



**Report
by the German National Contact Point for the OECD Guidelines
for Multinational Enterprises
on the
follow-up on the recommendations contained in the Final Statement
of 26 June 2018**

On 26 June 2018, the German National Contact Point for the OECD Guidelines for Multinational Enterprises at the Federal Ministry for Economic Affairs and Energy (hereinafter referred to as “NCP”) issued a Final Statement in response to a complaint filed by the

- European Center for Constitutional and Human Rights e.V. (hereinafter referred to as “ECCHR”), Berlin,
- Garment Workers Unity Forum, Dhaka/Bangladesh,
- Comrade Rubel Memorial Center,
- medico international e.V., Frankfurt am Main,
- FEMNET e.V., Bonn and
- Ms Raima Jahan, Mr Mahmudul Hasan Hridoy, Ms Rikta Khatun Joshna, Ms Morjina Begum and Ms Jesmin Akhter
(hereinafter collectively referred to as “Complainants”)

against

- TÜV Rheinland AG, Cologne (hereinafter referred to as “TÜV Rheinland”) and
- TÜV Rheinland India Pvt. Ltd, Bangalore/India (hereinafter referred to as “TÜV India”)
(hereinafter collectively referred to as “Respondents”).

(hereinafter both collectively referred to as “the Parties”)

The Final Statement made recommendations to the Parties, who had failed to reach agreement on the issues raised. The complaint related to a social audit conducted by TÜV India in a textiles factory which, at the time of the audit in June 2012, had been based in the factory building of Rana Plaza in Dhaka, Bangladesh. For further details on the case in

question and the issues raised, reference is made to the Final Statement itself (<https://www.bmwi.de/Redaktion/DE/Beschwerdefaelle-NKS/Abschliessende-Erklaerung/nks-abschliessende-erklaerung.html>).

A. Recommendations by the NCP

- 1 The mediation procedure had brought to light a number of differences in the Parties' positions, but also provided stimuli for a constructive dialogue on the way social audits can be conducted and possibly improved. In its Final Statement, the NCP acknowledged that the auditing companies implementing the standards – even though they may be able to integrate individual measures into their audits (for example by using more female auditors or by working more closely with trade unionists both on-site and off-site) – are unable single-handedly to bring about more far-reaching and fundamental changes (such as improving the transparency of auditing reports, involving the procurement officers in the audits, conducting unannounced audits, expanding the use of off-site interviews and conducting anonymous interviews); this is only possible by working with those setting the standards, clients, procurement officers, producers, trade unions and civil society. The NCP expressed its conviction that, if continued beyond the mediation procedure, the Parties' dialogue on how to conduct and possibly improve the social audits would help further the implementation of the OECD Guidelines.
- 2 As a follow-up to the complaints procedure, the NCP therefore recommended that the Parties should continue to discuss the issues raised within their respective spheres and, if possible, to involve other relevant stakeholders. It encouraged addressing the following points, for example:
 - The question as to whether a social audit should be paid for by the clients of the goods manufactured in the factory that is being audited rather than by the owner of the factory, and how the social audits could thus be enhanced.
 - The question as to whether, and if so, as to how, from a due-diligence angle, the scope of social audits across the value chain should be expanded to include aspects related to structural building analysis and building safety or whether social audits should be supplemented with additional examinations in order to better protect human rights, particularly workers' rights, at the manufacturing sites that are audited.
 - The question as to whether, and if so, as to how the social audits could be changed in a way that would allow these instruments to be used to effectively identify shortcomings and thus help improve working conditions. Issues that should be looked at in this context could include, for example, the auditors' qualifications, time budgets and

diligence, as well as ways in which a faithful account of the situation can be obtained from important interlocutors (such as employees or trade union representatives). In the view of the NCP, there are differences with regard to both auditing standards and auditing practice.

- The question as to whether, and if so, as to how the shortcomings which are identified in a particular auditing report or which are to be corrected by means of a “corrective action plan”, can be effectively remedied in practice. The auditing companies themselves cannot remedy the shortcomings: this requires constructive and effective cooperation between the production sites that have been audited and their clients; the duration of the business relationship can also play an important role here. Specific aspects that could be taken into consideration include unannounced follow-up audits, complaints mechanisms for employees and/or employee representation bodies at the company level, and the transparency of the auditing reports.

B. Follow-up on the implementation of the NCP’s recommendations

- 3 In its Final Statement of 26 June 2018, the NCP asked the Parties to each submit a report after one year, detailing the steps they have taken in response to the recommendations given and explaining the outcomes.

I. The Complainants’ reporting

- 4 During the mediation procedure concerning the complaint in question, the Complainants were represented primarily by representatives of ECCHR, with occasional support from a representative of FEMNET e.V. The report on the follow-up measures taken in response to the recommendations, dated 21 August 2019, was submitted to the NCP by ECCHR and FEMNET e.V.

- 5 The report made reference to the following activities:

- press reports, videos, blog posts
- comments and specialist publications
- a workshop in connection with the German Partnership for Sustainable Textiles.

- 6 The above-mentioned media and workshops addressed a number of points: the removal of incentive structures causing misconduct, transparency and accountability as basic requirements for audits, mechanisms to identify and sanction flawed audits, third-party

beneficiary rights, companies' liability claims against the auditors they contracted, the role of the state with a view to a regulatory framework for social audits.

- 7 The report also mentioned another complaints procedure, handled by another National Contact Point, against a foreign auditing company. The complaint made reference to the German NCP's statement, from which it derived expectations and obligations for the respondent.

II. The Respondent's reporting

- 8 In the context of the mediation, the Respondents were represented by TÜV Rheinland. Its report on the follow-up measures taken in response to the recommendations, dated 30 July 2019, was submitted to the NCP.
- 9 The report detailed
 - measures and objectives pursued by TÜV Rheinland in connection with issues that had been discussed at great length during the NCP procedure;
 - TÜV Rheinland's commitment to improving the standards relative to the training and qualification of social auditors, and to imposing rules of conduct across the industry.
- 10 The report addressed a number of points: increasing the use of female auditors, working more closely with employee representatives and trade unions, grievance mechanisms for the workforce and/or employee representation bodies at the company level, the question as to whether procurement officers are to be involved in the audits, conducting audits and follow-up audits without giving prior notice, expanding the use of off-site interviews.
- 11 As a founding member of the Association of Social Compliance Auditors (APSCA), TÜV Rheinland highlighted its commitment to improving the standards relative to the training and qualification of social auditors, and to imposing rules of conduct across the industry. It referred to APSCA's code of conduct and the establishment of a competence framework as key instruments in this process. The strategy is to strengthen the credibility and professionalisation of the industry and to ensure that the certified social auditors meet high standards of expertise and integrity.

C. Assessment by the NCP

12 The NCP finds that both the Complainants and Respondents have acceded to the request expressed in the Final Statement and reported on their follow-up action in response to the complaints procedure. As in the mediation procedure, the reports bring to light divergent views on the design of social audits and the perception of duties when it comes to developing standards and monitoring their compliance by private stakeholders. The NCP takes the view that the future implementation of the OECD Guidelines would benefit if the Parties continued to support an inclusive dialogue process with all relevant stakeholders to discuss how social audits are to be conducted and, if necessary, to be adapted.

Berlin, 10 January 2020

signed Brauns

For the National Contact Point

Detlev Brauns

Federal Ministry for Economic Affairs and Energy