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**REVIEW OF NCP PERFORMANCE:
KEY FINDINGS**

This report serves as a background document to the OECD-ILO Conference on Corporate Social Responsibility. It presents the key findings of the review of NCP performance conducted by the Working Party of the Investment Committee.

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I. Introduction

At their 2007 Annual Meeting held in Paris on 19-20 June 2007, the National Contact Points (NCPs) agreed that the 2007-2008 implementation cycle on the OECD Guidelines for Multinational Enterprises should give priority to the improvement of NCP performance.¹ At the Heiligendamm Summit of 6-8 June 2007, the G8 Leaders also committed themselves to “... *promote actively internationally agreed corporate social responsibility and labour standards (such as the OECD Guidelines for Multinational Enterprises and the ILO Declaration), high environmental standards and better governance through the OECD Guidelines’ National Contact Points*”.²

In view of this, the Working Party decided at its October 2007 meeting to offer its assistance in the preparation of a focused discussion on the improvement of NCP performance for the 2008 Annual NCP Meeting. It created a small task force of interested delegations³ to carry out, under the Chair’s guidance, a survey of NCP performance based on an update of the 2003 questionnaire on NCP procedures and a synthesis of the responses for the consideration of the Working Party identifying any new emerging NCP practices.

The present report by the Working Party summarises the key findings of this undertaking. It is based on the Working Party’s discussion at its December 2007 and March 2008 meetings of the 30 country responses to the questionnaire⁴ – 23 from OECD adherent countries⁵ and 7 from non-OECD adherent countries⁶ as well as comments received from TUAC and OECD Watch on the preliminary results of the questionnaire. Due to its broad scope and the high number of replies, the report provides a comprehensive and up-to-date picture of NCP institutional arrangements and working methods as well as an informative insight of how the experience with eight years of implementation of the revised OECD Guidelines for Multinational Enterprises have translated into new emerging NCP practices.

The remainder of this report is structured as follows. Part II highlights the salient features of existing NCP structures and significant recent developments; Part III summarizes perceived advantages and disadvantages associated with various NCP structures; Part IV takes stock of recent proactive promotional activities on the Guidelines; and Part V describes how the procedures for handling specific instances have been changed to enhance due process and facilitate the resolution of disputes. Part VI identifies some emerging practices.

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1. Annual Report on the OECD Guidelines for Multinational Enterprises 2007, pages 29-30.
 2. Paragraph 24 of G8 Summit Declaration Heiligendamm, “Growth and Responsibility in the World Economy”, Germany, 7 June 2007.
 3. Austria, Belgium, Canada, Chile, Japan, the Netherlands and the United Kingdom.
 4. The full set of responses to the questionnaire are reproduced in the confidential document [DAF/INV/RD(2007)2/REV3].
 5. Australia, Austria, Belgium, Canada, Denmark, France, Germany, Greece, Hungary, Italy, Japan, Korea, Mexico, The Netherlands, New Zealand, Norway, Poland, Spain, Sweden, Switzerland, Turkey, United Kingdom and United States.
 6. Argentina, Brazil, Chile, Estonia, Israel, Lithuania, and Romania.

II. The NCP organisational landscape

Since their creation in 2000, NCP structures have followed two basic models, namely (a) a government-only one and (b) a multi-partite one with the built-in participation of business, labour or non-governmental organisations or a combination thereof under the government's leadership. As reported in the 2007 Annual Report on the OECD Guidelines for Multinational Enterprises, the government-only structure constitutes the dominant form (26 over 39)⁷ but over time the number of multi-partite structures has increased (11), to a large degree as a result of choice made by new adherents (the three Baltic States and Romania). There are currently 20 NCP single government departments, 6 NCP multiple government departments, 1 bipartite NCP (involving government and business), 9 tripartite NCPs (involving government, business and trade unions), 2 quadripartite NCPs (involving governments, business, trade unions and NGOs) and a new mixed structure (of independent experts and government representatives – see further details below). Through experience, governments have found various ways of enhancing the inclusiveness of stakeholders (advisory committees or permanent consultative bodies, regular meetings, special events...).

Two important changes occurred during the last year. In February 2007, the Netherlands adopted, for a three-year trial period, a new structure composed of independent experts operating at “arms length” from the government, within certain instructions, written down in a published official Installation Ordinance. In September 2007, the UK NCP moved from a single unit to a dual-departmental NCP. The UK government also created a Steering Board to exercise oversight of the UK NCP and consider appeals on procedural issues in specific instances. These developments are described in greater detail in the box below. A few additional countries report being in the process of implementing new changes (Argentina, Brazil, Chile) or are considering exploring ones (Canada, Japan, and Turkey).

Box. Netherlands and UK NCP Restructuring

Netherlands

Composition. The Dutch NCP has been changed from an interdepartmental office to a bipartite structure consisting of four independent experts (including the Chair) chosen because of their social status with various stakeholder groups and for their knowledge and reputation on corporate responsibility issues. The NCP further consists of four government advisors (from the ministries of Economic Affairs, Foreign Affairs, Social Affairs and Housing, Spatial Planning, and Environment).

