the Advisory Board to clarify the nature of its role and its functions, notably regarding promotion. The membership of the Advisory Board could also be expanded to include CSOs active in a broader range of areas covered by the Guidelines, including human rights and environment-related issues.
1.3	The NCP has recently resumed its promotional activities and its workload has increased as a result of new specific instances. However, the NCP Secretariat has faced significant staff turnover and its resources were reduced relatively recently. Advisory Board members and stakeholders note that more resources are needed to allow for stronger promotional activities and timely handling of specific instances.	The human resources of the NCP Secretariat should be at least maintained at their current level, and ideally reinforced. Financial resources should also be increased, notably to increase promotional activities, potential hiring of experts and external mediator(s) where needed. The NCP should further strengthen its institutional memory through a handover strategy involving the Advisory Board to minimise the impact of regular staff turnover.

# 4 Promotion of the Guidelines

## Promotional plan

The NCP does not have a publicly available promotional plan. The Secretariat discusses plans for promotional events with the IMCB on an annual basis. As a result, in early 2022, the NCP reported that it was further defining its promotional agenda. The NCP does not have a publicly available promotional plan. Several stakeholders requested the development and publication of a promotional plan.

Overall, the NCP and stakeholders recognise the need to further raise its visibility, in particular among business. The NCP has not monitored the level of awareness regarding the Guidelines in Spain. However, the NCP is monitoring use of its webpage as a means of identifying interest in its activities and the Guidelines. The NCP already has prospects for increasing stakeholder engagement and reaching out to new audiences. Indicatively, the NCP noted that the recent flagship event co-organised by the NCP (see also section below on Promotional events) offered the opportunity to update its list of stakeholders and identify new actors active in RBC issues.

The structure of the NCP also offers many opportunities for promotion, in particular through the IMCB and the Advisory Board. Their members' own activities and contacts can act as relays for the NCP's promotion efforts. They could proactively reach out to their networks to disseminate activities organised by the NCP. The NCP could also seek to be more strategic in leveraging these bodies for promotional purposes. Indicatively, Advisory Board members did not engage in discussions on promotion since the outbreak of the pandemic. They have also not held joint promotional events with the NCP or otherwise promoted the Guidelines. Likewise, collaboration with 'multiplier' organisations such as the '*Plataforma por las empresas responsables*'<sup>12</sup> or *Forética*<sup>13</sup> could increase the reach of the NCP to target audiences.

## Information and promotional materials

The NCP does not report having developed information and promotional materials over the last years, but shared plans to develop a brochure on the Guidelines for dissemination in future events.

The NCP disseminates translated versions of OECD RBC instruments and documents through its webpage (see below). Stakeholders were aware of and welcomed the availability of these translations. Representatives of other parts of the government indicated that compelling materials would include information on the business advantages linked to RBC and successful specific instances. Successful examples cover agreement reached between the parties with the assistance of other NCPs and cases before the Spanish NCP resulting in agreement in the future. Beyond additional information on the NCP, stakeholders requested material on sectoral due diligence guidance, and links between RBC and the Sustainable Development Goals, gender, and climate change.

---

<sup>12</sup> [Plataforma por Empresas Responsables](#).

<sup>13</sup> [Forética](#).

## Promotional events

The current team of the NCP is in the process of increasing its promotional activity after two years with no promotional events. A flagship event co-organised by the NCP took place in the Ministry of Industry, Trade and Tourism on 15 March 2022 (see Box 4.1). The NCP also notes that its members promote the NCP through their participation in promotional events. Indicatively, the Vice-President promotes the NCP's work in her capacity as General Director for International Trade and Investments.

### Box 4.1. Conference on “Corporate Social Responsibility and Active Employment Policies: the Spanish National Contact Point”.

On 15 March 2022, the Secretary of State for Trade hosted a high-level promotional event at the Ministry of Industry, Trade and Tourism on “Corporate Social Responsibility and Active Employment Policies: the Spanish National Contact Point”. The Spanish NCP contributed to the organisation of the conference.

The conference covered three key topics:

- Corporate Social Responsibility and active employment policies: a dialogue between the Spanish Confederation of Business Organisations (CEOE) and the Chamber of Spain
- Presentation of the Spanish National Contact Point
- Roundtable on RBC and the role of the NCP: present, future and main challenges.

High-level representatives of the Spanish Government, the OECD, and business, participated as speakers or roundtable discussants. The Minister of Industry, Trade and Tourism made opening remarks and the Secretary of State of Trade and Foreign Investments made the closing statement. High-level speakers included the OECD Secretary General, one representative of the Ministry of Industry, Trade and Tourism, the President of the CEOE, and the President of the Chamber of Trade of Spain. Discussants in the roundtable included representatives of the General Department of Sustainable Development Policies (DGPODES) of the Ministry of Home Affairs, the Ministry of Employment and Social Security, and Social Economy, Transparency International and the company Forética.

Two key topics discussed during the conference concerned the Spanish NCP and the NCP system. During its presentation, the NCP Secretariat covered the NCP's structure, its establishment through the Ministerial order, challenges linked to the pandemic in the NCP's work, the specific instance process and the Rules of Procedure. The NCP Secretariat noted the potential impact of legislation on RBC at regional or national level. During the roundtable discussion, discussants noted ongoing negotiations at EU on a draft EU Directive on Corporate Sustainability Due Diligence, the role of the NCP in this context and the need to ensure a level-playing field for companies. Discussants further noted the advantages for companies operating in line with RBC and CSR standards.

The conference took place on a hybrid format. Speakers participated in person and participants could join in the Ministry of Industry, Trade and Tourism or virtually. The recording of the conference is available [online](#).

Source: Spanish NCP

The NCP notes that its promotional activities have been limited in the past three years. The NCP did not organise or participate in promotional events in 2020 or 2021. Among other reasons, the NCP notes the impact of the sanitary situation. Indicatively, the NCP's plans to organise again a promotional event on the

Guidelines were cancelled in 2020. Other reasons for the limited promotional activities included limited staff resources, staff turnover and heavy workload due to ongoing specific instances.

The NCP had previously organised promotional events in 2017 – 2019. More specifically, the NCP:

- organised a promotional event in July 2019 on the translated version of the Guidelines, with high-level participants, including the then Minister of Industry, Trade and Tourism and the Secretary of State for Trade.
- co-organised two and organised one promotional events in 2018:
  - in November 2018, the NCP contributed to the organisation of a high-level event on “Sustainable Development in the internationalization of the Spanish economy”. The event was held at the Minister of Industry, Trade and Tourism and covered the Guidelines, due diligence standards and the NCP’s work. Participants included the then OECD Secretary-General, Minister of Ecologic Transition and Ambassador of Spain to the OECD, and business representatives;
  - in July 2018, the NCP co-organised a seminar together with Invest in Spain (ICEX),<sup>14</sup> located in the Ministry of Industry, Trade and Tourism. The event focused on competitive advantages of sustainability standards for companies and corporate social responsibility (CSR) issues;
  - in June 2017, the NCP organised a seminar to disseminate the Guidelines with the cooperation of the Spanish Confederation of Business Organisations (CEOE) and the OECD Secretariat. The event was attended by representatives of 26 companies.

The NCP also participated in one event organised by academia in 2018. More specifically, in June 2018, the NCP participated in an international conference held in the University of Seville on the National Action Plan on Business and Human Rights (NAP) of Spain. The NCP Secretariat presented the NCP’s work.

Stakeholders indicated opportunities to further promote the Guidelines, the NCP and the specific instance process. They asked for more proactivity in the organisation of promotional events and active promotion of due diligence and sectoral guidance, in particular for high-risk sectors. Some stakeholders asked for training sessions on the Guidelines and related RBC standards. One business representative stressed that webinars and virtual events could be suitable options for activities in the context of the pandemic.

Stakeholders also noted the need for the NCP to reach out to different stakeholder groups. Business representatives noted that awareness among business of the NCP, its structure and mandate is very low. Stakeholders also noted that engagement with CSOs, including academia in particular, needs to be further strengthened. Several stakeholders noted the need for more promotional activities with participation of trade unions and CSOs. One CSO noted additional promotion opportunities through embassies and diplomatic staff posted abroad.

## Webpage

The NCP has a dedicated webpage on the Ministry of Industry, Trade and Tourism’s website.<sup>15</sup> The current NCP’s webpage is available in Spanish only. It is easily identified through online search engines. However, the former webpage of the NCP on the website of the Ministry of Labour and Social Economy is still active and showing in search results,<sup>16</sup> which can be confusing. The NCP indicates that the webpage is updated on a regular basis. The NCP also shared its plans to update the webpage and its visual identity. Several

<sup>14</sup> Invest in Spain is an executive division of ICEX Trade and Investment, a publicly owned business-oriented entity of the Ministry of Industry, Trade and Tourism’s Secretary of State for Commerce; [ICEX: About us](#).

