

**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 2019**

**[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 2018 (transmitted on 8 July 2019), Bundestag printed paper 19/11670

## Contents

A. SUMMARY .....	3
B. MAIN REPORT .....	4
I. Background .....	4
1. OECD Guidelines for Multinational Enterprises .....	4
2. National Contact Point for the OECD Guidelines .....	4
II. National Contact Point for the OECD Guidelines and its bodies .....	5
III. Completion of the implementation of the recommendations from the OECD Peer Review Report .....	6
1. Recommendations from the OECD Peer Review Report .....	6
2. Completion of the implementation of the recommendations .....	7
IV. Further activities of the National Contact Point for the OECD Guidelines .....	8
1. Complaints procedures .....	8
a) Procedures undergoing initial assessment or mediation .....	8
b) Procedures undergoing follow-up .....	10
c) Procedures brought before other National Contact Points .....	11
2. Promotional activities .....	12
3. Cooperation within the OECD and with other National Contact Points .....	13
C. OUTLOOK .....	15

## **A. SUMMARY**

- 1 The OECD Guidelines for Multinational Enterprises are the most important comprehensive international instrument for the promotion of responsible business conduct. The National Contact Point for the OECD Guidelines for Multinational Enterprises (NCP) promotes the effective implementation of the Guidelines and also provides a mediation procedure in cases of complaint regarding the application of the Guidelines.
- 2 In the following report, the Federal Government informs the German Bundestag about the activities that the NCP undertook in 2019 in exercising its mandate. It focuses on developments within the NCP and its bodies, on the completion of the implementation of the recommendations contained in the Peer Review Report, and in particular on further activities conducted during the reporting period – complaints procedures, promotional activities and cooperation within the OECD and with other National Contact Points.
- 3 Following its transmission to the German Bundestag, this report will be published on the NCP website<sup>1</sup>.

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<sup>1</sup> <http://www.oecd-nks.de>.

## **B. MAIN REPORT**

### **I. Background**

#### **1. OECD Guidelines for Multinational Enterprises**

- 4 The OECD Guidelines for Multinational Enterprises are recommendations made by the participating countries for multinational companies with a view to responsible business conduct in a global context. They contain established principles of responsible business conduct in the areas of information policy, human rights, employment policy, environmental protection, anti-corruption, consumer interests, science and technology, competition and taxation. Even though they are not legally binding, the Guidelines do reflect the Federal Government's expectations with regard to the conduct of German companies operating abroad.
- 5 The OECD Guidelines are supplemented by the general OECD Due Diligence Guidance for Responsible Business Conduct and sector-specific Guidance documents that focus on raw materials, textiles, agriculture and finance. The Guidance documents provide practical support in implementing the OECD Guidelines. They outline a risk-based due diligence process and make sector-specific recommendations for its practical implementation.

#### **2. National Contact Point for the OECD Guidelines**

- 6 The National Contact Points seek to promote the effective implementation of the OECD Guidelines in their respective country. Their role includes:
- raising awareness for the OECD Guidelines among enterprises, trade unions and civil society, and promoting their application;
  - providing a neutral platform for dispute settlement in cases of non-compliance with the OECD Guidelines;
  - working together with other NCPs and the OECD in further developing the Guidelines, and, if necessary, assisting in the response to complaints which fall within the responsibility of other NCPs;
  - responding to inquiries and specific questions that may come up in the application of the OECD Guidelines.

