



OECD Guidelines for Multinational Enterprises

**National Contact Point Peer Reviews**

**GERMANY**



## **ABOUT THE OECD GUIDELINES FOR MULTINATIONAL ENTERPRISES**

The OECD Guidelines are recommendations addressed by governments to multinational enterprises operating in or from adhering countries. They provide non-binding principles and standards for responsible business conduct in a global context consistent with applicable laws and internationally recognised standards. The OECD Guidelines are the only multilaterally agreed and comprehensive code of responsible business conduct that governments have committed to promoting.

## **ABOUT NCP PEER REVIEWS**

Adhering governments to the OECD Guidelines for Multinational Enterprises are required to set up a National Contact Point (NCP) that functions in a visible, accessible, transparent and accountable manner. During the 2011 update of the OECD Guidelines for multinational enterprises, NCPs agreed to reinforce their joint peer learning activities and, in particular, those involving voluntary peer reviews. The peer reviews are conducted by representatives of 2 to 4 other NCPs who assess the NCP under review and provide recommendations. The reviews give NCPs a mapping of their strengths and accomplishments, while also identifying opportunities for improvement. More information can be found online at <https://mneguidelines.oecd.org/ncppeerreviews.htm>.

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# 1. SUMMARY AND KEY FINDINGS

This document is the peer review report of the German National Contact Point (NCP) for the OECD *Guidelines for Multinational Enterprises* (the Guidelines). The implementation procedures of the Guidelines require NCPs to operate in accordance with the core criteria of visibility, accessibility, transparency and accountability. In addition, they recommend that NCPs deal with specific instances in a manner that is impartial, predictable, equitable and compatible with the Guidelines.

This report assesses conformity of the German NCP (the 'NCP') with the core criteria and with the Procedural Guidance contained in the implementation procedures. The peer review of the NCP was conducted by a team made up of reviewers from the NCPs of Brazil, the Netherlands and the United States, with an observer from the Austrian NCP, along with representatives of the OECD Secretariat. The peer review included an on-site visit that took place in Berlin, Germany on 22-23 June 2017.

## Key Findings and Recommendations

### *Institutional Arrangements*

The German government has recently introduced several structural changes to improve the visibility and impartiality of the German NCP, most notably: a transfer of the NCP within the Federal Ministry for Economic Affairs and Energy to a separate unit that provides a greater element of autonomy and visibility, a dedicated budget, an increased number of dedicated staff and a strategic promotional plan. The NCP enjoys a favourable reputation among many stakeholders, including those within the government, who noted that these structural changes were positive improvements in the right direction.

A number of the changes respond to the German National Action Plan on Business and Human Rights (hereinafter the "NAP") published in December 2016 and the 2015 G7 Leaders' Declaration, in addition to feedback from stakeholders. The NAP states that the NCP "will become the central complaints mechanism for foreign trade and investment promotion projects. (...) The aim is to ensure that enterprises which avail themselves of foreign-trade promotion instruments exercise due diligence. In particular, this includes participation in grievance proceedings initiated against them before the German NCP." The NCP and the Inter-ministerial Steering Group have not yet clarified the scope and functioning of this measure.

The current staff of the NCP is considered by stakeholders to be impartial, competent and responsive. One challenge noted during the peer review visit is that there has been frequent staff turnover in the NCP role. Since 2012, four different individuals have held the active NCP role. The NCP has Procedural Notes on its general functioning and its specific instance procedures, though the NCP does not have additional written procedures to guide its work or the work of the Inter-ministerial Steering Group and the Working Group. This means the NCP often relies on incoming and outgoing staff to ensure a smooth transition.

The NCP closely coordinates with government stakeholders in the NCP "Inter-ministerial Steering Group for the OECD Guidelines" (hereinafter the "Inter-ministerial Steering Group") on all issues, including decisions on specific instances. Members of the Inter-ministerial Steering Group noted that the structure allows the group to function well and to come to consensus on decisions as a result. The NCP also has a multi-stakeholder "Working Group on

the OECD Guidelines" (hereinafter the "Working Group"). Some representatives of the Working Group and some external stakeholders noted a lack of clarity about the roles and responsibilities of the Inter-ministerial Steering Group and the Working Group.

	Findings	Recommendation
1.1	The German NAP states that "the NCP will become the central complaints mechanism for foreign trade and investment promotion projects. (...) The aim is to ensure that enterprises which avail themselves of foreign-trade promotion instruments exercise due diligence. In particular, this includes participation in grievance proceedings initiated against them before the German NCP." The NCP and the Inter-ministerial Steering Group have not yet clarified the scope and functioning of this new measure.	The NCP should, together with the Inter-Ministerial Steering Group and potentially the Working Group and its wider stakeholders, clarify the scope and functioning of this measure with respect to foreign trade and investment promotion projects and communicate it in order to ensure clarity.
1.2	There has been frequent staff turnover in the NCP and it is anticipated that there will continue to be regular staff rotations in the future due to the structure of the ministry itself.	The NCP should create a handover process and record institutional memory to preserve good practices. This could include internal written procedures to guide the work of the NCP, in order to maintain the recent progress made in the functioning of the NCP.
1.3	Some representatives of the Working Group and some external stakeholders noted a lack of clarity about the roles and responsibilities of the Inter-ministerial Steering Group and the Working Group.	The NCP should discuss with the Inter-Ministerial Steering Group and Working Group the respective roles and responsibilities and then clearly define and communicate those roles and responsibilities, internally and externally, in order to ensure that stakeholders understand both, especially in relation to the handling of specific instances.

### **Promotional Activities**

The NCP is developing a strategic promotional plan to structure and prioritise engagement opportunities with a number of target organisations for promotional activities. In addition, NCP staff have recently increased their participation in events and meetings to promote the Guidelines. The NCP has also recently revised its website and developed a brochure on the Guidelines in German and English. These are positive steps towards making the German NCP more visible and accessible. In general, in line with the German institutional tradition of business and trade unions, the NCP focuses on engaging with industry and trade union associations more than with individual companies, or trade unions, in order to maximize its reach through stakeholder networks. Individuals from all stakeholder groups, including business, noted that awareness of the Guidelines and the NCP is generally low in non-adhering countries where German companies may operate.

The NCP works closely with relevant ministries to promote policy coherence and outreach with respect to responsible business conduct (hereinafter "RBC"), including with colleagues working on development, human rights, labour rights, public procurement, export credit, and trade and investment. Twelve ministries and government agencies that the NCP works with participated in the on-site visit, and they were well informed and supportive of the work of the NCP.

	Findings	Recommendation
2.1	The NCP focuses on engaging with industry and trade union associations and NGO coalitions, particularly those that are part of its Working Group, because most of these groups have existing relationships with key stakeholder groups and are the most actively engaged with the NCP.	As the NCP expands its promotional strategy and strengthens its existing relationships with groups, it should also give increased focus to diversifying and building relationships directly with companies and trade unions, particularly to highlight the recent changes to the NCP.
2.2	Stakeholders including business, noted that awareness of the Guidelines and the NCP is generally low in non-adhering countries where German companies operate.	As the NCP expands its promotional strategy and continues its engagement with embassy officers, it should give particular consideration to providing trainings on RBC for officers in non-adhering countries where German companies operate.

### ***Specific Instances***

The NCP has handled 30 specific instances since its creation in 2000. Of these, 12 were accepted for further examination, 15 were not accepted, 2 were withdrawn by the submitter prior to initial assessment, and 1 is pending. Recent users of the specific instance mechanism noted positive experiences and perceived the NCP to be impartial, competent and responsive. Some earlier users of the system also found the process to be impartial, but did not agree with the NCP decision not to accept certain cases. However, many of these stakeholders also noted recent improvements in the process. Companies involved in specific instances have participated in the process in 11 out of 12 cases in which mediation was offered demonstrating trust in the mechanism from the business community. Business stakeholders commented that there is an expectation within the community to participate in the NCP process.

In 2015, the NCP updated its Procedural Notes for handling specific instances. The Procedural Notes are comprehensive. One potential area of confusion is that the confidentiality requirements are spread across a number of different paragraphs using different terminology. Several stakeholders from civil society raised concerns about the provisions on confidentiality and campaigning, which were seen as a deterrent to some potential submitters.

The majority of the parties involved in the more recent specific instance proceedings that were discussed during the on-site visit noted that the NCP acted impartially and managed the process well. There was particular appreciation for the NCP's creativity in working to reach a solution and using various means such as videoconferencing, as well as using German embassies and other organisations in countries where the impacted individuals or communities are based, to involve parties in the process.

Many of the more recent final statements published by the NCP provide a detailed overview of the issues raised, positions of parties, prevention and mitigation measures. They also include specific recommendations on how the company could better observe the recommendations of the Guidelines. This contrasts with some of the older final statements that did not clearly describe the reasoning for the NCP's decision or outcomes achieved through the process.

	Findings	Recommendation
3.1	The Procedural Notes contain several provisions on confidentiality which use different terminology. Several civil society stakeholders noted that the provisions on confidentiality and campaigning were seen as a deterrent to some potential submitters.	The NCP should consider updating its Procedural Notes to make certain provisions clearer. In particular, the NCP should clarify and consolidate the provisions on confidentiality. Recognising that the provisions on campaigning and confidentiality may be acting as a deterrent to submitting specific instances, the NCP should consider discussing these provisions with stakeholders, ensuring that the provisions are equitable and ensure transparency wherever possible.
3.2	Some of the older final statements do not clearly describe the reasoning for the NCP's decision or outcomes achieved through the process. This contrasts to the most recent statements which are more comprehensive.	The NCP should continue to publish clear and meaningful final statements and may consider developing a clear template for final statements to ensure quality and consistency.

Germany is invited to report to the Working Party on Responsible Business Conduct on follow up to all the recommendations within one year of the date of presentation of this report.

## 2. INTRODUCTION

### Background

The implementation procedures of the Guidelines require NCPs to operate in accordance with the core criteria of visibility, accessibility, transparency and accountability. In addition, the guiding principles for specific instances recommend that NCPs deal with specific instances in a manner that is impartial, predictable, equitable and compatible with the Guidelines. This report assesses conformity of the German NCP with the core criteria and with the Procedural Guidance contained in the implementation procedures.

Germany adhered to the OECD Declaration on International Investment and Multinational Enterprises (Investment Declaration) on 21 June 1976. The OECD Guidelines for Multinational Enterprises (the Guidelines) are part of the Investment Declaration. The Guidelines are recommendations on responsible business conduct (RBC) addressed by governments to multinational enterprises operating in or from adhering countries. The Guidelines have been updated five times since 1976; the most recent revision took place in 2011.

Countries that adhere to the Investment Declaration are required to set up National Contact Points (NCPs). NCPs are set up to further the effectiveness of the Guidelines and adhering countries are required to make human and financial resources available to their NCPs so they can effectively fulfil their responsibilities, taking into account internal budget priorities and practices.<sup>1</sup> NCPs are “agencies established by adhering governments to promote and implement the Guidelines. The NCPs assist enterprises and their stakeholders to take

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<sup>1</sup> Amendment of the Decision of the Council on the OECD Guidelines for Multinational Enterprises, para I(4)

appropriate measures to further the implementation of the Guidelines. They also provide a mediation and conciliation platform for resolving practical issues that may arise.”<sup>2</sup>

The Procedural Guidance covers the role and functions of NCPs in four parts: institutional arrangements, information and promotion, implementation in specific instances and reporting. In 2011 the Procedural Guidance was strengthened. In particular, a new provision was added to invite the OECD Investment Committee to facilitate voluntary peer evaluations. In the commentary to the Procedural Guidance, NCPs are encouraged to engage in such evaluations.