<sup>15</sup> <https://comercio.gob.es/InversionesExteriores/PNCLD/Paginas/default.aspx>

<sup>16</sup> See <https://www.mites.gob.es/es/rse/puntocontacto/index.htm>

stakeholders welcomed recent updates to the webpage. Some stakeholders noted its accurate content. Other stakeholders stressed that the webpage could be further updated to ensure a user-friendly presentation of information. One stakeholder suggested creating a newsletter.

The webpage is organised in a front page and five subsections on:

- the Guidelines;
- the NCP;
- the specific instance process;
- promotional events;
- specific instances received by the NCP.

The front page of the NCP website opens with a short description of the NCP. Information follows on the recent high-level Conference on “Corporate Social Responsibility and Active Employment Policies: the Spanish National Contact Point”, including the online recording of the conference. The front page includes information on the 2020 Global Forum on Responsible Business Conduct (GFRBC) and an OECD publication on RBC in the context of the ongoing pandemic. The link to the high-level Conference agenda and the interventions in the 2020 GFRBC were inactive in March 2022.

The subsections accessible through a side bar, provide the following information:

- the Guidelines, general due diligence guidance, sectoral guidance for the mining and agriculture sectors in Spanish, as well as sectoral guidance for the garment and clothing and financial sectors in English;
- the UN Guiding Principles on Business and Human Rights (UNGPs) in Spanish;
- a brief presentation of the NCP system, including its functions and contact information (email and phone number);
- a brief presentation of the specific instance process, including a flowchart on the three phases of the specific instance process and a link to the NCP’s Rules of Procedure (RoP). This section does not mention follow-up as part of the specific instance process;
- promotional events, listing the events that the NCP organized, co-organised or participated in. This section covers events which took place in 2017-2019. At the time of the on-site visit, it did not include information on the recent high-level Conference and the promotional event in July 2019 on the translated version of the Guidelines;
- a list of specific instances that have been handled by the Spanish NCP, with brief descriptions of each and of their outcome, and, in addition, a link to the OECD database on specific instances (see also Chapter 6 below).

To facilitate contact with the NCP, each of the subpages contains a direct link to a contact form. The NCP uses the contact form of the Ministry of Industry, Trade and Tourism. The form includes ‘National Contact Point’ in the proposed titles.

The NCP is not active on social media. One business representative noted the need to ensure social media presence. The NCP noted that it may publish information through the Twitter account of the Secretary of State for Trade, following discussion within the IMCB. Stakeholders overall agreed that social media should be further leveraged for regular dissemination of information.

## Promotion of policy coherence

Various parts of the government in Spain are active in areas related to RBC. Several legislative and policy initiatives covering RBC standards are ongoing in Spain. Indicatively, in 2021, the Ministry of Social Rights

and 2030 Agenda launched preparations on a Sustainable Development Strategy 2030 to ensure policy coherence between domestic policies and Spain's foreign policy.<sup>17</sup> The initiative covers business and human rights issues. In December 2021, Spain also approved a National Action Plan against Forced Labour.<sup>18</sup> The Ministry of Labour and Social Security and the Secretary on Value Markets and Financial Instruments also engage on RBC developments at EU level. The Export Credit Agency operating under the General Secretary for the Financial Promotion of Internationalization also follows developments on due diligence for environment and anti-bribery risks. The agency informs companies on international RBC standards, including the Guidelines, and their importance for companies irrespective of size.

One ongoing initiative is undertaken by the Ministry of Industry, Trade and Tourism. More specifically, the Ministry leads a working group on Internationalization and Human Rights in the framework of the Strategic Plan for the Internationalization of the Spanish Economy (GTIDH). The working group was established to elaborate an action plan on business internationalization and ensure alignment with the UNGPs. The NCP led the working group and covered issues related to the Guidelines, the UNGPs, official supported export credits and development cooperation. A government representative notes the need for implementing the relevant outcomes and for prioritising of the issue.

Spain published its National Action Plan on Business and Human Rights (NAP) (*Plan de Acción Nacional de Empresa y Derechos Humanos*) in 2017.<sup>19</sup> The NAP was approved by the Spanish Council of Ministers and published in July 2017. The timeline of the plan was three years and therefore it expired in 2020. The NCP had an active role in the NAP's development as participant in the relevant inter-ministerial working group coordinated by the Ministry of Foreign Affairs in 2015.<sup>20</sup>

The NAP includes the following references to the NCP:

- the NCP may contribute to the organisation of awareness-raising and training activities on the UNGPs, the NAP itself and the government's expectations on business and human rights. Such activities should prioritise participation of state-owned enterprises or companies benefiting from state financial support, companies which may impact vulnerable communities, and award-winning companies;
- the NCP is mandated to act as focal point to provide information and assess business and human rights issues (Section B.2);
- the NCP acts as extrajudicial remedy mechanism (Section C.1).

The implementation of the NAP was subject to monitoring through a designated commission composed by representatives of different ministries. Among other tasks, the commission was mandated to conduct stakeholder consultations and hold sector-specific meetings to assess specific points of the NAP. The commission would develop update proposals by July 2020, when its mandate expired. The Ministry of Foreign Affairs coordinated the commission.

Members included the Ministry of Industry, Trade and Tourism.<sup>21</sup> The NCP was not represented on the commission. There are currently no developments or ongoing work on the establishment of a new NAP. The Ministry of Foreign Affairs notes that future steps would reflect developments on mandatory due diligence at EU level. A potential future NAP would aim to ensure broader stakeholder participation.

---

<sup>17</sup> The 2030 Agenda Secretariat was established in 2015. Its mandate cover the promotion of the 2030 Agenda and the coordination of relevant public authorities ([Decree 452/2020](#) published on 12 March 2020).

<sup>18</sup> [Resolution no 308 of the Secretary of State for Employment and Social Economy](#), published on 24 December 2021.

<sup>19</sup> [Spain's NAP](#).

<sup>20</sup> José Aylwin, Marcel Didier y Felipe Guerra, "[Plan de acción nacional de derechos humanos y empresas: análisis crítico desde la sociedad civil](#)" (March 2019), p. 10.

<sup>21</sup> [Spain's submission to the UN Working Group on Business and Human Rights](#) (2020), p. 3.



The NCP reported coordinating with other governmental agencies in practice, such as with the Ministry of Employment and Social Security, which leads the government's CSR strategy and is represented in the NCP. The NCP notes that the Ministry of Employment and Social Security is currently developing a national RBC strategy and hosts 'The Spanish Portal of Social Responsibility'.

As mentioned above, the Ministry of Foreign Affairs has provided expertise on issues related to the UN Working Group on Business and Human Rights, and the Ministry of Justice on issues related to the OECD Anti-Bribery Convention. In the area of export credits, the Directorate on Export Finance and Investment Support in the Ministry for Industry, Trade and Tourism applies common approaches and a screening project on all export credit projects. The screening covers stakeholders and any type of transaction.

The Vice-President of the NCP is also Chair of the committee conducting the screening and informs the committee of the work of the NCP. If during the screening process there is doubt in relation to a specific instance, the application is not approved, which happened once.

In February 2022, the Spanish government published a proposal for a law for public consultation requiring Spanish transnational companies to undertake human rights and environmental due diligence in their supply chains. The proposal is linked to the discussions leading to the draft EU Directive on Corporate Sustainability Due Diligence. The draft law was included in the government's Legislative Plan for 2022.<sup>22</sup>

The Ministry of Social Rights and 2030 Agenda leads preparations on the proposal and coordinates consultations across the government. The proposal was open to public consultation on the website of the Ministry of Social Rights and 2030 Agenda from 14 February to 3 March 2022.<sup>23</sup> The proposal addresses due diligence through supply chains, inclusion of trade unions and CSOs in collective action on behalf of victims, sanctions and access to remedy for victims of human and environmental rights violations.<sup>24</sup> Although the proposal for a draft law touches upon issues covered under the Guidelines, it does not make reference to this instrument. The NCP should thus play a role in ensuring that RBC initiatives across the government align with the Guidelines and further disseminate them in ongoing consultation processes.

## Requests for information

The NCP has their contact details listed on the webpage (email and telephone). It also provides a contact form for any enquiries.

## Cooperation amongst NCPs

The NCP engages with other NCPs through multilateral and bilateral meetings (see Chapter on Specific Instances below).

---

<sup>22</sup> [Plan Annual Normativo 2022](#), Administracion General del Estado, p. 114.

<sup>23</sup> Consulta pública previa sobre anteproyecto de ley de protección de los derechos humanos, de la sostenibilidad y de la diligencia debida en las actividades empresariales transnacionales, [Ministry of Social Rights and 2030 Agenda](#).

