

**Federal Ministry for Economic Affairs and Energy
German National Contact Point for the OECD Guidelines**

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 2015

Reference: 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 since the revision of the Guidelines in 2011 and up to 31 December 2014 (German Bundestag, printed paper 18/4766)

1. The OECD Guidelines for Multinational Enterprises

The OECD Guidelines for Multinational Companies are one of the most important and comprehensive international instruments for the promotion of corporate social responsibility (CSR). They set out well-recognised principles for corporate social responsibility, spanning the areas of human rights, employment and industrial relations, environmental standards, anti-corruption, taxes, consumer interests, the disclosure of information, competition, science and technology. The Guidelines are recommendations issued to multinational enterprises by the governments of the 34 OECD member states and twelve other participating states¹.

The OECD has set itself the goal of adjusting the Guidelines to be more specific. This work is about tailoring the Guidelines and their general recommendations to individual sectors and their particular needs, in order to help companies implement the Guidelines. Back in 2011, for instance, additional guidance was published relating to the use of minerals from conflict areas (*OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas*). Two more sets of guidance were published in December 2015, with one focusing on agricultural products (*OECD/FAO Guidance for Responsible Agricultural Supply Chains*) and the other on the role of stakeholders in the extractive industries (*OECD Due Diligence Guidance for Meaningful Stakeholder Engagement in the Extractive Sector*). Another two sets of guidance that will deal with the financial

¹ Argentina, Brazil, Colombia, Costa Rica, Egypt, Jordan, Latvia, Lithuania, Morocco, Peru, Romania, Tunisia.

sector and the textile industry are to be published later this year. Furthermore, the OECD is drafting guidance on how to interpret the recommendations on due diligence (*OECD General Guidance on Risk-based Due Diligence for Responsible Business Conduct*). Representatives from the employers' side (BIAC-Business and Industry Advisory Committee), from the unions (TUAC-Trade Union Advisory Committee) and from NGOs (OECD Watch) are always involved in the work.

2. The National Contact Point for the OECD Guidelines for Multinational Enterprises (NCP)

Under the OECD Guidelines, each member state and each participating country is to establish a National Contact Point (NCP). These NCPs are tasked with publicising the Guidelines, providing information about their content and promoting compliance with the Guidelines. Furthermore, the NCPs are to help resolve issues that result during the implementation of the Guidelines. The relevant procedural guidance under the OECD Guidelines sets out a dedicated procedure for this, which is called the 'specific instances procedure', but most commonly referred to as the complaints procedure. This procedure is open to anyone who has a legitimate interest that may have been violated contrary to the Guidelines. The NCP also handles any complaints made under the Guidelines. After examining whether the complaint justifies an investigation and whether it falls within the German NCP's remit, the NCP offers to act as a mediator between the parties involved. The NCP tries to help the parties resolve their dispute and to broker an agreement between them. In doing so, the NCP promotes compliance with the Guidelines.

The German NCP is based within the Federal Ministry for Economic Affairs and Energy (BMWi). All of its decisions and activities must be coordinated within the Interministerial Steering Group for the OECD Guidelines, which is made up of representatives of the Federal Foreign Office, the Federal Ministry of Justice and Consumer Protection, the Federal Ministry of Finance, the Federal Ministry of Labour and Social Affairs, the Federal Ministry of Food and Agriculture, the Federal Ministry for the Environment, Nature Conservation, Building and Nuclear Safety, and the Federal Ministry for Economic Cooperation and Development. The steering

group meets several times per year, whenever it is necessary. Because of this set-up, the German National Contact Point is classed by the OECD as an 'interagency' NCP². There is also a working group tasked with discussing topical issues relating to the OECD Guidelines and the NCP. The social partners, industry representatives and NGOs are all part of this working group, which meets twice every year (as it did again in 2015). Between meetings, the NCP informs the members of the working group of any complaints received and of its activities. The members of the working group support the NCP and its activities.

3. Activities conducted by the NCP during the reporting period (2015)

a) Complaints procedures

A total of four complaints were lodged with the German NCP during the reporting period. Of these, three complaints were not accepted for in-depth investigation; two of which because they did not fall within the geographical jurisdiction of the NCP. One of the complaints was accepted, and that procedure is still ongoing.

At the end of the reporting period, a total of two complaints were still pending. In a further case, a mediation procedure had been completed in 2014, with the follow-up meetings agreed as part of this procedure still ongoing.

Most cases dealt with by the NCP have been allegations of breaches of the Guidelines concerning employment and industrial relations (Chapter V of the OECD Guidelines). Human rights are another area to often feature in complaints. All of the Final Statements on cases that have been accepted and Final Notes on cases that have been rejected are available for download from the NCP's website at www.oecd-nks.de.

b) Declaration by the G7 on supply-chain standards and on strengthening the NCPs

² According to the OECD Annual Report of 2015, nine of the 46 NCPs were composed of representatives of several different ministries and classed as 'interagency' NCPs. 25 NCPs were classed by the OECD as 'monoagency or 'monoagency plus' NCPs, which means that only one ministry is involved. Three further NCPs are structured as 'independent expert bodies'.

The German G7 Presidency made CSR a prominent item on the G7 agenda. A chapter on responsible supply chains was successfully included in the G7 Declaration of 7 and 8 June 2015. In this chapter, the G7 commit to striving for better application of internationally recognized labour, social and environmental standards, principles and commitments (including the OECD Guidelines) in global supply chains. More specifically the heads of state and government agreed to do the following:

- Do more to help SMEs develop a common understanding of due diligence and responsible supply chain management;
- strengthen multi-stakeholder initiatives in G7 countries and in partner countries;
- welcome the efforts to set up substantive National Action Plans for implementation of the UN Guiding Principles on Business and Human Rights;
- enhance supply chain transparency and accountability;
- promote instruments that will help identify and prevent risks;
- promote best practices;
- promote the effective work conducted by the National Contact Points when it comes to implementing the OECD Guidelines for Multinational Enterprises, so as to promote their work in their capacity as out-of-court complaints mechanisms.

