



Action Plan to Strengthen National Contact Points for Responsible Business Conduct 2019 - 2021



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Table of contents

Introduction 2
Funding and delivery 4
Presenting the second Action plan (2019-2021) 5
Conclusion 12

Introduction

In December 2015 and January 2016, the Working Party on Responsible Business Conduct (WPRBC) and the Investment Committee (IC) respectively approved the first Action Plan to Strengthen National Contact Points.

National Contact Points for Responsible Business Conduct (NCPs) are agencies created by governments adhering to the OECD Guidelines for Multinational Enterprises (the Guidelines). NCPs are responsible for furthering the effectiveness of the Guidelines. They have existed since the 1983 update of the Guidelines and they have had the ability to receive cases (“specific instances”) related to the non-observance of the Guidelines since the year 2000.

During the last revision of the Guidelines in 2011, significant changes were made to the Implementation Procedures which govern NCP activities. In addition, a human rights chapter was added to the Guidelines, as was the concept of risk-based human rights due diligence, applicable to company operations and across value chains and business relationships.

NCPs have handled over 425 cases, related to operations by enterprises operating in or from the territories of adhering countries. Cases handled by NCPs have increased in terms of the complexity of issues and the number of geographies involved. Many of the cases are often highly challenging and NCPs are sometimes a matter of last recourse after many attempts to reach a solution. Notably, human rights-related cases have been increasing steadily since the human rights chapter was added, now accounting for over 50% of cases received by NCPs since 2011.

NCPs featured significantly in the June 2015 G7 Leaders Statement: *“We commit to strengthening mechanisms for providing access to remedies including the National Contact Points (NCPs) for the OECD Guidelines for Multinational Enterprises. In order to do so, the G7 will encourage the OECD to promote peer reviews and peer learning on the functioning and performance of NCPs. We will ensure that our own NCPs are effective and lead by example.”*

Two years later, in June 2017, the OECD Ministerial Council Meeting (MCM) made the following commitments with regards to NCPs: *“We commit to having fully functioning and adequately resourced National Contact Points and to undertake a peer learning, capacity building exercise or a peer review by 2021, with the aim of having all countries peer reviewed by 2023. We call for a report on progress made to the MCM in 2019.”* In July of the same year, NCPs were recognised in the G20 Leaders Statement: *“We support access to remedy and, where applicable, non-judicial grievance mechanisms, such as the National Contact Points for the OECD MNE Guidelines (NCPs).”*

As noted in earlier documents, as a result of the increasing interest in responsible business conduct (RBC) and more specifically in the Guidelines, demands on NCPs have grown. Issues raised in the past, or likely to be raised in the future, include complaints by stakeholders that certain NCPs do not meet the core criteria set out in the Procedural Guidance; issues regarding the performance and functioning of NCPs, or their interpretation of the Guidelines, NCPs imposing requirements for the submission of specific instances which appear to be based on an excessively restrictive interpretation of the Guidelines, or NCPs taking several years to process a specific instance, etc.

NCPs themselves have raised problems of cooperation with other NCPs, including the absence of a functioning NCP in some adhering countries.

Not all issues raised around the functioning of NCPs constitute criticism, but may relate to the difficulties encountered by NCPs in discharging their functions. NCPs are increasingly confronted with complex cases related to business conduct, spanning multiple jurisdictions, involving numerous business relationships, etc. and may therefore be in need of clarification of the Guidelines or of advice on handling certain enquiries or specific instances. Difficulties may also arise from the fact that an NCP may have neither the resources nor the capacity to carry out its functions, nor the necessary support from the government. Other issues arise regarding cooperation between NCPs.

The first Action Plan addressed the above through three tracks of activity aimed at strengthening NCPs over the period of January 2016 – December 2018. The three tracks were: Peer Reviews and Capacity Building; Building coherence; and Building tools.