- 7 Following its reorganisation, the details of which it communicated in its reports for 2016 and 2017, the National Contact Point became a unit placed under the direct authority of the Director-General for External Economic Policy at the Federal Ministry for Economic Affairs and Energy. In 2017, the NCP subjected itself to a peer review by the OECD Secretariat and three other National Contact Points, delivering on a promise made by Germany in the Leaders' Declaration of the G7 Summit at Schloss Elmau in 2015.
- 8 The NCP receives support from the Interministerial Committee on the OECD Guidelines for Multinational Enterprises. The Committee discusses issues linked to the application of the OECD Guidelines and decides by consensus, with the Federal Minister for Economic Affairs and Energy as the lead ministry making a proposal. Alongside the Economic Affairs Ministry, seven further ministries are represented on the Committee<sup>2</sup>.
- 9 In addition, the NCP receives advice and support from the Working Group on the OECD Guidelines for Multinational Enterprises. The Working Group provides a platform for discussing all issues linked to the implementation of the OECD Guidelines. The Working Group includes not only members from the Ministries which form part of the Interministerial Committee, but also representatives of the OECD stakeholder groups (employers, employees and civil society) and also other experts on responsible business conduct.

## **II. National Contact Point for the OECD Guidelines and its bodies**

- 10 In January 2019, the NCP unit at the Federal Ministry for Economic Affairs and Energy assumed the additional role of representing the ministry within the policy field of business and human rights, the lead responsibility for which lies with the Federal Foreign Office. The unit performs this duty separately from its role with regard to the OECD Guidelines.
- 11 The bodies of the NCP – the Interministerial Committee and the Working Group – each met twice during the reporting period. The major issues addressed by the Interministerial Committee included the completion of the implementation of the recommendations contained in the OECD's Peer Review Report, complaints procedures, promotional activities and cooperation within the OECD.

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<sup>2</sup> Federal Foreign Office, Federal Ministry of Finance, 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 Cooperation and Development.

- 12 In September 2019, the Working Group welcomed a new member of the employer stakeholder group, the German Retail Federation, and three new participants: econsense – Forum for Sustainable Development of German Business, the Secretariat of the Partnership for Sustainable Textiles e.V., and the German Institute for Human Rights e.V. Complaints procedures, promotional activities and cooperation within the OECD constituted the key themes dealt with by the Working Group.

### **III. Completion of the implementation of the recommendations from the OECD Peer Review Report**

- 13 In April 2018, the OECD Secretary-General Angel Gurría had submitted the Peer Review Report (mentioned above under I.2) – which had yielded a good result – to Federal Minister for Economic Affairs and Energy Peter Altmaier, setting out a number of recommendations and possibilities for further improvement. In its previous report to the German Bundestag, the NCP had reported on the significant progress made in implementing the recommendations and announced its intention to provide a final account of this work in this year's report.

#### **1. Recommendations from the OECD Peer Review Report**

- 14 The Peer Review Report of April 2018 assessed the performance of the NCP in positive terms, but also made recommendations on how it could 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 roles and tasks of the interministerial and working groups;
  - diversification of the promotional activities among multipliers (associations) and establishment of direct relations with individual companies and trade unions;
  - 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.

15 Further details on the peer review and its recommendations are provided by the Peer Review Report, which is available on the NCP website<sup>3</sup>.

## **2. Completion of the implementation of the recommendations**

16 The NCP had already stated in the outlook of its previous report that the work of implementing the recommendations of the Peer Review Report had been largely completed within the one-year time frame set by the OECD. In March 2019, the NCP reported on the implementation of the recommendations before the OECD Working Party on Responsible Business Conduct; the presentation is available on the NCP website<sup>4</sup>.

17 In 2018, the role and function of the NCP with regard to projects to promote foreign trade and investment had already been clarified and communicated on the NCP website. The NCP expressly mentions this point since it was not spelt out in the previous report. In particular, it would like to inform the German Bundestag that, a company's constructive participation in complaints procedures run by the NCP will be taken into account now when it comes to deploying specific instruments to promote foreign trade and investment (export credits, investment guarantees, untied financial loans). The Federal Government reserves the right to exclude specific companies which do not address complaints from the said instruments.

18 The establishment of a 'handover process' had already been mentioned by the NCP in its previous report. The NCP had also described the actions undertaken to more clearly define and communicate the roles and tasks of the former interministerial and working group. In February 2019, by agreement among the relevant ministries, the former Interministerial Working Group was upgraded to an Interministerial Committee. In its first meeting, held in the month of its inception, the Committee adopted its new Rules of Procedure, which are available on the NCP website<sup>5</sup>. The Working Group first met in March 2019 on the basis of its own new Rules of Procedure, which can also be found on the NCP website<sup>6</sup>.