<sup>24</sup> Labor Solutions, [Spain Calls for Mandatory Human Rights Due Diligence](#).

	<b>Finding</b>	<b>Recommendation</b>
2.1	The visibility and accessibility of the NCP could be further strengthened. Stakeholders noted a need for more dissemination of information on the NCP, and thematic promotional activities, including on the NCP mechanism and sectoral guidance, in particular for high-risk sectors. The recent high-level event co-organised by the NCP relaunched its promotional activities after two years of inactivity. However, the IMCB and the Advisory Board are not consistently leveraged for promotion and the NCP is not active on social media.	The NCP should increase its promotional activities in order to strengthen its visibility and accessibility. This can be done through (i) a promotional plan that includes a stakeholder mapping, identification of priority sectors for promotion, and topics of interest for different stakeholder groups; (ii) the production of information and promotional material for dissemination; (iii) active social media presence. The promotional plan should leverage key actors and relationships, including the IMCB, Advisory Board, embassies and diplomatic staff posted abroad, and stakeholder networks.
2.2	The NCP operates in a context where several other parts of the government are active on RBC issues. The NCP currently engages through its membership, e.g. through the Vice-Chair on export credits.	The NCP should position itself more visibly and affirmatively in the broader policy framework relevant to RBC in Spain, so as to promote policy coherence. The ongoing consultations on mandatory due diligence are an opportunity for the NCP to further strengthen its role and visibility in respect of policy coherence.

# 5 Specific instances

## Overview

As of the dates of the on-site visit, the NCP has received ten specific instances. Eight specific instances have been closed by the NCP (three concluded and five not accepted) and two are ongoing. More specifically, among the closed cases:

- one specific instance was concluded with agreement outside the NCP process;<sup>25</sup>
- two specific instances were concluded without agreement and with recommendations.<sup>26</sup>
  - In one of these cases, the company refused to engage in good offices;<sup>27</sup>
  - In the other case, developments outside the NCP process led to the conclusion, including a final decision of the Supreme Court of Justice of Guatemala.<sup>28</sup>
- two specific instances were not accepted following unanswered requests for additional information;<sup>29</sup>
- two specific instances were not accepted based on the lack of transnational investment;<sup>30</sup>
- one specific instance was not accepted as the NCP could not find indications of non-observance of the Guidelines.<sup>31</sup>

An overview of all cases received by the NCP is available in Annex D.

## Rules of Procedure

### Overview

The Rules of Procedure (RoP) of the NCP are available on the NCP's webpage.<sup>32</sup> The RoP were adopted in November 2015. They are currently only available in Spanish. During the peer review, the NCP noted

<sup>25</sup> E-00002 - Conflict in a Spanish owned company over differences in salaries.

<sup>26</sup> E-00005 - Human rights issues in the workplace involving a Spanish security services company in Brazil, Colombia, Paraguay, Peru and Chile, E-00007 - Environment and indigenous issues in Guatemala concerning a Spanish NGO and a Spanish construction multinational, E-00009 - NGO and multinational company in the transport industry sector.

<sup>27</sup> E-00005 - Human rights issues in the workplace involving a Spanish security services company in Brazil, Colombia, Paraguay, Peru and Chile.

<sup>28</sup> E-00007 - Environment and indigenous issues in Guatemala concerning a Spanish NGO and a Spanish construction multinational.

<sup>29</sup> E-00001 - Employee complaint against financial institution, E-00004 - Preferential stocks in Spain.

<sup>30</sup> E-00003 - Preferential stocks in Spain, E-00006 - Environmental issues in Spain concerning a Spanish multinational energy supplier and an individual.

<sup>31</sup> E-00008 - Individual and multinational company in the telecommunications sector.

<sup>32</sup> [www.comercio.mineco.gob.es/es-ES/inversiones-exteriores/punto-nacional-contacto-lineas-directrices/Paginas/Guia-de-Procedimiento.aspx](http://www.comercio.mineco.gob.es/es-ES/inversiones-exteriores/punto-nacional-contacto-lineas-directrices/Paginas/Guia-de-Procedimiento.aspx)

its plans to update its RoP. This Chapter is based on the current RoP and notes update plans, where relevant.

The RoP open with an introduction on the Guidelines and the NCP. They provide an overview of the NCP's establishment and mandate (Section 1), followed by key definitions (Section 2). The RoP define companies as multinational.

The RoP are organised around the following key topics:

1. Specific instance process (initial assessment, good offices, and conclusion) (Section 3)
2. Follow-up (Section 4)
3. Transparency and confidentiality (Section 5)
4. Communication with the parties (Section 6)
5. Relations with other institutions (Section 7)
6. Coordination with other NCPs (Section 8)
7. Conflicts of interest, abstention and recusal (Section 11).

The RoP also specify that they apply on specific instances submitted prior to their adoption, starting from the phase of each specific instance at the time of their entry into force (Sections 14-15). Stakeholders noted clear and helpful communications with the NCP Secretariat on their application.

### ***Filing a complaint***

Any institution, natural or legal person may file a specific instance (Section 3.2.1). The submission needs to identify (Section 3.2.2):

- the identity of the submitter;
- the relevant part ('punto') or parts of the Guidelines raised and any supporting information;
- a request for the NCP to provide its good offices to achieve a solution to the issues raised; and
- the submitter's claim ('pretension') regarding remediation. According to the NCP Secretariat, this element reflects expectations of the submitter from the process and the outcomes of mediation.

The RoP do not specify

- whether support is provided to submitters, in particular in cases where the submission does not include the information above;
- the means through which a specific instance can be submitted (e.g. online, by mail, in person).

The NCP website does not include a submission link or online form. The webpage provides the contact form of the Ministry of Industry, Trade and Tourism. The form does not include 'specific instances' as a proposed topic for exchange with the NCP (see Chapter above on Promotional Activities regarding the webpage). Overall, stakeholders agree that the submission process is clear and easily accessible.

In terms of steps following receipt of the complaint, the RoP state that the NCP Secretariat will:

- acknowledge receipt of a submission and inform the submitter within 15 working days. The RoP specify that confirmation of receipt does not entail acceptance of the case (Section 3.2.3.1.(a));
- inform in writing the concerned company on the receipt of the case and submission elements within 15 working days from the confirmation of receipt (Section 3.2.3.1.(b)). The NCP notes that in practice the company receives the full complaint;
- inform the NCP members and the Advisory Board within one month from the confirmation of receipt (Section 3.2.3.1.(c)).

The NCP Secretariat supports submitters in providing the necessary information and will request additional documentation where needed. Stakeholders welcomed the support provided in ensuring that submissions were complete.

### ***Initial assessment***

To facilitate the NCP's decision on whether to accept the case, the NCP Secretariat is tasked to prepare an initial report with the following elements (Section 3.2.3.1.(d)):

- the identity of the party concerned and its interest in the matter;
- the alleged facts and whether they are sufficiently supported by the evidence presented;
- the link between the issues raised in the specific instance and the activities of the company concerned;
- whether there is reason to believe that the company has not observed the Guidelines and whether accepting the specific instance would contribute to improvement;
- legal provisions, applicable administrative proceedings, or case law related to the case;
- if the issues raised have been subject to parallel legal or administrative procedures;
- any information provided by members of the NCP and other consulted parties;
- how similar issues have been treated by other NCPs;
- any data protection risks;
- any other pertinent element.

In addition to these criteria, the NCP considers two more factors in deciding whether to accept the case. In particular, the NCP considers (i) whether an offer of good offices could contribute to resolving the issues and (ii) whether acceptance of the specific instance does not entail serious damage to one of the parties in other proceedings or interferes with parallel judicial or administrative proceedings (Section 3.2.3.1.(f)) (see also below on Parallel Proceedings). One stakeholder raised concerns regarding possible restrictive effects of the second factor. The NCP notes that in practice these criteria aim to raise awareness of its members on ongoing parallel proceedings early in the process. The decision will rest on a consideration of whether the specific instance process can potentially contribute to the resolution of the issues. The NCP clarifies that the NCP Secretariat conducts its own research in addition to the information provided by the submitter to collect the supporting information. Stakeholders indicated that the NCP had not been consistent in providing parties with access to documents submitted by the other party.

In terms of process, the NCP Secretariat drafts and sends the initial assessment report to the IMCB members and the Advisory Board for comments. The IMCB then decides following consultation with the Advisory Board. The Advisory Board members noted that their views are heard by the NCP, although some requested that their be more consistently taken into account in the NCP's decision. Nonetheless, they recognise that the complexity of the issues in ongoing specific instances lead to different views within both the Advisory Board and the NCP.