Under the first track, which focused on peer reviews and capacity building, all G7 countries have either completed or have an ongoing peer review as of January 2019. An additional four countries which have received at least 5 specific instances have undergone a peer review during the 2016-18 period.¹ During the same period, four countries benefited from a tailored capacity building mission to address areas for improvement.²

Actions taken in the second track of activity, to address coherence between NCPs, included support through peer learning activities and training on a wide range of topics including: confidentiality and campaigning, mediation, RBC for institutional investors, due diligence in practice, etc. A set of papers was also developed to address challenging topics and to draw together NCP practice, and these addressed: NCP structures and activities; confidentiality and campaigning; NCP case coordination; recommendations and determinations. Guidance was also provided to NCPs in the development of rules of procedure, in setting out good practice for NCP websites and in addressing common topics in specific instances.

Finally, the third track of activity covered the development of tools to support NCPs in their work. At the outset, an exercise was undertaken to make the OECD public specific instance database as complete as possible. In addition, key tools were developed in partnership with NCPs including a support tool for developing rules of procedure, the development of the ONE Community space for NCPs to share updates and questions, and the development of key communication tools to support NCPs in their promotional activities.

This second Action Plan builds upon the lessons learnt and activities undertaken to date, and sets the course for the coming three years in order to meet the commitments made by Ministers in 2017, and the increasing relevance of NCPs in the broader RBC context.

¹ Belgium, Switzerland, Austria, Chile

² Ukraine, Egypt, Jordan, Kazakhstan

Funding and delivery

As was the case for the first Action Plan, the delivery of this Action Plan is dependent upon funding from extra-budgetary sources. Canada, Italy, Germany and Switzerland provided voluntary contributions to support activities under the 2016-18 Action Plan. Furthermore, in December 2016, the OECD Council as part of its decision on the 2017-18 Programme of Work and Budget, agreed to provide additional support for work on NCPs through a long-term reallocation (2017-18 Programme of Work and Budget Report by the Chair of the Budget Committee).

In addition, peer reviews will continue to be funded at a fixed cost of EUR 35 000 provided by the individual country under review.

Presenting the second Action plan (2019-2021)

Overview

The second Action Plan to strengthen NCPs has been designed to mirror the three tracks of activity set out in the first Action Plan, with the addition of a track dedicated to policy coherence. Each track of activity introduces either a continuation of existing efforts or a selection of new projects, designed to support NCPs in meeting their mandate and continuing to effectively cooperate.

TRACK ONE: Peer Reviews and Capacity Building

Peer Reviews

The first Action Plan underscored the importance of peer reviews in strengthening NCPs and providing an opportunity to share lessons learnt while identifying any areas for improvement. Peer reviews have been effective in raising the profile of NCPs within their own government and amongst key stakeholders. Peer reviews are also a useful learning opportunity for those NCPs involved as reviewers and observers.

In the Guidelines, the Investment Committee, assisted by the Secretariat, is requested to *“facilitate peer learning activities, including voluntary peer evaluations, as well as capacity building and training, in particular for NCPs of new adhering countries, on the implementation procedures of the Guidelines such as promotion and the facilitation of conciliation and mediation.”*³

Under the first Action Plan, priority was given to the peer reviews of G7 countries, who in the G7 Leaders’ statement had pledged to *“lead by example”* along with NCPs that had previously volunteered to undergo a peer review, and any country where the NCP had received at least five cases.

As of January 2019, 13 peer reviews have been completed⁴, 1 is ongoing⁵ and an additional 5 are scheduled for the period 2019-20⁶. All G7 countries have either completed a peer review or have a review in progress.

Lithuania acceded to the OECD Convention on 5 July 2018, and Costa Rica is currently going through the accession process. As a result, their NCPs were reviewed by the Secretariat. This review exercise involved an in-depth analysis and an on-site visit carried out by the Secretariat.

³ OECD Guidelines for Multinational Enterprises (2011), Procedural Guidance, section II, para. 5 c).

⁴ Netherlands, Japan, Norway, Denmark, Belgium, Italy, Switzerland, France, Chile, Germany, United States, Austria and Canada

⁵ United Kingdom

⁶ Spain, Argentina, Korea, Sweden and Australia

Peer reviews completed under the 2016-2018 Action Plan have given rise to significant feedback from participants and several lessons can be drawn from these exercises. Such reflection led to the development of a paper providing guidance to all participants in peer reviews. In addition, a paper addressing possible improvements to the peer review methodology was discussed at the 3-4 December 2018 meeting of the WPRBC.

