



Die
Bundesregierung



OECD-LEITSÄTZE FÜR
MULTINATIONALE UNTERNEHMEN

DEUTSCHLAND
NATIONALE KONTAKTSTELLE

**National Contact Point for the
OECD Guidelines for Multinational Enterprises
at the Federal Ministry for Economic Affairs and Energy**

**Report by the Federal Government to the German Bundestag
concerning the work undertaken by the National Contact Point for the
OECD Guidelines for Multinational Enterprises
in 2018**

[Courtesy translation of the original German version]

Re: Report by the Federal Government to the German Bundestag concerning the work undertaken by the National Contact Point for the OECD Guidelines for Multinational Enterprises in 2017 (transmitted on 31 May 2018), Bundestag printed paper 19/2628

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A. SUMMARY

- 1 The OECD Guidelines for Multinational Enterprises are one of the most important and comprehensive international instruments for the promotion of responsible business conduct.
- 2 In order to fulfil the obligations that the Federal Republic of Germany has as an OECD member state, a National Contact Point for the OECD Guidelines for Multinational Enterprises (NCP) was set up in the Federal Ministry for Economic Affairs and Energy. The NCP is tasked with making companies, trade unions, and civil society more aware of the OECD Guidelines and further fostering their implementation. It also acts as an out-of-court complaints mechanism in the case of a complaint about an alleged breach of the Guidelines.
- 3 In the following report, the Federal Government informs the German Bundestag about the activities that the NCP has undertaken between January and December 2018 in order to fulfil this task. In particular, it provides information on work to implement the OECD recommendations for further improving the work of the NCP which are set out in the Peer Review Report. It also looks at complaint procedures that have been completed during the period under review and its promotional activities for fostering the implementation of the OECD Guidelines.
- 4 Following its transmission to the German Bundestag, this report will be published on the NCP website.¹

¹ URL: <http://www.oecd-nks.de>.

B. MAIN REPORT

I. Background

1. Content and nature of the Guidelines

5 The OECD Guidelines for Multinational Enterprises are one of the most important and comprehensive international instruments for the promotion of responsible business conduct.

6 The Federal Government dealt comprehensively with the content and nature of these Guidelines in its previous report to the German Bundestag. This report was published by the German Bundestag as printed paper 19/2628 and can be downloaded from the NCP website^{2,3}.

2. The German National Contact Point

7 In order to fulfil their obligations under the OECD Guidelines, the governments of the adhering countries set up National Contact Points.

8 The National Contact Points are tasked with fostering effective application of the OECD Guidelines. This particularly involves promotional activities with companies, trade unions, and civil society to raise further awareness about the OECD Guidelines. The National Contact Points are also out-of-court complaints offices. Anyone who can plausibly show that he/she has a legitimate interest in a matter where a multinational enterprise may have breached the OECD Guidelines can lodge a complaint with the competent National Contact Point. The National Contact Point receiving the complaints examines these and, if it decides to accept them for consideration, offers its support to the parties to the complaint to help them reach an agreement on contentious issues. In this way, the NCP also fosters compliance with and future implementation of the OECD Guidelines.

9 The German NCP is based at the Federal Ministry for Economic Affairs and Energy, in the Directorate-General for External Economic Policy. Its structure and its cooperation with other minis-

² Cf. footnote 1.

³ Report by the Federal Government to the German Bundestag concerning the work undertaken by the National Contact Point for the OECD Guidelines for Multinational Enterprises in 2017, paragraph 5 ff.

tries and stakeholders from business, the trade unions and NGOs was looked at in detail in last year's report to the German Bundestag.⁴

II. Implementation of the recommendations from the OECD Peer Review

- 10 In order to implement a decision by the G7 Heads of State and Government at the 2015 summit in Elmau, the German NCP underwent a Peer Review by the OECD in the last reporting period (2017). Peer Reviews serve the purpose of examining the work undertaken by the National Contact Points. The aim is both to identify the strengths of the National Contact Points and the areas in which they can further develop and improve their work.

1. OECD Peer Review Report

- 11 At the end of the Peer Review process, representatives of the Brazilian, Netherlands, and U.S. National Contact Points worked with the OECD Secretariat to draft a joint Report summarising the findings of the review and providing recommendations for further improving the work of the German NCP.

- 12 This Report was sent to the Federal Minister for Economic Affairs and Energy by the OECD Secretary-General in April 2018. Overall, the German NCP's performance was assessed positively in this report. At the same time, as already mentioned in the previous report to the German Bundestag, the NCP was given a number of recommendations to further improve its work. These can be summarised as follows:

- Clarification and external communication of the role and function of the NCP in foreign trade promotion projects
- Introduction of internal mechanisms ('handover processes') to improve the transfer of knowledge whenever there are personnel changes in order to maintain existing high performance standards
- Clear definition and communication of the role and task of interministerial and working groups
- Diversification of the promotional activities among multipliers (associations) and establishment of direct relations to individual companies and trade unions

⁴ Report by the Federal Government to the German Bundestag concerning the work undertaken by the National Contact Point for the OECD Guidelines for Multinational Enterprises in 2017, paragraph 12 ff.