The objectives of peer reviews as set out in the Core Template for voluntary peer reviews of NCPs<sup>3</sup> are to assess that the NCP is functioning in accordance with the core criteria set out in the implementation procedures; to identify the NCP’s strengths and possibilities for improvement; to make recommendations for improvement and to serve as a learning tool for all NCPs involved.

This report was prepared based on information provided by the NCP and in particular, its responses to the NCP questionnaire set out in the core template<sup>4</sup> as well as responses to requests for additional information. The report also draws on responses to the stakeholder questionnaire which was completed by 25 organisations representing German enterprises, civil society, trade unions/representative organisations of the workers’ own choosing (hereinafter worker organisations), international organisations, academic institutions and government agencies (see Annex 1 for complete list of stakeholders who submitted written feedback) and information provided during the on-site visit.

The peer review of the NCP was conducted by a team made up of reviewers from the NCPs of Brazil, the Netherlands and the United States, with an observer from the Austrian NCP, along with representatives of the OECD Secretariat. The on-site visit to Berlin, Germany took place on 22-23 June 2017 and included interviews with the NCP, other relevant government representatives and stakeholders. A list of organisations that participated in the review process is set out in Annex 2. The peer review team wishes to acknowledge and thank the NCP for the quality of the preparation of the peer review and organisation of the on-site visit.

The basis for this peer review is the 2011 version of the Guidelines. The specific instances considered during the peer review date back to 2003. The methodology for the peer review is that set out in the core template.<sup>5</sup>

## **Economic Context**

Germany's economy is dominated by the service and the manufacturing sectors, representing 69% and 23% respectively of GDP. The main investors in Germany are the United States, the United Kingdom, Germany itself (round-tripping represents 8% of total inward FDI positions in Germany), Switzerland, and Luxembourg. The main inward investment sectors are professional, scientific and technical activities which represent 68% of total inward FDI

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<sup>2</sup> OECD Guidelines for Multinational Enterprises (2011), Foreword

<sup>3</sup> OECD, Core Template For Voluntary Peer Reviews Of National Contact Points (2015), [DAF/INV/RBC\(2014\)12/FINAL](#)

<sup>4</sup> Id.

<sup>5</sup> Id.

positions in Germany. The main destinations for outward investment from Germany are the United States, the United Kingdom, Luxembourg, the Netherlands and France, and the most important sectors are professional, scientific and technical activities, manufacturing and private purchase and sale of real estate.

### 3. GERMAN NCP AT A GLANCE

**Established:** 2000

**Structure:** The NCP is made up of a core team of 5 members of staff plus the "Inter-ministerial Steering Group". The NCP is also supported by a multi-stakeholder "Working Group".

**Location:** The NCP staff is based in a separate unit directly attached to the Director-General for External Economic Policy in the Federal Ministry for Economic Affairs and Energy (Bundesministerium für Wirtschaft und Energie – BMWi).

**Staffing:** 5 staff members in total: 2 full time, 1 part-time at 90%, 1 part-time at 50% and 1 full time secretary.

**Website:**

<http://www.oecd-nks.de>, <http://www.bmwi.de/Redaktion/EN/Textsammlungen/Foreign-Trade/oecd-guidelines.html>

**Specific instances:** 30 since 2003.

## 4. INSTITUTIONAL ARRANGEMENTS

Under the Procedural Guidance of the Guidelines, Section I(A):

"Since governments are accorded flexibility in the way they organise NCPs, NCPs should function in a visible, accessible, transparent, and accountable manner."

### Legal/Administrative Basis

The German NCP in its present form was first established in 2000. There is no specific legal basis for the NCP, as is the case for many policy positions in the Executive Branch.

### NCP Structure

In December 2016, following the 2015 G7 Leaders' Declaration, the German National Action Plan for Business and Human Rights (NAP) introduced in 2016 and feedback from stakeholders, the NCP was restructured. It was moved within the Federal Ministry for Economic Affairs and Energy (Bundesministerium für Wirtschaft und Energie – BMWi) from the division named "Foreign Investment; National Contact Point OECD Guidelines" which was located in the Directorate for Foreign Trade and Investment Promotion to a separate unit directly attached to the Director-General for External Economic Policy. The reasons for creating a unit directly attached to the Director-General were to:

- Provide better visibility both within the Ministry as well as outside.
- Underline the relevance and independence of the NCP.
- Provide a clear separation from the Directorate for Foreign Trade and Investment Promotion to address concerns about inherent conflicts of interest raised by NGOs in the past.
- Set the NCP apart from the original hierarchy to enable greater autonomy in practice.

The NCP currently consists of five staff members based in the Federal Ministry for Economic Affairs and Energy. The current staff of the NCP is considered by stakeholders to be impartial, competent and responsive. The roles are divided as follows:

- Head of division (100%)
- Deputy head of division (100%)
- Deputy head of division (part time, 90%),
- Clerical assistant (part time, 50%)
- Secretary (100%)

Of the three staff members working full time – one joined the NCP in December 2016, the second in January 2017 and the third in June 2017. Two part time members joined the NCP Secretariat in January and March 2016.

On its website, the NCP sets out its tasks as follows:

- To raise awareness of the Guidelines with employers and employees and civil society, and to promote their application.
- To work together with other NCPs and other governments, and to respond to the procedures which fall within the responsibility of the NCPs of other member states.
- To answer general inquiries and specific questions arising from the application of the Guidelines.
- To act as mediators between the different parties in the case of complaints and indications regarding breaches of the Guidelines.

It is also stated in the NAP that the NCP "will become the central complaints mechanism for foreign trade and investment promotion projects.(...) The aim is to ensure that enterprises which avail themselves of foreign-trade promotion instruments exercise due diligence. In particular, this includes participation in grievance proceedings initiated against them before the German NCP." The NCP and the Inter-ministerial Steering Group have not yet clarified the scope and functioning of this new measure.

One challenge noted during the peer review visit is that there has been frequent staff turnover in the NCP role. Since 2012, four different individuals have held the active NCP role. The NCP has Procedural Notes on its general functioning and its specific instance procedures, though the NCP does not have additional written procedures to guide its work or the work of the Inter-ministerial Steering Group and the Working Group. This means the NCP often relies on incoming and outgoing staff to ensure a smooth transition.

#### *Inter-ministerial Steering Group*

The NCP closely coordinates with an Inter-ministerial Steering Group on all issues, including decisions on specific instances. The Inter-ministerial Steering Group is comprised of representatives from a variety of German federal ministries with a special interest in the Guidelines, namely:

- Federal Foreign Office,
- Federal Ministry of Justice and Consumer Protection,
- Federal Ministry of Finance,
- Federal Ministry of Labour and Social Affairs,
- Federal Ministry of Food and Agriculture,
- Federal Ministry for the Environment, Nature Conservation, Building and Nuclear Safety,
- Federal Ministry for Economic Cooperation and Development

The Inter-ministerial Steering Group receives all documents and information concerning specific instances in order to make recommendations and come to collective decisions. Members of the Inter-ministerial Steering Group are also invited to participate in mediations of specific instances. The FAQ to the Procedural Notes state that "The extent to which a ministry is involved in the examination of a particular complaint, in the consultations with the parties, and in the co-ordination process regarding specific procedural steps and decisions, will depend on the extent to which the subject matter falls into the remit of this ministry." Expertise from government representatives outside of the Steering Group may also be sought where needed.

The NCP has further noted that the general principle of consensual decision-making between the NCP and the Inter-ministerial Steering Group also applies to the handling and the resolution of specific instances. Members of the Inter-ministerial Steering Group noted that the structure allows the group to function well and to come to consensus on decisions as a result.

The Inter-ministerial Steering Group meets at least two to three times a year and the NCP circulates an agenda and any documents in advance. The Inter-ministerial Steering Group also receives written communications from the NCP in between meetings and can take decisions by written procedure where necessary. The Procedural Guidance Notes currently serve as the written guidance for the Inter-ministerial Group. Some stakeholders had a lack of clarity about the roles and responsibilities of the Steering Group.

There is structural continuity in terms of the same ministries participating in the Inter-ministerial Steering Group. When individuals rotate to new positions within their ministry, as per standard practice, their successor in that role will fill that spot in the Inter-Ministerial Steering Group. Some members of the Inter-ministerial Steering Group have been members for several years while others are more recent. Participation in the Inter-ministerial Steering Group is part of their job description, representing 5-10% of their time on average. Members of the Inter-ministerial Steering Group were well informed about the activities of the NCP and some are directly engaged in promotional activities or in OECD proactive agenda projects.

#### *Working Group on the OECD Guidelines*

In addition to the Inter-ministerial Steering Group, the "Working Group on the OECD Guidelines" has been supporting the NCP since at least 2002. The Working Group is comprised of representatives of the various stakeholder groups as set out in Table 1 below. The Procedural Notes, as well as historical precedent, provide the basis for the functioning of the Working Group.

The Working Group meets at least twice a year as well, including on an ad-hoc basis if necessary, and provides a forum for discussion about current issues relating to the Guidelines and enables stakeholders to provide feedback. Members of the Working Group are consulted on all general matters relevant to the NCP and informed whenever a specific instance has been received or accepted for further examination by the NCP. The Working Group is also informed at each meeting about pending specific instances but is not directly involved in the handling of specific instances.

Some members of the Working Group have been involved since its creation in 2002 while others have joined more recently. The members of the Working Group who participated in the on-site visit of the peer review team appreciated the flow of information from the NCP on its activities and other OECD-related matters. Some representatives of the Working Group and some external stakeholders noted they had a lack of clarity about the roles and responsibilities of the Working Group.

**Table 1: Representatives of the German Working Group on the OECD Guidelines**

1. Trade Unions	2. Business Organisations	3. NGOs	4. Government	5. Others
German Confederation of Trade Unions (DGB)	Confederation of German Employers' Associations (BDA)	Transparency International Germany and Transparency International	All staff members of the NCP as well as all members of the Inter-ministerial Steering Group	German Global Compact Network hosted by the German Society for International Cooperation (Deutsche Gesellschaft für internationale Zusammenarbeit - GIZ)
German multi-service trade union (Verdi)	Federation of German Industries (BDI)	German Watch (also mandated by VENRO)		
German Metalworkers' Union (IG Metall)	Association of German Chambers of Commerce and Industry (DIHK)	ECCHR (also mandated by Forum Menschenrechte)		
	Association of German Banks (BdB)	Bread for the World (Brot für die Welt) / Protestant Development Service		

## Resources

As of 2017 the NCP has an annual budget of 300,000 euros, which reflects the significant institutional support the NCP now receives from the German Government. Prior to 2017, the NCP had no dedicated budget and this created challenges in long term planning of promotional and other activities. The number of staff has also increased in 2017 from one part-time and one full-time staff member to five staff members. It appears that there are now sufficient financial and human resources at its disposal to carry out its mandate. In addition where necessary the NCP draws on the resources of the other ministries involved in the Inter-Ministerial Steering Group.

