

Netherlands National Contact Point
OECD GUIDELINES 
 for multinational enterprises

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Mr Manfred Schekulin
 Chair, OECD Investment Committee
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Dutch National Contact Point

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Dealt with by

Date **16 JUN 2010**

Re OECD Peer Review of the Dutch NCP

Dear Mr Schekulin,

During the 2008 Annual NCP meeting in Paris, it was agreed that the Dutch National Contact Point for the OECD Guidelines for Multinational Enterprises (NCP) would voluntarily submit itself to a peer review. The goal was to gain an independent review from colleagues on the set up and the workings of the newly formed independent NCP. It was also clear that the review would, if successful, provide a learning process for both the Dutch NCP and the review team. During the meeting in Paris in March the member countries received the report and extensive information about the results of the review process. I promised to provide the NCP meeting in June with our reactions. With this letter I am pleased to confer to you our thoughts about the recommendations made.

Our ref.
 BEB/HPG / 10093634

Your ref.

Encl.

The members of the Dutch NCP are greatly thankful to Canada, Chile, France, Japan and the United Kingdom for offering knowledgeable colleagues who were enthusiastic, committed and thorough in their review.

The Dutch NCP was reformed in the summer of 2007 with the creation of a committee consisting of four independent members and four advisory members from the directly involved ministries. The Dutch government installed this committee for a first period of three years in which a critical review on the new structure is to take place. The peer review offers us an in-depth examination of our work to perform this evaluation and to further our efforts. The review was a valuable learning experience, which we can highly recommend to other NCPs. It offered an excellent opportunity to discuss different working methods and is helpful in formulating ideas for the future functioning of the Dutch NCP.

On the recommendations

Structure of the NCP

(1, 2) On the appointment of the NCP members we agree that stakeholders should be involved and that the procedure for appointment is transparent. In our recent stakeholder meeting stakeholders agreed that it is not necessary that members are representatives of stakeholder groups. (3) Key seems foremost that NCP members are knowledgeable on issues of the OECD Guidelines as promotion is



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considered a prime task. Additionally, solid mediatory experience is important, but should not depend on certification alone.

For handling of specific cases it is in our view important that an independent NCP member is able to assess a situation him/herself in order to establish the circumstances of a case as well as bringing parties closer to each other. Depending on the development introduction of a special outside mediator will sometimes be useful.

(6) Regarding the question of possibility of appeal, the NCP feels that this would place an unnecessary judicial burden on a procedure which should be very accessible and thus should have the lowest threshold possible. If stakeholders would feel the NCP is not functioning properly, this can be brought to the attention to the minister of Foreign Trade. The procedure gives the minister the possibility to comment on the handling of a specific instance by the NCP, without the possibility to change the statement of the NCP though.

Promotional activities

(9, 11) The NCP welcomes the recommendations regarding active engagement with stakeholders and will seek to further enhance this, maybe by engaging with new groups of stakeholders, such as company staff councils. (13) Further, we will align our communication plan with our annual report. (14, 15) The suggestions for teaming up with other NCPs and the OECD for our promotional activities are interesting and well worth exploring.

Handling of specific instances

(16) We consider a low threshold for our services and handling of specific instances a vital necessity for the application of the OECD guidelines. We would much welcome exploration of ways to achieve the lowest threshold possible during the update of the Guidelines. Extensive assessment of the representativeness of a complainant and/or the importance of his interest could jeopardize this. Furthermore, in our opinion the implementation of the OECD Guidelines by an enterprise should be the focus of a specific instance rather than the complainant's interest. This is a distinguishing factor of an NCP procedure in comparison to e.g. a legal proceeding under administrative law, where a stakeholder needs to have a direct interest which is affected by an administrative decision.

(17, 18, 23) Cooperation with embassies can be very useful, considering their knowledge of local circumstances, as we have found in a few cases. Regarding protective measures for notifiers the NCP feels this is an important issue which merits further reflection within the OECD. This has risen as a matter of concern among stakeholders which we would like to address in future.

(19) The NCP will strive to publish the way it deals with parallel procedures in the handling of specific instances on its website this summer. In general, the NCP will look into publishing information about the way certain questions were handled to share lessons learned.

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(20, 21, 22, 24) In specific instance procedures, an initial assessment is made regarding admissibility. The notification determines the scope of this initial assessment. After admissibility the NCP firstly sets out to establish the facts and circumstances of a case through a conflict- or situation assessment. The assessment could alter the scope of the case, both in terms of involvement of stakeholders and the issues to be investigated. We feel it is useful for an NCP to have discretionary space to narrow a notification to help focus the case or to broaden its scope to include correlated circumstances.

The assessment by which the facts and circumstances are established is then offered to parties by the NCP as a base for mediation. The parties may agree or disagree with the found facts or circumstances. Mediation will be based on the facts and circumstances the parties agree to share among each other.

Information shared with the NCP members for the benefit of the mediation are preferably shared between parties, but a party may request the NCP to keep information confidential.

If mediation is unsuccessful the NCP returns to its situation assessment of found facts and circumstances to determine whether or not the enterprise complied with the OECD Guidelines. The NCP might also include publicly available information. Confidential information shared for the benefit of mediation is not included unless a party agrees to this.

The division between the different stages and the confidentiality of the information in each phase may have not always been made as clear as possible.

This may have created confusion in the past, as parties may have thought that all available information would be shared. The NCP aims to improve its working methods continuously and will therefore give more attention to making a clear distinction between the mediatory or adjudicatory stages in a specific instance procedure and the use of information during the different stages.

(26, 27) In this light the NCP will also give more timely information on the timelines during procedures, as these may change due to unforeseen consultation with other stakeholders, such as other NCPs.

(25) For feedback the NCP sees great added value in conducting follow up a year after the closure of an instance or as agreed between parties and will adopt this as part of its standard practice.

Closing

The peer review recommendations have stimulated reflections on the way we work and have thus been very useful for us. Hopefully the peer review has benefited other NCPs as well. We would welcome further informal meetings with.



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other NCPs to share our experiences more often and explore way of working together.

On behalf of the other members of the NCP,

A handwritten signature in black ink that reads "Frans Evers". The signature is fluid and cursive, with a long horizontal stroke underneath.

Frans Evers
Chairman of the Dutch NCP

16-6-2010



Ministerie van Economische Zaken

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