Motivation. The change is intended to ensure the independence of the Dutch NCP and avoid conflicting requirements between the NCP functions and those of the responsible Minister as member of the Dutch cabinet.

Location. The new NCP continues to be hosted in the Ministry of Economic Affairs.

Mandate. The new NCP has been installed for a trial period of three years to fulfil the tasks outlined in the *Procedural Guidance* for the implementation of the Guidelines and operate in accordance with the core criteria of visibility, accessibility, transparency and accountability to further the objective of functional equivalence.

Oversight. The NCP members act independently without supervision of any other authority. However, the government can issue a public comment on final statements on specific instances made by the Dutch NCP. The connection with the government is also upheld via the advisory members of the Dutch NCP. The Minister for Foreign Trade will instruct the Dutch NCP about any clarifications or other decisions by the OECD Investment Committee.

7. Egypt, which adhered to the OECD Declaration on International Investment and Multinational Enterprises in July 2007, has not yet communicated the structure of its NCP.

Relations with stakeholders. The new Dutch NCP will hold regular consultations with representatives of all stakeholders. This enables them to monitor the working procedures of the Dutch NCP. Stakeholders are also asked to participate actively in information and promotional activities.

Resources. The new NCP has a fixed budget (almost 900 000 Euros for three years). This includes the cost of one full-time officer for promotional activities located in MVO Netherlands (a separate private entity funded by the Ministry of Economic Affairs to promote corporate social responsibility among companies). In addition, two full-time officer equivalents from the Ministry of Economic Affairs have been made available to serve as the secretariat to the Dutch NCP.

United Kingdom⁸

Composition. The UK NCP has changed from a single departmental unit to a dual-departmental structure. It consists of a representative from the Department for Business, Enterprise and Regulatory Reform (BER) – the leading agency – working with officials from the Department for International Development. A Steering Board oversees the work of the NCP (see Oversight).

Motivation. The enlarged composition of the UK NCP is intended to take better into account the concerns of key stakeholders (business, trade unions and NGOs). The inclusion of DFID is intended to give easier access to staff in overseas embassies and in addition, formal procedures have been put in place to contact Foreign and Commonwealth Office officials at the relevant Embassy. The UK NCP has also access to various specialist teams in UK offices and links the Guidelines with teams responsible for other corporate responsibility initiatives (such as EITI and Global Compact). The Steering Board aims to improve the functioning of the UK NCP (further details below).

Location. The enlarged NCP continues to be hosted in the Department for Business, Enterprise and Regulatory Reform. BERR also acts as a secretariat for the Steering Board.

Mandate. The mandate of the UK NCP has remained unchanged.

Oversight. The Steering Board has been created to oversee the effectiveness of the operating of the NCP and to ensure that the procedures are followed. It also has the broad mandate of providing advice on issues of general and specific application of the Guidelines and promoting their use.

The Steering Board is chaired by a senior official from BERR and includes representatives from 8 other ministries (the Foreign Office, DFID, the Attorney General's Office and Export Credit Guarantees Department, the Department for the Environment, Food and Rural Affairs, the Ministry of Justice, the Scottish Executive and the Department of Work and Pensions and BERR's legal Department and the Directorate with overall responsibilities for Corporate Responsibility). There are four external members (representing business, trade unions and NGOs as well as an independent member who represents the All Parliamentary Group for the Great Lakes and the Prevention of Genocide. External members serve for a period of three years with the possibility of appointment for a further three years. The Steering Board can also draw on the other external experts for particular topics and issues as appropriate.

The Steering Group meets on a quarterly basis and more often if required. Minutes of the meetings will normally be published on the website. The Steering Board is currently reviewing the NCP Specific Instance Procedures as well developing appeals procedures. The Steering Group will conduct a self-evaluation after one year of operation (September 2008).

Relations with stakeholders. The establishment of the Steering Board allows the voice of stakeholders to be heard.

Resources. Two BERR officials work full time for the NCP while DFID allocate 20 per cent of one official to the NCP. The expectation is that these officials will carry this function for a minimum of two years. The external members of the Steering Group are not paid except for travel expenses. One NCP member has now undertaken mediation training.

There is no perfect structure however. The following section summarizes the perceived advantages or disadvantages of various NCP structures, as outlined in the responses to the questionnaire.

8. This description reflects changes to the UK NCP structure that became effective on 1 April 2008.

III. Perceived structural strengths and weaknesses

Government structures

Advantages

Adherent governments are the primary guarantor of the Guidelines. While stakeholders have without doubt an important role to play, adherent governments have the primary responsibility of promoting the Guidelines and ensuring the effective implementation of this most comprehensive, multilaterally-backed up corporate responsibility instrument in existence today.⁹ Direct government involvement and oversight is essential for the protection of the integrity and good functioning of the Guidelines.