The NCP Secretariat then informs the parties in writing of the NCP's decision within 15 days from its adoption (Section 3.2.3.1.(g)).

The RoP are silent regarding publication of initial assessment statements.

### ***Good offices***

If a specific instance is accepted, the NCP will offer mediation or conciliation to the parties (Section 3.2.3.1.(a)).

Mediation may be provided by an independent professional selected by mutual agreement, or, alternatively, by the NCP. If mediation is provided by an independent professional, the NCP suspends its own processing of the specific instance. The NCP will reflect this decision in the final statement, prepared by the NCP Secretariat at the conclusion of the mediation process conducted by the independent mediator. If the mediation is provided by the NCP, the NCP will meet with the parties separately and jointly, as many times as necessary, to achieve agreement between them (Section 3.2.3.II(b-c)).

The RoP specify a good faith requirement during the good offices phase (Section 3.2.3.II(d)). Good faith at this stage entails in particular:

- acting in a genuine way to achieve an agreement and not acting with other objectives including causing delays, exercising pressure on the other party to achieve goals other than those contemplated in the Guidelines;
- respecting the confidentiality of the exchanges between the parties and with the NCP, and exchanged information if this is requested by the other party and if this does not impair the effectiveness of the process;
- not campaigning against the other party, whether directly or through communications channels, in relation to the specific instance.

### ***Conclusion of the specific instance***

The content of final statements varies between specific instances with agreement and without agreement (Section 3.2.3.III). If the parties reach an agreement, the final statement includes:

- the identity of the parties;
- a description of the case;
- the key steps followed by the NCP;
- the main points of the agreement, with consent of the parties

If parties do not reach an agreement within the established timeframe, the NCP issues a final statement with:

- the identity of the parties
- a description of the case;
- the steps followed by the NCP;
- a declaration of closure without agreement, including, where appropriate, the reasons that prevented parties from reaching an agreement and, as relevant, any recommendations by the NCP.

In terms of process, in both cases the NCP consults the Advisory Board prior to approving the statement. The NCP Secretariat provides the Advisory Board with the final report on the specific instance and, where appropriate, other necessary elements.

The NCP publishes a statement (report) within three months from its presentation to the NCP (Section 5.3). The NCP notes that in practice the time period starts with the approval of the draft statement by the IMCB.

Parties receive the draft statement and may make comments within 15 days of receipt. The NCP decides at its discretion to reflect comments in the statement.

The RoP do not refer to the possibility for the NCP to make determinations, and are silent on requirements and modalities for the publication of statements.

### **Case follow-up**

The RoP provide that the NCP will follow-up on agreements reached upon request of the parties only (Section 4). The RoP do not require publishing a follow-up statement. The NCP notes that in practice, the follow-up covers the implementation of recommendations. One CSO representative asked for more consistent publication of follow-up outcomes. The NCP notes plans to update the RoP provisions on follow-up. According to plans shared by the NCP, follow-up would be conducted for all cases concluded with recommendations one year after publication of the final assessment. The NCP could consider aligning its RoP with para. 36 of the Commentary by mentioning follow-up timeframes and clarifying that the NCP can take the initiative to launch the follow-up.

## **Analysis of NCP statements**

### **Non-accepted cases**

Almost two thirds of the specific instances closed by the NCP were not accepted (five out of eight, or 63%) (see also Overview above). Stakeholders noted that the NCP conducts a very thorough review during the initial assessment phase. Two trade union representatives have shared their perception that this phase is in practice an initial mediation.

As mentioned above, reasons for not accepting the five specific instances were:

- lack of indications of non-observance of the Guidelines;<sup>33</sup>
- lack of transnational investment in one case not accepted after the 2011 revision of the Guidelines;<sup>34</sup>
- lack of transnational element and ongoing parallel proceedings in two specific instances;<sup>35</sup>
- unanswered requests to the submitter for additional information.<sup>36</sup>

In three cases, the NCP decided not to accept specific instances due to the lack of a transnational element (see Overview above). Consideration of this criterion was advised by external legal opinions and applied to one specific instance<sup>37</sup> submitted after the 2011 revision of the Guidelines, which removed the requirement that NCP cases have an ‘investment nexus’. Following this logic, cases involving activities in Spain of Spanish multinational companies could not be brought to the NCP. One business representative shared the same understanding.

In light of the above, the NCP needs to ensure that it aligns its practice of reviewing whether the company involved falls into the scope of the Guidelines with Chapter 1, paragraphs 4 and 5 of the Guidelines.

In at least two specific instances, the NCP held extensive exchanges with the parties in the initial assessment phase, which some stakeholders pointed out blurred the difference between initial assessment and good offices. For example, in a non-accepted specific instance,<sup>38</sup> the NCP facilitated exchanges between the parties while awaiting the opinion of the State Attorney on whether to accept the case. Exchanges notably led the company to respond to the submitter’s request, even though the specific instance was eventually not accepted. In an accepted specific instance,<sup>39</sup> the NCP conducted

<sup>33</sup> E-00008 - Individual and multinational company in the telecommunications sector.

<sup>34</sup> E-00006 - Environmental issues in Spain concerning a Spanish Multinational Energy supplier and an individual.

<sup>35</sup> E-00003 - Preferential stocks in Spain, E-00004 - Preferential stocks in Spain.

<sup>36</sup> E-00001 - Employee complaint against financial institution.

<sup>37</sup> E-00006 - Environmental issues in Spain concerning a Spanish Multinational Energy supplier and an individual.

<sup>38</sup> *Ibid.*

<sup>39</sup> E-00005 - Human rights issues in the workplace involving a Spanish Security Services company in Brazil, Colombia, Paraguay, Peru and Chile.

consultations between the parties through meetings in person, virtually, or by phone during the initial assessment phase. The company however declined the offer of mediation after the case was accepted.

The NCP also conducts extensive fact-checking at the initial assessment phase. According to trade union representatives, review of extensive evidence by the NCP goes beyond an initial level of examination. The NCP notes that in practice it conducts an exhaustive research at this stage beyond submissions by the parties, including by liaising with commercial offices abroad and other parts of the government for further evidence. This may exceed the level of scrutiny provided for in para. 25 of the Commentary and in some cases limit the accessibility of the NCP. It may also contribute to delays at this stage (see also section below on Timeliness).

Although the RoP are silent on the issue, the NCP states that in practice it publishes final statements for cases that are not accepted following initial assessment. On the NCP's webpage, out of five not accepted cases,

- the final statement is available for one case;<sup>40</sup>
- the final statement is not available for one case concluded in 2019.<sup>41</sup> For this case, the NCP website notes the timing of receipt of the specific instance, the sector of the concerned company (telecommunications), the relevant Chapter of the Guidelines (Employment and Industrial Relations (V)) and related Chapters, the broad issue regarding employment of local workers in the company's activities in Spain and the reason of the NCP's decision to not accept the case;
- three cases were not accepted prior to the 2011 revision of the Guidelines, which at the time did not provide for a separate initial assessment phase.<sup>42</sup> For these cases, the NCP website provides an overview of the issues, anonymised parties and reasons for the NCP's decision. Information on the reasons for the NCP's decision could be further elaborated.

The NCP should consider publishing consistently the final statements in non-accepted specific instances. The ongoing review of the RoP offers an opportunity for the NCP to align its practice with para. 32 of the Commentary. The final statements in non-accepted cases should describe at least the issues raised and the reasons for the NCP's decision.<sup>43</sup> Publishing consistently final statements in non-accepted specific instances would also strengthen the transparency of the process.

Out of ten parties involved in the five not accepted specific instances, only one party is identified on the NCP's website. Besides the company involved in E-00006 - Environmental issues in Spain concerning a Spanish Multinational Energy supplier and an individual, all other parties are anonymised.

### **Accepted cases**

The NCP has offered good offices in three specific instances so far. Out of three accepted specific instances, mediation was offered in two. In one accepted specific instance, mediation was not offered in light of agreement reached by the parties outside the NCP process.<sup>44</sup> In another specific instance, mediation was offered and refused by the company due to ongoing campaigning by the submitter.<sup>45</sup> Overall, business representatives welcomed the constructive approach followed by the NCP during good

<sup>40</sup> E-00006 - Environmental issues in Spain concerning a Spanish Multinational Energy supplier and an individual.

<sup>41</sup> E-00008 - Individual and multinational company in the telecommunications sector.

<sup>42</sup> E-00001 - Employee complaint against financial institution, E-00003 - Preferential stocks in Spain, E-00004 - Preferential stocks in Spain.

<sup>43</sup> Procedural Guidance, Section I.C para 3(a).

<sup>44</sup> E-00002 - Conflict in a Spanish owned company over differences in salaries.

