



Ministero dello Sviluppo Economico



Handbook for the management of the specific instances submitted to the Italian National Contact Point

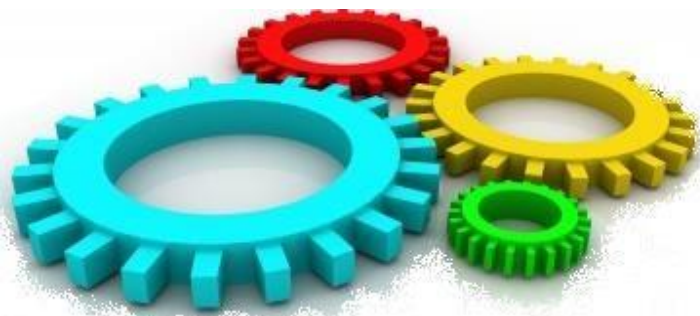




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Foreword

The "OECD Guidelines for Multinational Enterprises" ("Guidelines"), attached to the OECD Declaration on International Investment and Multinational Enterprise¹, are the most comprehensive set of non-binding recommendations jointly addressed by adhering Governments to the enterprises for a responsible conduct. The aim of the Governments is to maximize the positive impact that multinationals can have on sustainable development and on a long-lasting social progress and to encourage an open, competitive and transparent environment for international investment.

The Guidelines have the support of businesses, trade unions and non-governmental organizations.

The recommendations contained in the Guidelines, in addition to fostering the positive contribution of the enterprises to the economic and social growth, aim to avoid the negative impact that the activities and relationships of the company may have in particularly sensitive areas.

To this end, the enterprises are recommended to adopt due diligence practices based on risk prevention and management. The OECD has adopted several due diligence guidance documents², one general guidance and several sectoral guides, which are a useful and important tools for companies to implement the Guidelines, although these guides are not intended as a reference for a stakeholder in submitting a specific instance or for the National Contact Point (NCP) in assessing it.

The NCPs are the institutional tools created by the Governments to contribute to the effective implementation of the Guidelines; the NCPs have the task of spreading the Guidelines, raise the awareness of companies and managing the "specific instances" mechanism (see below).

The Italian NCP was established by the law 273/2002, art. 39, and subsequent ministerial decree. The NCP is located within the Ministry of Economic Development - Directorate General for Industrial Policy, Competitiveness and Small and Medium-Sized Enterprises (DGPICPMI).

The specific instance procedure is regulated by the Implementation Procedures of the OECD Guidelines for Multinational Enterprises. The aim of this handbook is to specify the NCP's role and functioning consistently with the Implementation Procedures set forth in the Guidelines.

The "specific instance" is a non-judicial grievance mechanism to settle disputes and to solve issues arising from the alleged non-observance of the Guidelines, between one or more

¹ First adopted in 1976, the Declaration is a policy commitment by adhering governments to provide an open and transparent environment for international investment and to encourage the positive contribution multinational enterprises can make to economic and social progress. All parts of the Declaration are subject to periodical reviews. The most recent review - completed in May 2011 - concerned the Guidelines for Multinational Enterprises.

All 35 OECD countries, and 13 non-OECD countries (Argentina; Brazil; Colombia; Costa; Rica; Egypt; Jordan; Kazakhstan; Lithuania; Morocco; Peru; Romania; Tunisia; Ukraine) have subscribed the Declaration

² <http://mneguidelines.oecd.org/duediligence/>



stakeholder(s) and one or more enterprise(s), through consensual procedures such as, for instance, conciliation or mediation.

This mechanism offers the opportunity to solve critical and conflicting situations in areas such as human rights, workers' rights, environmental protection, transparency, etc.

The ultimate goal is to find an agreement between the parties to undertake a common path in the search for a shared solution. In other words, it is about transforming critical situations into opportunities for economic, environmental and social progress.

