



Die
Bundesregierung



OECD-LEITSÄTZE FÜR
MULTINATIONALE UNTERNEHMEN

DEUTSCHLAND
NATIONALE KONTAKTSTELLE

**National Contact Point for the
OECD Guidelines for Multinational Enterprises
at the Federal Ministry for Economic Affairs and Energy**

**Report by the Federal Government to the German Bundestag
concerning the work undertaken by the National Contact Point for the
OECD Guidelines for Multinational Enterprises
in 2020**

Re: Report by the Federal Government to the German Bundestag
concerning the work undertaken by the National Contact Point for the
OECD Guidelines for Multinational Enterprises in 2019, Bundestag printed
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A. SUMMARY

- 1 The OECD Guidelines for Multinational Enterprises are the most important comprehensive international instrument for the promotion of responsible business conduct. The National Contact Point for the OECD Guidelines for Multinational Enterprises (NCP) promotes the effective implementation of the Guidelines and also provides a mediation procedure in cases of complaint regarding the application of the Guidelines.
- 2 In the following report, the Federal Government informs the German Bundestag about the activities that the NCP undertook in 2020 in exercising its mandate. 2020 was a landmark year that celebrated the 20th anniversary of National Contact Points as non-judicial grievance mechanisms. The report provides a detailed account of developments within the NCP and its bodies and of the activities conducted during the reporting period, including complaints procedures, promotional activities and cooperation within the OECD and with other National Contact Points.
- 3 Following its transmission to the German Bundestag, the report will be published on the NCP website¹.

¹ <http://www.oecd-nks.de>.

B. MAIN REPORT

I. Background

1. OECD Guidelines for Multinational Enterprises

- 4 The OECD Guidelines for Multinational Enterprises are recommendations made by the participating countries for multinational companies with a view to responsible business conduct in a global context. They contain established principles of responsible business conduct in the areas of information policy, human rights, employment policy, environmental protection, anti-corruption, consumer interests, science and technology, competition and taxation. Even though they are not legally binding, the Guidelines do reflect the Federal Government's expectations with regard to the conduct of German companies involved in cross-border operations.
- 5 The OECD Guidelines are supplemented by the more general OECD Due Diligence Guidance for Responsible Business Conduct and sector-specific Guidance documents that focus on raw materials, textiles, agriculture and finance. The Guidance documents provide practical support in implementing the OECD Guidelines. They outline a risk-based due diligence process and make sector-specific recommendations for its practical implementation.

2. National Contact Point for the OECD Guidelines

- 6 The National Contact Points seek to promote the effective implementation of the OECD Guidelines in their respective country. Their tasks include the following:
- raising awareness for the OECD Guidelines among enterprises, trade unions and civil society, and promoting their application;
 - acting as neutral mediators to settle disputes between the different parties in the case of complaints and indications regarding potential breaches of the Guidelines;
 - working together with other NCPs and the OECD in further developing the Guidelines, and, if necessary, assisting in the response to complaints which fall within the responsibility of other NCPs;
 - answering general inquiries and specific questions arising from the application of the OECD Guidelines.

- 7 The NCP is located at the Federal Ministry for Economic Affairs and Energy; during the reporting period, it was a task force under the direct authority of the Director-General for External Economic Policy. It is supported by the Interministerial Committee on the OECD Guidelines for Multinational Enterprises. The Committee discusses issues relating to the application of the OECD Guidelines and, at the proposal of the Federal Ministry for Economic Affairs and Energy as the lead ministry, resolves them by consensus. Alongside the Economic Affairs Ministry, seven further ministries are represented on the Committee².
- 8 In addition, the NCP receives advice and support from the Working Group on the OECD Guidelines for Multinational Enterprises. The Working Group provides a platform for discussing all issues linked to the implementation of the OECD Guidelines. It is comprised of not only members from the ministries which form part of the Interministerial Committee, but also representatives of the OECD stakeholder groups (employers, employees and civil society) and other experts on responsible business conduct.

