

**Federal Ministry for Economic Affairs and Energy
National Contact Point in Germany 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 2016**

**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 in 2015 (transmitted on 17 May 2016)**

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 / responsible business conduct (CSR / RBC). They contain accepted principles for responsible corporate conduct in the areas of human rights, social affairs, the environment, anti-corruption, tax, consumers, reporting and research. The Guidelines are recommendations issued to multinational enterprises operating in or from a participating state by the governments of the 35 OECD member states and eleven other participating states. Compliance with the Guidelines by the companies is voluntary and is supplementary to compliance with local laws; however, the German government firmly expects German companies operating abroad to observe the OECD Guidelines and thus to help them have an impact and become a success.

The OECD has set itself the goal of adjusting the Guidelines for certain sectors to be more specific, in order to support the companies in these sectors as they implement the Guidelines. Specific documents (“Guidance”) already exist for the following sectors:

- minerals from conflict areas (*OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas*)
- agricultural produce (*OECD-FAO Guidance for Responsible Agricultural Supply Chains*)

- extractive industries (*OECD Due Diligence Guidance for Meaningful Stakeholder Engagement in the Extractive Sector*)
- textiles and shoes (*OECD Due Diligence Guidance for Responsible Supply Chains in the Garment and Footwear Sector*)

The Guidance document on extractive industries was adopted in May 2016. It aims to prevent and reduce detrimental effects of business activities in the sector, particularly by including stakeholders in the project planning and in regular operations, and by developing a strategy for the involvement of stakeholders. In order to publicise the Guidance, the NCP has worked with the relevant division in the Economic Affairs Ministry to distribute information about this to all the relevant business associations in Germany.

The Guidance on textiles and shoes was jointly drawn up by governments, companies, civil society and international organisations in a two-year process chaired by Germany. It was adopted in February 2017. The Guidance provides companies with recommendations on how they can implement their due diligence obligations specifically in the garment and footwear sector. It offers companies detailed support, e.g. by highlighting specific risks for the sector like child and forced labour or dangers relating to health and safety at work, e.g. from chemicals. The German government's work on drafting the Guidance should also be seen in the context of its commitment to the Partnership for Sustainable Textiles.

Further sector-specific work will follow in 2017, e.g. for the financial sector (*Key considerations for institutional investors in carrying out due diligence under the OECD Guidelines for multinational enterprises*). 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 them. The NCP also handles any complaints made under the Guidelines. This procedure is open to anyone who has a legitimate interest that may have been violated by a company in breach of the Guidelines. The NCP examines the complaints submitted to it, and if it decides to accept them for consideration, it offers its support to the parties to the complaint in order to attain agreement about the contentious issues and to promote compliance with and future implementation of 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. There is also a working group tasked with discussing topical issues relating to the OECD Guidelines and the NCP. The social partners and NGOs are all part of this working group, which meets twice every year (as it did again in 2016). 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 (2016)

a) Complaints procedures

Three complaints were pending at the German NCP during the reporting period. One complaint dating from 2016 was partially accepted for in-depth examination, and the procedure is now ongoing. The complaints procedure against Nordex SE was concluded in August 2016 with a Final Statement by the NCP. In it, the company confirmed its willingness to comply with certain standards and processes in the eco-audits for the construction of wind turbines. 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. At the end of the reporting period, two complaints were still pending.

Most cases dealt with by the NCP have referred to the sections on human rights (Chapter IV of the OECD Guidelines) and employment and industrial relations (Chapter V of the OECD Guidelines). 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) 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 2016, and was actively involved in the production of this text. The National Action Plan, which was adopted in December 2016, seeks to implement the UN Guiding Principles on Business and Human Rights. The UN Guiding Principles form the basis for Chapter IV (human rights) of the OECD Guidelines. The NCPs' complaints mechanism therefore also serves to implement the UN Guiding Principles.

The NAP contains a specific chapter on the 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. The NCP is currently being reorganised and strengthened (cf. letter c) below).