The publication of this handbook is also intended to follow up some of the recommendations that have been addressed to the Italian NCP as a result of the peer review process to which it has been submitted in the context of the OECD processes. Therefore, on the 16th October 2017 an *ad hoc* Working Group was set up, composed by members of the NCP Committee representing the Ministry of Foreign Affairs and International Cooperation, the Ministry of the Economy and Finance, Confindustria (the General Confederation of Italian Industry) and the Trade Unions CGIL, CISL and UIL, under the coordination of the NCP Secretariat, to elaborate a draft handbook of the procedures .

Afterwards the handbook was submitted to the NCP Committee, that expressed a positive opinion, and it was adopted by the Chair of the NCP.



General Principles

This handbook indicates the procedures for the management of the specific instances submitted to the Italian NCP in accordance and consistency with the Procedural Guidance of the Guidelines and the related Commentary.

A specific instance is a request to the NCP to provide its good offices to contribute to the resolution of issues relating to the implementation of the Guidelines in concrete cases. A specific instance should be submitted *bona fide* (in good faith) and should not be manifestly unfounded or pretentious.

The effectiveness of the specific instance procedure depends on the good faith behaviour of all parties involved in the procedures. Good faith behaviour in this context means responding in a timely fashion, maintaining confidentiality where appropriate, refraining from misrepresenting the process and from threatening or taking reprisals against parties involved in the procedure, and genuinely engaging in the procedures with a view to finding a solution to the issues raised in accordance with the Guidelines.

In managing the specific instance, *the NCP abides to the core criteria of visibility, accessibility, transparency and accountability, which are the basis of its activity*³, to pursue the objective of *functional equivalence*.⁴

Visibility. [...] adhering governments agree to nominate NCPs, and also to inform the business community, worker organisations and other interested parties, including NGOs, about the availability of facilities associated with NCPs in the implementation of the Guidelines. Governments are expected to publish information about their NCPs and to take an active role in promoting the Guidelines, which could include hosting seminars and meetings on the instrument. These events could be arranged in cooperation with business, labour, NGOs, and other interested parties, though not necessarily with all groups on each occasion.

Accessibility. Easy access to NCPs is important to their effective functioning. This includes facilitating access by business, labour, NGOs, and other members of the public. Electronic communications can also assist in this regard. NCPs would respond to all legitimate requests for information, and also undertake to deal with specific issues raised by parties concerned in an efficient and timely manner.

Transparency. Transparency is an important criterion with respect to its contribution to the accountability of the NCP and in gaining the confidence of the general public. Thus, as a general principle, the activities of the NCP will be transparent. Nonetheless when the NCP offers its good

³ Guidelines, Comm. Impl. Proc., § 9

⁴ I.e. the ability of each NCP to carry out with (the same degree of) effectiveness the functions assigned to it by the OECD, regardless of the respective institutional form



officesö in implementing the Guidelines in specific instances, it will be in the interests of their effectiveness to take appropriate steps to establish confidentiality of the proceedings. Outcomes will be transparent unless preserving confidentiality is in the best interests of effective implementation of the Guidelines.

Accountability. A more active role with respect to enhancing the profile of the Guidelines ó and their potential to aid in the management of difficult issues between enterprises and the societies in which they operate ó will also put the activities of NCPs in the public eye. Nationally, parliaments could have a role to play. Annual reports and regular meetings of NCPs will provide an opportunity to share experiences and encourage öbest practicesö with respect to NCPs. The Committee will also hold exchanges of views, where experiences would be exchanged and the effectiveness of the activities of NCPs could be assessed.

The National Contact Point contributes to the resolution of the specific instances in a manner that is impartial, predictable, equitable and compatible with the principles and standards of the Guidelines.⁵

Impartial. NCPs should ensure impartiality in the resolution of specific instances.

Predictable. NCPs should ensure predictability by providing clear and publicly available information on their role in the resolution of specific instances, including the provision of good offices, the stages of the specific instance process including indicative timeframes, and the potential role they can play in monitoring the implementation of agreements reached between the parties.

Equitable. NCPs should ensure that the parties can engage in the process on fair and equitable terms, for example by providing reasonable access to sources of information relevant to the procedure.

Compatible with the Guidelines. NCPs should operate in accordance with the principles and standards contained in the Guidelines.