Under the 2016-2018 Action Plan, on average 3 NCPs were reviewed each year. In order to meet the 2023 MCM commitment, at least six NCPs will need to be reviewed each year. The Secretariat will continue to report to the WPRBC on a regular basis with regards to the peer review schedule. Adherents that have not yet volunteered to undergo a peer review are invited to do so by communicating their intention to the Secretariat and indicating a timing preference over the period 2019-2023.

Capacity building

Aside from peer reviews, strengthening NCPs can also take place through capacity building. In this regard, as indicated above, the 2017 MCM included a commitment to have NCPs undertake a peer learning, capacity building exercise, or peer review by 2021, with the aim of having all countries peer reviewed by 2023.

The 2016-2018 Action Plan proposed that the Secretariat provide ‘capacity building support’ to NCPs not undergoing peer reviews, by means of two-day capacity building missions during which the Secretariat would meet with relevant government agencies and local stakeholders, and engage in in-depth learning sessions with the NCP. These capacity building sessions would result in a report by the Secretariat with a set of findings.

Jordan, Egypt, Ukraine and Kazakhstan each benefited from a capacity building mission under the 2016-2018 Action Plan. Given that the focus of this second Action Plan and the resources of the Secretariat will be directed more heavily towards peer reviews, the plan does not propose to offer individual capacity building missions to NCPs again under this Action Plan unless directly requested by individual countries and provided that resources are available. However, capacity building will continue to be provided to the NCP Network as a whole.

Non-functioning NCPs

The successful performance and reputation of the entire NCP Network is dependent upon the engagement and commitment of all adherent countries. However, progress across the Network is not even. At the request of the Council, the Secretary-General has communicated directly with Ministers from certain countries regarding their NCPs.

The letters from the Secretary-General were sent to adherents whose NCPs did not meet certain criteria i.e.: 1. Ensure there is an NCP in existence, 2. Report to the Investment Committee, 3. Have a website, 4. Engage in promotional activities, 4. Have publicly available rules of procedure for specific instance process. Under the second Action Plan, it is proposed that those NCPs which do not meet at least one of these criteria receive additional support from other NCPs at each meeting of the WPRBC. In response, clusters of NCPs to support each country may also be identified during the meetings.

TRACK TWO: Building functional equivalence

Peer learning

In order to meet the peer learning and capacity building objective set by the 2017 MCM, it is proposed to take advantage of regional and thematic networks of NCPs to organise joint activities. Regional and thematic networks of NCPs could be set up for this purpose and would address themes agreed within the group that are pertinent for the context. It is proposed that at least one activity per year be organised in each regional or thematic network.

It is proposed that each regional or thematic network appoint an NCP host on a rotating basis. This NCP would then take the lead on coordinating the programme of activities in a given timeframe. Regional and thematic networks will be supported by the Secretariat as was the case for the Nordic-Baltic network of 8 NCPs which was launched in September 2018. Other potential regional networks might include: Asia-Pacific; Central and Eastern Europe; Middle East and North Africa; Northern and Central America; Latin America; Western Europe. Ideas for potential thematic networks will be explored with individual NCPs. Both regional and thematic networks will be developed on the basis of interest expressed by NCPs.

Peer learning during the biannual meetings of the NCP Network will continue as a set part of the meeting agenda. Such sessions will be led by interested NCPs on practitioner challenges as identified by the Network. If necessary, sessions will be organised in parallel to provide a variety of discussion items to each NCP present. The WPRBC could support in identifying key topics of interest in advance of each meeting of the Network of NCPs.

Issues

Under the first Action Plan, a list of ten topics were identified as possible issues for papers setting out current practice amongst NCPs and providing an overview of possible actions in line with the procedural guidance. Of the ten topics identified, four were completed as formal papers⁷, an additional three topics were proposed to the WPRBC in December 2018 in the form of new papers for development in 2019⁸ and two were addressed through peer learning activities⁹. The broader topic of ‘understanding impacts – thematic examples based on sector, geography and impact’ has been addressed in part through sector-specific webinars and training materials, along with some thematic publications such as the publication launched in June 2018 focused on the role of NCPs in supporting social dialogue¹⁰.

⁷ Confidentiality and Campaigning in Specific Instances, Coordination between NCPs on Specific Instances, Scoping paper: Recommendations and Determinations in Specific Instances, NCP Structures and NCP activity .

