

# Guide for National Contact Points on Follow Up to Specific Instances



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## Guide for National Contact Points on Follow Up to Specific Instances

### Introduction

When an NCP accepts a specific instance and offers its good offices, the final result of the process may take two forms:

- The parties reach an agreement and the NCP issues a report on the issues which may contain information on the content of the agreement with the consent of the parties;<sup>1</sup>
- The parties do not reach an agreement or do not wish to participate in the process, and the NCP issues a statement on the issues, which may contain recommendations on the implementation of the Guidelines as appropriate.<sup>2</sup>

For the purposes of this paper the collective term ‘statements’ will be used to refer to both statements and reports.

What the two outcomes described above have in common is that they will typically include actions to be taken by the company and/or the submitter. Increasingly, NCPs are conducting follow up on specific instances and in particular on actions agreed by the parties or recommended by the NCP.

The ways in which NCPs conduct such follow up vary significantly and there is no standard form for measuring successful implementation of recommendations and/or agreements.

This paper reviews:

- What the Guidelines and the Procedural Guidance say about follow up;
- NCP practices regarding follow up;
- Challenges and opportunities related to follow up;
- Good practices and scenarios regarding follow up.

This analysis is based on desk research and on interviews with NCPs.

Stakeholder perspectives on follow up on specific instances by NCPs are provided in Annex B.

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<sup>1</sup> Procedural Guidance, para. I.C.3.b).

<sup>2</sup> Procedural Guidance, para. I.C.3.c).

## Follow up under the OECD Guidelines and Procedural Guidance

### Box 1. Commentary to the Procedural Guidance

“34. [...] The parties may [...] agree to seek the assistance of the NCP in following-up on the implementation of the agreement and the NCP may do so on terms agreed between the parties and the NCP.

36. [...] If the NCP makes recommendations to the parties, it may be appropriate under specific circumstances for the NCP to follow up with the parties on their response to these recommendations. If the NCP deems it appropriate to follow up on its recommendations, the timeframe for doing so should be addressed in the statement of the NCP.”

The Guidelines address follow up on both agreements and recommendations. Follow up on agreements by the NCP should be sought by the parties and performed by the NCP “on terms agreed between the parties and the NCP”. The NCP may also follow up on recommendations made to parties, “if appropriate under specific circumstances for the NCP.” Moreover, if an NCP wishes to follow up on its recommendations, it should indicate a timeframe for doing so in its statement. There is no specific timeframe for following up on recommendations set out in the Guidelines.

Some NCPs have noted that they considered follow up to agreements and recommendations to be instrumental in their role in furthering the effectiveness of the Guidelines, while recognising that the Guidelines allow increased control over follow up by the parties to an agreement. This view is supported by research showing that soft norms or recommendations which are not followed up on or not accompanied by a credible verification mechanism will be less effective and will not likely lead to accountability for non-compliance.<sup>3</sup> In turn, research also shows that, should compliance with such norms and recommendations be closely monitored, they may be able to achieve high levels of effectiveness.<sup>4</sup>

For these reasons, other non-judicial grievance mechanisms such as the World Bank Inspection Panel,<sup>5</sup> or the European Ombudsman<sup>6</sup> do include optional or mandatory follow up actions to recommendations they make in relation to a grievance.

<sup>3</sup> See generally, Kenneth W. Abbott and Duncan Snidal, “Hard and Soft Law in International Governance” 54 *International Organization* 3 (2000), 421-56, p. 446. In the field of RBC, see Mark B. Baker, “Tightening the Toothless Vise: Codes of Conduct and the American Multinational Enterprise”, 20 *Wisconsin International Law Journal* 89 (2001-2002).

<sup>4</sup> See, in the field of environment protection, Jon Birger Skjærseth, Olav Schram Stokke and Jørgen Wettstad, “Soft Law, Hard Law, and Effective Implementation of International Environmental Norms”, 6 *Global Environmental Politics* 3 (2006), 104-120; in the field of government audit, Richard C. Brooks and David B. Pariser, “Audit Recommendation Follow-Up Systems: A Survey of the States” 15 *Public Budgeting and Finance* 1 (1995) 72-83; in the field of RBC, Barnali Choudhury, “Balancing Hard and Soft Law for Business and Human Rights”, 67 *International and Comparative Law Quarterly* 4 (2018), 961-986.

<sup>5</sup> World Bank Inspection Panel, “Operating Procedures”, April 2014, p. 21.

<sup>6</sup> European Ombudsman, “Decision of the European Ombudsman adopting Implementing Provisions”, 2016, para. 6.3.

Given the brevity of the Guidelines provisions regarding follow up, NCP practices have largely shaped the way follow up is conducted with regard to specific instances. The following section therefore provides a mapping of such practices, so as to be able to identify trends and best practices.

## Follow up in practice

In order to map NCP practices regarding follow up, this section first examines NCP Rules of Procedure (RoP) and whether they address follow up. Relevant excerpts of NCP RoP are available in Annex A). The paper then reviews NCP follow up actions in relation to actual specific instances. This includes specific instances which resulted in agreement as well as specific instances in which no agreement was reached by the parties, but in which the NCP issued recommendations.

The mapping then examines the types of recommendations which have led to follow up, and identifies a correlation between the specificity of recommendations and the frequency of follow up. Finally, the mapping surveys the main methods used by NCPs to conduct follow up and the various types of outcomes of follow up.

All specific instances received by NCPs in or after 2011 and reported as closed (i.e. not accepted or concluded) by NCPs on 15 October 2019 were analysed for the purposes of this paper. This represents a sample of 225 specific instances, amongst which 118 are concluded cases, and 112 are non-accepted cases. RoP examined in this paper are those in force as at 15 October 2019. For some of the cases examined below, follow up was therefore planned or performed by the NCP in accordance with past versions of their RoP.

### *Follow up in NCP practice*

Table 1 below shows that, of 40 NCPs with RoP, 26 mention follow up. In one case (Denmark), follow up is not mentioned in the NCP's RoP, but in the statute and executive order by which the NCP was set up.<sup>7</sup>

It is not always possible to access information as to whether follow up that was “planned” was actually “performed”, as certain NCPs explicitly conduct follow up in a confidential manner,<sup>8</sup> or do not systematically publicise the follow up process, e.g. by issuing a follow up statement. Table 1 is therefore based on publicly available information and may not reflect instances in which follow up happened on a confidential basis or without the publication of a follow up statement.

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<sup>7</sup> ACT no. 546 of 18/06/2012 on a Mediation and Complaints-Handling Institution for Responsible Business Conduct, Section 7(3) for follow up on agreements and Section 7(6) for follow up on recommendations; and Executive Order of 18/09/2012 on a Mediation and Complaints-Handlings Institution for Responsible Business Conduct, Section 13 (7) for follow up on agreements and Section 14 (4) for follow up on recommendations.

<sup>8</sup> US NCP peer review report, pp. 31-32.

“Planned” follow up means that the final statement of a specific instance indicates that the NCP intends to verify implementation of the recommendations or the agreement after a certain period of time, or otherwise requests in the final statement that the parties report on implementation after a certain period of time. “Performed” follow up means that the NCP has acted on its intent to verify implementation, or that the company has complied with the NCP’s request to report on implementation.

In practice, 15 NCPs have planned and/or performed follow up in at least one specific instance in the sample (out of a total of 31 NCPs which have closed a specific instance since 2011).