- Promotional activities also in countries not adhering to the OECD Guidelines in which German companies operate
- Review of the procedural rules for complaints brought to the German NCP in conjunction with a strengthening of the principle of transparency over confidentiality

13 Further details on these can be found in the OECD's Peer Review Report, available on the NCP website.⁵

2. Development of the implementation process

14 The above recommendations have enabled the NCP to take action to further optimise its work by building upon existing structures and processes. Other units of the Federal Ministry for Economic Affairs and Energy, as well as other ministries and the stakeholders represented in the Working Group on the OECD Guidelines were also involved in this.

15 The NCP has thus been able to usher in improvements in the handover process largely independently. This includes, for example, compiling collections of relevant national and international regulations as well as of schedules and checklists for complaint procedures. In the same way, it was able to create electronic forms in pdf format, which are now available on the NCP's website, to facilitate the submission of enquiries or complaints.

16 There was extensive coordination across the ministries on upgrading the interministerial working group for the OECD Guidelines to an Interministerial Committee on OECD Guidelines (IMA).⁶ This upgrade is a clearly visible sign that the various ministries involved agree on the importance of this decision-making body which is crucial for the work of the NCPs. Linked to this, the rules on ministerial cooperation were revised and rules of procedure were developed for the new IMA⁷ in order to provide even greater structure for its work in the future.

17 Acting upon the recommendations of the Peer Review Report, the NCP also worked intensively with the ministries and stakeholders represented in the Working Group to strengthen and formalise the group's role. This led to an agreement to open up the Working Group to further

⁵ Cf. footnote 1.

⁶ Alongside staff from the Federal Ministry for Economic Affairs and Energy, the IMA includes representatives from the following ministries: Federal Ministry of Finance, Federal Foreign Office, Federal Ministry of Justice and Consumer Protection, Federal Ministry of Labour and Social Affairs, Federal Ministry of Food and Agriculture, Federal Ministry for the Environment, Nature Conservation and Nuclear Safety, Federal Ministry for Economic Co-operation and Development.

⁷ Can be downloaded from the NCP website (cf. footnote 1).

participants and to the definition of the competencies that each of the members hold, etc. Similarly as in the case of the IMA, this fed into new rules of procedure for the Working Group.

- 18 The revision of the NCP's rules of procedure involved particularly extensive coordination with both the interministerial working group and the Working Group on the OECD Guidelines. In its Peer Review Report, the OECD recommended that the NCP strengthen the principle of transparency over confidentiality. Both principles are of key importance for the complaint procedures carried out by the NCP, but are weighted differently by different stakeholder groups. Therefore it had to be worked in an extensive consultation and coordination process on a compromise that does justice to all sides. The new rules of procedure are available on the NCP website.⁸

3. Outcomes of the implementation process

- 19 The action taken to implement the recommendations of the Peer Review Report was largely completed within the one year timeframe set by the OECD. Other, smaller measures (e.g. the redesign of the NCP website, actual implementation of new procedural rules) are still in the process of being implemented. The NCP will provide the German Bundestag with a final account of this work in its forthcoming report for 2019.

III. Further activities conducted by the NCP during the reporting period

- 20 In addition to implementing the recommendations of the Peer Review Report, the NCP was particularly involved in the following processes during the reporting period:

1. Complaint procedures

- 21 During the reporting period, two ongoing complaint procedures were closed and another was brought before the NCP.
- 22 One of the complaint procedures to be completed had been initiated by several non-governmental organisations against TÜV Rheinland AG and its Indian subsidiary and was led, for the Complainants, by the European Center for Constitutional and Human Rights e. V. (EC-CRHR). The complaint relates to a social audit conducted by said subsidiary in a textiles factory in Bangladesh in June 2012. The Complainants contended that this social audit fell short of the standards set out in the OECD Guidelines. Whilst the Parties spent much time engaging in ac-

⁸ Cf. footnote 1.

tive and broad-based talks to resolve the matters raised, they were not able to reach agreement. The NCP therefore concluded the procedure in June 2018, issuing a comprehensive unilateral Final Statement. This particularly contains recommendations for the Parties on how they can continue to work on the matters raised independently. The Parties are also requested to report back to the NCP after one year on the steps they have taken.

- 23 A further case was concluded with the publication of a Final Statement by the NCP in October 2018. The case was initiated by a non-governmental organisation from the Democratic Republic of the Congo (DRC) against a Congolese corporation with headquarters in the DRC. As part of this procedure, the NCP had to conduct extensive research to clarify the underlying facts of the case, with the German Embassy in the DRC also involved in this in particular. The German NCP additionally coordinated with the National Contact Points of Belgium, Canada, France, Luxembourg, and Switzerland. At the end of this procedure, the NCP concluded that it could not accept the complaint for further examination as it is not the competent authority internationally.
- 24 The NCP's Final Statements on the two proceedings mentioned above can be downloaded from its website.⁹ Another complaint procedure initiated by three non-governmental organisations against a German company during the reporting period is currently still pending. Part of the complaint has since been accepted and the mediation process is now under way. As this part of the complaint enjoys special protection for reasons of confidentiality, in accordance with OECD requirements, the NCP will report to the German Bundestag on it at a later date.