<sup>45</sup> E E-00005 - Human rights issues in the workplace involving a Spanish Security Services company in Brazil, Colombia, Paraguay, Peru and Chile.



offices. One CSO representative asked for more opportunities for meetings between the parties at this stage.

The NCP states that when offered, mediation has always been facilitated by the NCP rather than by professional mediators. In at least two concluded specific instances, the NCP organised meetings with each party separately but not with both as part of the good offices.<sup>46</sup>

The NCP regularly consults other governmental agencies in relation to specific instances. This is particularly the case for legal issues. The NCP consulted the State Attorney on three specific instances<sup>47</sup> and the Legal Advisors of the Ministry of Foreign Affairs in one.<sup>48</sup> The NCP also notes that it seeks legal advice on the competent NCP to lead a specific instance. In one case, the NCP facilitated exchanges with the parties in one specific instance while awaiting the legal opinion.<sup>49</sup> However, as the NCP is the competent authority for the interpretation of the Guidelines, it should avoid basing its decision exclusively on the advice of government legal counsels for matters that concern exclusively the interpretation of the Guidelines. In the event of doubt in this regard, the Procedural Guidance notably allows to seek the advice from different actors such as other NCPs or the OECD Investment Committee.

So far, out of the three concluded cases:

- one early case was concluded with agreement outside the NCP process;<sup>50</sup>
- one was concluded in view of the company's refusal to accept good offices;<sup>51</sup>
- one was concluded following developments outside the NCP process, including a final decision of the Supreme Court of Justice of Guatemala:<sup>52</sup> in this case, the NCP held separate meetings with the submitter NGO and the concerned company, as well as a joint meeting. Parties provided written submissions and made presentations to the NCP and the Advisory Board. One year and a half after the specific instance was accepted, the Supreme Court of Justice of Guatemala issued a final decision on the submitter's claims. Among others, the decision obliged the competent Ministry in Guatemala to conduct dialogue with the concerned indigenous communities. The NCP concluded the case in light of the decision, making some general findings on the context of the specific instance in Guatemala.

The NCP does not publish initial assessments for accepted cases. The RoP do not require it and the NCP does not do so in practice. In practice, the NCP Secretariat drafts the initial statement and the NCP consequently approves it. One business representative would welcome publication of an initial statement on acceptance of a specific instance clarifying that acceptance does not entail a finding on non-observance of the Guidelines.

Final statements are available on the NCP's webpage for both specific instances that were accepted since 2011.<sup>53</sup> The NCP notes that the final statement is not publicly available for the four specific instances

---

<sup>46</sup> E-00005 - Human rights issues in the workplace involving a Spanish Security Services company in Brazil, Colombia, Paraguay, Peru and Chile, E-00007 - Environment and indigenous issues in Guatemala concerning a Spanish NGO and a Spanish construction Multinational.

<sup>47</sup> E-00003 - Preferential stocks in Spain, E-00006 - Environmental issues in Spain concerning a Spanish Multinational Energy supplier and an individual.

<sup>48</sup> E-00008 - Individual and multinational company in the telecommunications sector.

<sup>49</sup> *Ibid.*

<sup>50</sup> E-00002 - Conflict in a Spanish owned company over differences in salaries.

<sup>51</sup> E-00005 - Human rights issues in the workplace involving a Spanish Security Services company in Brazil, Colombia, Paraguay, Peru and Chile.

<sup>52</sup> E-00007 - Environment and indigenous issues in Guatemala concerning a Spanish NGO and a Spanish construction Multinational.

<sup>53</sup> E-00005 - Human rights issues in the workplace involving a Spanish Security Services company in Brazil, Colombia, Paraguay, Peru and Chile, E-00007 - Environment and indigenous issues in Guatemala concerning a Spanish NGO and a Spanish construction Multinational.

handled prior to 2015, which is the date the RoP requiring final statements to be published were adopted. CSO representatives asked for consistent publication of final statements. Both CSO and trade union representatives noted that further dissemination of information on outcomes would strengthen the predictability and transparency of the process.

The NCP's practice regarding the content of final statements has evolved significantly. Final statements in the specific instances concluded in the past three years are much more detailed than the previous ones. They provide an overview of consultations with the parties and extensive information on the NCP's reasoning. Indicatively, the final statement in one specific instance concluded in 2017 did not provide a description of the issues.<sup>54</sup> The more recent final statements also provide the views of the Advisory Board.<sup>55</sup>

The NCP regularly makes recommendations in both accepted and non-accepted specific instances. The NCP has not made determinations so far. So far, the NCP has made recommendations in two out of four closed cases since the adoption of the current RoP in 2015. The content and extent of recommendations varies:

- in one case,<sup>56</sup> the NCP made recommendations to both parties (see also Box 5.1 below). The NCP recommended to the company to conduct additional due diligence in its subsidiary companies in Latin America taking into consideration the issues raised by the submitter and, where necessary, to provide access to remedy in such cases in the future. The NCP recommended to the submitter to focus any future submissions on issues strictly covered by the Guidelines. The NCP decided to not examine some issues related to collective negotiations in this case, as part of 'normal negotiations' between the company and trade unions;
- in one case,<sup>57</sup> the NCP recommended that the company (i) inform the concerned indigenous communities of its regret for the potential damage of its activities and propose to cooperate with the national judicial authorities for remediation, (ii) revise its Human Rights policy in line with the relevant international standards, (iii) engage with its local partner to proactively improve the local communities' quality of life.

Parties to concluded specific instances have welcomed some of the measures taken by the companies as a result of the recommendations, but stakeholders in general noted that their impact and clarity could be improved, notably through follow-up (see Box 5.1, Box 5.2; see also section below on Follow-up).

---

<sup>54</sup> E-00005 - Human rights issues in the workplace involving a Spanish Security Services company in Brazil, Colombia, Paraguay, Peru and Chile.

<sup>55</sup> e.g. E-00005 - Human rights issues in the workplace involving a Spanish Security Services company in Brazil, Colombia, Paraguay, Peru and Chile.

<sup>56</sup> E-00005 - Human rights issues in the workplace involving a Spanish Security Services company in Brazil, Colombia, Paraguay, Peru and Chile.

<sup>57</sup> E-00007 - Environment and indigenous issues in Guatemala concerning a Spanish NGO and a Spanish construction Multinational.

### Box 5.1. Specific instance E-00005 – PROSEGUR and UNI Global Union regarding issues in Brazil, Colombia, Paraguay, Peru, and Chile

On 26 November 2013, the Spanish NCP received a specific instance from trade union UNI Global Union alleging that activities in five countries in Latin America (Brazil, Colombia, Paraguay, Peru, and Chile) of subsidiary companies of Prosegur Compañía de Seguridad, S.A, a multinational security company headquartered in Spain, were in conflict with Chapter I (Concepts and Principles), Chapter IV (Human Rights), and Chapter V (Employment and industrial relations).

In its initial assessment on 3 March 2014, the NCP decided to accept the case and offer good offices to the parties. The NCP held separate meetings with the parties in person, virtually, and by phone. On 31 May 2016, the NCP decided to close the case based on the company's refusal of good offices. More specifically, the company requested that the submitter suspend public campaigning on the case during six months. The submitter offered three months, and parties did not reach agreement on the duration of a suspension. In its final statement on 31 July 2017, the NCP recommended that (i) the company take additional due diligence measures on the alleged human rights issues, and remedial measures where needed; (ii) the trade union align its submissions with the scope of issues covered by the Guidelines. In an annex to the final statement, three trade union and one CSO representative members of the Advisory Board noted that the acceptance by the NCP of a company's request to treat as confidential the information on its due diligence mechanisms was not justified and did not allow the Advisory Board members to take an informed position. The NCP also decided to conduct follow-up. The company provided a report on the recommendations within one year.

In general, communication by the NCP on the filing of the complaint and launch of the process was positive. The recommendations were considered to have a positive impact in establishing stronger due diligence commitments. The opportunity to engage in the follow-up process was welcome. The main challenge concerned timeliness, in particular around the conclusion of each phase and next steps, as delays were caused by turnover in the NCP Secretariat. Challenges also related to perception of impartiality of the NCP in view of its location, transparency on the outcomes of the initial assessment and follow-up phases, and access to translated documents.

### **Follow-up**

In practice, the NCP committed to follow-up in two specific instances.<sup>58</sup> The cases were concluded in 2018 and 2019 respectively. The final statement in these cases did not set a timeframe for follow-up. Although no information is publicly available on actual follow-up actions, follow-up was conducted in practice by the NCP in one specific instance (see also Box 5.1)<sup>59</sup> and by the commercial office of the Spanish embassy in Guatemala in another specific instance (see also Box 5.2).<sup>60</sup>

In one specific instance,<sup>61</sup> the NCP proposed to the company to provide a report within a year from the publication of the final statement, though without consulting the parties (see also Box 5.1). In one specific

<sup>58</sup> E-00005 - Human rights issues in the workplace involving a Spanish Security Services company in Brazil, Colombia, Paraguay, Peru and Chile, E-00007 - Environment and indigenous issues in Guatemala concerning a Spanish NGO and a Spanish construction Multinational.