Further to this, the NAP establishes a link between participation in a complaints procedure at the NCP and the approval of certain instruments to promote foreign trade and investment (export credit guarantees, investment guarantees and untied financial loans). For example, it is expected that companies that make use of the foreign trade and investment promotion instruments fulfil their due diligence obligations. This includes in particular the companies' participation in complaints procedures against them at the NCP.

c) Reorganisation and strengthening of the NCP

In line with the commitments deriving from the G7 summit declaration from Elmau in 2015 and the NAP, the phase of restructuring and further strengthening the NCP commenced in December 2016. The first step was to separate off the NCP from the Division responsible for foreign investment and from the Directorate responsible for foreign trade and investment promotion, with effect from 1 December 2016, and to make it a separate unit, designated the “National Contact Point for OECD Guidelines”, directly attached to the Director-General for External Economic Policy. This is intended to improve the visibility of the NCP and to counter accusations of structural bias. The staffing of the NCP was also strengthened (3 posts at higher level, 1 at higher intermediate level), and it has its own budget from the 2017 financial year.

d) G20: global supply chains

Germany's 2017 G20 Presidency aims to continue the G7 Agenda on sustainable global supply chains. The NCP was actively involved in the preparations, particularly in terms of the following points:

- flagging up the general due diligence obligations of companies in terms of global supply chains in line with international standards (OECD Guidelines, UN Guiding Principles on Business and Human Rights, ILO MNE Declaration),

- establishing / strengthening complaints mechanisms (strengthening existing mechanisms and setting up contact points for complaints in countries which do not subscribe to the OECD Guidelines).

e) Publicising the OECD Guidelines

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 offers information about the OECD Guidelines, the sector-specific Guidance documents and the complaints procedures being handled by the NCP. Also, it provides access to all of the NCP's annual reports submitted to the OECD Secretariat and the Bundestag. Visitors can also download all of the Final Statements and Final Notes, and recent publications by the NCP.

The staff of the NCP make regular and proactive use of opportunities to report on their work. In 2016, the NCP also gave proactive presentations on the OECD Guidelines and the work of the NCP, e.g. in the context of a conference on responsible supply chains in the agricultural sector in the Federal Ministry for Economic Cooperation and Development, at a conference of the Confederation of German Employers' Associations on CSR, at a secondment preparation seminar on commerce at the Federal Foreign office, at a peer learning event organised by the Italian NCP in Rome, and in the peer review of the Swiss NCP in Berne. Further to this, they participated in numerous events of other federal ministries. These included: the dialogue on "Possibilities for state actors in the field of sustainable supply chain management" of the Federal Ministry for the Environment, Nature Conservation, Building and Nuclear Safety; the event on responsible supply chains organised for SMEs by the Federal Ministry of Labour and Social Affairs; and the exchange of information and experience on relevance, application and monitoring of the Voluntary Guidelines on the Responsible Governance of Tenure of Land by various German stakeholders organised by the Federal Ministry of Food and Agriculture and the Federal Ministry for Economic Cooperation and Development.

In December 2016, to mark the 40th anniversary of the OECD Guidelines, the NCP published an article by the Federal Minister for Economic Affairs and Energy on the OECD Guidelines and the work of the NCP, which was printed by several German newspapers.

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.

f) Cooperation with other NCPs:

The NCP regularly consults with other NCPs on how these have dealt with similar cases. In 2016, the NCP participated in the peer learning events in Jerusalem, London, Rome and Warsaw.

g) Peer Reviews:

The German NCP has informed the OECD Secretariat that it is putting itself forward for a peer review, which will take place on 22-23 June 2017. On this occasion, the work of the NCP will be evaluated by the OECD Secretariat, together with reviewers from three other National Contact Points.

The German NCP has also been involved in reviewing other countries' NCPs, most recently as a reviewer of the Swiss NCP in 2016.

h) Activities in the context of OECD bodies

The German NCP participates actively in all relevant OECD bodies relating to responsible business conduct (RBC) and feeds German positions into their work. These include the "Working Party on Responsible Business Conduct" (WPRBC), the "meeting of NCPs", the "Global Forum on RBC" and the "High Level Roundtable on RBC". At these events, 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 serves to promote better cross-border cooperation.

i) 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 2016 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.

j) Reports to the Bundestag:

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