**Table 1. Follow up in NCP rules of procedure and in practice**

NCP	RoP mention follow-up	NCP handled specific instances since 2011	At least one final statement mentions follow up	NCP has published at least one follow up statement
Argentina	No	Yes	No	No
Australia	Yes	Yes	Yes	Yes
Austria	Yes	Yes	Yes	Yes
Belgium	Yes	Yes	Yes	Yes
Brazil	No	Yes	Yes	No
Canada	Yes	Yes	Yes	Yes
Chile	Yes	Yes	No	No
Colombia	No	Yes	No	No
Costa Rica	Yes	No	N/A	N/A
Czech Republic	No	No	N/A	N/A
Denmark	Yes*	Yes	Yes	Yes
Finland	No	Yes	No	No
France	Yes	Yes	Yes	Yes
Germany	Yes	Yes	Yes	No
Hungary	Yes	Yes	No	No
Ireland	Yes	No	N/A	N/A
Israel	Yes	No	N/A	N/A
Italy	Yes	Yes	Yes	No
Japan	No	Yes	No	No
Kazakhstan	No	No	N/A	N/A
Korea	No	Yes	No	No
Latvia	Yes	Yes	No	No
Lithuania	Yes	No	N/A	N/A
Luxembourg	Yes	Yes	No	No
Mexico	Yes	Yes	No	No
Morocco	Yes	Yes	No	No
Netherlands	Yes	Yes	Yes	Yes
New Zealand	No	Yes	No	No
Norway	Yes	Yes	Yes	Yes
Peru	No	Yes	No	No
Poland	Yes	Yes	Yes	No
Slovak Republic	No	No	N/A	N/A
Slovenia	Yes	No	N/A	N/A
Spain	Yes	Yes	No	No
Sweden	No	Yes	No	No
Switzerland	Yes	Yes	Yes	Yes
Turkey	No	Yes	No	No
United Kingdom	Yes	Yes	Yes	Yes
United States	Yes	Yes	Yes	No
<b>Total</b>	<b>26</b>	<b>31</b>	<b>15</b>	<b>10</b>

*Note:* This table does not list NCPs which do not have RoP and have not closed specific instances since 2011.

*Note:* \* denotes that follow up is not mentioned in the NCP's RoP but in its constitutive act.



In terms of the types of case outcomes which may give rise to follow up, the RoPs of 17 NCPs include the possibility to follow up on both recommendations and agreements reached by the parties.<sup>9</sup> The RoP of 3 NCPs provide that the NCP will or may follow up on recommendations, but not on agreements.<sup>10</sup> The RoP of seven NCPs provide that the NCP will or may follow up on agreements, but not on recommendations.<sup>11</sup>

RoP vary with regard to the discretion given to the NCP to plan or perform follow up. In their majority, RoP provide that follow up is at the discretion of the NCP. For example, the RoP of the US NCP indicate that follow up “will be entirely within the discretion of the U.S. NCP and will only be done on an exceptional basis, if the U.S. NCP determines this appropriate, and only as the U.S. NCP’s resources allow.”<sup>12</sup> The RoP of 12 NCPs require that the parties consent to, or request, follow up.<sup>13</sup> Among these, the RoP of three NCPs explicitly require, as indicated in the Guidelines, that follow up on an agreement be requested by the parties, whereas follow up on recommendations can be performed on the initiative of the NCP.<sup>14</sup> Nonetheless, the RoP of eight NCPs<sup>15</sup> make follow up a “standard practice”<sup>16</sup> that the NCP is required to follow, the other.

Regarding the process through which follow up should take place, the RoP of six NCPs<sup>17</sup> contain details on the steps that the NCP must follow in conducting follow up, the respective involvement of the parties and information to be provided, or indicative time frames (see Annex A). The RoP of other NCPs are silent in this regard.

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<sup>9</sup> The NCPs of Australia, Austria, Belgium, Canada, Chile, Denmark, Germany, Hungary, Israel, Italy, Latvia, Netherlands, Norway, Slovenia, Switzerland, United Kingdom, and United States.

<sup>10</sup> The NCPs of Costa Rica, France and Morocco.

<sup>11</sup> The NCPs of Finland, Ireland, Lithuania, Luxembourg, Mexico, Poland, and Spain.

<sup>12</sup> See also Israeli NCP’s RoP.

<sup>13</sup> The NCPs of Austria, Belgium, Hungary (for cases concluded with agreement), Ireland, Israel, Italy (for cases concluded with agreement), Mexico, Poland, Spain, Switzerland, United Kingdom (for cases concluded with agreement), United States.

<sup>14</sup> The NCPs of Hungary, Italy and the United Kingdom.

<sup>15</sup> The NCPs of Chile (only for cases not resulting in agreement) Denmark, Latvia, Lithuania, Luxembourg, the Netherlands, Norway, Slovenia (only for cases resulting in agreement), and the United Kingdom (only for cases not resulting in agreement).

<sup>16</sup> See rules of procedures of the Dutch NCP: “4. Provide follow-up services -- Following the completion of a procedure for a specific instance, the NCP requests all parties to provide the NCP with information on any progress regarding implementation of the agreements and/or recommendations. As standard practice, the NCP will publish a brief evaluation of the implementation of the agreements and/or recommendations on the website one year after the publication of the final statement.”

<sup>17</sup> The NCPs of Australia, Denmark, Norway, Poland, Slovenia and United Kingdom.

In order to complement the succinct provisions of their RoP, the NCPs of France and the United States chose to provide further details in informational documents. For example, in order to complement its RoP that only include a short provision allowing the NCP to follow up on recommendations if it deems it necessary, the French NCP then included more details on the procedure followed in its explanatory note (“fiche explicative”) on the specific instance process.<sup>18</sup>

Table 2 below presents an analytical overview of specific instances in which follow up was planned and/or performed by NCPs. It shows that, out of 230 concluded specific instances in the sample (accepted and not accepted), follow up was planned and/or performed in 42 specific instances (18%). In a significant proportion of specific instances (24 out of 42, or 57%), NCPs have planned or performed follow up in specific instances resulting into agreements between the parties.

Of the 42 specific instances that involved follow up, 30 included recommendations. This reflects the fact that NCPs frequently formulate recommendations in specific instances resulting in agreement.<sup>19</sup> In these cases, NCPs may therefore follow up both on the agreement and on its recommendations.

Given that 97 specific instances of the sample contain recommendations, follow up was planned or performed slightly less than a third of the time (30/97, or 31%). Taking into consideration only the 42 specific instances in the sample in which agreement was reached within the NCP process, follow up was planned or performed over half of the time (24/42, or 57%). It can be observed that final statements planning follow up seem to have become more frequent in recent years. For example, in the ten cases accepted and concluded so far in 2019, eight final statements include plans for follow up (80%).<sup>20</sup>

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<sup>18</sup> See <https://www.tresor.economie.gouv.fr/Ressources/File/437213>, p. 2. See also the US NCP’s website, which provides additional details not contained in the RoP as to the duration and confidential character of the follow up: <https://www.state.gov/e/eb/oecd/usncp/specificinstance/index.htm>.

<sup>19</sup> OECD (2019) Scoping paper: Recommendations and Determinations in Specific Instances [DAF/INV/NCP(2018)46/FINAL], p. 15.

<sup>20</sup> “Australian Women Without Borders against Mercer PR” (Australian NCP); “DIAM International and Birlesik Metal-Is in Turkey” (French NCP), “ING Bank and NGOs concerning climate policy” (Dutch NCP), “Grupa OLX and Frank Bold Foundation” (Polish NCP), “Group PZU S.A. and Development YES – Open-Pit Mines NO Foundation” (Polish NCP), “Roundtable for Sustainable Palm Oil and TUK Indonesia: Land Conflict in Indonesia” (Swiss NCP), “Chima Williams & Associates (CWA) et al. and ENI S.p.A” (Italian NCP), “Crédit Suisse and Society for Threatened Peoples Switzerland (North Dakota Access Pipeline)” (Swiss NCP).