## Reporting

The NCP reports on an annual basis to the OECD Investment Committee in accordance with the Procedural Guidance. These reports are also published on the NCP website which includes annual reports from the year 2008-2009 in German and from 2009-2016 in German, and English. These reports are translated and published to further increase transparency and facilitate accessibility to relevant information.

The NCP has been reporting annually on its activities to the German Parliament since 2014 (with an earlier report in 2008) in German and since 2015 in both German and English as a proactive measure by the NCP in order to be transparent. These reports are also published on the NCP website. As an entity within the federal government, the NCP is also subject to parliamentary control by the Bundestag (Federal 'Lower House' of Parliament). Individual members of Parliament as well as Parliamentary Groups have the right to ask oral and written questions and have done so in the past. The NCP regularly contributes to the answers to those questions.

The NCP also reports to the Inter-ministerial Steering Group and the Working Group on activities as part of the meetings of these bodies and as noted, circulates relevant information in between meetings by email.

There is no fixed rule as to reporting internally to government services beyond the Inter-ministerial Steering Group. The NCP informs its hierarchy within the Federal Ministry for Economic Affairs and Energy on important developments as necessary. As part of a public authority, the NCP has to report on its budget and accounts in line with the legal obligations under German law and in line with internal audit and control procedures.

	Findings	Recommendation
1.1	The German NAP states that “the NCP will become the central complaints mechanism for foreign trade and investment promotion projects. (...)The aim is to ensure that enterprises which avail themselves of foreign-trade promotion instruments exercise due diligence. In particular, this includes participation in grievance proceedings initiated against them before the German NCP.” The NCP and the Inter-ministerial Steering Group have not yet clarified the scope and functioning of this new measure.	The NCP should, together with the Inter-Ministerial Steering Group and potentially the Working Group and its wider stakeholders, clarify the scope and functioning of this measure with respect to foreign trade and investment promotion projects and communicate it in order to ensure clarity.
1.2	There has been frequent staff turnover in the NCP and it is anticipated that there will continue to be regular staff rotations in the future due to the structure of the ministry itself.	The NCP should create a handover process and record institutional memory to preserve good practices. This could include internal written procedures to guide the work of the NCP, in order to maintain the recent progress made in the functioning of the NCP.
1.3	Some representatives of the Working Group and some external stakeholders noted they had a lack of clarity about the roles and responsibilities of the Inter-ministerial Steering Group and the Working Group.	The NCP should discuss with the Inter-Ministerial Steering Group and Working Group the respective roles and responsibilities and then clearly define and communicate those roles and responsibilities, internally and externally, in order to ensure that stakeholders understand both, especially in relation to the handling of specific instances.

## 5. PROMOTION OF THE GUIDELINES

Under the Procedural Guidance of the Guidelines, Section I(B), NCPs are mandated to:

1. “Make the *Guidelines* known and available by appropriate means, including through on-line information, and in national languages;
2. Raise awareness of the *Guidelines* and their implementation procedures, including through co-operation, as appropriate, with the business community, worker organisations, other non-governmental organisations, and the interested public;
3. Respond to enquiries about the *Guidelines*.”

### Information and Promotion Materials

#### *Promotional Plan*

Since the allocation of a dedicated budget in 2017 the NCP has started developing a promotional strategy and a specific “public relations work plan” in collaboration with stakeholders from the Working Group and members of the Inter-Ministerial Working Group. This will structure and prioritise possibilities for communication and promotion (see Annex 3). It lists in detail different methods and channels to be explored in order to reach a broader public, including small and medium-sized enterprises (SMEs) and authorities at the local level. Business is the primary target of initial promotional activities. The plan features:

- Updates to the NCP website and flyer
- Articles and interviews in newspapers and journals
- Organisation of conferences and workshops
- Participation in local (regional) and international conferences, workshops and meetings hosted by stakeholders and government authorities
- References in ministerial speaking notes and speeches
- Contributions to answers to questions from Parliament
- Contributions to answers to questions from the press
- Training of staff in German embassies
- Awareness-raising activities among relevant government services.

## *Promotional Materials*

The NCP has prepared a brochure that provides information on the Guidelines, the content of the different chapters of the Guidelines and on the functioning of the NCP. This brochure is available in German<sup>6</sup> and English.<sup>7</sup>

## **Website**

The NCP has a website (<http://www.oecd-nks.de>) that includes the following information:

- Description of the Guidelines and how the Guidelines are positioned within the broader suite of relevant international standards
- Links to the German Corporate Social Responsibility (CSR) policies and forums and to the Guidelines pages
- Information about the OECD proactive agenda and sector guidelines
- A description of the NCP and the contact details of the NCP
- Final statements related to specific instances
- A summary of cases not accepted
- The NCP Procedural Notes for the handling of specific instances
- Annual Reports of the NCP to the OECD from 2009-2016
- Annual Reports to the German Parliament from 2008-2016

In order to make the website accessible to a broader public, its content is also accessible in English<sup>8</sup> and French.<sup>9</sup> In addition, various documents are available in German and English.

While quite comprehensive, the visibility and navigation of the website could be improved. At present there is no direct pathway to the NCP website via the landing page of the main ministry website<sup>10</sup> and the website is not easily found through an online search. Locating specific instance statements can also be difficult as dates are not included in their titles.

## **External collaboration on RBC**

Since the restructuring of the NCP in December 2016, the NCP has had several meetings with stakeholders in order to explore the possibilities to cooperate with the NCP in raising awareness. Stakeholders included:

- Confederation of German Employers' Associations – BDA
- Federation of German Industries – BDI
- Association of German Chambers of Commerce and Industry – DIHK

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<sup>6</sup><http://www.bmwi.de/Redaktion/DE/Publikationen/Aussenwirtschaft/oecd-leitsaetze-fuer-multinationale-unternehmen.html>

<sup>7</sup> <http://www.bmwi.de/Redaktion/EN/Publikationen/oecd-guidelines.html>

<sup>8</sup> <http://www.bmwi.de/Redaktion/EN/Textsammlungen/Foreign-Trade/oecd-guidelines.html>

<sup>9</sup> <http://www.bmwi.de/Redaktion/FR/Textsammlungen/Economie-exterieure/principes-directeurs-de-l-ocde.html>

<sup>10</sup><http://www.bmwi.de/Navigation/EN/Home/home.html>

- Germany Trade and Invest – GTAI
- German Global Compact Network
- German Institute for Human Rights - DIMR
- Econsense
- German Council for Sustainable Development – RNE
- German Federation of Trade Unions – DGB
- NGO-participants of the Working Group
- Universities

The NCP is also starting to reach out to Länder (states) and will explore further links with academia as well. As part of its expanded promotional strategy, the NCP is currently exploring options with business stakeholders to organise a survey in order to assess the awareness of German companies of the Guidelines and their needs regarding actual implementation.

In line with the German institutional tradition of business and trade unions, the NCP focuses on engaging with industry and trade union associations, particularly those that are part of its Working Group, because most of these groups have existing relationships with key stakeholder groups and are the most actively engaged with the NCP. The NCP has fewer direct relationships with individual companies or trade unions.

As noted during the peer review, one of the challenges for the NCP is the high number of small and medium sized enterprises (SMEs) in the German economy. As all German businesses are obliged to join a chamber of commerce, the NCP has targeted work with chambers of commerce as an effective method of raising awareness among SMEs.

Stakeholders including business noted that awareness of the Guidelines and the NCP is generally low in non-adhering countries where German companies may operate.

### **Promotional events**

The NCP promotes the Guidelines and the NCP at conferences, workshops and meetings hosted by the Federal Administration, business organisations, trade unions, NGOs and other interested parties. The NCP reported that it has participated in 22 promotional events since the beginning of 2017. In 2016, the NCP organised an event on the FAO-OECD Guidance for Responsible Agriculture Supply Chains together with the Federal Ministry of Food and Agriculture and gave presentations at three events organised by others to promote the Guidelines. In 2015, the NCP organised two events – one on decent work in global supply chains and the other on State-based non-judicial complaint mechanisms. The NCP also participated in and gave presentations at seven events organised by others to promote the Guidelines.

Stakeholders from business, NGOs and trade unions noted appreciation with the increase in promotional efforts.

### **Requests for information**

The NCP notes—and stakeholders confirmed—that the NCP responds to all requests for information in an effective manner and as timely as possible. Business representatives interviewed during the peer review noted that to-date they have generally not approached the

NCP for information or technical advice. Clear indication of how to submit inquiries about the Guidelines on the NCP's website could help to better promote this function.

### **Collaboration with other NCPs**

The NCP previously collaborated in a peer-learning platform featuring an annual workshop for German-speaking NCPs in collaboration with the Austrian and Swiss NCPs, and other Central European NCPs. The NCP plans to revive this initiative. It also regularly participates in peer learning events and other learning activities with other NCPs (e.g. in 2016 in Israel, UK, Italy and Poland and in 2017 in the Czech Republic, Slovakia and the United States). The NCP has also been involved in NCP peer reviews, most recently as a reviewer of the Swiss NCP in 2016.

### **Proactive agenda**

Various federal authorities in Germany engage in different multi-stakeholder groups under the proactive agenda:

- The Federal Ministry for Economic Cooperation and Development chairs the advisory group for the OECD project on responsible supply chains in the garment and footwear sector.
- The Federal Ministry of Food and Agriculture was involved in the advisory group for the OECD project on responsible supply chains in the agricultural sector.
- The Federal Institute for Geosciences and Natural Resources (Bundesanstalt für Geowissenschaften und Rohstoffe - BGR) is actively engaged in the advisory group for the OECD project on responsible mineral supply chains from conflicted affected and high-risk areas.

The NCP's website contains a section dedicated to the proactive agenda. All existing OECD guidance documents can be found on the website with a short description. In addition, the NCP is currently translating the Guidance documents into German. The NCP includes information on the OECD proactive agenda projects in its promotional work.

### **Policy coherence**

Responsible Business Conduct issues are addressed through formal structures in Germany such as the Corporate Social Responsibility Forum (CSR) Forum. The Ministry of Labour and Social Affairs is formally the lead ministry on CSR for the Federal Government.

The NCP cooperates with German Embassies, the German export credit agency (ECA) and the investment promotion agency to promote the Guidelines.

For example:

- *Embassy staff*: In 2016, the NCP participated in two events for economic counsellors posted at German embassies where it gave presentations on the Guidelines and the NCP. Stakeholders have also recommended the NCP undertake trainings with ambassadors, an idea which is under consideration by the Inter-ministerial Steering Group.