The Guidelines have undergone several revisions over the years. In the management of each specific instance submitted to the NCP:

- Part I of the Guidelines applies in the version in force at the time of the facts described in the specific instance;
- Part II of the Guidelines applies in the version in force at the time the specific instance is submitted .

The deadlines contained in this handbook are non-mandatory and can be extended by the NCP with adequate motivation⁶, when it is useful for understanding or resolving the issue.

⁵ Cft. Guidelines, Comm. Impl. Proc., § 22.

⁶ ⁶ In calculating the time-limits by days or hours, the initial day or hour is excluded. For the calculation of the time-limits by months or years, the common calendar is observed. Public holidays are counted in the time. If the expiration day is a public holiday, the deadline is extended to the first following business day.

Transparency and Confidentiality

Transparency is a general principle of the NCPs' conduct.

When the NCP receives a specific instance it discloses this information and the outcomes of the procedure are always public. The primary means of disclosure of the NCP is its own website⁷, the NCP also informs the OECD about the evolution of the specific instances, this information is published on the OECD website and database⁸.

Nevertheless, it remains important to strike a balance between transparency and confidentiality in order to build confidence in the procedure and to promote the effective implementation of the Guidelines.

The NCP takes appropriate steps to protect sensitive information of the enterprise and of all the parties involved in the specific instance, both during the relations between the parties and towards third parties. When publishing information on its website, the NCP may decide to keep the identity of one or more parties confidential, where circumstances so require.

The NCP, the parties involved and anyone who, during the procedure, will come into possession of information such as the identity of the individuals involved in the proceeding, personal data, sensitive business information and other information identified by the NCP on a case-by-case basis, they are required not to disclose them even after the conclusion of the procedure.

During the procedure and after its conclusion, the NCP, the parties and any other stakeholder involved, are required to respect the confidentiality of the procedure not disclosing the documents, the facts, the arguments and any other information submitted or formed during the procedure, in order to protect the privacy of the parties⁹.

The parties are entitled to inform the persons they represent about the progress of the case, without prejudice to the confidentiality obligations that, in this circumstance, also extend to the persons represented.

In order to foster a peaceful and profitable climate for the resolution of the issues raised, during the phase of assistance to the parties, these latter will also have to abstain from publicising the issues addressed and commenting them in public or on the media.

At the end of the procedure, if the parties reach an agreement on the issues raised, in that agreement they should address how and to what extent the content of the agreement is to be made publicly available. If, on the other hand, they have not agreed on a resolution of the issues

⁷ <http://pcnitalia.mise.gov.it/en>

⁸ <http://mneguidelines.oecd.org/database>

⁹ The access to administrative documents is regulated by national legislation.



raised, they are free to communicate and discuss about these issues. However, information and views provided during the proceedings by the counter-party involved will remain confidential, unless this party agrees to their disclosure or this decision would be contrary to the provisions of national law. Equally, sensitive business information and data and information relating to individuals will remain confidential, based on the instructions given by the NCP, unless the parties to whom the information and data refer will not accept their disclosure and unless keeping them confidential would be contrary to the provisions of national law.

The violation of any confidentiality obligation of the parties, assuming the meaning of non-cooperation to the carrying out of the good offices, could cause the early termination of the procedure before the NCP.

Who can submit a specific instance and towards whom?

Anyone who is a stakeholder (individuals, NGOs, trade unions other companies, etc...) in relation to the issue arisen can submit a specific instance to the NCP.

It is also possible to submit and carry on a specific instance and act in the procedure on behalf of identified other parties.

The specific instance is submitted towards one or more Italian multinational enterprise or foreign multinational enterprises operating in Italy, if the latter are based in one of the Countries adhering to the Guidelines.

The Guidelines do not provide a precise definition of multinational enterprise (MNEs), but offer several indications stating that these enterprises operate in all sectors of the economy. They, usually, include companies or other entities established in more than one country which are linked so that they may coordinate their operations in various ways. While one or more of these entities may be able to exercise a significant influence over the activities of others, their degree of autonomy within the enterprise may vary widely from one multinational enterprise to another. Ownership may be private, of the State or mixed. However, the Guidelines are addressed to all the entities of the multinational enterprise (parent companies and/or local entities). According to the actual distribution of responsibilities among them, the different entities are expected to cooperate and to assist each other to facilitate the observance of the Guidelines.