**Table 2. Analytical table of specific instances in which follow up was planned or performed**

	Specific instance	Lead NCP	Year closed	Agreement	Recommendations	Timeframe	Public follow up statement
1.	Agricultural sector in Argentina	Netherlands	2012	✓		1 year	✓
2.	Michelin Group, and four NGOs and a trade union	France	2013		✓	1 year (round 1) 18 months (round 2)	✓
3.	Fisheries and fish processing in Western Sahara	Norway	2013	✓		10 months	
4.	Freedom of representation in France*	France	2014		✓	1 year	
5.	Agro-industrial sector in Cameroon	France	2014	✓	✓	6 months (round 1) 1 year (round 2) 1 year (round 3)	✓
6.	UNI Global Union (UNI), International Transport Workers' Federation (ITF) and Deutsche Post DHL	Germany	2014	✓	✓	Periodically for 2 years, extended and still ongoing <sup>21</sup>	
7.	Displacement of local populations and environmental degradation in Bangladesh	United Kingdom	2014		✓	6 months	✓
8.	Supplying of surveillance equipment in Bahrain	United Kingdom	2014		✓	11 months	✓
9.	Hydropower development in Malaysia	Norway	2015	✓	✓	No time limit <sup>22</sup>	✓
10.	Alleged general policy breaches in Israel and the Palestinian Authority	United Kingdom	2015		✓	1 year	✓
11.	Intimidation and bribery in Cameroon	United States	2015	✓		1 year	
12.	Etex, Building and Wood Workers' International (BWI) and Ceramic Workers' Union of the Republic of Argentina (FOCRA)	Belgium	2016		✓	6 months (round 1) 18 months (round 2)	✓
13.	Socfin Group/Socapalm and Sherpa concerning operations in Cameroon	Belgium	2016		✓	1 year	✓
14.	Kinross Brasil Mineração and Paracatu neighboring associations	Brazil	2016	✓	✓	None	
15.	PWT Group and the NGOs Clean Clothes Campaign Denmark and Active Consumers	Denmark	2016		✓	1 year	✓
16.	Atradius Dutch State Business (ADSB) and NGOs	Netherlands	2016	✓	✓	10 months	✓
17.	Mylan N.V. and an individual, Mr. Bart Stapert	Netherlands	2016	✓	✓	11 months	✓
18.	Rabobank, Bumitama Agri Group (BGA) and the NGOs Friends of the Earth Europe and Friends of the Earth Netherlands/Milieudefensie	Netherlands	2016	✓	✓	13 months	✓
19.	Eurasian Natural Resources Corporation (ENRC) and the NGOs Rights and Accountability in Development (RAID) and Action Contre l'Impunité pour les Droits Humains (ACIDH)	United Kingdom	2016		✓	1 year	✓
20.	Starwood Hotels & Resorts Worldwide and IUF	United States	2016	✓	✓	1 year	
21.	Ansell Limited and IndustriALL Global Union regarding activities in Sri Lanka and Malaysia	Australia	2017	✓	✓	2 years	✓
22.	Andritz Hydro GmbH and Finance and Trade Watch Austria	Austria	2017	✓	✓	1 year	✓
23.	Gold mining in Mali	Canada	2017		✓	9-12 months	
24.	Banro Corporation and group of former employees	Canada	2017		✓	3-6-12 months	✓

	Specific instance	Lead NCP	Year closed	Agreement	Recommendations	Timeframe	Public follow up statement
25.	Fédération Internationale de Football Association (FIFA) and Building and Wood Workers' International (BWI)	Switzerland	2017	✓		6-9 months	✓
26.	Holcim and NGO consortium	Switzerland	2017	✓	✓	6 months	
27.	Human Rights of the Baka people in environmentally protected areas Cameroon	Switzerland	2017		✓	6 months	
28.	Alleged impacts on local populations of an oil and gas facility in Kazakhstan	United Kingdom	2017		✓	18 months	✓
29.	ANZ Banking Group, and Inclusive Development International and Equitable Cambodia	Australia	2018	✓		1 year	N/A
30.	Danish Ministry of Defence in regard to the contracting and building of the inspection vessel Lauge Koch	Denmark	2018	✓		1 year	
31.	Vinci and Vinci Airports and ITUC in Cambodia	France	2018		✓	6-12 months	N/A
32.	TÜV Rheinland and European Center for Constitutional and Human Rights	Germany	2018		✓	1 year	N/A
33.	FS FIVAS, the Initiative to Keep Hasankeyf Alive and Hasankeyf Matters vs Bresser	Netherlands	2018		✓	1 year	N/A
34.	Hou Friesland Mooi vs. Nuon Energy N.V.	Netherlands	2018	✓	✓	1 year	N/A
35.	Mercer PR and Australian Women Without Borders	Australia	2019		✓	6 months	N/A
36.	DIAM International and Birlesik Metal-Is in Turkey	France	2019		✓	6-12 months	N/A
37.	ING Bank and NGOs concerning climate policy	Netherlands	2019	✓		1 year	N/A
38.	Group PZU S.A. and Development YES – Open-Pit Mines NO Foundation	Poland	2019	✓		1 year	N/A
39.	Grupa OLX and Frank Bold Foundation	Poland	2019	✓		10 months	N/A
40.	Roundtable for Sustainable Palm Oil and TUK Indonesia: Land Conflict in Indonesia	Switzerland	2019	✓		6 months	N/A
41.	Chima Williams & Associates (CWA) et al. and ENI S.p.A	Italy	2019	✓		No time limit	N/A
42.	Crédit Suisse and Society for Threatened Peoples Switzerland (North Dakota Access Pipeline)	Switzerland	2019	✓		6 months	N/A
<b>TOTAL</b>				<b>24</b>	<b>30</b>		<b>19</b>

*Note:* \* Denotes that follow up was conducted in a non-accepted case.

*Note:* The mention “N/A” in the last column indicates that no follow up statement has yet been issued because the time frame for follow up is still current.

<sup>21</sup> See final statement p. 12: “The NCP considers that the number of direct contacts of the complainants with the respondent could be increased to three-monthly meetings, so that the complainants could raise issues of concern regarding labour relations in a more direct way. [...] *The NCP will receive reports on these meetings in the next two years.*” Emphasis added

<sup>22</sup> See final statement, p. 1 : “The NCP will invite both parties to a follow-up meeting once a decision has been made with regards to one of the central issues of the case; the construction of the Baramdam, to give an update on the implementation of the joint statement.”

The frequency with which NCPs follow up on specific instances varies. The Dutch, French, Swiss and UK NCPs have followed up on four specific instances or more since 2011. As indicated above, the RoP of the Dutch and UK NCP require follow up to be performed as standard practice. Other NCPs follow up less frequently, reflecting the fact that follow up may not be considered useful by the NCP in all cases, or that certain circumstances – such as a request of the agreement of the parties – must be present to allow follow up.

The overwhelming majority of specific instances (41 out of 42) that involved follow up are accepted cases. Follow up was planned by the French NCP in one case that was not accepted. In that specific instance, the French NCP decided not to accept the case for further examination, since the object of the specific instance had disappeared (i.e. trade union mandates withdrawn by the company had been reinstated). The NCP however formulated recommendations and indicated that it would monitor the implementation of these recommendations within a year. This was done in an informal manner and no follow up statement was issued.

### *Correlation between the wording of recommendations and follow up*

This section discusses whether the way recommendations are drafted may have an impact on whether or not NCPs conduct follow up. As indicated above, follow up generally takes place in relation to accepted cases, and a related factor may be that of the specificity of the recommendations or of the agreement. NCPs in practice issue three types of recommendations: specific, medium-specific, and general.<sup>23</sup> Recommendations made in cases that were not accepted tend to be more general than those in accepted cases.<sup>24</sup>

The data shows that, among the 30 specific instances of the sample that contain recommendations, the recommendations were specific in 19 specific instances (63%), medium-specific in 7 specific instances (23%), and general in 4 specific instances (13%). These ratios are not aligned with the ratios of specific, medium-specific and general recommendations found in the entire sample.<sup>25</sup> This may suggest a correlation between the specificity of recommendations and the likelihood of follow up.

## **Process and outcomes of follow up**

### *Follow up process*

Analysis of RoP and follow up statements reveals that there are broadly three models for conducting follow up: in writing, in person, and a combination of both.

In writing follow up means that the NCP requests parties to submit a written report on the implementation of the agreement or the recommendations, and bases its follow up only on these written submissions. The submissions may be requested in the final statement itself, or by the NCP on the date specified in the final statement. As per its RoP, the UK NCP only uses this model.

<sup>23</sup> OECD (2019) Scoping paper: Recommendations and Determinations in Specific Instances [[DAF/INV/NCP\(2018\)46/FINAL](#)], p. 19.

<sup>24</sup> *Id.*, p. 20.

<sup>25</sup> 38% of accepted cases contain specific recommendations, 29% contain medium-specific recommendations, 32% contain general recommendations.

In person follow up means that the NCP invites the parties to a meeting where they can present their views on the implementation of the recommendations or the agreement. The NCP may decide to meet both parties together or separately.<sup>26</sup> The NCP will base its evaluation on the outcome of the meeting. Again, the meeting may be announced in the final statement itself, or be called by the NCP in advance of the date specified in the final statement. Although several NCPs have used this model, none use it exclusively.

The model used most frequently is that by which follow up takes place both in writing and in person. Namely, the NCP requests a written report from the parties before meeting them to discuss implementation. NCPs may specify that the meeting will take place via teleconference to limit the costs of participation for parties.<sup>27</sup>

As indicated above, RoP typically do not contain provisions as to the exact process through which follow up must take place. The above three models are therefore mainly the result of NCP practice, and NCPs frequently opt for one or the other model according to the particulars of the case at hand. For example, in one specific instance, the Belgian NCP conducted follow up in writing after the company indicated that it was not willing to participate in a meeting.<sup>28</sup>

Certain follow up processes are also determined by the parties themselves either in separate terms of reference, or in the agreement concluded within the NCP process (see Box 2).