- *Export credit, investment and untied loan guarantees:* Public authorities competent for export credit guarantees, investment guarantees and untied loan guarantees (at ministerial level as well as at ECA level) are informed about all specific instances submitted to the NCP as well as those accepted by the NCP. They are also informed of final statements published by the NCP. During the mediation procedure, the ECA is kept informed should difficulties arise. Following the adoption of the German NAP, the application forms for export credit guarantees and untied loan guarantees will be updated to make reference to the Guidelines. The application form for investment guarantees already includes a reference to the Guidelines, an explanation about their nature and content and a link to the text of the Guidelines; it also underlines the German Government’s expectations that companies that are active at a multinational level should implement the Guidelines. The NAP furthermore provides that the participation or non-participation of a company in a specific instance procedure will be taken into consideration in the review of any application of said company for export credit guarantees, investment guarantees or untied loan guarantees. This measure is designed to create an additional incentive for parties to specific instances to participate in the NCP process.
- *High Level Trade Missions:* The registration form to participate in trade missions makes reference to the Guidelines and reaffirms the Federal Government’s expectation that German companies acting abroad respect responsible business conduct.
- *National Action Plan on Business and Human Rights:* The NCP contributed to the drafting of the German NAP introduced in December 2016. The NAP includes a number of references to the Guidelines and a chapter dedicated to the NCP. Drafting of the NAP was led by the Federal Foreign Office.

At least twelve ministries and government agencies that the NCP works with participated in the on-site visit, and they were well informed and supportive of the work of the NCP. Several also expressed interest in further collaborating with the NCP.

	Findings	Recommendation
2.1	The NCP focuses on engaging with industry and trade union associations, particularly those that are part of its Working Group, because most of these groups have existing relationships with key stakeholder groups and are the most actively engaged with the NCP.	As the NCP expands its promotional strategy and strengthens its existing relationships with groups, it should also give increased focus to diversifying and building relationships directly with companies, and trade unions, particularly to highlight the recent changes to the NCP.
2.2	Stakeholders including business noted that awareness of the Guidelines and the NCP is generally low in non-adhering countries where German companies operate.	As the NCP expands its promotional strategy and continues its engagement with embassy officers, it should give particular consideration to providing RBC trainings for officers in non-adhering countries where German companies operate.

## 6. HANDLING SPECIFIC INSTANCES

Under the Procedural Guidance of the Guidelines, Section I (C):

“[t]he National Contact Point will contribute to the resolution of issues that arise relating to implementation of the *Guidelines* in specific instances in a manner that is impartial, predictable, equitable and compatible with the principles and standards of the *Guidelines*.”

### Implementation in Specific Instances

The NCP has handled 30 specific instances since its creation in 2000. Of these, 12 were accepted for further examination, 15 were not accepted, 2 were withdrawn by the submitter prior to initial assessment, and 1 is pending (see Annex 4). Recent users of the specific instance mechanism noted positive experiences and perceived the NCP to be impartial, competent and responsive. Some earlier users of the system also found the process to be impartial, but did not agree with the NCP decision not to accept certain cases. However, many of these stakeholders noted recent improvements in the process. In addition, companies involved in specific instances have participated in the process in 11 out of 13<sup>11</sup> cases in which mediation was offered—a high acceptance rate among global NCPs—demonstrating trust in the mechanism from the business community.

#### Box 1: Outcomes of Specific Instances Handled by the German NCP

Out of the 30 specific instances submitted to the NCP:

- 12 were accepted for further examination<sup>1</sup>
- 2 were withdrawn by the submitter prior to initial assessment<sup>2</sup>
- 15 were not accepted for further examination<sup>3</sup>
- One is pending<sup>4</sup>

Out of the 15 not accepted, the following reasons were provided by the German NCP for not accepting 14 of the specific instances (the information for one specific instance dating from 2011 was not available<sup>5</sup>):

- In two cases: German NCP not the competent NCP to deal with the specific instance<sup>6</sup>
- In one case: A direct link between company actions and non-observance of the Guidelines not sufficiently established<sup>7</sup>
- In one case: No lack of observance of the Guidelines established<sup>8</sup>
- In two cases: Overly broad and unsubstantiated complaint<sup>9</sup>
- In one case: Impossible to examine the issues in the complaint<sup>10</sup>
- In one case: Unsubstantiated complaint and parallel proceedings.<sup>11</sup>
- In six cases: Lack of an investment nexus (which was relevant and required prior to the 2011 update of the Guidelines).<sup>12</sup>

<sup>11</sup> In one specific instance which was not accepted for further examination mediation was nevertheless offered by the NCP but was rejected by the company. Ratiopharm and Transparency International Deutschland (2006). Hyundai Motor Europe Technical Center GmbH and IG Metall (2014) (where the company refused to participate in mediation); Trovicor and ECCHR (2013) (where the submitter refused to participate in mediation).

## Box 2: Outcomes of Specific Instances Handled by the German NCP (cont.)

Of the 12 specific instances accepted and concluded by the German NCP:

- Ten have gone to mediation.
- In the remaining two, mediation was offered but not accepted by the company in one case, and the submitter in another case.<sup>13</sup>

Of the ten specific instances that went to mediation:

- Six resulted in some form of agreement between the parties.<sup>14</sup>
- In the remaining four the company committed to undertake actions to improve performance despite the lack of agreement.<sup>15</sup>

### Notes

1. Robert Bosch GmbH & Bosch Limited and Yogesh KN (2017); Nordex and Dominic Whiting (2014), Hyundai Motor Europe Technical Center GmbH and IG Metall (2014), HeidelbergCement AG and IndustriALL et al. (2013), Kik Textilien & Non-Food GmbH, C&A Mode GmbH & Co. Karl Rieker GmbH & Co. KG and Uwe Kekeritz (2013), trovicor GmbH and ECCHR et al. (2013), Deutsche Post DHL and UNI Global Union et al. (2012), Otto Stadlander GmbH and ECCHR et al. (2010), Neumann Kaffee Gruppe GmbH and FIAN Deutschland et al. (2009), Bayer CropScience and Germanwatch et al. (2004), Bayer AG and German Trade Union Confederation (2003), Adidas and Clean Clothes Campaign (2002).

2. Audi AG and German individual (2014); Metro Cash & Carry and Metro Habib Employee Union (2014).

3. German company and UK NGO (2015), Luxembourgish company and UK NGO (2015), German company and two individuals from Brazil and Russia (2013), German company and Indonesian individual (2012), Deutsche Telekom and Communications Workers of America (CWA) et al. (2011); Vattenfall and Greenpeace (2009), Volkswagen and Gesellschaft für bedrohte Völker (Society for Threatened Peoples) (2008), 57 companies (Oil for Food Programme) and Transparency International Deutschland (2007), Volkswagen and Germanwatch (2007), Ratiopharm and Transparency International Deutschland (2006), Daimler Chrysler and Scientific, Industrial & Environmental Consultants GmbH (2005), A. Knight International Ltd. and Krall (2004), West LB and Greenpeace Deutschland (2003), BP AG Deutschland and Urgewald et al. (2003), TotalFinalElf and Greenpeace (2002).

4. German company and ECCHR et al. (2016).

5. Deutsche Telekom and Communications Workers of America (CWA) et al. (2011).

6. Luxembourgish company and UK NGO (2015), BP AG Deutschland and Urgewald et al. (2003).

7. German company and UK NGO (2015).

8. German company and Indonesian citizen (2012).

9. Vattenfall and Greenpeace Deutschland (2009); Volkswagen and Germanwatch (2007) where the NCP noted that the topic (contribution to climate change) was too broad to be considered a breach of the Guidelines.

10. The NCP noted that it could not examine the complaint due to "warlike conditions in DRC." A. Knight International Ltd. and Krall (2004).

11. German company and two individuals from Brazil and Russia (2013).

12. These cases strictly interpreted the requirement of an "investment nexus" and excluded cases which involved trade relations (TotalFinalElf and Greenpeace (2002)); loans (West LB and Greenpeace Deutschland (2003)); sales and trade activity (Daimler Chrysler and Scientific, Industrial & Environmental Consultants GmbH (2005)); supply chain relationships 57 companies (Oil for Food Programme) and Transparency International Deutschland (2007); international financing (Volkswagen and Gesellschaft für bedrohte Völker (Society for Threatened Peoples) (2008)). See also Ratiopharm and Transparency International Deutschland (2006). In 2003 the OECD Investment Committee clarified that when considering the existence of an "investment nexus" flexibility is required, specifically in the context of suppliers and business relationships. See (2003) OECD Guidelines for Multinational Enterprises: 2003 Annual Meeting of the National Contact Points, Report by the Chair.

13. These are Hyundai Motor Europe Technical Center GmbH and IG Metall (2014) (the company did not accept mediation) and trovicor GmbH and ECCHR et al. (2013) (the submitter did not accept mediation).

14. Robert Bosch GmbH & Bosch Limited and Yogesh KN (2017); HeidelbergCement AG and IndustriALL Global Union (2013); Kik et al. and Mr. Kekeritz (2013); Deutsche Post DHL and UNI Global Union (2012); Otto Stadlander GmbH and ECCHR et al. (2010); Bayer AG and German Trade Union Confederation (DGB) (2003).

15. Nordex SE and Dominic Whiting (2014); Neumann Kaffee Gruppe GmbH and FIAN Deutschland et al. (2010); Bayer CropScience and Germanwatch et al. (2004); Adidas and Clean Clothes Campaign (2002).

## **NCP Procedural Notes**

In 2015, the NCP updated its Procedural Notes for handling specific instances. The Procedural Notes explain the purpose of the specific instance procedure and the different stages of the procedure; they also include a set of frequently asked questions (FAQ) and a brief flowchart diagram.

The Procedural Notes were revised with input from the Inter-Ministerial Steering Group and the Working Group.

The Procedural Notes are comprehensive, though some sections would benefit from additional detail and clarity, such as the criteria and material that will be assessed during an Initial Assessment, and the substantiation requirements for submissions. One potential area of confusion is that the confidentiality requirements are spread across a number of different paragraphs using different terminology. (See section on Confidentiality). Several stakeholders noted that the provisions on confidentiality and campaigning were seen as a deterrent to some potential submitters.

When the NCP communicates with stakeholders orally, it encourages companies to apply the Guidelines in their operations and to participate in the Specific Instance process. The Procedural Notes do, however, emphasize the voluntary nature of the Guidelines, stating that "Compliance with the Guidelines by companies is voluntary; there is no statutory requirement." In a separate section they note that "The company is at liberty to respond to the complaint or not."<sup>12</sup>

## **Submission of Specific Instances**

Information about who can submit a specific instance can be found in the Procedural Notes under the heading "(Non) acceptance of the case by the NCP," and in the FAQ. Additionally, this issue is addressed on the website of the NCP. The Procedural Notes provide information on how submissions are assessed but do not clearly state what information or documentation should be provided in a submission. Some stakeholders felt there could be more clarity around how to make a submission and what support – informal, formal, technical or financial – could potentially be offered to those making or considering making a submission. The development of a template form for submissions could help facilitate this process.

In terms of process, the Procedural Notes state that the NCP will contact the complainant<sup>13</sup> to inform them how the complaint will be handled. This usually happens within 10 days after the complaint has been filed.

As a first step, the NCP will assess the specific instance for clarity and as to whether there is a risk that it might violate any third party's right to data privacy. The NCP can ask the submitter to address these issues where relevant and can request that the submitter makes additional information or documents available for assessment.<sup>14</sup>

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<sup>12</sup> Section 1, Procedural Notes (2015)

<sup>13</sup> The Procedural Notes refer to the "complainant" and "complaint"

<sup>14</sup> Section 1, Procedural Notes (2015)

The NCP then forwards the letter of complaint to the company concerned, together with an invitation to respond to the allegations within six weeks. The NCP will also inform the company that their response will be forwarded to the complainant so that any confidential business information should be provided separately. At this stage the NCP may offer both parties separate talks to provide them with more detailed information about the proceedings and to answer any questions.<sup>15</sup>

### **Initial Assessment**

According to the Procedural Notes “[a]fter assessing the complaint and any response submitted by the company, the NCP will decide whether the issues raised in the complaint merit further investigation, i.e. whether or not to accept the complaint. This will usually happen within three months after the complaint has been filed.”