II. National Contact Point for the OECD Guidelines and affiliated bodies

- 9 During the reporting period, the NCP, located at the Federal Ministry for Economic Affairs and Energy, was a task force under the direct authority of the Director-General for External Economic Policy. It continued to exercise the responsibility of representing the Ministry in the field of business and human rights issues, an additional task it had been assigned in 2019. In its next report, the NCP will give an account of its reorganisation as Division within the Directorate for 'Eastern Europe (non-EU) and Asia-Pacific, Officer for Eastern Europe (non-EU) and Asia-Pacific'³.
- 10 The bodies affiliated with the NCP – the Interministerial Committee and the Working Group – each met twice during the reporting period. In addition to complaints procedures, promotional activities and cooperation within the OECD, the work of the Interministerial Committee centred on the process of drawing up an international guidance document for environmental due diligence in raw materials supply chains⁴ and also included a major focus on the sector-specific OECD guidelines and guidance documents.

² Federal Foreign Office, Federal Ministry of Finance, Federal Ministry of Justice and Consumer Protection, Federal Ministry of Labour and Social Affairs, Federal Ministry of Food and Agriculture, Federal Ministry for the Environment, Nature Conservation and Nuclear Safety, Federal Ministry for Economic Cooperation and Development.

³ Internal order No. 30/2021 of 29 March 2021.

⁴ Measure No. 15 of the Federal Government's Raw Materials Strategy, available at: <https://www.bmwi.de/Redaktion/DE/Publikationen/Industrie/rohstoffstrategie-der-bundesregierung.html>.

- 11 In November 2020, the Working Group welcomed the Mining, Chemical and Energy Industrial Union (IG BCE) and the trade union IG Bauen-Agrar-Umwelt as new members of the employee stakeholder group, as well as BUND / Friends of the Earth Germany as a new member of the civil society stakeholder group. Major issues within the Working Group – aside from complaints procedures, promotional activities, and cooperation within the OECD – included the COVID-19 pandemic, a stocktaking process on the occasion of the 10th anniversary of the last revision of the OECD Guidelines and a thematic priority on cooperation between companies and non-governmental organisations.

III. Activities of the National Contact Point for the OECD Guidelines

- 12 During the reporting period, the NCP was concerned with the following dossiers in particular:

1. Complaints procedures

- 13 During the reporting period, four complaints procedures were brought before the NCP, one procedure was closed after a process of mediation, and two further procedures were undergoing follow-up. In addition, the NCP accompanied a procedure within the remit of another National Contact Point.

a) Procedures undergoing initial assessment or mediation

- 14 In April 2020, the NCP closed the complaint filed by SÜDWIND Institut et al. against Adidas AG, issuing a Final Statement subsequent to mediation⁵. The complainants had accused the respondent of failing to adequately exert its buyer leverage over a supplier of its main partner in Indonesia with respect to wage issues and the freedom of association. The respondent had rejected this allegation. A mediation process led to an agreement over the wage dispute, but was not able to resolve the issue pertaining to freedom of association. Since the NCP did not see any reasonable prospect of the two sides reaching an agreement on this matter, it concluded the procedure with a Final Statement. On the issue of freedom of association, the NCP recommended the respondent to review its reporting and grievance channels and to discuss with relevant stakeholders what existing impediments might get in the way of potential informants using these channels and how these channels could be improved. The complainants

⁵ Final Statement of the NCP in response to a specific instance submitted by SÜDWIND Institut, Sedane Labour Resource Centre (Lembaga Informasi Perburuhan Sedane) and Clean Clothes Campaign (Stichting Schone Kleren) against Adidas AG, 24 April 2020, available at <http://www.oecd-nks.de>.

were advised by the NCP to contribute to this review, for instance by making specific suggestions for improvements to the respondent's channels.

