

**REPORT OF THE GERMAN NATIONAL CONTACT POINT TO THE INVESTMENT
COMMITTEE**
**Common Framework for Annual Reporting by National Contact Points
for the period 1 July 2009-30 June 2010**

The Common Reporting Framework is designed to assist NCPs in reporting on their activities to the Investment Committee. The NCP annual reports should be sent to the Secretariat by c.o.b. on Monday, 3 May 2010.

As this year will mark the tenth anniversary of the 2000 Revision of the Guidelines, Section E has been added to the Reporting Framework to solicit more general comments on NCP experiences on the past ten years. These views would be fed into the preliminary discussion to be held on the occasion of the 29 June 2010 Annual NCP Meeting on the revisions to the Procedural Guidance and Commentary proposed by consultation partners during the preparatory work on the update¹.

A. Institutional Arrangements

- Annexes 1 and 2 to this questionnaire show, respectively, the “Structure of the National Contact Points” from the 2009 NCP Chair’s Summary and the list of National Contact Points (providing contact details) that is available on the OECD Guidelines website. NCPs are asked to update these tables if necessary.
- NCPs may wish to provide additional information regarding institutional arrangements (e.g. regarding the composition of the National Contact Point; advisory committees...).

Although being composed as a ‘Single department’-NCP, all Federal Ministries concerned are closely involved in the work of the German NCP, especially in specific instances procedures. This encompasses support of the NCP in the assessment of complaints, participation in consultation with parties, involvement in the preparation of decisions and recommendations, which then are agreed upon by the Federal Ministries represented in the ‘Ministerial Group on the OECD Guidelines’ (current composition see Annex 1).

This inter-ministerial cooperation in the handling of specific instances is also laid down in the Draft Procedural Guidance, which is currently under consideration by ministries and stakeholders and which is to be published in its final version on the German NCPs web page before the end of this reporting period.

In addition, the NCP holds regular meetings with the ‘Ministerial Group on the OECD Guidelines’ as well as the ‘Working Party on the OECD Guidelines’, composed of representatives of these Federal Ministries as well as business organisations, employee organisations and civil society NGOs to discuss (a) current issues relating to the OECD Guidelines, (b) how to improve the dissemination of these Guidelines and (c) the working methods of the National Contact Point.

The ‘Working Party on the OECD Guidelines’ meets usually once a year under the chairmanship of a senior official of the Federal Ministry of Economics and Technology to discuss all Guidelines-related issues.

¹ See Draft Terms of Reference for an Update of the Guidelines for Multinational Enterprises [DAF/INV/WP(2010)1], Paragraph 39.

Given the upcoming update of the OECD Guidelines, more frequent consultations are necessary. Therefore, during the reporting period, additional meetings of the ‘Working Party’ are held.

- How does the NCP relate to other government agencies?

The National Contact Point consults other Federal Ministries including the Federal Foreign Office, Federal Ministry for Labour and Social Affairs, the Federal Ministry of Justice, the Federal Ministry of Finance, the Federal Ministry for Economic Cooperation and Development and the Federal Ministry for the Environment and provides them with the opportunity to participate in the implementation of the Guidelines. Furthermore, these Ministries cooperate and participate in conciliation or mediation proceedings, as appropriate. Along with the regular meetings mentioned above, each of the participating ministries may convene meetings as needed. If necessary, additional ministries may be called upon to provide specific expertise.

- How does the NCP relate to social partners (business community and employee organisations) involved in the functioning of the National Contact Point?

Within the context of the “Working Party on the OECD Guidelines”, the national contact point offers representatives of business organisations and social partners the opportunity to participate in Guidelines-related activities. The National Contact Point may consult and include them on an ad-hoc basis in conciliation or mediation proceedings with the agreement of the parties involved.

- How does the NCP relate to other interested parties, including non-governmental organisations (NGOs), involved in the functioning of the NCP?

In its efforts to promote the Guidelines, the National Contact Point also cooperates with other non-governmental organisations within the context of the “Working Party on the OECD Guidelines”. Furthermore, the National Contact Point may consult and include them on an ad-hoc basis in conciliation or mediation proceedings with the agreement of the parties involved.