Identification of the competent NCP and coordination between NCPs.

The identification of the NCP that takes charge of the management of a specific instance will be carried out according to the following criteria:



- in general, when both the home country of the multinational enterprise and the country in which the issues have arisen (host country) are adhering countries¹⁰ (and therefore have established an NCP¹¹), issues will be dealt with by the NCP of the host country. Among adhering countries, such issues will first be discussed on the national level and, where appropriate, pursued at the bilateral level. The NCP of the host country should consult with the NCP of the home country in its efforts to assist the parties in resolving the issues. The NCP of the home country should strive to provide appropriate assistance in a timely manner when requested by the NCP of the host country;
- when issues arise from an enterprise's activity that takes place in several adhering countries or from the activity of a group of enterprises organised as consortium, joint venture or other similar form, based in different adhering countries, the NCPs involved should consult with a view to agreeing on which NCP will take the lead in assisting the parties. The NCPs can seek assistance from the Chair of the Investment Committee in arriving at such agreement. The lead NCP should consult with the other NCPs, which should provide appropriate assistance when requested by the lead NCP. If the parties fail to reach an agreement, the lead NCP should make a final decision in consultation with the other;
- In the event that Guidelines-related issues arise in a non-adhering country, home NCPs will take steps to develop an understanding of the issues involved. While it may not always be practicable to obtain access to all pertinent information, or to bring all the parties involved together, the NCP may still be in a position to pursue enquiries and engage in other fact finding activities. Examples of such steps could include contacting the management of the enterprise in the home country, and, as appropriate, embassies and government officials in the non-adhering country. The parties involved will have to be advised of the limitations inherent in implementing the Guidelines in non-adhering countries.

Role of the Chair of the NCP

The Director General of the DGPICPMI of the Ministry of Economic Development is the Chair of the NCP.

The Chair of the NCP:

- convenes the parties at any stage of the procedure, when deemed appropriate;
- adopts the final acts of the procedure (initial negative assessment and final

¹⁰ These are the Countries that, having adhered to the "OECD Declaration on International Investments and Multinational Enterprises" (all OECD countries, plus Argentina, Brazil, Colombia, Costa Rica, Egypt, Jordan, Kazakhstan, Lithuania, Morocco, Peru, Romania, Tunisia and Ukraine), are committed to promoting the OECD Guidelines and to establishing, for this purpose, a National Contact Point).

¹¹ <http://mneguidelines.oecd.org/ncps/>



- statement), as well as the decision that the issue merit further examination (positive initial assessment).
- decides to transmit the final statements and reports to other public bodies, when deemed relevant;
 - offers the parties the NCP's good offices; agrees with them the person of the mediator/conciliator and the indicative timeframe of the phase of assistance to the parties and the contents of the report on the possible final agreement between the parties;
 - acquires the opinion of the NCP Committee when required (see *infra*);
 - while adopting the acts within his competence, if he deviates from the prior opinion of the Committee he must motivate such divergence;
 - submits the Annual Report of the Italian NCP to the OECD Investment Committee;
 - if appropriate, refers to the Investment Committee for clarifications about the interpretation of the Guidelines.

The Head of the NCP Secretariat replaces the President of the NCP in case of absence or temporary impediment of the latter.

Role of the NCP Secretariat

The NCP Secretariat is located in the Division VI of the DGPICPMI of the Ministry of Economic Development. The Head of Division VI is the Head of the NCP Secretariat.

The NCP Secretariat:

- ensures the operational management of the procedure including the exchange of documents and information between and with the parties, with other NCPs and with all the relevant institutions and stakeholders;
- should provide information on the steps to be taken to submit a specific instance, on the obligations of the parties, including in terms of confidentiality, and on the procedures followed by the NCP and the related timing. Upon request, the Secretariat provides support in drafting the specific instance and the replies;
- prepares the Annual Report of the Italian NCP and participates in the OECD activities dedicated to the NCPs (NCPs' annual meetings, peer learning, peer reviews, capacity building etc.).