<sup>59</sup> *Ibid.*

<sup>60</sup> E-00007 - Environment and indigenous issues in Guatemala concerning a Spanish NGO and a Spanish construction Multinational.

<sup>61</sup> E-00005 - Human rights issues in the workplace involving a Spanish Security Services company in Brazil, Colombia, Paraguay, Peru and Chile.

instance,<sup>62</sup> the NCP committed to follow up based on the submitter's request after publication of the final statement (see also Box 5.2). However, the NCP was not further involved in the process, which was led by the commercial office of the Spanish embassy in Guatemala.

Several stakeholders stressed that the NCP could strengthen the specific instance process by conducting thorough and consistent follow-up. One CSO representative noted that the NCP did not react to lack of action by a company regarding recommendations.

### **Box 5.2. Specific instance E-00007 – Spanish construction company and CSO Alianza por la Solidaridad regarding issues in Guatemala**

On 23 November 2017, the Spanish NCP received a specific instance from CSO Alianza por la Solidaridad alleging that the activities of a Spanish construction company subcontracted by a Guatemalan company in a hydroelectric complex project in Guatemala were in conflict with Chapter II (General Policies), and Chapter VI (Environment). More specifically, the CSO alleged that a comprehensive environmental impact study was not duly prepared and that the project impacted the way of life of the Q'eqchí indigenous people in the region by impeding access to the river and fishing, and limiting access to water.

In its initial assessment on 16 April 2018, after separate meetings with both parties, the NCP decided to accept the case and requested additional information. The NCP received reports from both parties, held separate meetings, examined evidence and heard representatives of the Q'eqchí people. On 19 December 2019, the NCP decided to conclude the case based on developments outside the specific instance process, including a final decision of the Supreme Court of Justice of Guatemala. In its final statement, the NCP identified positive and negative impacts of the project and made four recommendations to the company (see para. 0 above). Following the submitter's request, the commercial office of the Spanish embassy in Guatemala followed up on the recommendations.

The accessibility of the NCP and the NCP Secretariat, and its availability to consider extensive evidence, including testimonies, as well as communication with the NCP on the RoP and steps of the process were listed as positive experiences. Although the recommendations resulted in positive corporate change and contributed to the implementation of the judicial decision, challenges regarding transparency of the process impacted trust and willingness of parties to hold joint meetings and prevented reaching agreements. More specifically, rules could have been clearer on campaigning, access to information submitted by the other party, as well as the launch, process and outcome of the follow-up phase.

## **Timeliness**

The RoP sets internal target timelines for different steps in the process as follows (see also above):

- Acknowledging receipt of the specific instance to the submitter(s) within a maximum period of 15 working days (Section 3.2.3(a));
- Notifying the company or companies about its receipt within a maximum period of 15 working days (Section 3.2.3(b));
- Informing the NCP members and the Advisory Board no later than one month after acknowledgement of receipt to the submitters (Section 3.2.3(c));

<sup>62</sup> E-00007 - Environment and indigenous issues in Guatemala concerning a Spanish NGO and a Spanish construction Multinational.

- Requiring, in response to having received a specific instance, the convening of the NCP within one month from the date of the receipt (Section 10);
- Requiring the NCP to decide on acceptance within three months after the acknowledgment of receipt and after having heard the Advisory Board (3.2.3(g));
- Notifying parties in writing of the decision on eligibility within 15 working days from decision (Section 3.2.3(g)I);
- Conducting the mediation process in no more than one year, even if extensions may be agreed for as long as is considered necessary. Extension of this period may not exceed one year, if necessary to resolve the case (Section 3.2.3.II.e). Several one-year extensions may be granted;
- Providing parties with the draft final statement for concluded specific instances and the right to comment within 15 working days from receipt (Section 5.3);
- Making public, on the NCP's website, the statement on a specific instance within three months from the date of submission of the final report to the NCP (Section 5.3).

The provisions on timeliness would benefit from closer alignment with the language in para. 41 of the Commentary. In particular, the process would be concluded within 18 months at a minimum under the RoP, going beyond the indicative timeline of 12 months. The NCP noted its plans to further address timeliness in the context of the RoP update.

The NCP has exceeded the indicative timelines in a number of cases. The NCP shared the following reasons for delays in practice: internal consultations on legal issues, limited resources of the NCP Secretariat and difficulties in convening NCP meetings. The NCP also noted that ongoing specific instances involve complex issues and lengthy discussions to ensure that views of both the Advisory Board and the NCP are heard. Out of four specific instances where the timeline is provided:

- one case was concluded within 12 months,<sup>63</sup>
- two cases were concluded between one to three years,<sup>64</sup> and
- one case was concluded in almost four years.<sup>65</sup>

In the two cases where the duration of the initial assessment was available at the time of the on-site visit, it took four and five months respectively<sup>66</sup> (see also Box 5.1, Box 5.2). CSO and trade union representatives suggested establishing clearer deadlines in practice to strengthen predictability of the process. Delays in the process have been due to turnover in the NCP Secretariat in a number of cases (see e.g. Box 5.1). In view of the above, the NCP should strive to meet indicative timelines when possible and proactively communicate with parties when timelines cannot be met.

## Confidentiality and transparency

Section 5 of the RoP deals extensively with confidentiality and transparency. The RoP take a broad approach to confidentiality. According to the RoP, the NCP adopts the measures deemed appropriate to protect all sensitive, commercial or other information, as well as the interests of other parties involved in the specific instance (Section 5.1). The NCP reported that it intends to further clarify confidentiality

<sup>63</sup> E-00006 - Environmental issues in Spain concerning a Spanish Multinational Energy supplier and an individual.

<sup>64</sup> E E-00007 - Environment and indigenous issues in Guatemala concerning a Spanish NGO and a Spanish construction Multinational, E-00008 - Individual and multinational company in the telecommunications sector.

<sup>65</sup> E-00005 - Human rights issues in the workplace involving a Spanish Security Services company in Brazil, Colombia, Paraguay, Peru and Chile.

<sup>66</sup> E-00005 - Human rights issues in the workplace involving a Spanish Security Services company in Brazil, Colombia, Paraguay, Peru and Chile, E-00007 - Environment and indigenous issues in Guatemala concerning a Spanish NGO and a Spanish construction Multinational.

conditions in the future RoP. Business representatives overall welcomed the currently applicable conditions. They noted that guarantees against publication of confidential information and unfair allegations protect companies against reputational risks. Trade union and CSO representatives in turn requested more transparency during the process.

During the stages of initial assessment and good offices, the NCP decides, in consultation with the parties, on the degree of confidentiality, total or partial (Section 5.2). Violation of the confidentiality agreement by one of the parties, may lead to the suspension of the specific instance process (Section 5.8). This provision has not been applied in practice. Under the RoP, the party requesting that information be treated confidentially is not obliged to provide the NCP with a public version of the information. In principle, the NCP should share information provided by one party with the other party, and where it determines that sensitive information should be kept confidential, it should consider giving an overview of the substance of exchanges and documentation to each of the parties. Further aligning the NCP's practice with para. 22 of the Commentary would strengthen the perception of impartiality and predictability of the process.

The RoP address in detail the information reflected in final statements. If agreement is reached, all or some of the points of agreement are included in the final statement depending on the will of the parties (Section 5.4). In case of disagreement, parties respect the confidentiality of the information and opinions provided by the other party, besides cases of agreement to disclosure, or when non-disclosure would be contrary to national legislation. Either party may contact the NCP to request inclusion of specific information in the final statement (Section 5.5). The NCP decides following consultations with the Advisory Board. The final statement in one concluded specific instance included annexed comments from the Advisory Board noting limited access to information submitted by the company based on a granted requests for confidentiality (see Box 5.1).