- How the NCP relates to other leading corporate responsibility instruments (such as the ILO Tripartite Declaration on Multinational Enterprises and Social Policy or the UN Global Compact and its local networks)?

The instruments should be seen as mutually reinforcing. The Federal Government emphasizes the importance of all three international, government-backed instruments (OECD Guidelines, ILO Tripartite Declaration and UN Global Compact) wherever suitable, e.g. in the context of G8/G20. Promotion efforts by the respective agencies often comprise promotion of the other instruments. ILO standards can become relevant in the interpretation of the OECD Guidelines. Other instruments, like the Global Reporting Initiative, can help companies to implement the OECD Guidelines’ expectations.

Information on the interrelation between the instruments and on important tools available should be provided to companies in a more transparent way. The German NCP therefore plans to include such information in its handbook on the *Guidelines*, which is to be finalized in accordance with the update of the *Guidelines*.

The German Global Compact Network (DGCN) is a member of the NCP’s working party. Regular meetings take place between the DGCN and the NCP. The NCP is also available to provide advisory support on potential future complaints addressed by the DGCN. Companies and NGOs may approach the German National Contact Point to report about a breach of the ten Global Compact principles which constitute a violation of the Guidelines at the same time. The NCP can therefore function as a means to verify the principles of the UN Global Compact. The DGCN continuously refers to the Guidelines at events and as part of their PR activities. The NCP participates in events organized by the DGCN whenever available.

- Have institutional changes been made, or are currently planned, to improve the performance of the NCP? Do these changes relate to the structure of the NCP or the consideration of specific instances? Have they, or are they being inspired, by changes in other NCP institutional arrangements or stakeholders' recommendations. Please elaborate on the reasons and expected impact of these changes.

The German NCP has identified greater transparency of the National Contact Point's working methods as key element to promote confidence in its performance. It therefore continued the publication of summarized reasonings for the rejection of specific instances on its web page. It also published a Procedural Guidance, explaining the handling of specific instance procedures in the German structure. The meetings of the "Ministerial Group on the OECD Guidelines" and the Working Party on the OECD Guidelines" provide the opportunity for discussions on further improvements. Although some participants ask for a closer stakeholder involvement in the handling of specific instances, these meetings did not reveal a uniform and clear plea for institutional changes.

B. Information and Promotion

- How have the Guidelines been made available in your country (translation, creation of a webpage or website, etc.)?

A German translation of the Guidelines is available on the revised Internet sites of both the Federal Ministry of Economics and Technology and the OECD BERLIN CENTRE. Furthermore, a leaflet ("Merkblatt OECD-Leitsätze") about the Guidelines is posted on the website of the Federal Ministry of Economics and Technology and has also been made available in a print version.

- How is co-operation with the business community, trade unions, NGOs and the interested public carried out, with respect to information on, and promotion of, the *Guidelines* (consultations, distribution of the Guidelines, etc.)?

(1) General Promotion of the *Guidelines*

In addition to the above-mentioned availability of the *Guidelines* and the explanatory leaflet, the Guidelines are promoted by the German government's main website for foreign trade and investment (iXPOS). The leaflet has been distributed by the economic sections of all German embassies abroad as well as other institutions, e.g. the Federal Foreign Office and the Federal Ministry for Economic Cooperation and Development as well as the UN Global Compact Germany represented by GTZ.

The leaflet and additional information on the Guidelines are available at all 81 Chambers of Industry and Commerce in Germany (IHK), at the 58 German bilateral Chambers of Industry and Commerce abroad, at the 22 Offices of the Delegates/Representatives of German Industry and Commerce and their 36 subsidiary offices worldwide (AHK). As the first point of contact for German companies on foreign markets, the AHK network is a part of the official German Foreign Trade Promotion Programme supported by the BMWi. Furthermore, information on the Guidelines is available at the Association of German Chambers of Industry and Commerce (DIHK), which functions as the umbrella organization for the chambers. The information is displayed at DIHK and IHK events and all other chamber activities at the regional and federal level related to investments in non-adhering countries. An introduction to the Guidelines with contact addresses and a download of the leaflet is integrated on the DIHK and other IHK and AHK websites. In addition, companies with a concrete investment interest in non-adhering countries are informed by IHK and AHK foreign trade officials when being involved by individual contacts. The Guidelines are also mentioned in major chamber publications on foreign investment topics.