2. Promotional activities to foster the implementation of the OECD Guidelines

- 25 In addition to dealing with complaints procedures, one of the central tasks of the NCP is to foster the implementation of the OECD Guidelines. As in the previous reporting period,¹⁰ the NCP therefore actively undertook promotional activities again in 2018.
- 26 It was able to build upon its time-tested PR cooperation with Division 401 (Business and Human Rights) at the Federal Foreign Office. As part of this work, a representative from the Federal Foreign Office and a member of staff from the Federal Ministry for Economic Affairs and Energy came together to present both the National Action Plan for the Implementation of the

⁹ Cf. footnote 1.

¹⁰ Report by the Federal Government to the German Bundestag concerning the work undertaken by the National Contact Point for the OECD Guidelines for Multinational Enterprises in 2017, paragraph 38 ff.

UN Guidelines for Business and Human Rights (NAP) and the OECD Guidelines, which are closely interlinked. This presentation was given, for example, at the Chambers of Industry and Commerce in Nuremberg and Potsdam, at an event held by the Nordmetall employers' association in Hamburg, at the Business Day of the Ambassadors' Conference at the Federal Foreign Office, and as part of pre-posting training seminars for employees of German embassies.

- 27 In addition, the NCP was also able to diversify its promotional activities through presentations of its own. For example, it presented information on the OECD Guidelines and the work of the National Contact Points to leadership staff from the Ukrainian government who were taking part in the Federal Ministry for Economic Affairs and Energy's Manager Training Programme. It also provided this information to managers from the People's Republic of China who visited the Ministry as part of the Manager Training Programme. In addition, two representatives of the NCP had the opportunity for the first time to present their work to the staff of a non-governmental organisation, Save the Children.
- 28 The NCP is also making an important contribution to the implementation of the 2030 Agenda and the German Sustainability Strategy (including SDG 8 – Decent Work and Economic Growth). It therefore also featured in the Report on the Implementation of the German Sustainability Strategy published by the Federal Ministry for Economic Affairs and Energy in October 2018,¹¹ and in the 2018 update¹² of the German Sustainability Strategy (among the priorities for the Federal Ministry for Economic Affairs and Energy).

3. Cooperation with National Contact Points in other countries

- 29 The NCP continued to deepen its cooperation with National Contact Points in other countries in 2018. In addition to the extensive coordination already mentioned in paragraph 23 above as part of a complaint procedure, this particularly included trilateral talks with the other German-language National Contact Points from Austria and Switzerland, which were held at the invitation of the German NCP at the Federal Ministry for Economic Affairs and Energy in Berlin. These discussions focused, for example, on challenges arising in mediation procedures and on national activities in the field of responsible business conduct, including the Swiss "People's Initiative for Corporate Responsibility – for the Protection of People and the Environment" (Volksi-

¹¹ URL: <https://www.bmwi.de/Redaktion/DE/Publikationen/Studien/ressortbericht-nachhaltigkeitspolitik-ist-modernisierungspolitik.html>.

¹² URL: <https://www.bundesregierung.de/resource/blob/975274/1546450/65089964ed4a2ab07ca8a04919e9e0af/2018-11-07-aktualisierung-dns-2018-data.pdf?download=1>.

initiative für verantwortungsvolle Unternehmen – zum Schutz von Mensch und Umwelt). Furthermore, the NCP additionally participated in information and discussion events of other contact points and presented, for example, in October 2018 its experiences with closed complaint proceedings at the Dutch Contact Point in The Hague.

4. Involvement in OECD events and related committees

- 30 In addition to engaging in bilateral and multilateral cooperation with other National Contact Points as described above, the German NCP also took part in events organised by the OECD and represented the positions of the Federal Government in the relevant OECD committees.
- 31 During the reporting period, this particularly included the regular meetings of the Working Party on Responsible Business Conduct and the Meeting of the Network of NCPs.
- 32 Since 2018, the German NCP has also been a member of the Office of the Working Party on Responsible Business Conduct, which convenes to discuss longer-term issues and the Working Party's strategic direction.

C. OUTLOOK

- 33 In 2019, the NCP is building upon the activities undertaken during the 2018 reporting period and described within this report.
- 34 In particular, it has now completed the most important work on implementing the recommendations set out in the OECD Peer Review Report and has reported on them to the OECD Working Party on Responsible Business Conduct. The topics that will be focused on in the coming months include follow-up work to the Peer Review and the consolidation of the new procedures for cooperation between the ministries and stakeholders, as well as those for complaint procedures.
- 35 The National Contact Point for the OECD Guidelines for Multinational Enterprises will provide information on these activities in its upcoming report to the German Bundestag.