The RoP also provide broad discretion for the NCP to decide on the confidentiality of the identity of the parties in the final statement. More specifically, parties may request not to be named. The NCP decides based on the relevant justification (Section 5.3). The NCP notes that companies must justify any request for anonymity in writing, following which the NCP then decides whether to grant the request after hearing the views of the Advisory Board. Anonymity of the parties is provided in six out of eight publicly available specific instances. The name of both parties is not publicly available in five cases: the four cases concluded before 2011 and one more case.<sup>67</sup> The name of the company is not publicly available in one specific instance.<sup>68</sup>

Trade union and CSO representatives overall agreed on the need to restrict confidentiality grounds and justify the NCP's decisions in this regard. They asked for stronger justification of anonymity requests to ensure that confidentiality remains the exception in practice. Regarding grounds for anonymity requests, trade union and CSO representatives agreed that avoiding reputational damage for the company should not be accepted by the NCP, nor should the protection of personal data, without further justification. Stakeholders further noted that the effectiveness of the specific instance process is undermined because a company may request anonymity despite refusing mediation. The NCP recognises the need to further clarify the grounds for anonymity in the future RoP, taking into account restrictions of the right of access to information based on commercial interests and reputational risk (Law 19/2013). The NCP noted its plans to review confidentiality grounds in the context of the RoP update.

The NCP reported a breach of confidentiality terms by a party in one ongoing specific instance.<sup>69</sup> More specifically, in this case the submitter published information on the specific instance and the identity of the

---

<sup>67</sup> E-00008 - Individual and multinational company in the telecommunications sector.

<sup>68</sup> E-00007 - Environment and indigenous issues in Guatemala concerning a Spanish NGO and a Spanish construction Multinational.

<sup>69</sup> E-00009 - NGO and multinational company in the transport industry sector.

concerned company. The NCP further notes that under the good faith requirement, parties should not campaign against each other in the media.

In practice, the NCP does not publish information on its webpage regarding ongoing specific instances.<sup>70</sup> Several CSO and trade union representatives noted that this approach limits the submitters' options and may lead to inequality of the parties. One CSO representative noted that in one specific instance, the submitter did not have access to documents provided to the NCP by the company.

The NCP has encountered issues related to campaigning in at least three specific instances.<sup>71</sup> In one specific instance,<sup>72</sup> the company refused good offices in view of ongoing campaigning by the submitter and the latter's refusal to suspend it for six months. The submitter instead offered to suspend the campaign for three months and during negotiations, which the company also refused (see Box 5.1). In another specific instance, lack of clarity on rules regarding campaigning was named as a challenge (see Box 5.2). In an ongoing specific instance, the submitter published information on the NCP and the company during the process. The NCP notes that it took into consideration this practice in granting the company's request for anonymity.

Overall, stakeholders agree that campaigning issues arise in practice. Several stakeholders raised the NCP's restrictions on campaigning as a sign of the limited transparency of the specific instance process. They notably highlighted that any publication of information by the submitter during initial assessment, is considered campaigning by the NCP in practice.

## Impartiality and avoidance of conflicts of interest in the handling of specific instances

Section 11 of the RoP deal extensively with issues related to conflicts of interests, abstention and recusal. The RoP set the following cases of conflicts of interest for NCP and Advisory Board members (Section 11.2):

- personal interest in the issues which may influence decision-making (e.g. role within the interested entities, ongoing litigation with one of the parties);
- blood relationship up to the fourth degree or kinship up to the second degree with any of the interested parties;
- intimate friendship or manifest enmity with any of the interested parties;
- intervention as expert or witness in the proceedings in question;
- contractual relationship with any interested legal or natural person.

In such cases, NCP members should abstain. The President may also request their abstention. In case of non-abstention, (i) the concerned member bears responsibility and (ii) the NCP's acts are considered invalid (Sections 11.3-11.5). Recusal of members for the abovementioned reasons is also possible. It is unclear what roles alternate NCP members would play in this regard. The NCP notes that administrative procedures on recusal of collective bodies' members apply on the NCP. Such issues have not arisen in practice so far. The Ministry of Justice representative in the IMCB also noted that the application of the legal framework on conflicts of interest for public officials and the RoP in practice could be further aligned.

<sup>70</sup> E-00009 - NGO and multinational company in the transport industry sector , E-00010 -NGO and multinational company in the transport industry sector.

<sup>71</sup> E-00005 - Human rights issues in the workplace involving a Spanish Security Services company in Brazil, Colombia, Paraguay, Peru and Chile, E-00007 - Environment and indigenous issues in Guatemala concerning a Spanish NGO and a Spanish construction Multinational, E-00009 - NGO and multinational company in the transport industry sector.

<sup>72</sup> E-00005 - Human rights issues in the workplace involving a Spanish Security Services company in Brazil, Colombia, Paraguay, Peru and Chile.

In case of conflict of interest, the Advisory Board members are obliged to inform the President. The President may then request their replacement by a representative of the same organisation (Section 11.7). Advisory Board member representatives noted that in a specific instance submitted by a trade union, the NCP considered whether trade union members of the Advisory Board should be exempted. They further noted that the scope and application of Section 11.7 could be further discussed and clarified with the NCP.

In addition to the above guarantees, the NCP notes that its interagency structure and consultations with the Advisory Board also foster impartiality (see also Section 4 above). However, stakeholders noted that the NCP's location and close links with the business community may impact the NCP's decision to accept a case. The NCP further notes that it engages with parties in specific instances in a fair and equitable manner, notably by arranging meetings with both parties. Overall, stakeholders agreed that the NCP members are impartial. One CSO representative welcomed the NCP's impartiality in cases involving other governments.

## Parallel proceedings

According to the RoP, parallel proceedings are not an obstacle to filing of a specific instance with the NCP. However, in its decision to accept the specific instance, the NCP considers (i) whether an offer of good offices could contribute to resolving the issues and (ii) whether acceptance of the specific instance does not entail serious damage to one of the parties in other proceedings or interferes with parallel judicial or administrative proceedings (Section 3.2.3(f)) (see also above).

In practice, one specific instance was not accepted due to the lack of a transnational element and the existence of ongoing parallel administrative proceedings.<sup>73</sup> In one case, mediation was offered while parallel judicial proceedings were ongoing. The specific instance was closed once the final judicial decision was issued.<sup>74</sup> Trade union representatives note that parallel proceedings extend the timeline of the initial assessment phase. Delays may be linked to the careful approach of the NCP in ensuring that parallel proceedings do not interfere in the specific instance process and that the process does not entail serious damage to one of the parties in other proceedings (see also above on Initial assessment).

## Cooperation among NCPs

Section 8 of the RoP addresses cooperation with other NCPs. The RoP reflect para. 23 of the Commentary to the Procedural Guidance on coordination among NCPs in specific instances. According to the RoP, in the event of specific instances involving a multinational based in the territory of another Adherent country, NCPs will decide together on the lead NCP. When a specific instance concerns activities of a company in the territory of several Adherents or a consortium, joint venture or other similar form, the NCPs will consult with the concerned Adherent countries to determine the lead NCP. The decision may be taken in consultation with the Chair of the Investment Committee. For specific instances involving non-adherents, the NCP seeks information through diplomatic representations and, if applicable, other governments.

To date, the NCP has cooperated in at least five cases with other NCPs (see Table 5.1), and reported not being able to coordinate effectively with another NCP in one case due to disagreements regarding leadership.

Six NCPs provided feedback on their cooperation with the Spanish NCP. The NCPs had cooperated with the NCP in the context of specific instances as lead or supporting NCP and in one specific instance

<sup>73</sup> E-00003 - Preferential stocks in Spain.

<sup>74</sup> E-00007 - Environment and indigenous issues in Guatemala concerning a Spanish NGO and a Spanish construction Multinational.



involving several jurisdictions. Other NCPs noted the valuable assistance and availability of the Spanish NCP to participate in meetings. NCPs overall note the Spanish NCP's proactivity. Two NCPs welcome the information provided by the NCP on companies. One NCP notes the Spanish NCP's diligent work in reviewing draft documents and consequently engaging on policy coherence matters. One NCP noted the Spanish NCP's visibility and high-level location paying off in practice.

**Table 5.1. Specific instances where the Spanish NCP has coordinated with other NCPs**

Specific instance	Lead NCP	Supporting NCP
Sindicato Nacional Tecnet and Unitary Confederation of Workers (CUT) & Tecnet (Ezentis Group)	Chile	Chile
User's family & Sacyr Concesiones SpA	Chile	Spain
Ingeaustral & Sacyr (ongoing)	Chile	Spain
Sindicato Konexia & Telefónica (ongoing)	Chile	Spain
E-00005 - Human rights issues in the workplace involving a Spanish Security Services company in Brazil, Colombia, Paraguay, Peru and Chile	Spain	Colombia

Source: OECD NCP Database (2022)

## Request for clarification

The NCP did not file any requests to the Investment Committee or the Working Party on RBC (WPRBC).