German business promotes the Guidelines within its various activities to mainstream CSR. The Guidelines are promoted by the BDI/BDA internet portal “CSR Germany”.

The German Confederation of Trade Unions (DGB) promotes the OECD Guidelines within the context of CSR on the DGB website.

Furthermore, the OECD Guidelines serve as a reference point for the work of the CSR Forum established in January 2009 by the Federal Ministry of Labour and Social Affairs. This Forum is advising the German government regarding the formulation of a national CSR strategy and will subsequently assist and support the implementation of this strategy. Accordingly, the “Common Understanding of CSR in Germany”, which was compiled by the Forum, mentions the OECD Guidelines as an important frame of reference for encouraging companies to take responsibility for social issues.

(2) Specific Promotion of the *Guidelines*

The German NCP has promoted the *Guidelines* during this reporting period by presentations, lectures, preparation of speeches and active participation in CSR-related events organized by stakeholders and multistakeholder initiatives, governments, universities etc..

These include:

- Workshop “Scaling Up Voluntary Standards for Human Rights – The Challenge of Measuring Impact”, Federal Ministry of Economic Cooperation and Development, June 30th 2009
 - “Companies in dialogue: Operating in and with instable regions, The OECD *Risk Awareness Tool* for Multinational Enterprises in Weak Governance Zones“, Stiftung Entwicklung und Frieden, Juli 2nd 2009
 - “Expert discussion: Consequences of the Financial Crisis on the sustainability management of companies”, German Global Compact Network, August 25th 2009
 - Round Table Codes of Conduct, Meeting of October 15th 2009, Presentation on the *Guidelines*
 - Workshop “Business Ethics: On Actors and Arenas”, Universities of Oldenburg and Montréal, October 16th 2009, Presentation on the *Guidelines* and the role of politics
 - Exchange of Experience: Sustainable Management BASF, German Global Compact Network, , November 2nd 2009
 - Workshop and Conference „Non-State Actors as Providers of Governance in Weak and Failing States: What Role for Public International Law?“, Freie Universität Berlin, November 6th 2009, Presentation on the experiences with the *Guidelines* as “soft law” instrument, with references to the *Risk Awareness Tool* for Multinational Enterprises in Weak Governance Zones
 - Conference "Protect, Respect, Remedy – A conference on CSR", Swedish EU Presidency, November 10-11 2009
 - Conference “That’s right - Corporate Responsibility for Human Rights”, Federal Ministry for Economic Cooperation and Development, January 21st 2009
 - Speech of State Secretary Dr. Bernd Pfaffenbach, Federal Ministry for Economics and Technology, Dinner on the occasion of the Board Meeting of the Extractive Industries Transparency Initiative (EITI), April 14th 2010, with reference to the *Guidelines* and the *Risk Awareness Tool*
 - Meeting of the “Working Party on CSR” of the Bundesvereinigung der deutschen Arbeitgeberverbände (BDA), Presentation on the future perspectives of the *Guidelines*
 - Expert Conference „Combatting Corruption: Aspects of the OECD Guidelines for Multinational Enterprises“, Transparency International, Deutschland; Evangelische Akademie Berlin , Evangelischer Entwicklungsdienst (EED), May 19th 2010, Panelist
- Have other information and promotion activities been held or planned (seminars and/or conferences on the Guidelines in general or on specific subjects, informative publications or

guides, co-operation with investment promotion agencies, departments of education, business schools, etc.)?

Other publications include an informative section on the *Guidelines* in the 2009 Annual Report on Foreign Investment Guarantees published by PriceWaterhouseCoopers AG, a leading partner of the federal government in managing these guarantees, underlining the importance the Ministry attaches to the *Guidelines*.

Furthermore, the *Guidelines* are also highlighted in the context of the German Governmental Reports on Human Rights and, with specific reference to the *Risk Awareness Tool*, in the Governmental Report on Crisis Prevention.

The national CSR Forum, Working Group 4, developed recommendations of "strengthening CSR in an international and developmental context", calling on the Government to proactively promote the *Guidelines* and support the updating-process.