- 15 In June 2020, three ex-employees and trade union representatives filed a complaint against a Congolese company and its Luxembourg holding company with the German NCP and 35 other National Contact Points. The procedure is linked to the complaint which had been lodged by four former employees and trade union representatives against a Congolese company, its Luxembourg holding company and a German company and which, in December 2019, the NCP had decided not to accept for in-depth examination as far as it related to the German company⁶. The OECD subsequently coordinated a comprehensive discussion of the international competence in the affair among the National Contact Points and with the complainants. In October 2020, the complainants announced their intention to no longer pursue their complaint for the time being; however, they also filed complaints with other National Contact Points against companies purchasing products from the Congolese company. The NCP suspended the procedure for the time being and – as will be outlined in its next report – went on to drop the case in March 2021.
- 16 In connection with these procedures, one of the complainants was sentenced in the DRC to a fine and imprisonment for several years – at both the trial and appellate levels in January 2020 and April 2020 respectively. Further to this, the Congolese company initiated a procedure of direct indictment against two further complainants in the summer of 2020. The NCP observed the proceedings, seeking the involvement of the German Embassy Kinshasa, and encouraged its affiliated bodies to discuss those proceedings and the concerns they raised over reprisals taken against participants in complaints procedures. The NCP also adapted its procedures for involving German embassies; its Procedural Guidelines already contain provisions on reprisals⁷. Moreover, the proceedings and the issues raised in terms of reprisals taken against participants in complaints procedures were repeatedly discussed within the OECD Working Party on Responsible Business Conduct. As early as March 2020, the Working Party expressed its deep concern over presumable cases of undue pressure on complainants⁸, stating that any form of

⁶ Statement of the NCP in response to a complaint submitted by four former employees and union representatives of a Congolese company against the Congolese company, its Luxembourg holding company and a German company, 16 December 2019, available at <http://www.oecd-nks.de>.

⁷ Items 8 and 9 of the Procedural Guidelines of the German National Contact Point for the OECD Guidelines for Multinational Enterprises at the Federal Ministry for Economic Affairs and Energy, current as at 25 February 2019, available at <http://www.oecd-nks.de>.

⁸ Statement of the Working Party on Responsible Business Conduct, 13 March 2020, available at <http://mneguidelines.oecd.org/ncps/working-party-on-rbc-statement-march-2020.htm>.

undue pressure on complainants is wholly unacceptable and that filing a complaint with a National Contact Point must not have any inappropriate consequences on individuals or organisations.

- 17 In September 2020, an Indonesian citizens movement supported by an American and a German NGO filed a complaint with the NCP against a German company. The subject of the complaint relates to events in Indonesia. In September and October 2020, the NCP conducted an initial bilateral dialogue with those involved; in October 2020, the respondent commented on the complaint. The procedure is ongoing; upon its conclusion, the NCP will provide a detailed account of it.
- 18 In October 2020, a Maltese non-governmental organisation filed a complaint with the NCP against a German company. The subject of the complaint relates to events in Malta. In November 2020, the NCP conducted an initial bilateral dialogue with those involved; in December 2020, the respondent commented on the complaint. The procedure is ongoing; upon its conclusion, the NCP will provide a detailed account of it.
- 19 Finally, in December 2020, a German non-governmental organisation filed a complaint with the NCP against a German company. The subject of the complaint relates to events in Brazil. The procedure is ongoing; upon its conclusion, the NCP will provide a detailed account of it.

b) Procedures undergoing follow-up

- 20 In January 2020, the NCP concluded its follow-up on the recommendations from the Final Statement concerning the complaint by the European Center for Constitutional and Human Rights e.V. (ECCHR) et al. against TÜV Rheinland AG et al. In its Final Statement of June 2018, the NCP had recommended the participants to continue to address the further development of social audits as discussed in the mediation process, providing examples of aspects to be taken into account⁹. Furthermore, it had asked the participants to report back to the NCP in one year's time. In its report on the follow-up on its recommendations, the NCP outlined how the participants had complied with its request to report back on actions taken: while the complainants had submitted a report about relevant press releases, videos, blog posts, position

⁹ Final Statement of the NCP in response to a complaint filed by the European Center for Constitutional and Human Rights e.V., the Garment Workers Unity Forum, the Comrade Rubel Memorial Center, medico international e.V., FEMNET e.V., Ms Raima Jahan, Mr Mahmudul Hasan Hridoy, Ms Rikta Khatun Joshna, Ms Morjina Begum and Ms Jesmin Akhter against TÜV Rheinland AG and TÜV Rheinland India Pvt. Ltd., available at <http://www.oecd-nks.de>.

papers and specialist publications, about a workshop conducted within the framework of the Partnership for Sustainable Textiles and against the background of a complaint brought before another National Contact Point, the respondents' report focused on relevant measures and objectives of TÜV Rheinland AG and highlighted the latter's commitment to improving training and qualification standards for social auditors and to imposing rules of conduct across the industry¹⁰.