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<sup>3</sup> German National Contact Point Peer Review Report, available at <http://www.oecd-nks.de>.

<sup>4</sup> Peer Review of the German NCP, available at <http://www.oecd-nks.de>.

<sup>5</sup> Rules of Procedure of the Interministerial Committee on the OECD Guidelines for Multinational Enterprises, 25 February 2019, available at <http://www.oecd-nks.de>.

<sup>6</sup> Rules of Procedure of the Working Group on the OECD Guidelines for Multinational Enterprises, 1 August 2019, available at <http://www.oecd-nks.de>.

- 19 The diversification of the NCP’s promotional activities, including in countries which are not adhering to the OECD Guidelines, and the creation of direct relations with individual companies and trade unions had already been addressed in the previous report (under ‘promotional activities’), and is also dealt with in this report under IV.2.
- 20 In its previous report, the NCP had referred to the revision of the procedural rules for complaints and to the extensive coordination process aimed, in particular, at strengthening the principle of transparency over confidentiality. The revision was completed in 2019, when new Procedural Guidelines, available on the NCP website<sup>7</sup>, were adopted.
- 21 2019 also saw the completion of the remaining minor activities mentioned in the previous report with regard to the implementation of the peer review recommendations. The NCP website was improved in terms of usability, and a database of concluded complaints procedures was added. Also, the NCP implemented stipulations of the new Procedural Guidelines, such as a systematic follow-up on recommendations and agreed solutions from Final Statements (cf. IV.1.b).

#### **IV. Further activities of the National Contact Point for the OECD Guidelines**

- 22 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. Complaints procedures**

- 23 During the reporting period, one complaints procedure was brought before the NCP and concluded. Another procedure was undergoing mediation. In addition, two procedures were being followed up on, and the NCP assisted in the response to two complaints brought before other National Contact Points.

##### **a) Procedures undergoing initial assessment or mediation**

- 24 In December, the NCP decided not to accept for further examination the complaint filed in May 2019 by four former employees and trade union representatives against a Congolese

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<sup>7</sup> Procedural Guidelines of the German National Contact Point for the OECD Guidelines for Multinational Enterprises at the Federal Ministry for Economic Affairs and Energy, 25 February 2019, available at <http://www.oecd-nks.de>.

company, its Luxembourg holding company and a German company<sup>8</sup>. According to the main allegation of the complaint, which was not directed against the German company, the Congolese company did not pay the minimum wage and had reacted to a letter of complaint to the President of the Democratic Republic of the Congo by dismissing eight union representatives, including the complainants, in 2019. With regard to the other allegations raised against the Congolese company, which cover a period of twenty years, the complainants claimed that the German company, a service provider in the field of international cooperation, bore some share of responsibility. The latter's predecessor had cooperated with the Congolese company in three development partnerships from 1999 to 2007. The allegations against the Congolese company referred in particular to methods of waste disposal, working conditions and occupational safety, as well as a management buy-out during the Congo War in 1999. The German company rejected any responsibility on its part for the allegations against the Congolese company.

- 25 At first, the NCP set out to discuss the international competence for the complaint with the three other NCPs that had been contacted. The NCP decided to handle the complaint as far as it related to the German company. It went on to enter into a dialogue with the complainants and the German company, particularly with a view to determining to what extent the latter shared responsibility for the allegations against the Congolese company. In June and August 2019, the complainants reported at first that security staff of the Congolese company had tried to contact the main complainant, later, that he had met with a Congolese intelligence agent, and finally, that he had been arrested. The NCP contacted the German Embassy in Kinshasa to inquire as to the main complainant's safety and arrest. In its upcoming report, it will provide information on the ongoing events and on the cooperation within the OECD as regards reprisals against participants in complaints procedures<sup>9</sup>. In December 2019, the NCP decided not to accept the complaint against the German company for further examination because the allegations against the company were not substantiated and there was no link between the company's activities and the issues raised.
- 26 The complaint filed in March 2018 by SÜDWIND Institut et al. against Adidas AG was undergoing mediation during the reporting period. It related to events in 2012 at a factory run