The Procedural Notes include a list of criteria that must be met for a complaint to be accepted for further examination. In line with the Procedural Guidance of the Guidelines these criteria include:

- *Eligibility of the parties* – “Complaints can be filed by (natural and legal) persons, trade unions, non-governmental organisations and also companies. Every complainant must be able to demonstrate their legitimate interest in the matter in question and be able to justify the complaint.”
- *Regional competence* – “By default, complaints will be handled by the NCP of the country in which the issues in hand have arisen” and “If the complaint relates to parts of companies or operations in more than one adhering country, the German NCP will consult with the other NCPs affected on how to proceed.”
- *Scope of application of the Guidelines and compliance with their intentions* – “The issues raised in the letter of complaint must be material to the Guidelines and their implementation and have been brought in good faith. “The complaint must be material and sufficiently substantiated. The allegations brought forward must be credible. Unlike in court proceedings, there is no burden of proof.”
- Whether there are parallel proceedings pending.

In addition to the criteria included in the Procedural Guidance, the Procedural Notes highlight an additional criterion of:

Whether or not an offer of good offices could help resolve the issues that have been raised. The Procedural Notes state that this is deemed not to be the case if the complaint is based on past circumstances that no longer apply and if there are no indications suggesting that future issues with regard to implementation of the Guidelines might arise. The Procedural Notes indicate that initial assessments are undertaken by the NCP and the Inter-Ministerial Steering Group who will additionally consider the legal aspects of the case. Publishing an initial assessment is not required under the Procedural Guidance and the NCP chooses not to. More recent final statements have included a section on the initial assessment stage.

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<sup>15</sup> Id.

The Procedural Notes also state that "there is no burden of proof" and note that "complaints must be material and sufficiently substantiated". The NCP noted that this means that the complaint must be plausible. Some stakeholders reported not having a clear understanding about what is required with respect to substantiation. Two specific instances were not accepted for further examination because they were not deemed to be sufficiently substantiated.<sup>16</sup>

A total of 15 out of 30 specific instances submitted to the NCP were not accepted for further examination (See Box 1). In relation to several specific instances, some civil society stakeholders expressed disappointment and disagreement with the NCP decision not to accept the specific instance.<sup>17</sup>

### **Good offices – Mediation**

The Procedural Notes highlight that the purpose of the mediation meetings is to arrive at a joint declaration among the parties, noting that "The NCP is to support the parties involved in the dispute in reaching consensus and to thereby promote adherence to and better understanding of the Guidelines. The NCP does so by offering a neutral forum for debate and by mediating these talks." The NCP has further added that it will take several steps to provide the same amount of proactive and impartial support to both parties.

Members of the Inter-ministerial Steering Group are involved in mediation depending on the substance of the specific instance. For example the Ministry of Labour and Social Affairs has been actively involved in a number of the specific instances involving labour rights.

As indicated in the Procedural Notes, "as a general rule, the NCP will contact each party by phone to prepare for the mediation process. This means discussing the party's expectations and explaining the mediation process." As needed, the NCP may develop a terms of reference for mediation.

The NCP head of division, with the support of NCP staff, as well as the interested members of the Inter-ministerial Steering Group, generally mediate specific instances. Relevant NCP staff have also received training from a professional mediator which is refreshed annually and prior to undertaking a mediation.

The Procedural Notes state that the NCP will "keep in contact with the parties for the duration of the procedure. It will discuss the latest state of the procedure with them as well as possible steps that could be taken in order to resolve the issues at hand. " As an alternative option they note that the NCP may also suggest that the parties enter into out-of-court settlement proceedings if these seem likely to facilitate an amicable solution. Generally, the NCP will approach the specific instance in a constructive manner and try to find creative solutions between the parties, which stakeholders noted and appreciated.

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<sup>16</sup> German company and NGO (2015) (here the submitter relied on information provided in a newspaper article which the NCP deemed was insufficient); German company and two individuals from Brazil and Russia (2013)

<sup>17</sup> For example in 57 companies (Oil for Food Programme) and Transparency International Deutschland (2007) submitters criticized the NCPs strict interpretation of the requirement for an investment nexus..

Out of the 12 specific instances accepted by the NCP for further examination ten have gone to mediation—a high acceptance rate among global NCPs. In the remaining two, mediation was offered but not accepted by the company and the submitter, respectively (See Box 1).<sup>18</sup> Mediated specific instances have nearly always resulted in a positive outcome. Out of the ten specific instances that went to mediation, six resulted in some form of agreement between the parties and the remaining four resulted in important changes to a company policy or operations, despite not reaching a final agreement. (See Boxes 1-4).

**Box 3: Uwe Kekertiz and KiK Textilien and Karl Rieker GmbH & Co. KG (2013)**

In May 2013 the German NCP received a submission alleging that KiK Textilien and Karl Rieker had not observed the general policies and human rights provisions of the Guidelines in Bangladesh. The submission is based on their alleged responsibility for the 2012 factory fire in the Tazreen factory. The submission was submitted by Uwe Kekertiz, a member of the German Bundestag and the first time a member had submitted a Specific Instance to the German NCP. As a result, this was a unique case that received high-profile media attention in Germany.

After accepting part of the request for consideration, the NCP led mediation talks with the companies and the submitter. Both companies co-operated fully in the mediation process. The submitter to the case noted that considering the issues raised against both companies in the same mediation procedure made the process more complex. The submitter also perceived the NCP to be partial towards the businesses involved in the case. One of the business parties to the case noted that the NCP handled the case as neutrally as possible but that they would have appreciated additional communication and support from the NCP around the specific instance process.

An agreement was reached with the submitter and Karl Rieker where Karl Rieker committed to improve the fire and building safety standards in its supplier factories. Measures included reducing the number of supplier factories, establishing long-term supplier relations, close supervision by local staff, and signing the Bangladesh Accord on Fire and Building Safety.

The parties involved in the specific instance proceedings discussed during the on-site visit noted that the NCP acted impartially and managed the process well. There was particular appreciation for the NCP's creativity in working to reach a solution and using various means such as videoconferencing, as well as using German embassies and other organisations in countries where the impacted individuals or communities are based, to involve parties in the process.

Some parties noted that mediation offered by the NCP differed from traditional mediation, meaning that multiple government representatives were present and involved in the dialogue and that in some cases the NCP took the lead in proposing solutions to the parties rather than facilitating the parties to resolve issues with one another directly. Two parties indicated that they would have liked to be given the option of more traditional mediation and/or the option of having an external mediator, but were still pleased with the process.

The NCP has been involved in mediation in a number of cases in non-adhering countries and has made good use of video-conferencing facilities through local German embassies and other institutions (e.g. GIZ) including interpretation to facilitate mediation with foreign participants. Participants appreciated these innovative approaches. Some

stakeholders noted that support with translation or other financial assistance for organisations and local residents bringing cases from non-adhering countries could be helpful.

#### **Box 4: IndustriALL Global Union and Heidelberg Cement (2013)**

The complaint was submitted by a combination of local and global trade unions against PT Indocement Tunggol Prakarsa, Indonesia and its parent company, HeidelbergCement AG, Germany concerning labour rights. The NCP held bilateral meetings with each of the parties to prepare the ground for a joint mediation. The mediation was held by videoconference involving all parties and was completed in one day.

The parties to the case noted that the NCP managed the bilateral discussions well and managed an efficient, one-day mediation between the parties that ended with an agreement. They appreciated that the terms of the process were clear and pragmatic. The parties appreciated the NCP's arrangement of videoconferencing facilities that allowed the parties to negotiate face-to-face.

The trade union noted that it would have appreciated translation services and financial support from the German NCP to support its local affiliate in mediation.

#### **Final Statements**

In line with the Procedural Guidance<sup>19</sup>, the Procedural Notes state that if a decision is taken not to further examine the complaint, the NCP will inform the parties of the grounds for its decision and issue a final statement covering the following information:

- Name of the parties (if consent is given by the parties)
- The allegations on which the complaint is based, including indications as to which parts of the Guidelines are considered to have been breached
- A summary of the process up to that point (observing the necessary standards of confidentiality)
- The grounds on which the case has been rejected.

The Procedural Notes provide that parties are invited to comment on the final statement within ten days. It is up to the NCP's discretion whether or not these comments are included in the final statement.

The Procedural Notes state that if the parties succeed in reaching agreement on substantial points, a final statement will be issued noting:

- The terms of the agreement (included insofar as the parties give their explicit consent);
- The issues dealt with;
- The procedure launched by the NCP in the interest of helping the parties reach agreement;
- and the date of the agreement.

The Procedural Notes also state that a final statement will be issued in cases where the parties do not reach agreement or refuse mediation and will include:

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<sup>19</sup> OECD Guidelines for Multinational Enterprises (2011), Procedural Guidance, Section C.3 (a)

- Details about the parties;
- A summary of the complaints procedure;
- If applicable, information regarding the outcome of the mediation or a statement agreed by the parties which summarises the outcome;
- If applicable, the reason why the mediation talks were abandoned;
- If applicable, recommendations as to how the Guidelines are to be implemented.

The Procedural Guidance additionally states that the final statement in these cases should identify the issues involved and the date on which the issues were raised with the NCP.

Issuing determinations with respect to compliance with the Guidelines in specific instance statements/reports is not required under the Procedural Guidance and the NCP does not choose to do so. The NCP makes recommendations as to how the Guidelines are to be implemented and has done so in five final statements.<sup>20</sup>

Final statements have been published for all cases except one.<sup>21</sup>

#### **Box 5: Nordex SE and Dominic Whiting (2014)**

This specific instance was submitted by an individual from Turkey and alleged that Nordex SE, a German multinational enterprise, had not observed the environment provisions of the Guidelines in Turkey. The NCP accepted part of the submission regarding Nordex SE's due diligence as a supplier of wind turbines for further consideration and conducted mediation with the parties. As a result of the mediation and bilateral discussions with the NCP Nordex SE agreed to improve its due diligence process in the supply of wind turbines (Gate Process) and the NCP identified detailed measures that could be taken in this regard.

During the on-site visit, it was noted that the NCP was responsive and professional and that as a result of the specific instance there is a heightened awareness of the Guidelines and due diligence obligations at the company. They also noted that while the process was not seen to be overly burdensome, at the time they felt they did not have a good overview of the status of the specific instance or next steps in the procedure. They also suggested that the NCP could include plain language summaries in its final statements to better communicate outcomes of the specific instance process to the broader public.