Role of the NCP Committee

In managing the specific instance, the Committee plays an advisory and supportive role. At any stage of the procedure - collectively and each of its members - it contributes to the understanding and the solution of the issues raised in the specific instances.



The Committee is composed by:

- a) The Director General of Industrial Policy, Competitiveness and SMEs (Ministry of Economic Development);
- b) The Head of the Division VI of the Directorate general of Industrial Policy, Competitiveness and SMEs (Ministry of Economic Development);
- c) One representative from the Ministry of Foreign Affairs and International Cooperation;
- d) One representative from the Ministry of the Environment and the Protection of Land and Sea;
- e) One representative from the Ministry of the Economy and Finance;
- f) One representative from the Ministry of Justice;
- g) One representative from the Ministry of Labour and Social Policy;
- h) One representative from the Ministry of Agricultural and Forestry Policies;
- i) One representative from the Ministry of Health;
- j) Two representatives from the Ministry of Economic Development, one from the General Directorate of Trade Promotion and Internationalisation Policy and one from the General Directorate of International Trade Policy; Ministry of the Economy and Finance
- k) One representative from Confindustria (General Confederation of Italian Industry);
- l) One representative from each of the two major SMEs business associations at national level (CNA, Confcommercio);
- m) One representative for each most representative Trade Unions at national level;
- n) One representative from ABI (Italian Banks Association);
- o) One representative from the Italian Regions Conference;
- p) One representative from Unioncamere (the Italian Union of the Chambers of Commerce);
- q) One representative from the National Council of Consumers and Users (CNCU);
- r) One representative of the Association of the Italian Organisations of International Solidarity and Cooperation (AOI).

Whenever a specific instance is submitted to the NCP, the Secretariat promptly informs the members of the Committee. At each meeting, the Secretariat updates the Committee on all the specific instances in progress, or concluded after the last meeting. Where circumstances so require, the Secretariat can also inform the Committee via electronic means.

The Committee expresses an opinion:

- on the draft initial assessment, before it is communicated to the parties;
- on the draft final statement, before it is communicated to the parties. This opinion can also be collected by written procedure transmitted electronically..

In addition, the members of the Committee, upon request or proposal from the Chair or the Secretariat of the NCP:



- provide the necessary information, opinions and documents that can be obtained from the institutions and organizations they represent or from entities connected to these institutions and organizations (eg public agencies, workers, consumers, embassies);
- provide opinions, within their own sphere of competence, on specific aspects of the cases in question;
- take up the task of conducting the conciliation / mediation phase, or propose a conciliator/mediator with proven experience and expertise.

Each member of the Committee is bound by the same confidentiality obligations incumbent upon the NCP and the parties.

Each member of the Committee is required to communicate possible situations of conflict of interest pursuant to national legislation.

Submission of the Specific Instance¹²

The specific instance must be drafted in writing. To this aim, a courtesy form is available on the NCP website (<http://pcnitalia.sviluppoeconomico.gov.it/it/>).

Once drafted, the specific instance must be submitted to the NCP electronically at the e-mail address: pcn1@mise.gov.it.

The submission of the specific instance can be preceded by informal contacts with the NCP Secretariat. These contacts do not replace the submission of the specific instance in accordance with the established requirements, needed anyhow to start the procedure.

The specific instance has to contain:

- the contact details of the person submitting the specific instance and, if the case, of the organization represented, and of the holders of the interests that the specific instance aims to advocate;
- the contact details of the other parties involved as well as of third parties from which to acquire further information, with a brief indication of the reasons justifying their involvement;
- the contact details of the multinational enterprise(s) towards which the specific instance is submitted¹³;
- the indication of the country / countries in whose territory(s) the issues arose;

¹² References to the "NCP" contained in this and in the following chapters of the handbook should be read in light of the roles of the various NCP bodies described in the chapters "Role of the Chair of the NCP", "Role of the NCP Secretariat" and "Role of the NCP Committee".

¹³ See "Who can submit a specific instance and towards whom?"