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<sup>8</sup> Statement of the NCP in response to a complaint submitted by four former employees and union representatives of a Congolese company against the Congolese company, its Luxembourg holding company and a German company, 16 December 2019, available at <http://www.oecd-nks.de>.

<sup>9</sup> Statement of the Working Party on Responsible Business Conduct, 13 March 2020, available at <http://mneguidelines.oecd.org/ncps/working-party-on-rbc-statement-march-2020.htm>.

by a subcontractor to Adidas AG's main partner in Indonesia. The complainants contended that Adidas AG had failed to adequately exert its influence as a buyer with regard to wage issues, the right to work and the freedom of association. Adidas AG rejected these allegations, pointing to, inter alia, the activities it undertook to help resolve the situation as well as the relatively small size of its order volume that limited its leverage vis-à-vis the subcontractor.

- 27 After it had accepted the complaint for further examination in 2018, the NCP continued the mediation process in 2019, holding mediation talks in March and May. Having had to postpone the forward-looking discussion scheduled for July and having held bilateral talks with the parties, the NCP concluded that, even though the wage issue had been resolved, there was no realistic prospect of reaching an agreement on the remaining disputed matters, i.e. the right to work and the freedom of association. In December, the NCP informed the parties about its intention to terminate the mediation and proceed to the preparation of a Final Statement. This Statement, published in 2020, will be a subject of the NCP's next report<sup>10</sup>.

#### **b) Procedures undergoing follow-up**

- 28 In 2019, the NCP's long-standing involvement in the complaints procedure of UNI Global Union et al. against Deutsche Post DHL, which had been concluded in 2014, brought new developments. In this procedure, which is deemed exemplary in terms of the evolution of the follow-up on complaints procedures by National Contact Points, the parties – two international trade unions and Deutsche Post DHL – had agreed to engage in structured cooperation on the basis of the NCP's recommendations in 2016<sup>11</sup>. The relevant cooperation protocol was revised during the reporting period and extended in November 2019. The parties' revised agreement sets out the principles, procedures and deadlines they intend to use to find solutions to employment and industrial relations issues that work for both sides.
- 29 The complaint filed by the European Center for Constitutional and Human Rights e.V. et al. against TÜV Rheinland AG et al. was the first procedure in which the NCP followed up on the implementation of its recommendations after incorporating the follow-up instrument into the Procedural Guidelines, as mentioned with respect to the implementation of the peer review

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<sup>10</sup> Final Statement of the NCP in response to a specific instance submitted by SÜDWIND Institut, Sedane Labour Resource Centre (Lembaga Informasi Perburuhan Sedane) and Stichting Schone Kleren / Clean Clothes Campaign against Adidas AG, 24 April 2020, available at <http://www.oecd-nks.de>.

<sup>11</sup> Joint Final Statement of the NCP, UNI Global Union (UNI), the International Transport Workers' Federation (ITF) and Deutsche Post DHL on the complaint filed by UNI/ITF against DP-DHL/Bonn, 2014, available at <http://www.oecd-nks.de>.

recommendations under III.2. In its Final Statement of 2018, the NCP had made recommendations and, in anticipation of the new Procedural Guidelines that were adopted in February 2019, had invited the parties to report back to the NCP in one year's time, detailing the steps they have taken in response to the recommendations and explaining the outcomes<sup>12</sup>. The parties submitted their reports to the NCP in July and August 2019. In light of the fact that the new Procedural Guidelines had entered into force after the procedure had already been concluded, the NCP went on to comprehensively coordinate the process, particularly with regard to the NCP's reporting, with the parties. In its upcoming report, the NCP will inform the German Bundestag about the follow-up report submitted in 2020<sup>13</sup>.

