



**An Roinn Gnó,
Fiontar agus Nuálaíochta**
Department of Business,
Enterprise and Innovation

National Contact Point for Ireland – Procedures for Dealing with Complaints Brought Under the OECD Guidelines for Multinational Enterprises

December 2018

Introduction

The **OECD Guidelines for MNEs (2011)** is part of an international framework to ensure that the operations of MNEs are in harmony with government policies, to strengthen the basis of mutual confidence between enterprises and the societies in which they operate, to help improve the foreign investment climate and to enhance the contribution to sustainable development made by multinational enterprises. The OECD Guidelines provide voluntary principles and standards for responsible business conduct consistent with applicable laws and internationally recognised standards. Adhering countries to the Guidelines, such as Ireland, are requested to establish a National Contact Point (NCP) to facilitate, amongst other things, the handling of complaints under the Guidelines.

Government strategies promote responsible business conduct in Ireland. *Towards Responsible Business – Ireland’s National Plan on Corporate Social Responsibility 2017-2020* – aims to support businesses in Ireland to create sustainable jobs; embed responsible practices in the marketplace; embrace diversity and promote responsible workplaces; and encourage enterprises to consider their businesses’ impacts on the environment. In addition, *Ireland’s National Plan on Business and Human Rights 2017-2020* gives effect to the UN Guiding Principles on Business and Human Rights and sets out the Government’s commitments to promoting responsible business practice at home and overseas. These strategies are each cognisant of the principles outlined across the international business practice framework, such as the EU, ILO, UN and including the OECD Guidelines for Multinational Enterprises.

Implementation of the OECD MNE Guidelines

In exceptional cases, where adherence is not considered to be achieved by a party, the OECD MNE Guidelines provide for a complaints procedure. Each adhering country can establish its own complaints procedure.

Procedures

Who can make a Specific Instance (complaint)?

According to the OECD Guidelines, any “interested party” can file a complaint. The complainant may be, for example, a community adversely affected by a company’s activities, employees or their trade union, or an NGO. Complaints falling outside the Guidelines will not be considered - nor will ineligible, frivolous or vexatious complaints.

The Irish NCP will consider all complaints it receives. However, the NCP will need to receive detailed information from the complainant in order to deal with the complaint. Therefore, complainants should have a close interest in the case and be in a position to supply information about it. They should also, in accordance with the principles of the Guidelines, have a clear view of the outcome they wish to achieve.

Who/Where should complaints be sent to?

National Contact Point for OECD MNE Guidelines

Trade Policy Unit

Department of Business, Enterprise and Innovation

26 Kildare Street

Dublin 2

Email: oecdncp@dbei.gov.ie

What happens to information provided during the course of an examination?

One of the objectives of the NCP is to ensure that its process is transparent. The NCP shares information provided to it about a complaint with all parties in the complaint, unless a good case is made to the NCP that specific information should not be shared.

Consideration of Complaints

There are three key stages involved in handling complaints.

Stage 1 – Initial Assessment

An initial assessment will be made of whether the issues raised are appropriate and valid for consideration by Ireland's NCP in the context of the scope of the OECD Guidelines, including:

- Whether it is appropriate for consideration by Ireland's NCP and/or that of another adhering country;
- whether it falls within one or more of the OECD Guidelines;
- whether the issue raised is material and substantiated; and
- whether there are any other factors which should be taken into account such as, but not limited to:
 - the relevance of applicable law and procedures, including court rulings;
 - how similar issues have been, or are being, treated in other domestic or international complaints;
 - whether consideration of the complaint would contribute to the purpose and effectiveness of the OECD Guidelines.

The usual process will be for the NCP to write to the complainant to confirm how the complaint will be handled. At the same time, the NCP will write to the MNE named in the complaint to share the information received about the complaint and invite the company to make a response within a specified timeframe.

The NCP may ask the complainant for further information or clarification it considers is necessary to take the complaint forward, and in this case may extend its deadline for the company's response.

In making its initial assessment the NCP may determine to consult with the National Contact Point(s) of other adhering countries to the OECD Guidelines with a view to:

- seeking advice from the other NCP(s) regarding the complaint;
- possibly involving the other NCP(s) in the complaint process;
- possibly transferring the complaint to the other NCP(s) if this is considered appropriate and agreed by the NCP(s) involved in the matter.

In making its initial assessment the NCP may also choose to consult with or engage external experts.

The NCP will make a draft Initial Assessment, based on the information received in the complaint and any response, and will issue this to the parties for comment before finalising it for publication.

The NCP will aim to complete Stage 1 within a reasonable period, generally 3 months, of having received all necessary information and completed consultations, including any legal advice considered necessary.

The Initial Assessment, when issued, will include:

- the names of the parties if the complaint is accepted for consideration;
- the substance of the complaint – including reference to those OECD Guidelines alleged to have been breached;
- a statement of the precise nature of the complaint;
- a summary of the process the NCP has followed to date;
- the reasons for accepting or rejecting issues for further examination;
- a statement that acceptance of issues for further consideration does not mean that the NCP has determined at this stage that the Guidelines have been breached; and
- an outline of the next stages in the NCP's determination.

Stage 2 – From acceptance of a case to conclusion of mediation or fact finding

Mediation

The preferred outcome of any complaint is an agreement between the parties. When the NCP accepts a complaint, it will discuss with the parties involved and offer its “good offices” with the objective of bringing both parties together to discuss the issues and come to a mutually agreed resolution without undue delay. Mediation is voluntary. The published Final Statement will note where the parties did not agree to undertake mediation.

If mediation is undertaken within the NCP process the mediation will be conducted by a mediator appointed by the NCP. The mediator will be agreed by the NCP and the parties.

Fact finding examination

If the parties are unable to agree on mediation or mediation fails, then the NCP will conduct an examination of the case.

The objective of this process is for the NCP to further consider the complaint in order to assess the complaint. At the outset of the investigation, the NCP will identify the steps it intends to take in order to proceed with the investigation and will notify both parties in writing. The NCP will inform both parties in writing of any amendments it considers necessary to these steps. If, as a result of the investigation, the NCP decides that additional steps are

required in order to complete the investigation, it will notify both parties of the additional steps it intends to take. The NCP will then review all the information it has gathered and may make a statement or report on the relevant issues.

The NCP will aim to complete Stage 2 within 6 months of Stage 1.

Stage 3 – Drafting and publication of Final Statement

The NCP's Final Statement will include the following:

- details of the complaint including identification of those parts of the OECD Guidelines (e.g. chapter/paragraph references) where non-compliance is alleged;
- details of the parties involved i.e. complainant and the company;
- the outcomes of any mediation in a statement agreed between the parties and including any follow up arrangements agreed by parties;
- the results of its examination (if any);
- where appropriate, the NCP may make specific recommendations.

The NCP will aim to complete Stage 3 within 3 months of Stage 2.

These procedures give effect to the OECD MNE Guidelines and may be amended from time to time.

Confidentiality

One of the objectives of the NCP is to ensure that its process is transparent. Unless a good case is made for information to be withheld from a party, all the information received by the NCP from the parties or any other person or organisation (whether during the course of a meeting or in writing) will be copied to all parties. The preferred course is to agree, where appropriate, conditions of confidentiality attaching to sensitive information.

Information which is sent to the NCP will be treated confidentially by the NCP. The information provided by each party may be shared with any other party to the complaint during the process of assessment, but only with the consent of the party which provided the information. If any such information is provided, it will be on condition that it is kept confidential for the period of assessment.

Parties should be aware that information and documents provided to the NCP will be subject to the operation of the Freedom of Information Act 2014 and could be released under the provisions of that Act.