### **Box 3. Follow up provisions in agreements mediated by NCPs**

#### **Fédération Internationale de Football Association (FIFA) and Building and Wood Workers' International (BWI) (Swiss NCP)**

The Parties agree to meet within nine months after the publication of the Final Statement under the auspices of the Swiss NCP. They will send a report about the progress made regarding the Joint Outcome to the Swiss NCP six months after the publication of the Final Statement. After reception of the reports, the Swiss NCP will organise a meeting with both Parties. Based on the reports and the discussion with the Parties, the Swiss NCP will decide about additional follow-up periods and/or meetings if needed. (Joint outcome, para. 18).

#### **UNI Global Union (UNI), International Transport Workers' Federation (ITF) and Deutsche Post DHL (German NCP)**

The NCP considers that the number of direct contacts of the complainants with the respondent could be increased to three-monthly meetings, so that the complainants could raise issues of concern regarding labour relations in a more direct way. These talks would

<sup>26</sup> It may happen that the NCP's plans in this regard be dictated by the parties. For example, in the case "Hydropower development in Malaysia" handled by the Norwegian NCP, the company declined to meet in the presence of the submitter, so the NCP heard the parties separately.

<sup>27</sup> Swiss NCP, "Roundtable for Sustainable Palm Oil and TUK Indonesia: Land Conflict in Indonesia".

<sup>28</sup> See Belgian NCP, "Etex, Building and Wood Workers' International (BWI) and Ceramic Workers' Union of the Republic of Argentina (FOCRA)".

be carried out in the mutual understanding that this does not grant the complainants an exclusive right to raise issues of labour relation to the respondent in relation to other representatives of the employees, in particular other unions engaged at local level. The NCP will receive reports on these meetings in the next two years.<sup>29</sup> It is understood that issues that could not be settled to the complainants' satisfaction could be raised at the NCP pursuant to the OECD Guidelines' procedure in specific instances. (Joint final statement, p. 12)

The most frequent time frame within which follow up takes place is about one year after the date of the final statement. This one year time frame is often specified in RoPs. A few specific instances plan follow up after 6 or 18 months. Again, NCPs often choose different time frames depending on the particular circumstances of the case. NCPs may also opt for a phased process including several deadlines for, e.g., written submission and meetings.<sup>30</sup> It should be noted that the time frames need to be extended regularly due to lack of response by the parties, or to their lack of availability to attend meetings.

Finally, in virtually all instances of follow up, both parties are meant to be involved, even though it may happen that one of them fails to respond or declines to participate.<sup>31</sup>

### *Follow up outcomes*

Outcomes of follow up may also vary. Table 2 shows that, in 19 out of 40 specific instances, follow up resulted in a written public statement from the NCP. In nine specific instances, no follow up statement or written record of the follow up was issued, signalling either that no follow up took place, or that the NCP conducted follow up but did not publicly report on it. In one specific instance, the Norwegian NCP published the agenda of the follow up meeting it organised, but no follow up statement as such. In one specific instance, the Australian NCP did publish a follow up statement even though the final statement did not explicitly plan for follow up.<sup>32</sup>

The RoPs of seven NCPs make it mandatory for the NCP to issue a public statement on follow up,<sup>33</sup> while the RoPs of four NCPs leave this to the discretion of the NCP.<sup>34</sup> On its website, the US NCP specifies that the parties' reports on implementation are confidential,<sup>35</sup> and therefore the US NCP did not publish a follow up statement in the two specific instances in which it planned follow up. In certain cases, NCPs have indicated in

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<sup>29</sup> This time frame was extended through a specific protocol in 2016 until end of 2017 and a second time until end of 2019.

<sup>30</sup> See German NCP, Human rights violations in various countries (German NCP).

<sup>31</sup> For instance, in the case “Kinross Brasil Mineração and Paracatu neighboring associations”, the Brazil NCP requested feedback from the company, which failed to respond.

<sup>32</sup> Australian NCP, “Ansell Limited and IndustriALL Global Union regarding activities in Sri Lanka and Malaysia”.

<sup>33</sup> The NCPs of Denmark, Latvia, Lithuania, Luxembourg, the Netherlands, Slovenia (only for cases concluded with agreement) and the United Kingdom.

<sup>34</sup> The NCPs of Australia, Canada, France, and Italy.

<sup>35</sup> <https://www.state.gov/e/eb/oecd/usncp/specificinstance/index.htm>

the final statement itself that they will conduct follow up by requesting implementation reports from the parties, while reserving the right to decide whether to publish a statement if deemed appropriate.<sup>36</sup>

The contents of follow up statements vary widely, from a succinct one page summary,<sup>37</sup> to detailed reports assessing in-depth the implementation of each recommendation.<sup>38</sup>

This variation shows that NCPs may have different views as to the actual purpose of follow up and the level of intensity it requires. Certain follow up statements focus on transparency, and seek to offer stakeholders and the public an account of the positions of the parties and of the situation on the ground.<sup>39</sup> Other follow up statements view follow up as the continuation of the good offices,<sup>40</sup> which may be the occasion of engaging again substantively with the parties and formulating additional recommendations.<sup>41</sup> Certain NCPs leave some discretion to the parties as to the purpose of the follow up. For example, the Italian NCP offers parties to cases resulting in agreement the possibility to assist them in the implementation of the agreement.<sup>42</sup> In one case, parties chose not to request the assistance of the NCP in implementing their agreement, but in its final statement the NCP still reserved the “possibility to ask the Parties for information on the steps taken and the results achieved in the implementation of the agreement, and to publish this piece of information on its website.”<sup>43</sup>

NCPs generally include their own assessment as to the status of implementation of the recommendations, and therefore follow up can play a role in holding the company accountable in case it fails to satisfactorily implement recommendations or an agreement. For example, the Dutch NCP names its follow up statements “evaluations”, while the UK NCP reaches “conclusions” in its statements, which are labelled “decisions” on its website,<sup>44</sup> and which occasionally criticise the company.<sup>45</sup>

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<sup>36</sup> See e.g. Swiss NCP, “Holcim and NGO consortium”; French NCP, “Vinci and Vinci Airports and ITUC in Cambodia”.

<sup>37</sup> See Dutch NCP, “Agricultural sector in Argentina”.

<sup>38</sup> See French NCP, “Michelin Group, and four NGOs and a trade union”

<sup>39</sup> See Norwegian NCP, “Hydropower development in Malaysia”.

<sup>40</sup> This is explicit in the follow up statements of the cases “Rabobank, Bumitama Agri Group (BGA) and the NGOs Friends of the Earth Europe and Friends of the Earth Netherlands/Milieudefensie” (Dutch NCP), “Andritz Hydro GmbH and Finance and Trade Watch Austria” (Austrian NCP). See also “Ansell Limited and IndustriALL Global Union regarding activities in Sri Lanka and Malaysia” (Australian NCP).

<sup>41</sup> Dutch NCP, “Mylan N.V. and an individual, Mr. Bart Stapert”.

<sup>42</sup> See Italian NCP, “Handbook for the management of the specific instances submitted to the Italian National Contact Point”, p. 17.

<sup>43</sup> Italian NCP, “Chima Williams & Associates (CWA) et al. and ENI S.p.A”.

<sup>44</sup> UK NCP, “Eurasian Natural Resources Corporation (ENRC) and the NGOs Rights and Accountability in Development (RAID) and Action Contre l’Impunité pour les Droits Humains (ACIDH)”.

<sup>45</sup> See Follow up statement to the case “Supplying of surveillance equipment in Bahrain” (UK NCP) para. 11: “Gamma’s failure to engage is therefore an individual choice rather than an unavoidable



Beyond the reputational rewards or costs which can be attached to follow up for a company, in a few cases positive or negative consequences may be formally attached to an NCP's conclusions as a result of follow up. An example of a positive consequence is given by the Danish NCP, whose RoP allow it to delete a final statement from its website if the company complies with the recommendations or the agreement.<sup>46</sup> The Danish NCP applied this procedure in one case, for which the final statement was removed from the website and replaced with a follow up statement indicating that the company had complied with the NCP's recommendations.<sup>47</sup>

An example of a negative consequence is given by the Canadian NCP which, faced with the lack of response from a company to its reporting requests, stated that this lack of constructive engagement would be taken into consideration should the company later apply for Trade Commissioner Service (TCS) or trade advocacy support provided by Canada's diplomatic missions abroad.<sup>48</sup> Likewise, the German National Action Plan on Business and Human Rights provides that participation in grievance proceedings initiated before the NCP will be taken into consideration in evaluating applications to benefit from foreign trade promotion.<sup>49</sup> This may give the German NCP leverage in ensuring that companies participate in any follow up process.

