



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 Climate Action**

**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 2021**

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 2020, Bundestag printed paper 19/32685

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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 complaints 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 2021 in exercising its mandate. 2021 was another year that, in terms of organisational practice, was marked by the COVID-19 pandemic and, in terms of substance, by a potential revision of the OECD Guidelines. 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 based at the Federal Ministry for Economic Affairs and Climate Action, in the Director-General for External Economic Policy. It is supported in its work by the Interministerial Committee on the OECD Guidelines for Multinational Enterprises (IMA). The IMA discusses issues relating to the application of the OECD Guidelines and, at the proposal of the Federal Ministry for Economic Affairs and Climate Action as the lead ministry, takes decisions by consensus. Alongside the Economic Affairs Ministry, seven further ministries are represented on the IMA².
- 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 IMA, 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 Since 29 March 2021, the NCP has been based at the Director-General for External Economic Policy of Directorate VE “Officer for Eastern Europe (non-EU) and Asia-Pacific”. In 2021, it continued to perform its task of representing the Ministry in the field of business and human rights issues, a task it had been assigned in 2019. In this reporting period, the NCP’s focus was once again on the Supply Chain Due Diligence Act.
- 10 The bodies affiliated with the NCP – the IMA and the Working Group – met four and three times respectively during the reporting period. In addition to complaints procedures, promotional activities and cooperation within the OECD, the work of the IMA centred on the stocktaking exercise for the 10th anniversary of the last revision of the OECD Guidelines, and, based on this a possible new revision of the OECD Guidelines and the use of external mediators in line with OECD best practice in the handling of complaints.
- 11 The Working Group has not welcomed any new members during the reporting period. In addition to complaints procedures, promotional activities and cooperation within the OECD, the Working Group focused also on the stocktaking exercise and based on this of a potential revision

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

of the OECD Guidelines. The Working Group continued to focus on cooperation between businesses 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. Complaint procedures

13 During the reporting period, a new complaints procedure was brought before the NCP. For a procedure which had been brought before the NCP in 2020, an Initial Assessment was concluded. For two other procedures, which had been brought before the NCP in 2020, the Initial Assessments were prepared and largely concluded. However, the parties to the complaints procedures were not sent the Initial Assessments until the beginning of 2022. Another procedure in 2020 was 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 2021, a new complaint was brought before the NCP. The draft of the Initial Assessment for this complaint was submitted to the parties involved in the procedure in October 2021. In addition, the NCP concluded the Initial Assessments for three complaints which had been brought before it in 2020.

15 The new complaint brought in 2021 is a complaint by a natural person against a German business. The subject of the complaint relates to events in Germany. In October 2021, the NCP submitted the draft of the Initial Assessment to the parties involved in the complaint. The procedure is ongoing; upon its conclusion, the NCP will provide a detailed account of it.

16 The complaint filed by an Indonesian citizens' movement in September 2020 and supported by a U.S. and a German NGO was accepted by the NCP for in-depth examination following the Initial Assessment in April 2021. The subject of the complaint relates to events in Indonesia. The procedure is ongoing. Upon its conclusion, the NCP will provide a detailed account of it.

17 The complaint brought by a Maltese NGO against a German business from October 2020 was accepted by the NCP following its Initial Assessment of 4 January 2022, which had been carefully prepared during the reporting period. The subject of the complaint relates to events in Malta. The procedure is ongoing. Upon its conclusion, the NCP will provide a detailed account of it.

- 18 The complaint brought by a German NGO against a German business in December 2020 was accepted by the NCP following its Initial Assessment of April 2022; this Initial Assessment, too, had been carefully prepared during the reporting period. 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

- 19 In June 2021, the NCP concluded the follow-up of the recommendations set out in its Final Statement to the complaint brought by Südwind Institut et al. against adidas AG. In its Final Statement of April 2020, the NCP had concluded that the mediation procedure had helped solve the wage issue, but not the issue related to freedom of assembly, for which it made the following recommendation:
- 20 The NCP recommended to the Respondent to review its reporting and complaint channels and to discuss with relevant stakeholders (trade union representatives, workers, business partners) what impediments might exist that might make potential informants refrain from using these reporting and complaint channels and how the effectiveness of these reporting and complaint channels could possibly be improved.
- 21 It recommended to the Complainants to submit a written contribution on the Respondent's review of its due diligence procedures, for example by making specific suggestions on how, in its view, the Respondent could improve its reporting and complaint channels.
- 22 The NCP requested the Complainants to report to the NCP within six months after receiving the Final Statement on activities developed in response to the above recommendation. It requested the Respondent to report to the NCP within one year after receiving the Final Statement on activities it developed in response to the above recommendation, including activities developed in response to the recommendations contributed by the Complainants.
- 23 In its report on the follow-up of the recommendations of June 2021, the NCP described how the parties involved in the complaint had implemented the recommendations: In November 2020, the Complainants made specific suggestions on how the Respondent could improve its reporting and complaint channels, and the Respondent presented an interim report.
- 24 In its report on the follow-up, the NCP welcomed the fact that both parties had complied with its request to communicate to the other side the activities they had developed in response to