The most recent final statements published by the NCP provide a detailed overview of the issues raised, positions of parties, prevention and mitigation measures. They also include specific recommendations on how the company could better observe the recommendations of the Guidelines. This contrasts with some of the older final statements that do not clearly describe the reasoning for the NCP's decision or outcomes achieved through the process. For example, in one specific instance not accepted for further examination it is noted, that "[t]he NCP is of the opinion that the company adequately demonstrates in its comments that it fulfils its duty of care (due diligence) in accordance with the OECD Guidelines" without explaining how this conclusion is reached.<sup>22</sup> In two other statements from 2012 and 2007, respectively, the NCP concluded there was no violation of the Guidelines, though did not provide further

<sup>20</sup> Robert Bosch GmbH & Bosch Limited and Yogesh KN (2015); Nordex SE and Dominic Whiting (2014), Kik et al. and Uwe Kekeritz (2013), Deutsche Post DHL and UNI Global (2012), Neumann Kaffee Gruppe GmbH and FIAN Deutschland et al. (2009).

<sup>21</sup> Deutsche Telekom and Communications Workers of America (CWA) et al. (2011).

<sup>22</sup> German MNE and NGO (2015).

reasoning.<sup>23</sup> In one specific instance accepted for further examination, the company agreed to a set of actions to be taken even though the submitter had disengaged from the process.<sup>24</sup>

### **Monitoring and follow-up of Specific Instances**

With regards to follow-up of specific instances, the Procedural Notes state that “if the parties have agreed that the NCP should follow up on the implementation of its recommendations and/or the steps that the parties have agreed on, the NCP will take on these monitoring tasks and support the parties based on the terms that have been agreed by the parties and the NCP.”

Three of the ten specific instances that went to mediation included references to follow up in their final statements.<sup>25</sup> In one specific instance, stakeholders noted the NCP’s continued involvement and follow up contributed to positive resolutions as well as open communication between parties long after the specific instance was formally closed. The NCP may consider reporting on follow up actions to enable parties and stakeholders to better track the outcomes of specific instances.

#### **Box 6: UNI Global Union (UNI) and International Transport Workers’ Federation (ITF) and Deutsche Post DHL (2012)**

This was a complex specific instance involving two international trade unions (UNI and ITF) and a company (DHL) operating in almost all countries and territories around the world through its subsidiaries. The original complaint involved allegations concerning the creation and membership of trade unions, discrimination, the use of agency workers and the use of polygraph testing across 13 countries. After an initial assessment the NCP partially accepted the complaint regarding allegations in Turkey, India, Colombia, Indonesia and Vietnam.

According to the participants in the peer review, the NCP conducted numerous bilateral discussions with each party separately to try to find common ground between the parties before finally bringing the parties together. The parties reached a final agreement with the support of the NCP. The parties agreed to continue to meet on a periodic basis to discuss and address the issues raised in the specific instance. As a result of these meetings, the parties agreed to a new protocol that involved more specific agreements between the parties, including maintaining periodic dialogues which continue at the time of writing.

During the on-site visit, it was noted that the specific instance proceeding was a constructive process that led to positive results, including improved relationships between the parties. They also noted that the NCP had acted professionally and in a neutral manner in handling the specific instances. In particular, both parties expressed appreciation for the continued involvement and oversight of the NCP and their wish for the NCP’s continued involvement in their on-going dialogue even though the specific instance formally closed three years earlier, in 2014.

<sup>23</sup> Indonesian citizen concerning a German multinational enterprise (2012); Germanwatch concerning Volkswagen AG (2007).

<sup>24</sup> Nordex SE and Dominic Whiting (2014).

<sup>25</sup> Otto Stadtlander GmbH and ECCHR et al. (2010), Deutsche Post DHL and UNI Global Union (2012), and Neumann Kaffee Gruppe GmbH and FIAN Deutschland et al. (2010).

## Feedback

The NCP currently does not have a formal process of soliciting feedback following the specific instance process through for example a questionnaire or survey. The NCP may consider options for obtaining feedback from parties to the specific instance process to aid in understanding what worked well and what could be improved in handling specific instances.

## Timeliness

The Procedural Guidance provides a three-month deadline for initial assessments. The Procedural Notes match this deadline and provide further that:

- Mediation should be completed in 6 months
- The final statement should be issued 3 months thereafter.

The Procedural Notes state that the "NCP will do its best to complete proceedings within a year and to avoid any unnecessary delay. The exact duration of the proceedings will, however, depend on the precise nature of the case and on factors that cannot be controlled by the NCP (translation services, involvement of other country's NCPs). [...] If the timeline will not be met, the parties will be informed about this fact and the reasons, and they will be issued with an amended schedule."

Prior to the 2011 update of the Guidelines NCPs were only required to issue a statement if the parties involved in a specific instance did not reach agreement (i.e., not if a case was not accepted). Out of specific instances filed since 2011 which were not accepted for further examination a statement was made available within three months for three<sup>26</sup> and within four months for two.<sup>27</sup>

For the 12 specific instances that were accepted a statement was made available within 12 months for four,<sup>28</sup> within 24 months for five<sup>29</sup> and within 36 months: for three<sup>30</sup>

Early users of the system noted that the NCP has improved the processing time of specific instances through better communication with the parties. The NCP did recognise maintaining its timeline for specific instances is an on-going challenge they are looking to address. (See Box 6).

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<sup>26</sup> German company and two individuals from Brazil and Russia (2013), German company and Indonesian individual (2012), Deutsche Telekom and Communications Workers of America (CWA) et al. (2011).

<sup>27</sup> German company and UK NGO (2015), Luxembourgish company and UK NGO (2015).

<sup>28</sup> Robert Bosch GmbH & Bosch Limited and Yogesh KN (2015); HeidelbergCement AG and IndustriALL (2013), Deutsche Post DHL and UNI Global Union (2012), Neumann Kaffee Gruppe GmbH and FIAN Deutschland et al. (2010).

<sup>29</sup> Nordex SE and Dominic Whiting (2014), Hyundai Motor Europe Technical Center GmbH and IG Metall (2014), Kik et al. and Uwe Kekeritz (2013), trovicor and ECCHR et al. (2013), Otto Statdlander GmbH and ECCHR et al. (2010).

<sup>30</sup> Bayer Crop Science and Germanwatch et al. (2004), Bayer AG and German Trade Union Confederation (2003), Adidas and Clean Clothes Campaign (2002).

### **Box 7: Challenges highlighted by the NCP with respect to handling specific instances**

The NCP has highlighted the following challenges in handling specific instances:

*Handling specific instances involving individuals from a country when it is not possible to meet or talk on the phone:* The NCP offered mediation talks via videoconference from the offices of the local German Embassy or other German institutions. The NCP also asked for the participation of a representative of the embassy and hired professional interpreters. However, mediation talks via videoconference are technically complex and delicate to handle.

*Communicating with individuals from a different cultural background and ensuring their participation in the mediation process.* The NCP tried to get in touch with complainants via different channels, but irregular email contact turned out as the only possible way. In addition, the NCP reminded parties of the dates of mediation repeatedly and showed flexibility with respect to postponing meetings and deadlines.

*Dealing with a power imbalance between the parties,* e.g. individual worker against multinational company. The NCP tried to rebalance the position of the parties by giving the weaker party particular support and attention, handling deadlines flexibly, granting more opportunity to make submissions etc.

*Convincing companies to take part in the NCP proceedings.* The NCP spends a lot of time and effort to convince companies about the merits of participating in the mediation process. In this context, it should be noted that the NAP recently created a link between the participation in a specific instance procedure and the grant of export credit guarantees and investment guarantees, providing an additional incentive for the company to participate in mediation.

*Handling expectations of parties that the NCP is unable to fulfil.* The NCP addressed expectations which it is unable to fulfil (e.g. re-employment of the complainant) via its initial assessments and via direct communication with the complainants. It made very clear what is inside and what is outside its competence and possibilities.

*One of the challenges is to meet the deadlines of specific instance procedures.* Usually, the initial assessment is communicated to the parties within three months. However, recent experience shows that the mediation phase often takes longer than nine additional months for various reasons (e.g. time for companies to decide about their participation, difficulty to find a date for mediation talks, parties asking to postpone mediation talks). The respect of deadlines should be weighed against the need to achieve a good quality outcome.

### **Confidentiality**

The Procedural Notes include confidentiality requirements spread across ten different paragraphs using different terminology which could cause confusion. (See Box 7)

The Procedural Guidance of the Guidelines notes the importance of transparency as a core criterion for functional equivalence of NCPs. With regard to confidentiality, specific types of information are identified which may need to be kept confidential during certain times in the specific instance proceedings. Generally confidentiality provisions should be designed to reflect the least restrictive approach in terms of limits on transparency.

The Procedural Notes set out specific provisions to protect confidential business data as well as personal data. At times, the Procedural Notes conflate obligations of good faith participation in the proceedings and confidentiality with an expectation that submitters of a specific instance cease campaigning against the company in question. However it is unclear what activities would be considered campaigning and at what point parties are required to cease campaigning since a variety of terms are used (i.e., "throughout the process", "from the

very beginning of the process", "as soon as the complaint has been accepted.") (See Box 7). Several stakeholders from civil society raised concerns about the provisions on confidentiality and campaigning which were seen as a deterrent to some potential submitters.

The NCP noted that there have been several specific instances where the provisions on campaigning and confidentiality were not respected. Nevertheless, in each of these specific instances the NCP continued to provide mediation and managed to reach a positive outcome.

#### **Box 8: Provisions on Confidentiality and Campaigning in the Procedural Notes**

##### **Receipt of the complaint, Initial Assessment:**

"The NCP will also inform the company that their response will be forwarded to the complainant and that any **confidential business information** should be provided separately. Such information will only be shared if consent has been given by the holder of the information."

"Both parties will be asked to ensure that *any information obtained at any stage of the proceedings is treated as confidential*. The Guidelines provide for confidentiality to be ensured at all stages of the process and during the reporting of the case to the investment committee. The NCP is called upon to take appropriate action to protect sensitive business information." (emphasis added).

##### **Mediation process:**

"NCP will insist on the parties' abiding by the principles set out in the Procedural Guidance, *which means that, throughout the process, they must uphold confidentiality and refrain from campaigning against the other party and/or using the media for any such purpose.*" (emphasis added)

"The mediation talks are confidential."

"Where NCPs have good reason to believe that disclosing the identity of the parties to the public could place one or several of them at a disadvantage, they can take measures to protect the parties' identities when offering them mediation services."

##### **Publication of final statements:**

"The NCP will take appropriate steps to ensure that sensitive business data is protected. Information is treated as confidential if necessary."

##### **As set out in the FAQ to the Procedural Notes:**

##### **Information submitted in the course of proceedings:**

"The NCP is bound by two essential principles, namely those of transparency and confidentiality. It is important to strike a balance between these two principles so as to build confidence in the process and to promote the Guidelines' effective implementation."

##### **Note on confidentiality:**

"The NCP asks all the parties involved to ensure confidentiality *from the very beginning of the process*. This includes *refraining from waging campaigns against the other party and/or using the media for any such purpose.*"(emphasis added).

"Should a party **consider it necessary to submit confidential business data or any data protected under applicable data privacy rules to the NCP**, it can do so separately from other information and/or mark it as confidential. It can also choose to redact parts of the documents. Without the consent of the data controller, *confidential business information and data protected under applicable data privacy rules* will not be passed on to anyone except the closed circle of the competent federal ministries. The NCP will take appropriate steps to ensure that *sensitive business data* is protected. Furthermore, it can prove necessary for other information, such as the *identity of individuals involved in the process*, to be treated as confidential. *Information and/or statements provided by any of the other parties during the process* are to be kept confidential unless the party concerned consents to the disclosure of this information or unless keeping the information confidential would constitute a breach of national legislation." (emphasis added).