⁸ Issues paper: Follow-up on recommendations made in specific instances, Issues paper: Initial Assessments (the second paper is envisaged to address both topics of ‘material and substantiated’ and ‘parallel proceedings’)

⁹ Bringing parties to the table for mediation/conciliation; Good practice promotional activities

¹⁰ OECD (2018), Facilitating social dialogue under the OECD Guidelines for Multinational Enterprises, <https://mneguidelines.oecd.org/facilitating-social-dialogue-under-the-OECD-Guidelines-for-MNEs.pdf>

Going forward, the identification of key topics will happen on an iterative basis through consultations and exchanges among NCPs, and with the Secretariat, including through the NCP ONE Community website. Following the June 2018 Meeting of the Network of NCPs, it was decided that the NCP ONE Community space would be used to develop a list of challenges faced by NCPs. Other NCPs provide inputs via the online platform where possible.

Thematic webinars or technical papers will be proposed where helpful. All NCPs will be encouraged to continue to contribute to the list of challenges by identifying questions or concerns which are pertinent to their ongoing work.

Skills sharing

The nature of the NCP Network lends itself well to a spirit of support and cooperation and there is a significant amount of support that occurs among NCPs. Over the past three years, NCPs have shared experience on promotional events, on raising awareness within government and on similar thematic topics being addressed in specific instances.

On various occasions, the creation of a mentoring system between NCPs has been proposed. Under the second Action Plan, a ‘skills matrix’ could be developed, to be completed by each NCP identifying areas of expertise that they would like to share with other NCPs. This could range from experience with particular sectors of business activity, with certain challenges in initial assessments, with impacts occurring in particular countries or with mediation in practice. Similarly, NCPs would be encouraged to identify any learning requests they may have which would be added into the matrix.

Information and Promotion

Promoting the Guidelines, including the existence of an NCP, and the various due diligence guidance documents is a core function of NCPs.

In certain countries, NCPs still face challenges as they are not well-known amongst business and civil society communities. Having a clear and helpful website is an important part of the promotional work of NCPs. Through this action plan, the Secretariat will support NCPs in understanding how to best present a clear website which is user-friendly and assists potential parties to cases.

Many NCPs now conduct promotional activities aimed at business and civil society audiences. A few NCPs have taken additional steps to measure the effectiveness of such promotional activities towards their business communities. The Secretariat will work with these NCPs to see whether such measurement can be standardised to assist other NCPs in measuring the impact of their promotional activities. Such a methodology will remain optional for NCPs that might be developing their own approaches to measurement.

Finally, it is proposed to conduct a survey to understand why certain NCPs conduct very little or no promotional activities. The survey would address how certain countries have overcome similar difficulties and could propose ways forward to support the entire Network.

TRACK THREE: Building and improving tools

Existing tools

Under the Action Plan 2016-2018, the Secretariat developed a number of tools aimed at assisting NCPs in their tasks by providing them with key information on the Guidelines and their role as NCPs. In addition to the documents described above, these tools included regular newsletters¹¹ and the NCP Community platform which is an online space for NCPs to share information and questions. As there is a continued demand from NCPs for readily available information and resources, it is proposed that the Secretariat continue developing such tools.

New tools

Template documents

Several NCPs have requested the Secretariat to build a variety of template documents to assist them in the delivery of their mandate. These documents would include:

- Rules of procedure template
- Standard online form for the submission of a specific instance
- Initial assessment template
- Final statement template
- Feedback questionnaire to parties after case closure

Such documents would be optional support tools made available to NCPs. Where issues are complex, the documents would include annotations to provide context and background.

Online training course

A recurrent need which can be addressed through the development of an innovative tool is that of having a repository of information about NCP structures, roles, procedures and activities. The Secretariat has already produced a range of documents on these topics, which are all available on the NCP ONE platform. In addition, and given the high staff turnover in some NCPs, it would be particularly useful to have access to this type of information in other formats, in particular to allow for training of NCP members who are new to the NCP role. It is proposed to develop this tool in the form of a webinar or online training for NCPs.