- 21 In April 2020, a Final Statement was issued in the complaint filed by SÜDWIND Institut et al. against Adidas AG, marking the beginning of the follow-up on recommendations. The NCP had advised the respondent to review its reporting and grievance channels with respect to the right to work and freedom of association, asking them to report back on actions taken in one year's time. Further to this, it had advised the complainants to make a contribution within six months to the review recommended to the respondent. In November 2020, the complainants made specific suggestions on how the respondent could improve its reporting and grievance channels, and the respondent presented an interim report. The further developments in the follow-up process, including the respondent's final report and the NCP's report on the follow-up, will be the subject of the NCP's next report.
- 22 During the reporting period, the NCP continued its long-standing involvement in the complaints procedure of UNI Global Union et al. versus Deutsche Post DHL, which had been concluded in 2014¹¹. The cooperation protocol had last been revised and extended in November 2019.

c) Procedures within the remit of other National Contact Points

- 23 During the reporting period, the NCP was involved in a procedure within the remit of the French National Contact Point. The latter had sought the involvement of the NCP in particular on the question of whether the OECD Guidelines can be applied to expropriations during the Nazi era. The NCP issued an opinion against the applicability of the OECD Guidelines to events prior to their adoption in 1976. The procedure is ongoing; once the French National Contact Point has closed the case, the NCP will provide a detailed account.

¹⁰ 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, 10 January 2020, available at <http://www.oecd-nks.de>.

¹¹ Joint Final Statement of the NCP, UNI Global Union (UNI), the International Transport Workers' Federation (ITF) and Deutsche Post DHL on the complaint filed by UNI/ITF against DP-DHL/Bonn, 2014, available at <http://www.oecd-nks.de>.

2. Promotional activities

- 24 In addition to handling complaints procedures, promotional activities are among the central tasks of the NCP. During the reporting period, the number of public talks given by the NCP was severely limited due to the COVID-19 pandemic and due to its additional responsibility for business and human rights. The NCP was able to organise no more than five events on its own or with others and gave presentations in just six externally organised events. A special highlight, however, was the participation by the head of the NCP in the opening panel of the Global Forum on Responsible Business Conduct in June 2020, which, under the heading ‘Access to remedy’, celebrated the 20th anniversary of National Contact Points as non-judicial grievance mechanisms¹².
- 25 The NCP’s promotional activities maintained their primary focus on fostering the application of the OECD Guidelines by companies. In light of the OECD project on the financial sector and the key considerations on ‘Due Diligence for Responsible Corporate Lending and Securities Underwriting’¹³, published in 2019 and translated into German in 2020, the NCP’s focus in the reporting period was on the financial sector, with talks being given at the Association of German Banks and the Interministerial Committees for investment guarantees and export credit guarantees. In addition, the NCP held a presentation for law and economics students at a German university.
- 26 With a view to further extending the reach of its promotional activities into countries which are not signatories to the OECD Guidelines and in which German companies are operating, the NCP again presented the OECD Guidelines as part of pre-posting training seminars for employees of German embassies. It also contributed – for example by producing a newsletter article – to the international support network of the Federal Foreign Office for the National Action Plan for the Implementation of the UN Guiding Principles on Business and Human Rights. Furthermore, the NCP continued to give presentations to foreign business delegations – from India and Indonesia this year – as part of the ‘Fit for Partnership with Germany’ manager training programme of the Federal Ministry for Economic Affairs and Energy.

¹² The panel discussion is available at <https://oecd-events.org/oecd-forum-rbc%20/content/program>.

¹³ OECD (2020), *Due Diligence for Responsible Corporate Lending and Securities Underwriting: Key considerations for banks implementing the OECD Guidelines for Multinational Enterprises*, available at <http://www.oecd-nks.de>.

- 27 In addition to a note by the OECD Secretariat entitled ‘COVID-19 and responsible business conduct’¹⁴, the NCP was able to complete a number of other translations, including the ‘OECD Due Diligence Guidance for Responsible Supply Chains in the Garment and Footwear Sector’¹⁵, the key considerations on ‘Due Diligence for Responsible Corporate Lending and Securities Underwriting’¹⁶, and ‘Practical actions for companies to identify and address the worst forms of child labour in mineral supply chains’¹⁷.