## Opportunities and challenges related to follow up

### *Opportunities*

NCPs shared that follow up falls squarely within the NCP's mandate and role as a non-judicial grievance mechanism. It has the potential to further the effectiveness of the Guidelines by encouraging parties to stay engaged with the issues and companies to implement recommendations and agreements adopted in accordance with the Guidelines. As indicated above, follow up is, for some NCPs, an opportunity to prolong good offices and ensure implementation of the recommendations over the long term. For example, an NCP shared that, in a specific instance which resulted in an agreement requiring to report on implementation to the NCP, the parties decided to extend such reporting after the expiry

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result of the nature of its business. It is a choice that is likely to leave Gamma open to further complaints and challenges, as well as to negative assumptions from stakeholders.”

<sup>46</sup> Executive Order of 18/09/2012 on a Mediation and Complaints-Handlings Institution for Responsible Business Conduct, Section 13 (7) for follow up on agreements and Section 14 (4) for follow up on recommendations.

<sup>47</sup> See the follow up statement to the case “PWT Group and the NGOs Clean Clothes Campaign Denmark and Active Consumers” (Danish NCP), p. 2: “through extensive efforts and the additional initiatives planned, PWT has complied with recommendations of the NCP to such an extent that the final statement of 16 October 2016 can be removed from NCP's website.”

<sup>48</sup> See the follow up statement to the case “Banro Corporation and group of former employees” (Canadian NCP), para. 19.

<sup>49</sup> See p. 18.

of the reporting period foreseen in the agreement. Additionally, some NCPs use the follow up phase as an opportunity to formulate further recommendations.<sup>50</sup>

This process also increases the NCP's visibility by showing continued activity in relation to specific instances it handles, but it also enhances the transparency of the process when follow up statements are published. It may also be an occasion for the NCP to clarify, interpret or refine its final statement, or to set the record straight when one of the parties communicates on the specific instance in ways that do not accurately reflect its outcome.<sup>51</sup>

Recognising that it may take time for the company to bring concrete changes and deliver measurable results by implementing the recommendations, follow up also helps gain an insight into the actual effectiveness of the specific instance mechanism in particular cases by providing indications regarding change on the ground. In this regard, out of the 19 follow up statements examined, ten conclude that implementation of the recommendations or agreement was satisfactory or very satisfactory,<sup>52</sup> four conclude that results are mixed,<sup>53</sup>

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<sup>50</sup> See Dutch NCP, "Mylan N.V. and an individual, Mr. Bart Stapert" and Belgian NCP, "Etex, Building and Wood Workers' International (BWI) and Ceramic Workers' Union of the Republic of Argentina (FOCRA)" (2<sup>nd</sup> round).

<sup>51</sup> See the follow up statement in the case "Alleged general policy breaches in Israel and the Palestinian Authority" (UK NCP), para. 24: "The UK NCP does not advise parties on their own statements, and recognises that parties will inevitably refer publicly to its statements in a way that plays to their own interests and stakeholders. However, the UK NCP notes that G4S's public response to the UK NCP's findings and recommendations was an early opportunity to signal the seriousness of its intention to address them. It is disappointing that G4S did not take this opportunity. See also Norwegian NCP, Case "Fisheries and fish processing in Western Sahara", "Reflections on the process", available at [https://nettsteder.regjeringen.no/ansvarlignaringsliv2/files/2013/12/Sj%C3%B8vik\\_KPs-refleksjoner\\_en.pdf](https://nettsteder.regjeringen.no/ansvarlignaringsliv2/files/2013/12/Sj%C3%B8vik_KPs-refleksjoner_en.pdf), para. 4.

<sup>52</sup> Dutch NCP, "Agricultural sector in Argentina"; French NCP, "Michelin Group, and four NGOs and a trade union" and "Agro-industrial sector in Cameroon"; Dutch NCP, "Atradius Dutch State Business (ADSB) and NGOs", "Mylan N.V. and an individual, Mr. Bart Stapert", "Rabobank, Bumitama Agri Group (BGA) and the NGOs Friends of the Earth Europe and Friends of the Earth Netherlands/Milieudefensie"; Danish NCP "PWT Group and the NGOs Clean Clothes Campaign Denmark and Active Consumers"; Austrian NCP, "Andritz Hydro GmbH and Finance and Trade Watch Austria"; Swiss NCP, "Fédération Internationale de Football Association (FIFA) and Building and Wood Workers' International (BWI)"; UK NCP, "[Alleged impacts on local populations of an oil and gas facility in Kazakhstan](#)"

<sup>53</sup> UK NCP, "Alleged general policy breaches in Israel and the Palestinian Authority" and "Eurasian Natural Resources Corporation (ENRC) and the NGOs Rights and Accountability in Development (RAID) and Action Contre l'Impunité pour les Droits Humains (ACIDH)"; Belgian NCP "Etex, Building and Wood Workers' International (BWI) and Ceramic Workers' Union of the Republic of Argentina (FOCRA)" and "Socfin Group/Socapalm and Sherpa concerning operations in Cameroon"

and three conclude that implementation has been entirely or largely unsatisfactory.<sup>54</sup> Two statements do not reach any conclusion.<sup>55</sup>

Overall, following up on specific instances has the potential to increase the confidence of stakeholders in the process.

Finally, follow up may open avenues for policy coherence, as NCPs are able to inform other government departments of the concrete results of specific instances and of the conduct of certain companies. For example, Canada's follow up on a specific instance allowed it to identify a company which may not deserve to benefit from the Trade Commissioner Service (TCS) or trade advocacy support provided by Canada's diplomatic missions abroad. Likewise, the UK NCP's RoP provide that the NCP "will [...] provide a copy of the Follow Up Statement to the [...] Minister with responsibility for the OECD Guidelines."

NCPs however shared that follow up was not necessary or appropriate in every case, and signalled that, whenever their RoP lend them discretion to conduct follow up or not, and/or to publish a follow up statement or not, they would consider whether doing so would have any added value. For example, an NCP may not conduct follow up if it considers that the issues are effectively solved at the time it publishes its final statement.<sup>56</sup> Likewise, the NCP may delay follow up or the publication of a statement if it considers that the implementation of the agreement or recommendations are underway but not yet ready to be evaluated.

### *Challenges*

Follow up is also associated with a number of challenges. The first challenge in the follow up process is the drafting of agreements and recommendations in ways that are amenable to monitoring and evaluation, and therefore to a serious follow up process and a solid conclusion as to implementation.

As indicated above, drafting recommendations in specific terms will make follow up easier and more credible. Regardless of whether follow up subsequently takes place, specificity in recommendations is identified as good practice by NCPs, and guidance is available elsewhere on this.<sup>57</sup> Specificity is also good practice for the drafting of agreements and, when appropriate, NCPs should assist parties or instruct mediators in this regard. The Norwegian NCP's RoP contain useful guidance regarding the need to draft agreements in specific language, using verifiable benchmarks (see Annex A).

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<sup>54</sup> UK NCP, "Displacement of local populations and environmental degradation in Bangladesh" and "Supplying of surveillance equipment in Bahrain"; Canadian NCP, "Banro Corporation and group of former employees".

<sup>55</sup> Norwegian NCP, "Hydropower development in Malaysia"; Australian NCP, "Ansell Limited and IndustriALL Global Union regarding activities in Sri Lanka and Malaysia"

<sup>56</sup> See e.g. French NCP, "Natixis and Unite Here", which concerned due diligence in the financial sector (asset management), the issue being that workers of an asset (a hotel) were prevented to unionise. After the asset manager exercised due diligence, a unionisation campaign took place at the hotel and a collective bargaining agreement was adopted, following which all workers have been allowed to join a union when the NCP published its final statement.

<sup>57</sup> OECD (2019) Scoping paper: Recommendations and Determinations in Specific Instances [[DAF/INV/NCP\(2018\)46/FINAL](#)], pp. 25-26.