the recommendation set out in the Final Statement. It also stated that it accepted the activities developed by the parties in response to the recommendations. It welcomed the fact that the Complainants had presented three proposals on how the Respondent could improve its reporting and complaint channels and that the Respondent – even though it had not communicated a review or discussion going beyond these proposals – had developed activities in response to two of the three proposals, with one of these activities leading to a change in its reporting channels.

- 25 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 2014³. The cooperation protocol was again revised and extended in 2022, and the NCP will report on this in detail in its next annual report.

c) Procedures within the remit of other National Contact Points

- 26 During the reporting period, the NCP was also involved in a procedure within the remit of the French National Contact Point. The latter had sought the advice of the NCP in particular on the question of whether the OECD Guidelines can be applied to expropriations during the Nazi era. The NCP had issued an opinion against the applicability of the OECD Guidelines to events prior to their adoption in 1976. The NCP continued to uphold this opinion during the reporting period.

2. Promotional activities

- 27 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 continued to be 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 four events on its own or with others and gave presentations in thirteen externally organised events.
- 28 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'⁴, published in 2019 and translated into German in 2020, the NCP's focus in the reporting

³ 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>.

⁴ 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>.

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 three German universities.

- 29 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 in May 2021. It was also involved in 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.

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

- 30 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.
- 31 The Global Forum on Responsible Business Conduct was held virtually from 15 to 17 June 2021. It was entitled ‘the new normal for a sustainable future’ and thus picked up on the impact of the ongoing COVID-19 pandemic and on possibilities to recover from this crisis. In addition to this, the OECD Secretariat presented its ‘NCP Impartiality Guide’ and a paper entitled ‘The role of OECD RBC tools and instruments in addressing environmental challenges’ in October.
- 32 Furthermore, the NCP supported peer reviews of other National Contact Points, for example Australia und Ireland; in March 2021, the NCP presented the report⁵ on the Peer Review of the South Korean NCP together with the Swiss and the Australian National Contact Points as part of the OECD Working Party on Responsible Business Conduct. The report confirmed that the Korean NCP was in principle compliant with the main criteria and the procedural guidance set out in the regulations. The Peer Review included an on-site visit in Seoul, Korea on 17 and 18 December 2019.

⁵ <http://mneguidelines.oecd.org/oecd-guidelines-for-multinational-enterprises-national-contact-peer-reviews-korea.pdf>

- 33 The Korean NCP was set up in 2000, but has seen far-reaching reforms since the revision of the OECD's procedural guidance in 2011. The review team gained the impression that the the Korean NCP carried out its daily work in an efficient and professional manner. It was positively noted that the NCP had developed advertising material to raise global awareness for the Guidelines. It also stated that since 2011, the NCP had become more transparent about the outcomes of the complaints procedures. In 2019, a complaints procedure was completed, with an agreement between the parties having been reached for the first time based on the mediation initiated by the NCP. Even though the review team recognised that the functioning of the NCP had been considerably improved, it pointed out additional possibilities to improve the current institutional rules in order to increase the NCP's visibility, accessibility, transparency and accountability. In addition, it expressed the view that relations between parts of the NCP and stakeholders, particularly from civil society and the trade unions, could be strengthened. Strategic planning for funding and better cooperation with other parts of the Korean government could help raise the NCP's visibility and help it fulfil its mandate.
- 34 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 and organised a Peer Learning event in September 2021. One of the topics focused on was the handling of complaints procedures and court proceedings happening in parallel.

C. OUTLOOK

- 35 In 2022, the NCP is building upon the activities undertaken during the 2021 reporting period as outlined in this report. In 2022, a strong focus is being placed on the work on a potential revision of the OECD Guidelines and on the continued handling of the four ongoing complaints procedures. In addition, the NCP will continue to work on its central tasks: apart from handling complaints procedures, this includes promotional activities and cooperation within the OECD and other National Contact Points. In 2022, external mediators will be used in the complaints procedures for the first time in line with OECD best practice. Promotional activities have slowly but surely been picking up speed since the beginning of 2022. Among the highlights are two hybrid events: a joint webinar with the Austrian NCP on due diligence and a joint event with the Association of German Chambers of Commerce and Industry (DIHK) and the Berlin OECD office entitled 'Due diligence and opportunities for companies – a dialogue'.
- 36 In its next report, the NCP will inform the German Bundestag about the activities commenced in 2021 on which further reporting has been announced and about its new activities of 2022.