3. Cooperation within the OECD and with other National Contact Points

- 28 The third major task of the NCP is cooperation within the OECD and with other National Contact Points. The NCP represents the Federal Government in the OECD Working Party on Responsible Business Conduct and engages in dialogue with other National Contact Points within the Network of National Contact Points for Responsible Business Conduct. The head of the NCP remained a member of the Office of the Working Party until July 2020; the Working Party and the Network held three and two meetings respectively.
- 29 While Part I of the 2020 Global Forum on Responsible Business Conduct, held in May, focused on ‘COVID-19 and Responsible Business Conduct’, the second part in June came under the heading of ‘Access to remedy’, celebrating the 20th anniversary of National Contact Points as non-judicial grievance mechanisms¹⁸. Further, the OECD Secretariat presented a note entitled ‘COVID-19 and responsible business conduct’¹⁹ in April 2020, followed by a report on ‘Providing access to remedy: 20 years and the road ahead’²⁰ in December 2020.
- 30 The reporting period also saw the continuation of the peer review of the South Korean National Contact Point, a joint undertaking by the German NCP and its Australian and Swiss counterparts.

¹⁴ OECD (2020), COVID-19 und verantwortungsvolles unternehmerisches Handeln, available at <http://www.oecd-nks.de>.

¹⁵ OECD (2020), OECD-Leitfaden für die Erfüllung der Sorgfaltspflicht zur Förderung verantwortungsvoller Lieferketten in der Bekleidungs- und Schuhwarenindustrie, OECD Publishing, Paris, available at <http://www.oecd-nks.de>.

¹⁶ OECD (2020), Erfüllung der Sorgfaltspflicht für ein verantwortungsvolles Firmenkredit- und Emissionsgeschäft: Zentrale Erwägungen für Banken zur Umsetzung der OECD-Leitsätze für multinationale Unternehmen, available at <http://www.oecd-nks.de>.

¹⁷ OECD (2020), Praktische Maßnahmen für Unternehmen zur Bestimmung und Beseitigung der schlimmsten Form der Kinderarbeit in Lieferketten für Minerale, available at <http://www.oecd-nks.de>.

¹⁸ Further information on the 2020 Global Forum on Responsible Business Conduct is available at <https://oecd-events.org/oecd-forum-rbc%20/content/program>.

¹⁹ OECD (2020), COVID-19 and responsible business conduct, available at <http://www.oecd-nks.de>.

²⁰ The presentation and the report on ‘Providing access to remedy: 20 years and the road ahead’ are available at <http://mneguidelines.oecd.org/ncps/ncps-at-20>.

In its upcoming report, the NCP will provide information on the Peer Review Report that was presented in March 2021 within the OECD Working Party on Responsible Business Conduct²¹.

- 31 In addition to cooperation within the OECD, the NCP also continued to work together bilaterally and multilaterally with other National Contact Points. Aside from the coordination involved in complaints procedures as mentioned under III.1, the NCP continued its trilateral dialogue with the other German-speaking National Contact Points of Austria and Switzerland in November 2020. In January 2020, the NCP participated in a dialogue within the Network of Central and Eastern European National Contact Points and joined a panel discussion on ‘NCPs handling specific instances - how to benefit from mediation?’ at the Budapest Conference on Responsible Business Conduct, which was hosted by the Hungarian National Contact Point.

²¹ OECD (2021), National Contact Point Peer Reviews: Korea, available at <http://mneguidelines.oecd.org/oecd-guidelines-for-multinational-enterprises-national-contact-point-peer-reviews-korea.pdf>.

C. OUTLOOK

- 32 In 2021, the NCP is building upon the activities undertaken during the 2020 reporting period as outlined in this report. The stocktaking exercise on the OECD Guidelines is a major focus this year, which marks the 10th anniversary of their latest revision. Further to this, the NCP remains actively involved in its key areas of competence: complaints procedures, promotional activities and cooperation within the OECD and with other National Contact Points.
- 33 In its next report, the NCP will inform the German Bundestag about the activities commenced in 2020 on which further reporting has been announced and about its new activities of 2021.