As part of their efforts to strengthen mechanisms for providing access to remedies including the National Contact Points, the G7 encourage the OECD to promote peer reviews and peer learning on the functioning and performance of NCPs. The G7 want to ensure that their own NCPs are effective and lead by example. The German NCP has already taken the initiative of volunteering to be peer-reviewed in the second quarter of 2017. Furthermore, the German NCP is to be reorganised and strengthened under the German National Action Plan for Business and Human Rights (details below).

The fact that the NCPs feature so prominently in the G7 report is attributable to the extensive work conducted by the NCP in the run-up of the G7 meeting. The Federal Ministry for Economic Cooperation and Development and the Federal Ministry of Labour and Social Affairs, for instance, hosted an international G7 stakeholders' conference on 10 and 11 March 2015 to discuss what ought to be the deliverables.

These were also discussed at the union's G7 outreach event on 23 March 2015 and at another outreach event on 20 May. The deliverables were then presented at a meeting of the G7 Ministers of labour and of development that took place on 20 and 21 May 2015, and the finishing touches put to a joint paper entitled Action for Production. Building upon the G7 Declaration of Elmau, the G7 labour and development ministers at their meeting on 12 and 13 October 2015 adopted a declaration called "Action for Fair Production", which was more specific on the details.

c) National Action Plan for Business and Human Rights

The German NCP made important contributions to the drafting of the German National Action Plan for Business and Human Rights in 2015, and was actively involved in the preparations of this text. As part of these efforts, the NCP worked with the German Confederation of Trade Unions (DGB), the European Center for Constitutional and Human Rights, and with Transparency International to organise a hearing on what should become the substance of the National Action Plan for Business and Human Rights. The National Action Plan, which is currently being coordinated between the competent ministries, seeks to implement the UN Guiding Principles on Business and Human Rights. One chapter is to be dedicated to the German NCP. In future, the NCP is to use its PR work to raise awareness of the OECD Guidelines, promote compliance with them, and do more to highlight itself and its special role as an effective out-of-court complaints mechanism implementing the UN Guiding Principles on Business and Human Rights. The NCP is currently being reorganised and strengthened to ensure that it can take on these additional tasks.

d) Publicising the OECD Guidelines

Online:

The NCP's website (www.oecd-nks.de) is an important source of information about the OECD Guidelines and the NCP's current activities. It provides access not only to general information about the Guidelines and the complaints

procedure, but also to all of the Annual Reports submitted by the German NCP to the OECD Secretariat. Visitors can also download all of the Final Statements and Final Notes, and recent publications by the NCP.

Additional action to publicise the OECD Guidelines

The staff of the NCP use many opportunities to report on their work. In addition to their participation in G7 events and events associated with the National Action Plan (see above), the NCP gave several presentations on the OECD Guidelines and their implementation, including at a CSR conference for the textile industry, a conference hosted by the Confederation of German Employers' Association, a conference organised by the German Global Compact Network, a session of the Bundestag, a meeting of the Austrian NCP on human rights in business's codes of conduct, an event coorganised by the OECD and CAITEC in Beijing, and an OECD event dedicated to the ICT sector.

The NCP has also provided talking points to be included in speeches delivered by ministers and state secretaries. It has also responded to queries from the public, from the parliaments, and from researchers. Whenever a complaints procedure is concluded, the press office of the Federal Ministry for Economic Affairs and Energy issues a press release.

Cooperation with other NCPs

The OECD Guidelines cover a wide range of issues, which is why the German NCP regularly consults with other NCPs on how these have dealt with similar cases. Furthermore, the NCP uses the OECD database to keep track of all of the possible approaches and procedural steps. Where necessary, the NCP will involve its counterparts in other countries (as happened in autumn 2015 when the German NCP consulted with the Turkish NCP on a complaint relating to the construction sector) or support these on cases dealt by them.

Peer Review:

The German NCP has informed the OECD Secretariat that it is putting itself forward for a peer review. So far, the Secretariat has not confirmed when exactly

this is to happen, but the review is scheduled for the second quarter of 2017. The German NCP has also been involved in reviewing other countries' NCPs, including the Danish one in 2015.

Activities within the Working Party on Responsible Business Conduct (WPRBC)

Four times a year, the German NCP attends events organised by the Working Party on Responsible Business Conduct (WPRBC). These events are hosted by the OECD Secretariat in Paris. Within the Working Party, the German NCP engages in in-depth discussions with representatives from the other OECD member states and of other countries on how the Guidelines should be applied and developed further. There are debates about individual cases and best practices. This direct interaction with representatives of other NCPs promotes better cross-border cooperation. Furthermore, the German NCP also participates in the work undertaken by the WPRBC in order to promote the sharing of experiences between the various NCPs.

Report to the Working Party on Responsible Business Conduct (WPRBC):

The NPC submits full annual reports about its activities to the WPRBC. You can find the OECD Annual Report for 2015 on the NPC's website at www.oecd-nks.de. Furthermore, the NCP keeps the OECD Secretariat up to date about any procedures that are pending.

Reports to the Bundestag:

The NCP will continue to provide annual reports to the Bundestag about the NCP's activities.