Governments have privileged access to a wealth of expertise and networking. In addition to the knowledge provided by stakeholders, government structures can mobilise and capitalise on the wealth of diverse expertise and resources available within government departments and agencies at both national and sub-national levels and benefit from the government's extensive networks at home and abroad. This advantage can be reinforced by the formal inclusion of interested departments into the NCP structure (Brazil, Canada, Denmark, Korea, Japan, United Kingdom) although this also puts a greater onus on co-ordination. Single department NCPs have the advantage of simplicity (Greece, Italy, Spain). They can also benefit from inter-agency support and feedback or that of their respective constituents and stakeholders (United States, Mexico).

A great majority of NCPs are located in economic ministries or departments. NCPs located in economic ministries or departments can more easily tap on business forums to promote the Guidelines and relate more closely with MNEs (Australia, Austria, Greece, Switzerland). Furthermore, regrouping the work on MNEs in one single economic entity dealing with the Guidelines and other corporate responsibility instruments could also help enlist the support of business and make responsible corporate behaviour easier and more effective (Switzerland). Mexico underlines the expertise available in the Ministry of the Economy as regards issues related to the side agreements on labour and environmental co-operation of the North America Free Trade Agreement (NAFTA) and several other multilateral agreements. On the other hand, NCPs located in foreign affairs ministries (Argentina, Canada, Chile, Japan, United States) have more direct access to embassies' assistance. This can be a real advantage as a growing number of specific instances take place in non-adherent countries. Irrespective of the government location, direct access whenever needed to government expertise and networking is deemed essential.

There are several ways to consult and seek the advice of stakeholders. Irrespective of the NCP structure, it is important to maintain a genuine and constructive two-way dialogue with stakeholders. A majority of government-centred NCPs have set up formal consultative or advisory mechanisms with stakeholders to assist them in performing their tasks. These mechanisms can be helpful in discussing strategies and activities for promoting the Guidelines. A smaller number of NCPs seem to prefer other avenues (existing channels of communication, meetings or special events with stakeholders...). This is perceived as providing more flexibility or as being less bureaucratic (Australia, Canada, Brazil, Switzerland). A few NCPs (Chile, Poland) report being in the process of seeking more permanent arrangements with business, labour and other civil society representatives although this is not always easy (Chile).

9. According to Section I.1 of the Implementation Procedures, "Adhering countries shall set up National Contact Points for undertaking promotional activities, handling enquiries and for discussions with the parties concerned on all matters covered by the Guidelines ..."

Governments are accountable for all their activities. Even if NCPs are not formally obliged to publicly report their activities (other than on an annual basis to the OECD Investment Committee),¹⁰ as any government entity operating in a democracy, they are nonetheless accountable, individually or through their hierarchy, to their Parliaments or societies (Australia, Greece, Japan, **New Zealand**). In some countries, ombudsmen may have oversight powers as well (Denmark).

Disadvantages

A perceived accountability and transparency deficit. As compared with multipartite structures, government-centred structures continue to be perceived by several stakeholders as falling short of giving them a decisive voice in NCP activities. They see this structure is less credible in reflecting a genuine consensus over corporate responsibility issues. The direct involvement of labour ministries is seen by labour unions as a prerequisite for developing a solid knowledge base on employment and industrial relations. Given these views, some respondents (Belgium) acknowledge that stakeholders may be less inclined to engage in promotional activities and encourage the use of the Guidelines among their constituencies. They may be less enthusiastic in providing financial or other kinds of logistic support.

Government-only structures are also criticised by stakeholders for not being sufficiently transparent or accountable to stakeholders. This criticism seems to be more recurrent with respect to the handling of specific instances (see Part V of this report). Multipartite structures can increase the acceptance of NCPs as a forum for discussion of globalisation and corporate responsibility (Austria). Lack of formal processes with stakeholders may limit their ability to press for changes to NCP structure and procedure (Canada).

Competing priorities and possible conflict of interests. As persons with a partial position as a result of other functions within their administrations, NCPs may be confronted with competing priorities and may not always be in a position to carry out all their tasks (Australia). In addition, the government may face a conflict of interest in simultaneously promoting the development of its business sector and monitoring its behaviour. Lack of political independence may also be a problem when a dispute involves a state-owned enterprise.¹¹ Since the NCPs deal with international issues, international foreign affairs and commercial considerations may become entwined and even have an influence in the NCP processes.

Insufficient oversight? With one exception, there are no special mechanisms in place to review NCP activities at the national level. Mounting criticisms in the UK has led the government to create a steering board whose primary responsibility is to oversee the effectiveness of the operation of the UK NCP and ensure due process.

Multipartite structures

Romania's NCP has a bipartite structure (government-business), Belgium, Denmark, Estonia, France, Luxembourg, Lithuania, Norway and Sweden have a tripartite structure (government, business and labour) and Chile, Finland, a quadripartite structure (government, business, labour and NGOs).