As indicated above, the Procedural Guidance identifies follow up as an optional practice, and most NCPs have significant discretion as to whether or not to conduct follow up, and as to the kind of process and outcome that will be used. Such flexibility sometimes makes unclear why an NCP plans or performs follow up in one specific instance and not in another. This in turn may lead to a perception of lack of impartiality or predictability among stakeholders or the public. It may therefore be useful for the NCP to justify why it chooses to conduct follow up or not, or why it opts for a particular follow up process or method. Alternatively, RoP could further define the criteria which should guide NCP decisions regarding follow up. In this regard, the US and Israeli NCPs' rules of procedure succinctly include such criteria by spelling out that follow up will be exceptional and depend on the NCPs' resources.

In addition, follow up can be difficult since the parties may no longer be following the specific instance closely, leading the NCP to have to send several reminders to obtain input. In certain specific instances, one or the other party may refuse to engage or respond or may place conditions on its participation.<sup>58</sup> This may mean that the NCP makes additional decisions as to how to proceed with follow up even with limited information, or what consequences to attach to non-participation.

RoP do not contain guidance on how to handle these situations, but rather assume that parties will engage. NCPs have therefore developed certain practices to respond to this challenge. The UK NCP, for example, proceeds with follow up based on the information made available to it, even if one of the parties failed to report. The Canadian NCP on one occasion partly based its follow up report on publicly available information, and concluded by triggering a "sanction" against the company for failing to engage in follow up. For some NCPs, there may however be little recourse against non-cooperative parties. For example, the Brazil NCP was not able to obtain that a company report on its implementation of an agreement, as the possibility to follow up on a specific instance is not provided for by its RoP. When parties do submit information, a challenge for the NCP may also be to handle possible requests for confidentiality made by the parties in respect of their submission, and therefore to issue appropriate rules in this regard.

An additional challenge presents itself when parties submit contradictory information regarding implementation. Verifying the veracity of each submission and/or engaging in thorough fact-finding represents a significant additional burden. This challenge is dealt with differently by NCPs. The UK NCP, for instance, has in one follow up statement noted that significant discrepancies existed between the accounts of the different parties, and made conclusions based on areas of the submissions on which there was sufficient overlap.<sup>59</sup> In other cases, combining written submissions and meetings with the parties can

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<sup>58</sup> See the follow up statement to the case "Eurasian Natural Resources Corporation (ENRC) and the NGOs Rights and Accountability in Development (RAID) and Action Contre l'Impunité pour les Droits Humains (ACIDH)" (UK NCP), para. 7: Subsequent requests from both sides to review information submitted by the opposite party, along with some additional delay in response by the NCP, resulted in the timetable for the publication of findings being set back.

<sup>59</sup> *Id.*, para. 23: "The UK NCP notes there are significant differences in the responses it received from the 2 parties. However, the main conclusion the UK NCP draws from the responses is that not all of the suggestions in the original recommendations - set out in the final statement of February 2016 - have been implemented effectively and that there are still a number of outstanding issues which will need to be addressed by the company in relation to both communities." See also Dutch

be very useful for identifying disagreement, and clarifying facts with the parties.<sup>60</sup> In one specific instance handled by the French and Belgian NCP, the parties agreed to set up independent verification mechanisms in their agreement, on which the NCPs would rely in their follow up. These mechanisms were finally not put in place. Without access to reliable information, the Belgian NCP noted in its follow up statement that any progress reported by the company was “impossible to validate”.

Finally, given that specific instances often address ongoing situations that may take a significant amount of time to improve, there may be calls for the NCP to continue follow up until the issues are fully resolved. In most specific instances examined, follow up was a one-time event resulting in the issuance of one follow up statement before closing the specific instance definitively. The French and Belgian NCPs have held several “rounds” of follow up,<sup>61</sup> issuing after each round a follow up report containing an in-depth appraisal of the implementation of their recommendations. In this specific instance, follow up was an important tool to seek to maximise the effectiveness of the NCP’s good offices, and that the companies were held accountable for ultimately failing to implement some of the recommendations.

## Conclusion

This mapping of NCP practices regarding follow up has shown that these are in a process of development and consolidation. The study of both Rules of Procedures, final statements and follow up statements showed wide variation in the frequency with which NCPs conduct follow up, the discretion that NCPs have in conducting follow up and publishing follow up statements, as well as in the processes and outcomes of follow up by NCPs.

Follow up is a strong tool to ensure the effectiveness of the specific instance process, and NCPs have shared that they considered it an important part of their role as a non-judicial grievance mechanism. The effectiveness gains from follow up can stem from the fact that follow up gives the NCP an opportunity to promote its work and the results achieved. Follow up may also allow the NCP to encourage the parties to stay engaged on the issues and to keep the company accountable in case it fails to implement recommendations or an agreement. This is particularly true when positive or negative consequences (such as the loss of access to export credit or economic diplomacy) are attached to follow up.

Challenges are also associated with follow up, in particular the fact that follow up adds to the burden of NCPs, many of which do not have the time resources to conduct extensive follow up, or to engage in fact-finding in cases of disagreement between the parties. Moreover, follow up can be hindered by the lack of willingness of certain parties to report on progress or attend follow up meetings.

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NCP, “Rabobank, Bumitama Agri Group (BGA) and the NGOs Friends of the Earth Europe and Friends of the Earth Netherlands/Milieudefensie”.

<sup>60</sup> Australian NCP, “Ansell Limited and IndustriALL Global Union regarding activities in Sri Lanka and Malaysia”.

<sup>61</sup> French NCP, “Michelin Group, and four NGOs and a trade union” and “Agro-industrial sector in Cameroon”; Belgian NCP, “Socfin Group/Socapalm and Sherpa concerning operations in Cameroon” and “Etex, Building and Wood Workers’ International (BWI) and Ceramic Workers’ Union of the Republic of Argentina (FOCRA)”.

## Annex A. Provisions on follow up in NCP rules of procedure

**Table A.1. Annex A. Provisions on follow up in NCP rules of procedure**

<b>Australia</b>	<p>7.1. The Examiner will specify a timeframe for follow-up on the case in the final statement, provided this is appropriate in the context of the issues involved. The objective of any follow-up process will be to examine the extent to which the recommendations in the final statement have been implemented and whether any further engagement from the Examiner or AusNCP is warranted.</p> <p>7.2. In these cases, the Examiner will request an update from both parties on developments since the completion of the final statement.</p> <p>7.3. The Examiner will publish a further statement with a summary of the updates received and any commentary on the matter that they consider relevant, including on the extent to which recommendations made in the Final Statement or any mediated outcome have been implemented. They may also recommend an additional follow-up period, where they consider this useful.</p> <p>7.3.1. Consistent with Paragraph 6.4, at the conclusion of each follow-up process, the Independent Examiner may draw instances of inappropriate conduct to the attention of other government agencies through the AusNCP Secretariat.</p> <p>7.4. Once the Examiner has drafted their follow-up statement, the Board will be provided with a copy for review and advice. The Examiner is not required to make changes in response to the views of the Board, but may do so at their discretion.</p> <p>7.5. The draft follow-up statement will then be provided to both parties for comment. The Examiner may make changes at their discretion.</p> <p>7.6. Each follow-up statement will be published on the AusNCP website and shared with the parties, members of the Board and relevant Australian government agencies.</p>
<b>Austria</b>	3.16. In consultation with the parties, specific follow-up activities (Follow-Up) between the parties can be carried out upon conclusion of the proceedings, which will be accompanied by the Austrian NCP
<b>Belgium</b>	4 <sup>th</sup> Stage: The NCP can also make recommendations for implementing the OECD Guidelines which it includes in the statement. In addition, in agreement with the parties, it can provide for follow-up activities which it supports once the NCP procedure has been concluded.
<b>Canada</b>	12.6. If the NCP makes recommendations to the parties, the NCP may request parties to report back to the NCP on their response to these recommendations. The NCP may also request parties to report back to the NCP on the implementation of any agreement or commitments parties might have made during the proceedings. The timeframe for doing so will be addressed in the Final Statement of the NCP. The NCP may issue a follow-up statement.
<b>Chile</b>	<p>Si el PNC hace recomendaciones a las partes, deberá solicitarles que le informen sobre su respuesta a estas recomendaciones. Asimismo, puede solicitar a las partes que le informen sobre la implementación de cualquier acuerdo o compromiso que puedan haber hecho durante el procedimiento.</p> <p>El plazo para hacerlo se abordará en la Declaración Final del PNC. Adicionalmente, el PNC deberá emitir una declaración de seguimiento, donde debe abordar si los indicadores establecidos han sido cumplidos o no y cuáles son las posiciones de las partes al respecto.<sup>62</sup></p>
<b>Costa Rica</b>	XX. Follow up to final recommendation – When the NCP provides specific recommendations to the parties in the final communication, it may follow up on the response and compliance therewith.