Most specifically, work has begun on a handbook for German companies, which shall help to further promote the *Guidelines* and give orientation especially to small and medium sizes enterprises in the understanding of the *Guidelines* and their implementation in their commercial activities abroad. Given the upcoming update of the *Guidelines*, finalization and publication of the handbook shall follow accordingly.

- Has the OECD Risk Awareness Tool for Multinational Enterprises in Weak Governance Zones been disseminated or otherwise referred to in the context of interactions with enterprises and stakeholders?

The *Risk Awareness Tool* is published on the German NCPs' web page. It has been referred to vis-à-vis enterprises, stakeholders and academia on numerous occasions (see sections above on promotional activities).

- Annex 3 to this questionnaire presents Table 1 from the 2009 NCP Chair's Summary ("The OECD Guidelines and Export Credit, Overseas Investment Guarantee and Inward Investment Promotion Programmes". NCPs are asked to update this table. If no update is necessary, please indicate this. If the OECD Risk Awareness Tool for Multinational Enterprises in Weak Governance Zones is referred to in these programmes, please indicate this separately.
- Have enquiries been received from (a) other NCPs; (b) the business community, employee organisations, other non-governmental organisations, or the public; or (c) governments of non-adhering countries?

Enquiries from other NCPs on promotional activities or development of tools such as a procedural guidance have been received and information was exchanged in good cooperative spirit.

A number of requests for general information have been received and answered, inter alia questions from students, researchers, citizens and companies.

C. Implementation in specific instances

NCPs might want to provide the following information on specific instances that were raised and/or concluded during the June 2009-2010 cycle. Please ensure that the information submitted is suitable for dissemination. Subject to respecting adhering countries' commitments to operate in accordance with the core criteria of visibility, accessibility, transparency and accountability, NCPs may provide any information they want (including no information).

At the beginning of the reporting period, no specific instance was pending. Since then, four complaints were formally lodged with the German NCP.

One specific instance was accepted for mediation, one was rejected after the initial assessment on material grounds. Two specific instances are located in adhering countries and those countries' NCPs (NZ, SWE) took the lead. In addition, the German NCP received information about a complaint against a German based MNE lodged with another NCP. The German NCP cooperates with the other NCPs and offered its assistance.

In one case, the German NCP actively continued monitoring of a companies' formal declaration to more actively combat child labour. The NCP was satisfied that a respective programme was initiated. The NCP has not yet taken a decision to end the monitoring.

Information on specific instances filed with or concluded by the German NCP within recent years, except those under the lead of another NCP, are found in Annex 4.

The German NCP wants to take the opportunity to sum up this years' experience with specific instances:

- 1) There seems to be a lack of understanding on part of the complainants that a specific instance should be lodged with the host country's NCP (if any). Even if this is clear to the complainants, there is a tendency to hand in the complaint either with more than one NCP at a time or with simultaneous information of the home country NCP about the complaint. This reveals a certain mistrust in the handling of a case by one NCP or in the cooperation between NCPs.
 - 2) Parallel legal proceedings can severely hinder progress of mediation, especially if more parties are involved in the legal proceedings than the two parties to the complaint.
 - 3) The attribution of possible human rights violations to the host country does not necessarily exclude responsibility on the company's side. Allegations of a company's involvement or lack of preventive measures might merit further examination. However, the threshold for establishing a company's responsibility remains high.
 - 4) Specific instances in non-adhering countries pose specific challenges regarding fact-finding and communication. The *Guidelines* strike a good balance in acknowledging these limitations.
 - 5) Confidentiality and cessation of campaigning are essential for the prospects of mediation. So are speediness and trust in tangible results of the proceedings.
 - 6) A major problem common to most specific instances seems to be a lack of communication between the parties before a complaint is handed in. The German NCP recommends companies and financial institutions not to decline requests for meetings by persons concerned by their activities.
- Date request to consider specific instance was received.
 - Who raised the specific instance (e.g. business, trade union, NGO)?
 - Which chapters of the Guidelines are cited in the specific instance? If possible, please also cite the specific recommendation(s) covered by the request.