Advantages

Objectivity, transparency and accountability. One of the perceived principal advantages of a multipartite structure is the more direct access to business, labour or other stakeholders. Providing relevant business, labour and NGOs players are represented, this direct contact can assist the NCP in better taking

10. As provided by the Procedural Guidance.

11. Norway, which has a multi-partite structure mentions this issue but can be applied to any government-based structure.

into account the relevant considerations relating to a specific instance. It may also help secure stakeholders' "ownership" of the findings and actions proposed for resolving a case (several respondents). The consensual approach and sharing of views and experiences built into multipartite structures also provide greater confidence about the objectivity, transparency and accountability of the Guidelines process (Belgium, France). In some countries, this approach is consistent with a long and solid tradition of government, labour and employers' co-operation (Denmark, Norway, Sweden). This can be a clear advantage in providing NCP good offices in finding solutions to specific instances.

More effective promotion of the Guidelines. As committed partners, stakeholder members can be more supportive of the Guidelines and be more pro-active in promoting the Guidelines within their own constituencies (Belgium, Norway, Sweden).

Disadvantages

But the advantages can also turn into disadvantages. Lack of consensus can make dispute resolution more complicated and lengthier. Conflict of interest may arise when one stakeholder is a partner to a dispute (Belgium). So far these downside risks have proven to be manageable. Furthermore, to avoid a potential dysfunction of the decision-making process, the chair of the NCP has the final say when no consensus can be reached among the parties (Belgium, Norway, and Sweden).

Resource is a general problem for all NCPs

Several NCPs (Brazil, Belgium, Chile, France, Greece, Italy, Mexico, Poland, Romania, Spain) report increased difficulty in coping with the various demands put on them. Frequent NCP turnover may also be a problem (United Kingdom). Several NCPs acknowledge that with additional resources, they could play a more active role in promoting the Guidelines. Special funding is also needed to carry out on-site visits (several respondents). Qualified staff may also be an issue, particularly as regards to mediation activities (Brazil). In view of this situation, some NCPs have taken steps to increase available resources and training as well as securing more stable arrangements (Brazil, Netherlands, Poland, Switzerland, United Kingdom). Netherlands, in particular, has earmarked a specific budget (900 000 Euros for three years plus two full-time staff) to cope with the problem.

IV. Promoting the Guidelines

The responses to the questionnaire confirm the increased diversification and sophistication of NCP promotional activities and the more extensive use of modern communication tools.¹² They also confirm a more frequent use of the Guidelines as a policy tool for communicating expectations to business, such as in the context of export credits or investment guarantees programmes. At the same time, it is recognized that continuous efforts are needed to raise the general awareness of the Guidelines and spread their use among enterprises. Three key approaches have been reported.

Getting the priorities right. The demands are numerous and (human and financial) resources are limited. The Guidelines need to be promoted on several fronts, including large and small enterprises, foreign countries with weak governance or exposed to human rights violations, labour intensive industries, or sectors capable of exercising an influence (the financial sector). Without a proper evaluation, it is difficult to measure the effectiveness of various promotional efforts. A new promotion strategy is being

12. As reported in the 2007 Annual Report of the NCPs, websites, presentations, interviews, special events, brochures, regional co-operation, promotion through chambers of commerce are the more frequently cited measures.

developed by the Netherlands to assist in translating the Guidelines into corporate good practices, particularly on the part of small and medium-sized enterprises.

Soliciting the contribution of stakeholders. Acting in partnership with stakeholders' organisations is an effective way of promoting the Guidelines and seeking feedback (Switzerland). Soliciting their direct contribution in promoting the Guidelines such as the release of explanatory brochures addressed to business and others actors and organising events is also becoming more recurrent (France, the Netherlands, **New Zealand**). **In New Zealand, this role is also fulfilled by a Liaison Group that includes government agencies and non-governmental (business and labour) organisations.** Making use of government support programs, such as investment promotion, export credit and investment guarantees to generate support for the Guidelines, is another effective way of promoting the Guidelines.¹³ There is a potential trade-off however: while the Guidelines may gain in exposure, government partners need to acquire a good understanding of the Guidelines (Australia). Monitoring the performance of enterprises is also an issue. In the Netherlands, where companies benefitting from government support must state that they are aware of the Guidelines and that they will endeavour to comply with them to the best of their ability, a study on the corporate responsibility side-effects of the Netherlands' financial instruments was released in November 2007.

Working more closely with other leading corporate responsibility initiatives. The multiplication of numerous corporate responsibility codes, mechanisms and initiatives appears to be an increasing source of confusion for business. This also makes it more difficult to promote the unique features of the Guidelines. One unfortunate perception of the Guidelines is that although unique, it is not a very practical "soft law" instrument (Switzerland). Special efforts are being deployed by some NCPs (Denmark, France, Germany,¹⁴ Norway, Sweden,¹⁵ Switzerland...) to better coordinate the work on major corporate responsibility initiatives (the OECD MNE Guidelines, ILO Conventions and MNE Tripartite Declaration, UN Global Compact and ISO). White papers on corporate responsibility have been commissioned in Denmark, the Netherlands and Norway. NCPs also benefit from the Investment Committee's work to relate more closely with other corporate responsibility forums (such as ILO, Global Compact, ISO...).