<sup>62</sup> Unofficial translation provided by the Chilean NCP :

If the NCP makes recommendations to the parties, it will request them to provide information about their response to these recommendations. In addition, it can request the parties to provide information about the implementation of any agreement or commitments they may have made during the procedure.

The time frame for doing so will be addressed in the NCP's Final Statement. In addition, the NCP should issue a follow-up statement, which should address whether the established indicators have been met and what the parties' positions are on this issue. (p. 6)

**Denmark**

## Cases concluded with agreement

## Legislative act:

Section 7 (3): The Mediation and Complaints-Handling Institution follows up on the statement after one year and makes a new statement. This statement is also published.

## Executive order:

Section 13 (7): The Mediation and Complaints-Handling Institution follows up on whether any agreements set out in the mediation result have been complied with one year after the conclusion of the case, and makes a new statement by either acknowledging that the parties concerned have complied with any agreements in the mediation result, or by stating that this is not the case. If the parties have complied with the mediation result, the statement is deleted from the Institution's website, and the parties are informed thereof. If the parties have not complied with the mediation result, the statements remains on the website for maximum five years from the date of its publication. The Mediation and Complaints-Handling Institution may furthermore delete the statement from the Institution's website if there is no longer any basis for publication. The Mediation and Complaints-Handling Institution performs an annual follow-up on the statement.

## Cases concluded without agreement

## Legislative act:

Section 7 (6) The Mediation and Complaints-Handling Institution follows up on the statement after one year and makes a new statement. This statement is also published.

## Executive order:

Section 14 (4): One year after the publication of the statement, the Mediation and Complaints-Handling Institution follows up on whether any recommendations in the statement have been complied with, and will make a new statement by either acknowledging that the parties concerned have complied with the recommendations of the Mediation and Complaints-Handling Institution, or by stating that this is not the case. If the parties have complied with the recommendations, the statement is deleted from the Institution's website, and the parties are informed thereof. If the parties have not complied with the recommendations, the statement remains on the website for maximum five years from the date of its publication. The Mediation and Complaints-Handling Institution may furthermore delete the statement from the Institution's website if there is no longer any basis for publication. The Mediation and Complaints-Handling Institution performs an annual follow-up on the statement.

**Finland**

If the parties reach an agreement, the NCP will monitor its application. (p. 3)

**France**

32. If it deems necessary or useful, the NCP may monitor the follow-up to its recommendations after having closed the examination of the specific instance.

## Explanatory note:

Phase 4: If deemed necessary or useful, the NCP may review the follow-up given to its recommendations. It asks the parties to inform him of the development of the situation and actions they had committed undertaken to take. It dialogues with them and can meet them together or separately. This allows the NCP to note results obtained. The NCP may decide to issue a statement, the project of which is subject to consultation with the parties, before its final adoption by the NCP and its publication, after having informed the parties.



<b>Germany</b>	<p>Cases concluded with agreement</p> <p>46. [...] At the request of the parties, the NCP can help with the implementation of the agreement. It can take appropriate steps to follow up on the implementation of agreed solutions.</p> <p>Cases concluded without agreement</p> <p>50. The NCP can take appropriate steps to follow up on the implementation of its recommendations.</p>
<b>Hungary</b>	<p>Cases concluded with agreement</p> <p>If the parties agree, the HNCP includes in the report the content of the agreement or a part of it. Furthermore, the parties can agree to seek the assistance of the HNCP in following-up on the implementation of the agreement and also on its terms and conditions. That agreement can be included in the report as well. (p. 4)</p> <p>Cases concluded without agreement</p> <p>If the HNCP makes recommendations to the parties and deems it necessary to follow-up on them, the timeframe for doing so will be addressed in the HNCP statement. (p. 5)</p>
<b>Ireland</b>	Stage 3: The NCP's Final Statement will include the following: [...] the outcomes of any mediation in a statement agreed between the parties and including any follow up arrangements agreed by parties;
<b>Israel</b>	After conclusion of the proceedings, the Israeli NCP may consider the parties' requests for follow-up or supervision over performance of the agreement or the Israeli NCP's recommendations. However, such follow-up will only be done according to the Israeli NCP's discretion, and will be done extraordinarily, if the Israeli NCP determines there is need for the same, and only if the resources of the Israeli NCP allow for it. (p. 9)
<b>Italy</b>	<p>If the parties that have reached an agreement require the NCP to assist them in the implementation of the agreement, the NCP can do so in the terms arranged with the parties.</p> <p>In the case of a final statement containing recommendations addressed by the NCP to one or both parties, the NCP, when appropriate, verifies how they implement them, by requesting the parties – after one year from the publication of the declaration – to draw up a short report to be published on the NCP website.</p> <p>The NCP is entitled to publish on its website information on the steps taken and on the results achieved after the conclusion of the procedure. (p. 17)</p>
<b>Latvia</b>	Following the completion of a procedure for a Specific Instance, the NCP requests all parties to provide it with information on any progress regarding implementation of the agreements and/or recommendations. As a standard practice, the NCP will publish a brief evaluation of the implementation of the agreements and/or recommendations on the Latvian NCP website one year after the publication of the Final Statement.
<b>Lithuania</b>	40.1. If the mediation process ends with an agreement, within 12 months the Mediator (or if unavailable s–the Chair of the Lithuanian NCP or other Independent Expert appointed by him/her) invite the parties to a meeting to discuss how the agreement was implemented. After the meeting, the Secretariat shall publish the information about the meeting on the Lithuanian NCP's website and make it publicly available otherwise
<b>Luxembourg</b>	If the good offices offered by the Luxembourg NCP were accepted by the parties, or if the parties have themselves proposed and agreed on measures to solve the issues under the supervision or the monitoring of the Luxembourg NCP, the Luxembourg NCP will release a follow-up statement after 12 months addressing the state of compliance of the settlement agreed upon for the resolution of the issues raised.
<b>Mexico</b>	Although the final statement finishes the specific instance, the NCP may serve as an auxiliary body to follow up on the implementation of the agreements and commitments reached, if the parties agree so.
<b>Morocco</b>	Si le PCN formule des recommandations à l'intention des parties, il pourra être opportun, dans certains cas, qu'il vérifie ensuite auprès des parties comment elles ont réagi à ces recommandations. Si le PCN juge un tel suivi approprié, le calendrier de la procédure devra être indiqué dans son communiqué.
<b>Netherlands</b>	<p>4. Provide follow-up services</p> <p>Following the completion of a procedure for a specific instance, the NCP requests all parties to provide the NCP with information on any progress regarding implementation of the agreements and/or recommendations. As standard practice, the NCP will publish a brief evaluation of the implementation of the agreements and/or recommendations on the website one year after the publication of the final statement.</p>