Such a webinar would be available anytime a new NCP staff member starts. It would save existing staff members the time taken to train their new colleagues, whilst ensuring consistency, being easily updated, and being agile (e.g. users can access modules separately if they need to focus on a particular topic). This ‘NCP-only’ webinar could be adapted in the future for a public audience, taking for example the form of a Massive Open Online Course (MOOC), thereby raising awareness on NCPs and RBC in general. MOOCs are courses made available on online platforms, organised into thematic modules and made up of a variety of learning materials (video lessons, reading materials, interviews with experts, quizzes and tests, forums of discussion).

¹¹ The regular newsletters were superseded by the launch of the NCP ONE Community website

It is proposed that the Secretariat work with NCPs on a syllabus for the webinar/MOOC, outlining the different modules, as well as on a technical roadmap and financial specifications for the development of the MOOC.

Good offices: supporting dialogue, conciliation and mediation

NCPs very often select the provision of good offices (including mediation) as a priority area for peer learning and support. In the context of this Action Plan, two specific proposals are proposed to address this particular area.

The first tool will unpack dispute resolution and problem-solving approaches (such as facilitation, conciliation, mediation etc.) to produce a menu of options that set out the advantages and potential challenges of each approach. This menu will be developed in consultation with NCPs as well as by looking at other grievance mechanisms and dispute-resolution platforms such as the independent accountability mechanisms or National Human Rights Institutions that receive complaints. The menu itself would map out the range of options available to NCPs.

The second proposal is to produce an updated version of the Mediation Manual to assist NCPs and mediators working with NCPs. The first manual that was developed was publicly released in 2012. The revised manual would be practical and user-friendly and provide an easily accessible overview of options, tools and case studies to support problem-solving in NCP cases. The manual would cover lessons learned and best practices in mediation based on a series of interviews with experienced mediators, including NCP mediators and external mediators.

Finally, as the community of professional mediators that have engaged in NCP mediation continues to grow, it is proposed to create a roster of external mediators for NCPs that can be referred to as appropriate. Such mediators would be identified on the basis of relevant criteria such as knowledge of the Guidelines and the particular region or issue involved.

TRACK FOUR: Promoting policy coherence

As part of their role of promoting the Guidelines, NCPs can also play an active role in promoting policy coherence with respect to RBC. Given the multi-faceted nature of RBC, policy coherence is highly important in ensuring effective and cohesive government positions on RBC issues. Many NCPs already actively engage on this by participating in inter-departmental committees dealing with sustainability issues, or business responsibility, through engaging bilaterally with other relevant agencies (e.g. environment, labour, trade, investment etc.) to ensure alignment with the recommendations of the Guidelines, and through participating in multilateral processes to ensure RBC issues feature in international commitments.

When NCPs play an active role in promoting policy coherence, government approaches to RBC are strengthened and the visibility of NCPs as an authority on RBC within their country is enhanced. There are risks of policy incoherence on RBC when there is a lack of communication on the Guidelines and the role of NCPs throughout government. This lack of coherence is particularly acute with the co-existence of various important international RBC standards, such as the UN Guiding Principles on Business and Human Rights, often “housed” in different ministries.

One way to promote policy coherence would be to map national RBC contexts to address a series of questions such as: What is the national RBC policy/general strategy of the country? Has a National Action Plan on Business and Human Rights been developed/will it be? Who is leading on the coordination and implementation of RBC? How does the policy relate to ongoing SDG commitments? What is the relationship with ILO focal points and with local ILO offices? What are the opportunities for collaboration or integration of RBC? What are the challenges? Such mapping could be carried out by individual governments supported by the secretariat.

Other options could include supporting NCPs in identifying opportunities for engagement, developing a strategy for collaboration with relevant actors, and developing tools such as communication materials for NCPs on the relevance of their activities and the Guidelines to other policy areas.

The secretariat can also identify opportunities for adherents to reach out to other relevant committees at the OECD to raise awareness of the NCP mechanism and Guidelines and ongoing specific instances as relevant. Such outreach can be useful in raising awareness of the NCP among various policy makers and underscoring the relevance of RBC across different policy areas.

Conclusion

A strong network of NCPs is critical for the success of the Guidelines and broader RBC developments. This document draws together some ideas for focused activities over the coming three years to support NCPs in the delivery of their mandate and in the spirit of cooperation and support within the community.

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