### **c) Procedures brought before other National Contact Points**

- 30 In addition, the NCP was involved in two complaints procedures that had been brought before other National Contact Points. In the complaint filed by the Turkish Metal Union against Putzmeister Makine San. ve Tic. A.Ş., which had been accepted for further examination in May 2019, the Turkish National Contact Point sought the NCP's involvement with a view to encouraging Putzmeister Makine San. ve Tic. A.Ş. to accept an offer of mediation. The NCP contacted the German parent company. With its subsidiary continuing to reject the offer of mediation, however, the Turkish National Contact Point concluded the procedure without mediation in December 2019.
- 31 In the complaint filed by Robert Palin against Deutsche Bank Australia, the Australian National Contact Point involved the NCP particularly with regard to the applicability of the OECD Guidelines to expropriations during the Nazi era and with regard to alternative mechanisms of compensation. In December 2019, the Australian National Contact Point decided not to accept

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<sup>12</sup> Final Statement of the NCP in response to a complaint filed by the European Center for Constitutional and Human Rights e.V., the Garment Workers Unity Forum, the Comrade Rubel Memorial Center, medico international e.V., FEMNET e.V., Ms Raima Jahan, Mr Mahmudul Hasan Hridoy, Ms Rikta Khatun Joshna, Ms Morjina Begum and Ms Jesmin Akhter against TÜV Rheinland AG and TÜV Rheinland India Pvt. Ltd, available at <http://www.oecd-nks.de>.

<sup>13</sup> Report by the German National Contact Point for the OECD Guidelines for Multinational Enterprises on the follow-up on the recommendations contained in the Final Statement of 26 June 2018, 10 January 2020, available at <http://www.oecd-nks.de>.

the complaint for further examination<sup>14</sup>; a procedural review conducted in 2020 failed to detect any procedural errors<sup>15</sup>.

## **2. Promotional activities**

- 32 In addition to handling complaints procedures, promotional activities are among the central tasks of the NCP. During the reporting period, the NCP continued to extend and diversify its public talks; it organised eight events on its own or with others and gave presentations in eleven events organised by others. A particular highlight was the talk given by Prof. Dr. iur. Christine Kaufmann, Chair of the OECD Working Party on Responsible Business Conduct, entitled ‘Responsible Business Conduct – seal of quality or competitive disadvantage – desire or load?’, at the Federal Ministry for Economic Affairs and Energy in January 2019.
- 33 The NCP’s promotional activities maintained their primary focus on fostering the application of the OECD Guidelines by companies. Throughout the reporting period, the NCP gave presentations to representatives of German business – regularly in cooperation with associations, e.g. the members of the Working Group on the OECD Guidelines, the Confederation of German Employers’ Associations and the German Retail Federation – but also to young minds at law and economics faculties of German universities. Also, in September 2019, the head of the NCP published for the first time an article on the OECD Guidelines in the magazine of a chamber of commerce<sup>16</sup>.
- 34 Building on the recommendations from the Peer Review Report, the NCP continued to diversify its promotional activities. In order to extend its reach into countries which are not adhering to the OECD Guidelines and in which German companies operate, the NCP again presented the OECD Guidelines as part of pre-posting training seminars for employees of German embassies. It was also involved in the international support network of the Federal Foreign Office for the National Action Plan for the Implementation of the UN Guiding Principles on Business and Human Rights. Moreover, the NCP gave a talk to employees of Germany Trade & Invest and presented the OECD Guidelines in a webinar in cooperation with Germany Trade

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<sup>14</sup> Final Statement of the Australian National Contact Point in the complaint by Mr Robert Palin, on behalf of the descendants of the Oswald Weiss Estate, against Deutsche Bank Australia, a subsidiary office of Deutsche Bank Germany, 13 December 2019, available at <https://ausncp.gov.au>.