- Has the specific instance involved business activities in a non-adhering country? Was the specific instance a multi-jurisdictional instance and involved other NCPs? Has the home NCP liaise with the parent company of the enterprise party to the specific instance?
- Sector of activity: extractive industry (which industry?); agriculture; other primary sectors; manufacturing (which sub-sector?); financial services; retail distribution; transport; other services.
- Was the request to consider the specific instance accepted or rejected (if possible, describe grounds for not taking up a request)?
- If accepted, date specific instance was concluded.
- Were the results communicated to the public and, if so, how?
- Has the NCP monitored the implementation of final statements' recommendations?
- Would the NCP care to contribute additional information about this specific instance -- e.g. how was the information on the specific instance gathered? Was accessibility to reliable information or the protection of confidentiality an issue? Did all parties agree with the final statement issued by the NCP?

Specific instances considered by NCPs to date

Annex 4 presents a summary table intended to provide basic information about specific instances that have been accepted for consideration by NCPs up to June 2010. NCPs are asked to verify and update this table if necessary.

The German NCP, like some other NCPs, has started to provide information in Annex 4 also on specific instances which had been rejected after initial assessment. This list is to be completed subsequently. Specific instances filed with the German NCP but handled and reported under the lead of another NCP are not listed.

D. Other

- How have the core criteria for the operation of NCPs (visibility, accessibility, transparency, and accountability) been applied in your country to further the effectiveness of Guidelines implementation? Please provide examples that illustrate this.

Application of the core criteria have been strengthened, inter alia, by

- meetings of both the 'Ministerial Group on the OECD Guidelines' and the 'Working Party on the OECD Guidelines'
- improvement of the NCPs web page, including new, easily accessible internet- and e-mail-adresses
- promotional activities of the NCP
- draft of Procedural Guidance which is to be published on the web page soon
- publication on summarized reasonings for rejection of cases on web page
- active cooperation with other NCPs
- active, frequent and transparent information of parties to specific instances on state of the play and further considerations

- Do you wish to provide any other information on the nature and results of NCP activities during this implementation cycle of the Guidelines, including on any useful experiences and/or difficulties encountered in carrying out the duties of the NCP?

See section on specific instances for summary of experiences.

- If the NCP disposes of surveys or statistics documenting companies' awareness of the Guidelines, do you wish to make this information available in your report?
- What issues might deserve particular attention during the 2010-2011 implementation cycle of the OECD Guidelines separate from those that might be raised during an update? Please elaborate as appropriate.

E. Looking back at the past ten years

- What is your assessment of the functioning of your institutional arrangements in the past ten years? What were the main achievements? In what areas do you feel the greatest pressure for change and why?

An increased transparency in the working methods of the German NCP (while respecting confidentiality requirements) helped reduce mistrust against the single ministry structure of the German NCP. The institutional arrangements as described above, including the establishment of a regular Ministerial Group and Working Party, are deemed sufficient by the NCP.

- How successful have you been in raising visibility, awareness and use of the Guidelines? What have been the greatest challenges? How have your promotional activities evolved as a result?

Experience shows that promotion of the *Guidelines* is a task which best is shared by numerous actors, including stakeholders. Resources proved to be the main limitation to an extension of promotional activities beyond core activities such as maintenance of a web page, distribution of a leaflet and active participation at events.

- What were the most important lessons learned or positive outcomes in handling specific instances? Did any of the challenges encountered relate to the areas singled out for special attention in the draft terms of reference for an update of the Guidelines [especially those described in paragraphs 26-28 of DAF/INV/WP(2010)1]? Please elaborate.

The mediatory approach of the Specific Instances Procedure is a unique feature and provides a real opportunity to amicably resolve specific problems and enhance responsible corporate behaviour in a future-oriented and sustainable way. Both on business and on NGO side, this opportunity is not always understood. This relates to questions of the relationship between the mediatory and the quasi-judicial functions of an NCP.

How do you view the opportunities for information exchange and peer learning, notably those provided by annual meetings of NCPs or meetings of the Working Party of the Investment Committee?

Information exchange and peer learning is essential in order to harmonize NCPs approaches in the handling of specific instances. Meetings are important in this respect, but provision of thorough analysis by the OECD secretariat provides the biggest opportunity.