V. Governance issues relating to specific instances

As shown in Annex 2 to the present Note, the respondents report having considered 60 per cent (98/164) of the requests to consider specific instances since the June 2000 Review of the Guidelines. Over 70 per cent were raised by labour (119/164) as compared to 30 per cent for NGOs (45/164). Close to half

13. As observed in the 2007 Annual Report, 29 NCPs report the existence of links between the Guidelines and such programs.

14. In particular, the local UN Global Compact in Germany, represented by GTZ, asked the German NCP for closer co-operation with the NCPs and whether it could especially provide NCP's mediation capacity for possible cases of non-compliance with the Global Compact principles. The German NCP welcomed this request and suggested a two-step procedure, to which the Global Compact representatives agreed: First, the Global Compact tries to solve possible problems within its reporting system; second, if the results are not satisfactory, the problem could be presented to the German NCP as a "specific instance", which would offer its mediation according to the OECD Guidelines and following the standards of the "OECD Procedural Guidance". The stakeholders of the UN Global Compact Germany have approved and formalized this possibility of co-operation.

15. The Swedish NCP and the Swedish Partnership have a close relationship with the UN Global Compact and its local networks. Sweden considers that the Guidelines and the UN Global Compact complement and reinforce each other. The Partnership has close contacts with the Nordic Global Compact Network and the Swedish NCP-chair participates in annual Global Compact Network meetings. Sweden is the biggest donor country to the Global Compact.

(76/164) concerned business activity in a non-adhering or in a weak governance zone country (44/164). Over 40 per cent of the cases involved other NCPs (66/164).

With regard to the issues addressed, close to 60 per cent (94/164) involved issues addressed in parallel proceedings (these were also the main reason for rejecting requests as reported below) and less than 20 per cent (29/164) related to the “investment nexus” and involved supply chain responsibilities. Issues on the application of the Guidelines to the financial sector or involving business conduct previously examined by other forums (such as ILO or the UN Global Compact) seem to be on the rise (11 and 12 specific instances respectively).

This Part of the report examines the procedures that have been followed to consider these specific instances.

Application procedures and decisions to consider specific instances

The procedures for handling specific instances have become clearer and more user-friendly. A large majority of NCPs have developed detailed guidance for handling specific instances¹⁶ based on the OECD Guidelines Procedural Guidance, which is usually made publicly available. No significant difference is reported for specific instances in non-adherent countries (although it is widely acknowledged that the procedures are more difficult to apply in their case). The distinctions between the principal procedural steps have also become clearer and more consistent. A growing number of NCPs set indicative time limits and actions to be taken in case these cannot be met. These timeframes may range from 1 to 3 months for the initial assessment (Australia, Belgium,¹⁷ Canada, Denmark,¹⁸ Korea, Netherlands,¹⁹ New Zealand, Poland, United Kingdom), 6 to 9 months for the conciliation and investigation phase (Argentina, Netherlands,²⁰ United Kingdom) and 3 months for the preparation and publication of the NCP final statement (United Kingdom). The newly reformed Dutch NCP also offers a so-called pre-advice service to applicants on the chances of acceptance of a case or ways to increase that chance.²¹

Other NCPs consider that they lack sufficient exposure to specific instances to set up a general rule on the length of the process (Greece, Romania, Sweden, Turkey). Some other NCPs prefer a more flexible approach given that the circumstances and complexity of each case may vary (Austria, Hungary, Italy, Japan and United States). But in the end, the time spent in considering a case may not be all that different (Japan). Final statements are made public and reported to the Investment Committee.

Relevance of the issues raised and quality of the supporting information. NCPs will not consider a specific instance unless credible documentation on the alleged breach of the Guidelines is provided by the

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16. This guidance may take various forms: detailed explanations on the NCPs’ websites (majority of NCPs), brochures, manuals or models or standard forms for filing complaints (Brazil, Japan, Italy, Norway, Poland) or useful “tips” (Australia). Argentina has indicated that its procedures are based on the OECD Watch Model. The existence of NCP procedures is less wide-spread, however, among countries with limited or no experience with specific instances (Greece, Israel, New Zealand, Spain).
 17. Parties to an accepted specific instance are invited to meet with the Belgian NCP within 2 months after the declaration of acceptance.
 18. Afterwards, the procedures are less formalistic.
 19. The timeframe for this phase is set at 30 working days.
 20. The timeframe for this phase is set at a maximum of 6 months, to be prolonged once with a maximum of 3 months in the case of a field visit abroad.
 21. Details for this facility are being developed. The Swiss NCP is also available to provide interested parties with advice on how to submit and present a specific instance.