**Duties of parties involved:**

"[The parties] should treat the process and any information they have gained during the process as **confidential**. For this reason, the NCP expects complainants to halt *any campaigns* they have been waging against the other party *as soon as the complaint has been accepted*. It also expects both sides to abide by the principle of confidentiality."

**Languages, Translation and Costs**

The FAQ to the Procedural Notes states that "in principle, the working language is German. Wherever possible, the NCP will, however, make translation or interpretation services available. This offer will be restricted to the most important steps of the proceedings and to English and French, the official working languages of the OECD. Where complainants from outside Germany are involved, complaints can also be submitted in these two languages."

**Parallel proceedings**

In line with the Procedural Guidance, the Procedural Notes state that "Court or administrative proceedings taking place in parallel are not, per se, a grounds for a case to be dismissed[...] The NCP should evaluate whether an offer of good offices could make a positive contribution to the resolution of the issues raised and do so without causing serious prejudice for either of the parties involved in these other proceedings or resulting in contempt of court. It is important that acceptance of the case must create added value by advancing the objectives of the Guidelines and rendering the latter more effective."

The FAQ to the Procedural Notes further adds "[w]hether or not a complaint will be accepted for consideration in such a situation will depend on whether or not acceptance of this specific complaint would further the cause of the Guidelines and enhance their effectiveness." The Procedural Notes go beyond the Procedural Guidance to state "This will not usually be the case if the proceedings running in parallel have already resulted in legal clarification of the issues raised to the NCP or if it is likely that they will. Where justified, however, the NCP can offer to act as a mediator in specific cases where parallel proceedings are already underway. If, at some point into the complaints proceedings, there is a danger that they may be having a negative impact on the other proceedings, the NCP may, at the request of one of the parties, decide to temporarily suspend its proceedings."

To date the NCP has referenced parallel legal proceedings as a reason for not accepting a specific instance for further examination on three occasions.<sup>31</sup> In the most recent case, the NCP accepted the submission in part, excluding a question subject to a settlement procedure taking place before the local Labour Conciliation Authority<sup>32</sup> noting that handling the same issue would not provide any positive contribution to the resolution of the issues raised.

**Cooperation with other NCPs**

Pursuant to the Procedural Notes and in line with the Procedural Guidance, "complaints will be handled by the NCP of the country in which the issues in hand have arisen,

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<sup>31</sup> HeidelbergCement AG and IndustriALL (2013), German company and two individuals from Brazil and Russia (2014), Robert Bosch GmbH & Bosch Limited and Yogesh KN (2015).

<sup>32</sup> Robert Bosch GmbH & Bosch Limited and Yogesh KN (2017).

meaning that the German NCP does not usually deal with issues that have arisen in another country adhering to the Guidelines. Such complaints will be forwarded to the competent NCP. If the complaint relates to parts of companies or operations in more than one adhering country, the German NCP will consult with the other NCPs involved on how to proceed.”

The Procedural Notes further highlight that “in cases where another NCP is in charge of dealing with a complaint that pertains to a company based in Germany, the German NCP will closely follow the proceedings and cooperate with the competent NCP as needed. This cooperation is mandatory – particularly in cases where there are grounds to believe that a German part of the company might have a share in the responsibility for a possible breach of the Guidelines. This would be the case, for instance, if a decision or instruction that played a decisive role in the matter that has given rise to the complaint can be traced back to the company’s headquarters in Germany.”

Germany has been a supporting NCP in six specific instances led by the United States,<sup>33</sup> Brazil,<sup>34</sup> Czech Republic<sup>35</sup> and Turkey.<sup>36</sup>

### Requests for clarification

The NCP asked the OECD Investment Committee to clarify the respective competences of the German and the Turkish NCP in one specific instance in 2014.<sup>37</sup>

	Findings	Recommendation
3.1	The Procedural Notes contain several provisions on confidentiality which use different terminology. Several civil society stakeholders noted that the provisions on confidentiality and campaigning were seen as a deterrent to some potential submitters.	The NCP should consider updating its Procedural Notes to make certain provisions clearer. In particular, the NCP should clarify and consolidate the provisions on confidentiality. Recognising that the provisions on campaigning and confidentiality may be acting as a deterrent to submitting specific instances, the NCP should consider discussing these provisions with stakeholders, ensuring that the provisions are equitable and ensure transparency wherever possible.
3.2	Some of the older final statements do not clearly describe the reasoning for the NCP’s decision or outcomes achieved through the process. This contrasts to the most recent statements which are more comprehensive.	The NCP should continue to publish clear and meaningful final statements and may consider developing a clear template for final statements to ensure quality and consistency.

<sup>33</sup> A German multinational enterprise operating in Montenegro and the USA Communications Workers of America (CWA) and UNI Global Union (2011).

<sup>34</sup> Kik et al. and Uwe Kekeritz (2013), German multinational enterprise operating in Brazil and an individual (2013).

<sup>35</sup> Czech subsidiary of Bosch operating in the Czech Republic and Czech-Moravian Confederation of Trade Unions (2001)

<sup>36</sup> A German company operating in Turkey and individuals (2014).

<sup>37</sup> Nordex SE and Dominic Whiting (2014).

## ANNEX 1: LIST OF ORGANISATIONS WHICH RESPONDED TO THE NCP PEER REVIEW QUESTIONNAIRE

1	Deutscher Bundestag	Parliament
2	BDA	Business
3	BdB	Business
4	BIAC	Business
5	BDI	Business
6	DHL	Business
7	econsense	Business
8	C&A	Business
9	KiK	Business
10	Federal Ministry of Food and Agriculture (BMEL)	Government
11	BMWi	Government
12	Federal Foreign Office, Germany, Division 401 "Business and Human Rights" (AA)	Government
13	Brot für die Welt	NGO
14	FIAN	NGO
15	OECD Watch	NGO
16	ECCHR	NGO
17	NHRI Germany (DIMR)	NGO
18	Transparency International	NGO
19	German Watch	NGO
20	DGB	Trade Union
21	UniGlobal	Trade Union
22	IG Metall	Trade Union
23	IndustriALL	Trade Union
24	TUAC	Trade Union
25	ITF	Trade Union

## ANNEX 2: LIST OF ORGANISATIONS PARTICIPATING IN THE ON-SITE VISIT

a) Federal Ministry for Economic Affairs and Energy

Organisation
Parliamentary Undersecretary
Director General External Economic Policy

b) Members of the Inter-ministerial Steering Group

Organisation
Federal Foreign Office
Federal Ministry of Labour and Social Affairs
Federal Ministry of Food and Agriculture
Federal Ministry of Justice and Consumer Protection
Federal Ministry for Economic Cooperation and Development
Federal Ministry for the Environment, Nature Conservancy, Building and Nuclear Safety

c) Members of the Working Group

Organisation
BDA - Confederation of German Employers' Associations
BDI – Federation of German Industries
DGB - German Trade Union Confederation
DIHK - Association of German Chambers of Commerce and Industry
Germanwatch
Global Compact Network Germany
Industrial Union of Metalworkers
Transparency International Germany

d) Other stakeholders

German Institute for Human Rights
Econsense

e) Institutional stakeholders

OECD Watch
TUAC

f) Specific instances

Case	Organisation	Position
Dominic Whiting and Nordex SE	Nordex SE	Regional Head of Legal Germany Central Europe, Turkey & Middle East
	Nordex SE	Public Affairs, Corporate Communications
Uwe Kekeritz and Kik Textilien und Non-Food GmbH, C&A Mode GmbH & Co. and Karl Rieker GmbH & Co. KG	Member of the German Bundestag (MdB)	
	Office of Uwe Kekeritz	
	Kik Textilien und Non-Food GmbH	Head of Corporate Communications and Public Affairs
	Kik Textilien und Non-Food GmbH	Adviser
Indocement Union, the Federation of Indonesian Cement Industry, the Confederation of Indonesian Trade Unions and IndustriALL Global Union and PT Indocement Tunggal Prakarsa, Indonesia and HeidelbergCement AG, Germany	IndustriALL Global Union	Director, Mechanical Engineering and Materials Industries
	HeidelbergCement AG	Director Group Human Resources
UNI Global Union (UNI) and International Transport Workers' Federation (ITF) and Deutsche Post DHL (DP-DHL/Bonn)	UNI Global Union	Deputy General Secretary
	ITF	Legal Adviser
	Deutsche Post DHL	EVP Industrial Relations / Civil Servants

g) Policy coherence

Unit within the Federal Ministry of Economic Affairs and Energy
CSR and Economic Policy
Public Procurement
International raw materials policy
Export financing, Export Credit Guarantees
Foreign Investment and Investment Guarantees
National Action Plan Business and Human Rights
Export Credit Agency
Investment Promotion Agency
Former NCP members



### ANNEX 3: PROMOTIONAL PLAN OF THE GERMAN NCP

	Partners	Activities	State of play	Comments
	<b>Germany Trade and Invest (GTAI)</b>	ixpos (GTAI website): link to NCP homepage	done	discussed options for cooperation, 25.01.2017
		Articles, Interviews in GTAI publications	interview with State Secretary to be published in June 2017	
1.	<b>Association of German Chambers of Commerce and Industry (DIHK)</b>	presentations to DIHK bodies	<ul style="list-style-type: none"> <li>teaser and summary sent February 2017</li> <li>presentation to DIHK Regional Boards, 15.03.17</li> </ul>	discussed options for cooperation, 26.01.2017
		presentations to DIHK member businesses	<ul style="list-style-type: none"> <li>presentation IHK Erfurt, scheduled 03.05.17</li> </ul>	
		link to Foreign Chambers of Commerce	to be followed up with DIHK	
		“World Economic Conferences”	next conference 2018	
2.	<b>Federation of German Employers’ Associations (BDA)</b>	presentations to BDA member associations and businesses	under preparation; feedback from BDA expected	discussed options for cooperation, 13.03.2017
		presentations to BDA bodies	<ul style="list-style-type: none"> <li>CSR Working Group, 01.02.2017</li> <li>CSR Working Group, scheduled 24.05.2017</li> </ul>	
3.	<b>Federation of German Industries (BDI)</b>	presentations to geographic caucuses	<ul style="list-style-type: none"> <li>offer and summary sent to OAV, APA, Afrikaverein, LAV, NUMOV in March 2017</li> <li>presentation to NUMOV, Berlin, scheduled 15.05.17</li> </ul>	<ul style="list-style-type: none"> <li>discussed options for cooperation, 16.02.2017</li> <li>OAV: East Asia</li> <li>APA: Asia Pacific</li> <li>Afrikaverein: Africa</li> <li>LAV: Latin America</li> <li>NUMOV: Near and Middle East</li> </ul>
4.	<b>Econsense</b>	Presentations to bodies and members	<ul style="list-style-type: none"> <li>Steering Board: Berlin 26.04.17</li> <li>Project Group Human Rights, scheduled 26.06.2017</li> <li>Project Group Supply Chains: Essen, scheduled 05.07.2017</li> </ul>	discussed options for cooperation, 29.03.2017