	Finding	Recommendation
3.1	The NCP has detailed and clear Rules of Procedures, though stakeholders and parties to specific instances noted the need for more clarity on some issues to further build trust and strengthen the predictability of the specific instance process. Such issues include the review of whether a company falls into the scope of the Guidelines, thresholds and consultations with parties in initial assessments, level of detail in older statements, frequent extensions of indicative timelines, and publication of statements in every closed case. The NCP has noted its plans to review its Rules of Procedure.	When undertaking its review of the Rules of Procedure, the NCP should focus on: <ul style="list-style-type: none"> <li>aligning its definition of multinational enterprise with that of the Guidelines;</li> <li>ensuring clarity on thresholds in the initial assessment phase, to strengthen the accessibility and predictability of the process;</li> <li>ensuring clarity and transparency regarding timelines;</li> <li>publishing statements in non-accepted specific instances and considering publishing statements in accepted specific instances, ensuring clarity on the issues and reasons for the NCP's decision;</li> <li>following up consistently on recommendations and agreements, and setting a timeline in the final statement;</li> <li>clarifying the application and scope of provisions on conflict of interests and recusal.</li> <li>In handling specific instances in practice, the NCP should then ensure clearer and more timely communication with the parties.</li> </ul>
3.2	The NCP grants anonymity of the parties in the majority of specific instances. Trade union and CSO representatives have questioned some of these decisions and have requested better justifications. Some stakeholders also requested more clarity on reasons to withhold information submitted by one party from the other, as well as on rules restricting campaigning during the specific instance process.	In order to further strengthen the transparency and equitability of the specific instance process, the NCP should consider consistent rules on campaigning and communication about sharing information submitted by one party with the other, and in case sensitive information should be protected, providing a non-confidential version of such information to the other party. The NCP should also ensure that requests for anonymising statements are granted as an exception rather than the rule and duly justified based on specific reasons.

# **6** 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
- C. Promotional events
- D. Overview of specific instances handled by the NCP as the leading NCP

## Annex A. List of organisations submitting responses to the NCP peer review questionnaire

**Table A.1. Questionnaire submitters for the Spanish NCP peer review by stakeholder group**

<b>Government</b>
Ministry of Justice
Ministry of Home Affairs – General Department of Sustainable Development Policies (DGPOLDES)
<b>Business</b>
(CAF)
Spanish Confederation of Business Organisations (CEOE)/ BIAC
COBRA Group – Infrastructure Management
El Corte Ingles (EC)
Forética
Prosegur
<b>Trade Unions</b>
Confederación Sindical de Comisiones Obreras (CCOO)
Trade Union Advisory Committee (TUAC)
Unión General de Trabajadores (UGT)
Unión Sindical Obrera (USO)
<b>CSOs and Academia</b>
Observatorio de Responsabilidad Social Corporativa (Observatorio de RSC)
Alianza por la Solidaridad
Committee for Solidarity with the Arab Cause (CSCA)
<b>NCPs</b>
Austria
France
Germany
Netherlands
Portugal
United Kingdom

## Annex B. List of organisations that participated in the NCP peer review

**Table B.1. Participants of the Spanish NCP peer review by stakeholder group**

<b>Organisation</b>	<b>Sector</b>
Ministry of Industry, Trade and Tourism, General Directorate for International Trade and Investments	NCP Secretariat
Ministry of Employment and Social Security	Government, Inter-ministerial collegiate body (IMCB)
Ministry of Foreign Affairs, European Union and Cooperation	Government, IMCB
Ministry of Justice	Government, IMCB
Ministry of Foreign Affairs, European Union and Cooperation, Human Rights Office Directorate General for UN, International Organizations and Human Rights	Government
General Secretariat of Securities Market and Financial Instruments Legislation	Government
Directorate Export Finance and Investment Support (MINCOTUR)	Government
Secretary of State Agenda 2030	Government
Spanish Chamber of Trade, Industry and Navigation	Business organisation, Advisory Board
Spanish Confederation of Business Organisations (CEOE)	Business organisation, Advisory Board
General Union of Workers (UGT)	Trade union, Advisory Board
Trade Union Confederation of Workers' Commissions (CCOO)	Trade union, Advisory Board
Worker Trade Union (USO)	Trade union, Advisory Board
Transparency International Spain	CSO, Advisory Board
Acciona	Business organisation
El Corte Ingles	Business organisation
PROSEGUR	Business organisation
UNI Global Union	Trade Union
Oxfam Spain	CSO
Alianza por la Solidaridad	CSO
Business at OECD (BIAC)	Institutional stakeholder
OECD Watch	Institutional stakeholder
Trade Union Advisory Committee to the OECD (TUAC)	Institutional stakeholder

## Annex C. Promotional events

**Table C.1. Events in 2019 participated in by the NCP**

<b>Title</b>	<b>Date</b>	<b>Location</b>	<b>Size of Audience</b>	<b>Targeted Audience</b>
CEOE International Conference on Business and Human Rights	03/04/2019	Madrid	50-100	Business representatives
Spanish AMFORI Network meeting	09/04/2019	Madrid	10-50	Business representatives
Responsible Sourcing Commission Annual Meeting	30/04/2019	Madrid	10-50	Business
Workshop on Due Dilligence in the Textile Sector	04/06/2019	Madrid	10-50	Business, NGOs
Masters' degree in Due Dilligence	27/11/2019	Madrid	<10	Academia

Source: National Contact Point Reporting Questionnaire (2019)

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

Enterprise/Specific instance number	Submitter	Host country	Chapter(s) of the Guidelines	Date of Submission	Date of Initial Assessment	Date of Conclusion	Outcome	Description	Follow-up	Review
Not available/E-0010	Not available	West Bank and Gaza Strip	General Policies (II), Disclosure of information (III), Human Rights (IV), Employment and industrial relations(V), Consumers' Interests (VIII), Competition(X), and Taxation (XI)	23/07/21			Ongoing		-	-
Not available/E-00009 - NGO and multinational company in the transport industry sector	Not available	West Bank and Gaza Strip	General Policies (II), Disclosure of information (III), Human Rights (IV), Employment and industrial relations(V), Consumers'	20/12/19			Ongoing		-	-

			Interests (VIII), Competition(X), and Taxation (XI)							
Multinational telecommunications Company/E-00008 - Individual and multinational company in the telecommunications sector	One individual	Spain	Employment and industrial relations (V)	31/08/18		12/19	Not accepted.	The NCP did not accept the case due to lack of indications of non-implementation of the Guidelines.	-	-
Not available, Spanish multinational/E-00007 – Environment and indigenous issues in Guatemala concerning a Spanish NGO and a Spanish construction multinational	CSO Alianza pour solidaridad (NGO Alliance for Solidarity) (AxS)	Guatemala	General Policies (II), Environment (VI)	23/11/17	16/04/18	19/12/19	Concluded with statement Without agreement With recommendations	The NCP concluded the case following developments outside the NCP process, including a final decision of the Supreme Court of Justice of Guatemala.	Yes	No
Iberdrola/E-00006 – Environmental issues in Spain concerning a Spanish multinational energy supplier and an individual	Individual, Mercedes Maldonado de Guevara Toledano	Spain	Environment (VI)	31/07/17		19/02/18	Not accepted	The NCP did not accept the case based on the lack of transnational element.	-	-
Prosecur/ E-00005 – Human rights issues in the workplace involving a spanish security services company in Brazil, Colombia, Paraguay, Peru and Chile	UNI Global Union Spain	Brazil, Colombia, Paraguay, Peru, Chile	Concepts and principles (I), Human Rights (IV), Employment and industrial relations (V)	26/11/13	03/03/14	31/07/17	Concluded with statement Without agreement With recommendations	The NCP concluded the case following the company's refusal of good offices.	Yes	No
One financial institution/ E-00004 –	One individual	Spain	Consumer Interests (VIII)	07/12	N/A	23/06/15	Not accepted	The NCP did not accept the case following lack of response by the submitter to NCP requests for additional information.	-	-

Preferential stocks in Spain										
Several financial institutions/ E-00003	15 individuals	Spain	Consumer Interests (VIII)	07/12 Renewed on 16/02/15	N/A	24/11/12	Not accepted	The NCP did not accept the case, initially in view of ongoing parallel proceedings and the lack of transnational element, and consequently in view of the lack of transnational element.	-	-
Multinational Spanish company located in Peru/ E-00002 – Conflict in a Spanish-owned company over differences in salaries	Not available	Peru	Employment and Industrial relations (V)	14/12/04	N/A	11/01/05	Concluded with statement With agreement outside the NCP process	The NCP concluded the case based on information by the company on ongoing social dialogue close to agreement.	-	-
Not available/ E-00001 –Employee complaint against financial institution	Not available	Venezuela	Employment and Industrial relations (V)	21/04/04	N/A	30/07/04	Not accepted	The NCP concluded the case following two unanswered requests to the submitter for additional information	-	-



## **National Contact Point Peer Reviews: Spain**

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 Spanish NCP, mapping its strengths and accomplishments and also identifying opportunities for improvement.