complainant (all respondents). They may go the extra mile to seek additional information or clarifications from the complainant (and the respondent in the case of Norway) but they will not “adjudicate” on the validity of the information provided (Australia) or normally launch independent research at that stage (Belgium, Korea, Japan, Netherlands). The Swiss NCP, on the other hand, conducts a “pre-assessment” as to whether the application may be acceptable under the Guidelines; if the result is positive, it will proceed with collection of relevant information to issue the initial assessment.²² Differences in quality or reliability may occur²³ and be even a recurrent source of delay (Mexico) but a large number of respondents do not feel this is a major problem, at least for specific instances in adherent countries. Access to reliable information in non-adherent countries can be more problematic and raise sensitivities relating to sovereign jurisdiction (Canada, Japan, Mexico, Netherlands). Site visits are more the exception than the general rule. One country (United Kingdom) reports making a site visit to collect information.

Criteria for taking on or rejecting a case. The NCPs must be convinced that the request constitutes an investment (or that there is an investment nexus) and that a possible non-compliance to the Guidelines is conceivable on the basis of the presented facts.²⁴ The company involved is normally informed shortly after receipt of the complainant’s notification. In Belgium, the decision is taken by the NCP, in taking into account the recommendation of the evaluation committee created for each case. The composition of the evaluation is drawn from NCP members. The existence of parallel legal proceedings²⁵ and the lack of investment nexus are the most frequently cited reasons for turning down or delaying examination of a request to consider a specific instance.

Communicating the results of an initial assessment. The results of the initial assessment are normally communicated in writing to the parties.²⁶ Some NCPs have also started to publicly acknowledge **in their websites** their decision to actively take on (Brazil, Japan, United Kingdom)²⁷ a specific instance. This decision may also be taken on a case-by-case basis (Romania). Other NCPs refrain from making public the outcome of an initial assessment (Austria, Brazil), particularly when the case is rejected (Brazil). In Switzerland, this decision is never made public. On the other hand, the Dutch NCP always publishes the

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22. Switzerland reports the following steps before an initial assessment: (1) confirmation of the receipt of an application; (2) pre-assessment as to whether the application may be acceptable under the Guidelines; (3) if the result of the pre-assessment is not negative, information on the company concerned by the complaint, constitution of an *ad hoc* committee including relevant government departments and collection of relevant information, including through the Swiss diplomatic mission in the country concerned; and (4) making and communication to the parties of the initial assessment.
 23. This may be the result of various factors, ranging from insufficient knowledge (for instance because of large distances, language barriers or communication channels, hampered for reasons of protecting the safety of the informants), resources, experience and motivation of the complainants, or deliberate manipulation of information (Netherlands, Norway, Switzerland). It may be critical to hear both the complainant and the respondent at an early stage (Norway).
 24. Chile’s response also mentions that allegations can be proven by means foreseen in the Chilean law and that the complainant is recognized as a player in his area of activity.
 25. Most respondents indicate that their NCPs will refrain from taking on a case subject to parallel proceedings unless the parties or the NCP see clear merit in getting involved. Some NCPs might also be more inclined to take on specific aspects of legal proceedings taking place in developing countries when flaws in the legal framework and judicial systems of these countries are documented.
 26. According to Section I.C.1 of the Procedural Guidance, the first step to be taken by the NCP in considering a specific instance is to “make an initial assessment of whether the issues raised merit further examination and respond to the party or parties raising them”.
 27. Japan occasionally informs the Diet about the outcome of its initial assessment.

reasons for accepting to hear a case and in the future, it will do this as well for denials. If the UK NCP accepts a case, the parties will be named but if the case is rejected, the parties will remain anonymous.

Consideration of specific instances

Confidentiality is not incompatible with good communication. The Procedural Guidance enables the NCP to take appropriate steps to protect sensitive information and inform the parties of their obligations. Confidentiality of the proceedings is also needed to ensure the success of good offices for mediation and conciliation efforts by the NCPs. That being said, several NCPs report an encouraging two-way exchange of information between the parties to a complaint. It is also made clear to them that a breach of confidence could be treated as a breach of faith in the process and could result in either a refusal to consider a complaint further or an adverse final report (United States). As provided by the Procedural Guidance outsiders are not, as a general rule, informed about the progress made in considering a case; this is more conducive to confidence-building between the parties more directly concerned.

Good communication between NCPs is crucial. While it is recognized that the need for consultations between NCPs may be directly proportional to their interest in the resolution of a specific instance, several NCPs (Mexico, United States) report making every effort to keep these NCPs apprised of the situation regarding a specific case. This includes forwarding at an early stage a copy of the submission, soliciting views at various stages of the process, include other NCPs' joint meetings with the parties to the complaint as appropriate and sharing drafts of final statements. The challenge is greater in cases involving complex international consortia for which more detailed procedural guidance might be warranted (Italy).