5.	<b>German Global Compact Network (DGCN)</b>	participation in DGCN events presentations to businesses link websites	DGCN participants' conference, 21.03.2017 under preparation • done	discussed options for cooperation, 01.03.2017
6.	<b>Council for sustainable development (RNE)</b>	participation in RNE conferences	RNE annual conference, scheduled 29.05.2017	discussed options for cooperation, 21.04.2017
		presentations in RNE workshops on the Sustainability Code	to be followed up	
7.	<b>Civil Society (Universities, NGO)</b>	presentations to NGOs	meeting scheduled for the first week of May	discussed options with European School of Governance Berlin and Bremen University, February 2017
		presentations in university classes	to be followed up	
8.	<b>Trade Unions</b>	presentations and training to trade union representatives	training for trade union representatives, scheduled 10.-12.07.17	discussed options with DGB, 02.03.2017
		presentations to board members	training for board members, scheduled 30.06.2017	
9.	<b>German Länder</b>	presentations to Länder Committee for Foreign Economic Relations (BLA)	presentation to BLA Berlin, 31.03.2017	discussed options with Ministry of economic affairs in Northrhine-Westphalia , 22.03.2017
		presentations to Länder authorities	under discussion	
		cooperation with Länder authorities	concept paper under preparation together with Northrhine-Westphalia	
10.	<b>German Mining Network</b>	Presentations to German Mining network	conference in Berlin, scheduled 31.05.2017	
11.	<b>Federal Government</b>	presentations to/with other Ministries	• regular exchanges	discussed options during conference on SDGs, 22.03.2017
		Federal Ministry of Economic Cooperation and Development /BDI conference series on RBC and SDGs	• participation in conference on SDGs, 22.03.2017 • presentation planned during next conference envisaged for June or September 2017	
		Textilbündnis (at the Federal Ministry of Economic Cooperation and Development)	participation in interministerial meeting, 22.03.2017	
		Federal Foreign Office: Information to Embassies; preparation for economic counsellors	• next prep meetings (Postenvorbereitung) in summer 2017 under preparation	
12.	<b>Ministry of Economic Affairs and Energy</b>	press activities	• press article Minister Gabriel, December 2016 • article in Ministry public policy paper, January 2017 • Interview for Secretary of State in GTAI journal under preparation (cf. GTAI) • Interview for Secretary of State in business association	

			journal under preparation	
		update flyer	done, March 2017	
		Trade + investment promotion services	bilateral awareness raising meeting, 22.02.2017	
		procurement services	bilateral awareness raising meeting, 19.01.2017	
		subsidies services	bilateral awareness raising, 31.01.2017	
		trade fair services	bilateral awareness raising meeting, 13.04.2017 to be followed up	
		conflict minerals	participation at interministerial meeting, 09.02.2017	
		country desks	regular exchange; informed about BDI caucuses contacts	
13.	<b>Other NCPs</b>	presentations to stakeholders abroad	presentation at a seminar organized by the Czech NCP, scheduled 12.05.2017	

## ANNEX 4: OVERVIEW OF SPECIFIC INSTANCES HANDLED BY THE GERMAN NCP

No.	Enterprise	Submitter	Host Country	Chapter of the Guidelines	Date of Submission	Date of Closure	Outcome
1.	German company	ECCHR, Femnet, medico international, Garment Workers Unity Forum, Comrade Rubel Memorial Center and five individuals from Bangladesh	Bangladesh	Human Rights Employment and Industrial Relations	2 May 2016	Pending	Pending
2.	Robert Bosch GmbH & Bosch Limited	Yogesh KN	India	Human Rights Employment and Industrial Relations	13 October 2015	29 May 2017	Partially accepted, withdrawn by submitter during mediation phase – settled elsewhere, final statement with recommendations.
3.	German company	NGO	US, Yemen Somalia	Human Rights	20 March 2015	13 July 2015	Not accepted for further examination because no link established between the company actions and non-observance of the Guidelines.
4.	Luxembourg company	NGO	US, Yemen, Somalia	Human Rights	13 January 2015	11 May 2015	Not accepted for further examination on grounds of no adverse impacts in Germany.
5.	Audi AG	German individual	Germany	General Policies Employment and Industrial Relations	5 August 2014	21 October 2014	Withdrawn by submitter before initial assessment settled elsewhere.
6.	Nordex SE	Dominic Whiting	Turkey	General Policies Environment	4 August 2014	31 August 2016	Partially accepted Concluded with unilateral commitment by company to specific, detailed improvements in due diligence process.
7.	Hyundai Motor Europe Technical Center GmbH	IG Metall	Germany	Employment and Industrial Relations	8 April 2014	5 March 2015	Partially accepted; did not accept part covered by parallel proceedings. Concluded without agreement between the parties as the company refused to participate in mediation.
8.	METRO Cash&Carry	Metro Habib Employee Union	Pakistan	Chap V - Employment and Industrial	8 January 2014	21 May 2014	Withdrawn by submitter - before initial assessment – issues had already been solved by the company.

				Relations			
9.	German company	two individuals from Brazil and Russia	Brazil, Russia	General Policies Human Rights Employment and Industrial Relations	5 June 2013	23 August 2013	Complaint from Brazilian individual forwarded to Brazil; complaint from Russian individual not accepted for further examination on the grounds  that the complaint was unsubstantiated and subject to parallel proceedings.
10.	HeidelbergCement AG	IndustriALL Global Union et. al.	Indonesia	Employment and Industrial Relations	29 May 2013	21 May 2014	Partially accepted; did not accept part covered by parallel proceedings. Concluded with agreement between parties.
11.	KIK Textilien und Non-Food GmbH, C&A Mode GmbH & Co und Karl Rieker GmbH & Co. KG	Member of the German Parliament, Mr. Uwe Kekeritz	Bangladesh	General Policies Human Rights	13 May 2013	4 November 2014	Concluded without agreement between the submitter and 1st company, unilateral commitment by 1st company. Recommendations made in final statement.  Concluded with agreement between the submitter and 2nd company.  Forwarded to Brazilian NCP for the 3rd company.  Recommendations made in final statement.
12.	Trovicor GmbH	ECCHR et.al.	Bahrain	Human Rights	6 February 2013	21 May 2014	Partially accepted Concluded without agreement between the parties as the submitter refused to participate in mediation.
13.	Deutsche Post DHL	UNI Global Union, International Transport Workers' Federation	Bahrain, Colombia, Guatemala, Hong Kong, China, India, Indonesia, Malawi, Norway, Panama, South Africa, Turkey, United States, Vietnam	Employment and Industrial Relations	21 November 2012	1 January 2014	Partially accepted Concluded with agreement between parties (unclear if joint final statement). Agreement to continue bilateral discussions. NCP to receive reports on discussions.
14.	German company	Indonesian individual	Indonesia	Human Rights Employment and Industrial Relations	17 September 2012	7 December 2012	Not accepted for further examination on grounds of no violation of human rights or rules of non-discrimination or of Chapter V of the OECD-Guidelines

15.	Deutsche Telekom	Communications Workers of America (CWA), verdi and UNI Global Union	Montenegro, USA	Employment and Industrial Relations	7 July 2011	9 August 2011	Part of the complaint forwarded to the United States. The other part not accepted for further examination.
16.	Otto Stadtlander GmbH	ECCHR et al.	Uzbekistan	Employment and Industrial Relations	22 October 2010	17 November 2011	Concluded with agreement between the parties and joint statement by the parties. Commitment by company to take specific actions.
17.	Neumann Kaffee Gruppe GmbH	FIAN Deutschland, Wake Up and Fight for Your Rights Madudu Group	Uganda	Human Rights	15 June 2010	30 March 2011	Concluded without agreement between the parties. Subsequent to mediation company responded to main demands of the submitter.
18.	Vattenfall	Greenpeace Deutschland	Germany	Gen Policies Environment Consumer Interests	30 October 2009	15 March 2010	Not accepted for further examination on the grounds that the submission was unsubstantiated and overbroad.
19.	Volkswagen AG	Gesellschaft für bedrohte Völker	China	Human Rights	28 April 2008	3 June 2008	Not accepted for further examination on the grounds of no "investment nexus" (as previously required by the Guidelines), nor did it constitute or foster a violation of human rights.
20.	57 companies (Oil for Food Programme)	Transparency International (TI) Deutschland	Iraq	Combating Bribery	5 June 2007	31 August 2007	Not accepted for further examination on the grounds of no "investment nexus" or supply chain relationship (as previously required by the Guidelines).
21.	Volkswagen AG	Germanwatch	diverse	General Policies Disclosure Environment	7 May 2007	20 November 2007	Not accepted for further examination on the grounds that the OECD Guidelines (version in force at the date of submission) were not applicable to climate change issues.
22.	Ratiopharm	TI Deutschland	Germany, Belgium, Canada, Spain	Combating Bribery	20 April 2006	13 December 2006	Not accepted for further examination on the grounds that: - There was no transnational connection concerning the request about the activities of the company in Germany; and - The NCPs of the other host countries evoked in 2006 would be the competent authorities to handle the NGO's request.
23.	Daimler Chrysler	Scientific, Industrial & Environmental Consultants	Turkmenistan	Diverse	1 February 2005 (with the	July 2005	Not accepted for further examination on the grounds that the OECD Guidelines (version in force at the date

		GmbH			Austrian NCP)		of submission) were not applicable because referred to sales and trade activity.
24.	A. Knight International Ltd.	Krall	Congo	Environment	November 2004	February 2005	Not accepted for further examination on the grounds that examination impossible due to warlike conditions in DRC.
25.	Bayer CropScience	Germanwatch, Global March et al.	India	Employment and Industrial Relations	11 October 2004	30 August 2007	Concluded without agreement between the parties. Unilateral commitments by company to take specific actions.
26.	Bayer AG	German Trade Union Confederation (DGB)	Philippines	General Policies Employment and Industrial Relations Environment	27 June 2003	29 June 2007	Concluded with agreement between the parties and joint final statement.
27.	West LB	Greenpeace Deutschland	Ecuador	Environment	15 May 2003		Not accepted for further examination on the grounds that the OECD Guidelines (version in force at the date of submission at the time) were not applicable because the Guidelines applied only to investments but not to loans.
28.	BP AG Deutschland	Urgewald, WEED, Germanwatch, BUND	Azerbaijan et al.	General Policies Employment and Industrial Relations Environment	29 April 2003	July 2003	Not accepted for further examination on the grounds that there was no involvement of a German company.
29.	Total Fina Elf	Greenpeace	Russia	Environment	16 December 2002	16 July 2004	Not accepted for further examination on the grounds of no "investment nexus" (as previously required by the Guidelines). Confirmed by the OECD Investment Committee.
30	Adidas	Clean Clothes Campaign (CCC)	Indonesia	General Policies Employment and Industrial Relations Environment	5 September 2002	24 May 2004	Concluded without joint statement. Commitment by the parties to remain in communication.



## National Contact Point Peer Reviews: Germany

Adhering governments to the OECD Guidelines for Multinational Enterprises are required to set up a National Contact Point (NCP) that functions in a visible, accessible, transparent and accountable manner.

This report contains a peer review of the German NCP, mapping its strengths and accomplishments and also identifying opportunities for improvement.