<sup>15</sup> Procedural Review Statement of the Australian National Contact Point Complaint 19, 14 May 2020, available at <https://ausncp.gov.au>.

<sup>16</sup> Detlev Brauns, OECD-Leitsätze für multinationale Unternehmen (in German), Der Markt in Mitteldeutschland, September 2019, p. 35, available at <https://www.magdeburg.ihk.de/share/flipping-book/4537016/index.html#page/35>.

& Invest and the Federal Foreign Office. It also gave a presentation to foreign business executives as part of the 'Fit for Partnership with Germany' manager training programme of the Federal Ministry for Economic Affairs and Energy.

- 35 Drawing inspiration from the peer review's recommendation to establish direct relations with individual companies and trade unions, the NCP contacted cooperating companies and NGOs in an effort to publicise successful examples of responsible business activity. Among other things, this set the stage for the presentation of a specific cooperation project, anchored by the NCP, at econsense – Forum for Sustainable Development of German Business, a member of the Working Group on the OECD Guidelines.
- 36 As mentioned with respect to the implementation of the peer review recommendations under III.2, the NCP website was improved in terms of usability, and a database of concluded complaints procedures was added. The NCP also completed the German translations of the OECD Due Diligence Guidance for Responsible Business Conduct<sup>17</sup> and of the third edition of the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas<sup>18</sup>.

### **3. Cooperation within the OECD and with other National Contact Points**

- 37 The third major task of the NCP is cooperation within the OECD and with other National Contact Points. The NCP represents the Federal Government in the OECD Working Party on Responsible Business Conduct and engages in dialogue with other National Contact Points within the Network of National Contact Points for Responsible Business Conduct. In the reporting period, the head of the NCP remained a member of the Office of the Working Party; the Working Party and the Network each held two meetings.
- 38 During the reporting period, the NCP, the Australian and the Swiss National Contact Points jointly took on the task of conducting a peer review of the South Korean National Contact Point. A visit was made to Seoul in December 2019; the peer review report will be a subject of the NCP's upcoming report. Apart from that, the NCP was involved in an OECD project group developing an online training tool for National Contact Points.

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<sup>17</sup> OECD (2018), OECD-Leitfaden für die Erfüllung der Sorgfaltspflicht für verantwortungsvolles unternehmerisches Handeln, available at <http://www.oecd-nks.de>.

<sup>18</sup> OECD (2019), OECD-Leitfaden für die Erfüllung der Sorgfaltspflicht zur Förderung verantwortungsvoller Lieferketten für Minerale aus Konflikt- und Hochrisikogebieten: Dritte Ausgabe, OECD Publishing, Paris, available at <http://www.oecd-nks.de>.

- 39 In addition to cooperation within the OECD, the NCP also continued to work together bilaterally and multilaterally with other National Contact Points. Aside from the coordination involved in complaints procedures as mentioned under IV.1, an event was held in Bern in October 2019, allowing the NCP to continue its trilateral dialogue with the other German-speaking National Contact Points of Austria and Switzerland. The NCP also supported the foundation of a network of Central and Eastern European National Contact Points.
- 40 Finally, the NCP took part in and contributed to peer learning events of international organisations and other National Contact Points, including a seminar in September 2019 that was jointly organised by the EU, OECD and ILO for European National Contact Points, entitled ‘Labour Issues in Responsible Business Conduct’, as well as a workshop by the Moroccan National Contact Point on ‘How to handle a specific instance’, held in October 2019.

### **C. OUTLOOK**

- 41 In 2020, the NCP is building upon the activities undertaken during the 2019 reporting period as outlined in this report. Following the completion of the implementation of the recommendations from the OECD Peer Review Report, the NCP is intensifying and expanding its activities with a particular focus on its key tasks – complaints procedures, promotional activities and cooperation within the OECD and with other National Contact Points.
- 42 In its next report, the NCP will inform the German Bundestag about the activities commenced in 2019 on which further reporting has been announced and about its new activities of 2020.