Tips of good practices for handling or mediating specific instances. Mediation and conciliation remain no doubt the major strengths and most distinctive features of the specific instances process. The responses suggest that a growing number of NCPs are giving their best shot at offering their good services for resolving investment disputes and a few useful tips have been learned since the 2000 Review. These include encouraging the parties to provide a thorough and detailed submission in the early stages of the process, promoting genuine co-operation between stakeholders and sharing and where practical release of all non-sensitive information. Mediation efforts should also be carefully stage-managed with clear agendas and deadlines and realistic expectations about what can be achieved. The process should also leave room for the NCPs to exercise their judgment on individual cases. Outside expertise may also be sought when needed. A certain amount of discretion may also need to be exercised to cool down the noise around the complaint.

Publication of the results

As a general rule, a final statement is issued and made public even if a mediated settlement has not been reached.²⁸ The final statements are also becoming more detailed, in providing background information on the complaint, including the names of the parties, assessing the parties' behaviour, explaining NCP procedures and reasoning on non-observance of the Guidelines or good practice where this can be evidenced. Whenever possible, recommendations are formulated with a view to providing guidance to businesses in respect of their future conduct (United States). The companies and complainants are consulted before the release of the statement. (United States).

28. Under section I.C.4.b of the Procedural Guidance, the NCP will "after consultation with the parties involved, make publicly available the results of these procedures unless preserving confidentiality would be in the best interests of effective implementation".

VI. Emerging practices

At its March 2008 meeting, the Working Party broadly felt that the progress made since the 2000 Review in putting in place operational NCPs for furthering the effectiveness of the Guidelines has been a tangible and forward looking one. NCPs have become more experienced and confident about their duties. They have become more attentive to the functioning of their institutional arrangements and ways to integrate the views and expectations of stakeholders. NCPs have also learned from each other in becoming more pro-active in their promotion of the Guidelines and making the procedures for considering specific instances become clearer and more user-friendly. Broadly speaking, the relationship between structures, working methods and performance seems now better understood.

The Working Party also considered that the questionnaire has been useful in identifying some interesting emerging practices. While fully acknowledging that not all recent innovations mentioned in this report might be transposable to other NCPs because of economic, social, or cultural differences or other factors – which is why NCPs operate according to the functional equivalence principle – it still felt that some recent developments could provide “seed material” for NCP practices of a broader application. The following emerging practices were particularly identified as deserving special attention by NCPs at their 2008 Annual Meeting.

NCP structures

Increased inclusiveness of stakeholders. The closer association of stakeholders to NCP operations has no doubt been an evolving trend but three NCPs – namely the Dutch and the UK NCPs – have raised the bar a bit higher. In the case of the *Netherlands* the increased inclusiveness concerns the NCP decision-making process itself. The Dutch NCP now consists of four independent stakeholders which are sovereign in their decisions on specific instances. This was a deliberate decision on the part of the Dutch government to avoid possible conflict of interests with other governmental activities. But it is the Dutch government which nominates the four members of the Dutch NCP and the connection with the government is upheld via advisory members of the Dutch NCP. In the case of *new UK structure*, on the other hand, stakeholders are full members of the Steering Board, overseeing and advising the work of the UK NCP. This allows the voice of stakeholders to be heard and make the UK NCP accountable. However these new institutional arrangements are still being implemented and it may be too soon to draw conclusions on NCP performance.

Independence of NCPs to avoid possible conflict of interests. If this was the main rationale for the recent Dutch reform, there could be some pre-conditions for this kind of structure to work. The four **members** of the Dutch NCP have been selected because they are “recognizable” by their peers as knowledgeable and objective representatives of the constituencies they represent. Netherlands’ cultural and industrial relations traditions have also played a part.

Oversight at the national level. Also, it was the mounting criticism in the UK which led the government to create a Steering Board to oversee the effectiveness of the operation of the UK NCP and ensure due process. The Steering Board provides a way to counterbalance the government structure of the UK NCP. To reinforce this, appeal procedures are being considered by the Steering Board. Several delegations at the Working Party’s March 2008 meeting felt nevertheless that the creation of appeal procedures on the substantial aspects of a specific instance would not be consistent with the non-judicial character of the specific instance facility.

Appropriate resources. There was broad agreement that earmarking a budget and allocating permanent expert staff to NCPs are good ways to address NCP resource constraints.

Promotion

Casting the net wide. Many NCPs have gone beyond the stage of simply providing basic information to the Guidelines, responding to inquiries and improving websites. They are also engaged in deliberate efforts to raise the public's general awareness of the importance of the Guidelines as a leading corporate responsibility instrument. Good emerging practices in this respect include more frequent speaking engagements, organisations of events and financing research projects on corporate responsibility. Regional co-operation such as that between MERCOSUR countries is another effective way to promote the Guidelines.

Enlisting the support of stakeholders. A growing number of NCPs are soliciting the direct involvement of stakeholders in promotional activities such as the organisation of events or publication of brochures. This is to be encouraged. It may also be desirable (as the Netherlands suggested) to put greater effort into translating the Guidelines into best practices on the part of enterprises, more particularly small and medium-sized firms.