<b>Norway</b>	<p>If the mediation was successful, the parties will often agree on some forward-looking measures. In such cases, it is recommended that the parties, with the assistance of the mediator, incorporate into the mediated agreement as concrete measures and specific formulations as possible regarding what is to be done, by whom, and by which deadlines. This is to create predictability regarding what follow-up the parties expect. The agreement should also clarify the parties' expectations of the NCP in the follow-up process. As a rule, the NCP will take the initiative to invite the parties to a follow-up meeting within a year to ask the parties to report on how useful the agreement is and on their respective part of any agreed follow-up measures. After the meeting, the NCP will announce that the meeting was held. The agenda and any reflections by the secretariat/NCP will usually also be enclosed with the announcement. In cases where mediation did not result in an agreement, but where the NCP issued a final statement containing recommendations to the company, the final statement may contain a deadline by which the parties must update the NCP on certain matters. For example, the company can be requested/encouraged to inform the NCP about its efforts, if any, to implement the recommendations. Any follow-up measures should be implemented within a year after publication of the final statement.</p>
<b>Poland</b>	<p>The NCP, as far as possible and to the extent the parties are willing to cooperate, will monitor the execution of the agreement.</p> <p>The final statement will stipulate a date by which the parties should provide the NCP with the first piece of information on progress in agreement execution and organizational changes related to the enterprise's procedure improvement, so as to avoid OECD Guidelines breaches in the future.</p> <p>The NCP contacts the enterprises in order to monitor the progress at least bi-yearly. Upon obtaining information about full or satisfactory implementation of the agreement for both parties, the NCP develops and publishes information thereof on its website, including:</p> <ul style="list-style-type: none"> <li>• designation of the specific instance, parties, and period during which it was considered</li> <li>• a summary of the concluded agreement</li> <li>• information on steps undertaken by the parties to implement the agreement</li> <li>• information on additional changes in the procedures of the enterprises, implemented in order to avoid OECD Guidelines breaches in the future</li> <li>• an explanation of the occurred situation, if execution of the agreement was conducted in a manner different than assumed, but the parties accepted such a state of affairs</li> </ul> <p>The NCP, as far as possible, will ensure the translation of the above-mentioned information into English and its publishing on those websites where the initial assessment or the final statement was previously published. (p. 6)</p>
<b>Slovenia</b> <sup>63</sup>	<p>Cases concluded with agreement:</p> <p>V primeru, da je bila mediacija uspešna in so stranke sklenile sporazum, bodo stranke običajno dogovorile določene ukrepe, ki se bodo izvedli po izdaji zaključne izjave. V tovrstnih primerih se priporoča, da stranke s pomočjo izbranega mediatorja določijo čim bolj konkretne ukrepe in specifične formulacije glede tega, kaj je potrebno storiti, kdo bo to storil in v kakšnem časovnem roku. To bo omogočilo, da se zagotovi predvidljivost glede tega, kakšen razplet stranke lahko pričakujejo. NKT Slovenija bo prevzela pobudo, da stranke povabi na sestanek, ki ga bo sklical NKT Slovenija v roku enega leta od izdaje zaključne izjave, na katerem se bo od strank zahtevalo, da poročajo o koristnosti doseženega dogovora, kot tudi o svojem delu pri izvajanju dogovorjenih ukrepov. Po končanem sestanku bo NKT Slovenija objavila, da je do tega sestanka prišlo.</p> <p>Cases concluded without agreement:</p> <p>V primerih v katerih se postopek mediacije ni zaključil s sklenitvijo sporazuma in je NKT Slovenija izdala zaključno izjavo v kateri so navedena priporočila podjetju, lahko zaključna izjava vsebuje rok do katerega morajo stranke NKT Slovenija seznaniti glede določenih točk v priporočilu podjetja. Primer: od podjetja se lahko zahteva oziroma se podjetje spodbuja, da obvesti NKT Slovenija o morebitnih ukrepih, ki jih le-to izvaja s ciljem uveljavitve zahtev navedenih v tem priporočilu.</p> <p>Vsi morebitni nadaljnji ukrepi v spremljevalni fazi morajo biti zaključeni v roku enega leta po objavi zaključne izjave.</p>
<b>Spain</b> <sup>64</sup>	<p>A petición de las partes, el PNC realizará el seguimiento del acuerdo alcanzado.</p>

<sup>63</sup> No English translation available.

<sup>64</sup> No English translation available.

**Switzerland**

The NCP may draw up recommendations for implementation of the OECD Guidelines, which are also included in the statement. In addition, in consultation with the parties, it can envisage specific follow-up activities, for which the NCP will provide support following completion of the specific instance procedure.

**United Kingdom**

6.1 Where the Final Statement includes recommendations to the company, it will also specify a date by which both parties are asked to provide the NCP with a substantiated update on the company's progress towards implementing these recommendations. The NCP will then prepare a Follow Up Statement reflecting the parties' response and, where appropriate, the NCP's conclusions thereon. The NCP will send a draft of the Follow Up Statement to parties and invite any factual comments within 10 working days. The NCP will, in its discretion, then incorporate any necessary factual changes before sending the finalised Follow Up Statement to the parties and publishing the finalised Follow Up Statement on the NCP's website. The NCP will also provide a copy of the Follow Up Statement to the BIS Minister with responsibility for the OECD Guidelines.

6.2 The NCP may also make a follow-up statement in cases where an agreement between the parties provides for this and sets an agreed follow-up date.

**United States**

Following the conclusion of the proceedings, the U.S. NCP may consider requests by the parties to follow-up or monitor the implementation of an agreement reached or recommendations made by the U.S. NCP. However, such monitoring will be entirely within the discretion of the U.S. NCP and will only be done on an exceptional basis, if the U.S. NCP determines this appropriate, and only as the U.S. NCP's resources allow.

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## Annex B. Stakeholder perspectives on follow up on specific instances

### *Business and Industry Advisory Committee to the OECD (BIAC)*

A successful follow up process very much depends on the trust which the parties have in the quality and fairness of the process. In a number of cases, follow up dialogue based on the recommendations can help improve trust and enhance the credibility and the effectiveness of the NCP process. There have been positive examples where companies have benefited from longer-term dialogue, which has enhanced internal changes in the business culture.

At the same time, it should be recognized that follow up depends on specific circumstances and on available resources. While acknowledging that follow up is not systematic and relevant in every case, for example when an issue has been effectively solved, it should be at the discretion of the NCP to decide, in discussion with the parties involved, whether follow-up would provide added value. This is particularly important when balancing tight resources. If follow-up is considered, what is being envisaged should be clearly spelled out (precise expectations, timeframe, follow up in writing or follow up meetings) bearing in mind the resource requirements both for the company and the NCP. The company concerned should be closely involved when follow up processes are discussed and determined within the process. The general provisions of good faith, constructive dialogue and a solution-focused approach should also apply to potential follow up actions. If follow up is decided, it should relate to the scope of the specific instance. The NCP should ensure that the confidentiality agreement regarding sensitive information remains valid during the follow up to a specific instance, even after completion of the procedure.

### *Trade Union Advisory Committee to the OECD (TUAC)*

Follow up is essential for implementing the parties' agreement or NCP recommendations. Whether or not mediation is successful, all final statements should include clear recommendations and provide meaningful remedy to affected parties. An NCP commitment to follow up gives a final statement more credibility and strengthens the process overall.

Trade unions generally include follow up as part of any resolution to a specific instance and will continue to do so. It is helpful when the NCP openly makes follow up a priority and requests to be updated on progress without necessarily involving itself in the details of the agreement itself. "Detailed reports assessing in-depth the implementation of each recommendation" (para. 40) would be an excessive and unnecessary level of involvement for an NCP in trade union cases.

A better approach would be to set a minimum standard, whereby the NCP asks the parties to provide a boilerplate form of evidence that the union and MNE would jointly provide periodically to verify actions are being taken that were agreed during the NCP mediation. Trade unions and MNEs are more than capable of assuming the burden of follow up in this way. The NCP, in turn, would not need to remain involved and expend additional resources. If requested, NCPs can rely upon trade unions and MNEs to jointly provide a form of evidence that its recommendations are being met.

### ***OECD Watch***

Follow up after the conclusion of NCP specific instances is vital to ensure the accountability of NCPs and the NCP process itself, and to ensure that complaints are handled in a manner compatible with the OECD Guidelines. OECD Watch is pleased that more NCPs are undertaking follow up. When NCPs commit to conduct follow up, they give weight to the findings and recommendations they have made, providing leverage to encourage companies to actually implement agreed action plans and recommendations. This helps ensure that the NCP process is accountable to parties and other stakeholders. An NCP's follow up statement should indicate whether and where the NCP process has led to effective change on the ground. Follow up should also identify whether all complainant groups (such as women) are benefitting equally from the agreement, and whether complainants have faced reprisals due to their involvement in the complaint. Critically, an NCP's follow up statement should document whether companies and complainants are actually implementing the actions they agreed to take and the recommendations the NCP gave them. If agreements and recommendations are not being met, the NCP must expose the shortcomings and also call on partner government offices to apply consequences to parties for their bad faith towards the NCP's good offices.

OECD Watch calls upon NCPs to undertake follow up six months to a year after each complaint is closed. Follow up should involve consultations with the complainants and site-visits when they are asked or required to verify whether recommendations are being implemented. Publication of follow-up statements is essential to increase the transparency and accountability of the NCP process and enable other injured parties to understand the mechanism and consider filing other complaints.

[mneguidelines.oecd.org](http://mneguidelines.oecd.org)