Specific instances

Due process. The procedures for handling specific instances have become clearer and more predictable through the publication of more detailed guidance and indicative time-frames on the various procedural steps as well as the adoption of confidentiality rules that provide parties easier access to the information available to NCPs. Increased transparency has also been achieved through the more systematic publication of the outcome of specific instances, including a description of the facts, the implications for the Guidelines and government recommendations. Some NCPs have gone further in offering pre-advice to services to potential complainants (the Netherlands) and publicizing the results of initial assessments, including the names of the parties (the Netherlands and the United Kingdom).

Proactive mediation and conciliation. The strength of the NCP mechanism is to provide a non-judicial avenue for resolving investment issues. A number of NCPs have become more proactive in offering their good offices to mediate and conciliate investment disputes, including where there are parallel proceedings. Tips of good practices for a successful mediation also include good communication between the parties, careful stage-management of the process, discretion, access to outside expertise and setting realistic expectations from the outset of the process.

Good communication and co-ordination. With the increased complexity of MNE operations, NCPs have become more sensitized to the importance of closer communication and co-ordination in multi-partite specific instances. Perceived good practices include soliciting views of NCPs concerned at an early stage of the process, including through joint meetings, sharing of information at each main procedural step and sharing drafts or issuance of joint final statements. The discussion also showed that further guidance from NCPs and the Investment Committee might be called for on this subject (Italy).

ANNEX 1 NCPs' MAIN TASKS

By virtue of the OECD Council Decision of June 2000 on the *Implementation Procedures of the OECD Guidelines for Multinational Enterprises*, adhering countries have the obligation to set up National Contact Points. This Decision and its attached *Procedural Guidance* assigns three major tasks to NCPs with a view to furthering the effectiveness of the Guidelines. These are (a) providing information, promoting and responding to enquiries about the Guidelines; (b) contributing to the resolution of issues that arise relating to the implementation of the Guidelines in specific instances and (c) reporting annually to the Investment Committee about the nature and results of their activities. NCPs shall carry these tasks according to the core criteria of visibility, accessibility, transparency and accountability.

Consistent with the objective of “functional equivalence” adhering countries have the flexibility to decide on the institutional arrangements for their NCPs. The Procedural Guidance states that the NCP can be organized as a government entity or as a co-operative body and include representatives of the business, labour and other interested parties. NCPs are free to decide, however, the degree of their “inclusiveness” of these stakeholders and their respective contributions to the effective functioning of the Guidelines. Irrespective of choices made, NCPs must keep the business community, employee organisations and other interested parties informed about their institutional arrangements and Guidelines-related activities.

Owing to its uniqueness and central importance to the functioning of the Guidelines, the procedural guidance is more detailed about how the Guidelines should be implemented in specific instances. NCPs should deal with the issues in an efficient and timely manner and in accordance with applicable law. A specific instance normally involves three distinct phases, namely (a) an initial assessment of whether the issues raised merit further consideration; (b) the examination phase where NCPs offer their good services to help the parties resolve the issues; and (c) a concluding phase where the NCP issues a statement and makes recommendations as appropriate, on the implementation of the Guidelines. NCPs can take the necessary steps to protect sensitive business and other information. If issues arise in non-adhering countries, they will develop an understanding of the issues involved, and follow these procedures where relevant and practicable. NCPs are also encouraged to consult other NCPs over overlapping cases.

The flexibility embedded in the “functional equivalence” principle constitutes a recognition that the conditions and circumstances upon which various corporate responsibility actors operate may vary from one adherent country to another. This operational guidance also implies that NCPs can learn from experience and from each other and thus over the course of time improve their institutional arrangements based on evidence about emerging good practice.

ANNEX 2
STATISTICAL ANNEX ON SPECIFIC INSTANCES

(Based on the information provided by the 28 respondents to the questionnaire)

Q1. How many requests to consider specific instances has your NCP received since the June 2000 Review?	164
Q2. How many such requests has it decided not to consider?	66
Q3. How many of these specific instances concerned business activity in a non-adhering country?	76
Q4. How many of these specific instances were raised by labour?	119
Q5. How many of these specific instances were raised by NGOs?	45
Q6. How many specific instances involved other NCPs?	69
Q7. How many specific instances involved confidential business information?	78
Q8. How many specific instances involve business conduct that was covered by host country laws, regulations or administrative procedures?	63
Q9. How many specific instances involve issues addressed in parallel proceedings?	94
Q10. How many specific instances involving parallel proceedings were concluded?	27
Q11. How many specific instances raised issues relating to the “investment nexus” and involve supply chain responsibilities?	29
Q12. How many specific instances raised issues on the application of the Guidelines to the financial sector?	11
Q13. How many specific instances concerned business activity in weak governance zones as defined by the OECD Risk Awareness Tool for MNEs in Weak Governance Zones?	44
Q14. How many specific instances involved business conduct previously examined or under examination by another forum or corporate responsibility instruments (such as ILO or the UN Global Compact)?	12