- the detailed description of the facts that are the subject of the dispute, with an indication of the principles and recommendations of the Guidelines that are considered applicable to the specific case, including documents (also in copy) and other elements such as to give relevance and credibility to the specific instance;
- the indication of the data, among those provided with the specific instance, considered strictly confidential and those for which it is requested that they are not communicated even to the counterparty(ies). On these indications the PCN reserves the right to make its own evaluation, informing the complainant(s);
- the indication of the national and / or international, public and / or private authorities, as well as of the other NCPs before which a proceeding is pending or has been concluded, concerning the same facts of the specific instance or facts connected (so- called parallel proceedings), in so far as the complainant(s) is aware of;
- the request to the NCP to provide its good offices to contribute to the consensual resolution of the issues raised, with the indicative illustration of the expected outcomes;
- the signature of the person submitting the specific instance.

After the submission of the specific instance, the complainant is not allowed to raise new issues.

Within one week after the reception of the specific instance, the NCP confirms the reception to the complainant(s) and informs the enterprise(s) involved.

Phases of the Procedure

As a general principle, the NCP should conclude the procedure within 12 months after the reception of the specific instance. It may be necessary to extend this term if the circumstances require so, as in the case of issues arising in non-member countries.

The proceeding is divided into the following phases:

- An **initial assessment**, aimed at determining whether the issue raised merits further examination, that is to say whether it is *bona fide* and relevant to the implementation of the Guidelines, according to the specified criteria,
- A phase of **assistance to the parties**, following a positive outcome of the initial assessment, consisting, in brief, of the offer to the parties of the “good offices” and, in case of acceptance, of the provision of those “good offices” by the NCP, aimed at reaching a consensual solution of the issue (see below).

The duration of this phase is established by the NCP after consulting the parties, according to reasonableness and, where possible, in compliance with the overall time

envisaged for the procedure.

- A **final phase**, with publication of the outcomes of the case. The conclusive phase can be of **three types**:
 - a) negative initial assessment;
 - b) agreement between the parties;
 - c) final statement, in case where no agreement is reached between the parties.

The outcomes of the procedure are always made public.

The NCP, before publishing the outcomes of the procedure, gives the parties the opportunity to submit their remarks.

Throughout the entire procedure the NCP is entitled to:

- listen to and / or summon the parties, separately or jointly, whenever it deems it necessary;
- listen to persons, integrate the documentation in its possession and acquire new elements, also regardless the indications given by the parties;
- request the opinion of the competent authorities, the representatives of business environments, trade unions, other non-governmental organizations, individuals and experts;
- consult the NCPs of other countries;
- seek the guidance of the Investment Committee if any doubt arises about the interpretation of the Guidelines in particular circumstances.

Initial Assessment

Once received the specific instance, the NCP will determine whether the issue raised merits further examination. To this aim, the NCP will determine whether the issue is *bona fide* and relevant to the implementation of the Guidelines. In particular, the NCP will consider:

- the identity of the party concerned and its interest in the matter;
- whether the issue is material and substantiated;
- whether there seems to be a link between the enterprise's activities and the issue raised in the specific instance;
- the relevance of applicable law and procedures, including court rulings;
- how similar issues have been, or are being, treated in other domestic or international proceedings;
- whether the consideration of the specific issue would contribute to the purposes and effectiveness of the Guidelines.

For the purposes of the initial assessment, the NCP examines the specific instance submitted, the documentation and the memories produced and it is entitled to request or



authorise an integration of the information received.

The NCP transmits the specific instance to the enterprise(s) together with the attached documentation, and gives it the opportunity to illustrate, also by submitting a written reply, its position on the matter, within the timeframe established by the NCP. Against this note, the NCP may authorize the complainant(s) to submit a written counter-reply, within the time established by the NCP and, in this case, the same possibility is granted to the enterprise(s).

The parallel progress of other national or international proceedings dealing with similar issues or the possibility that further proceedings may be activated by the parties, or that they are in progress or that the related judgments have been issued (so-called parallel proceedings), does not exclude the possibility of activating the procedure of the specific instance to the NCP. In these cases the NCP should evaluate whether an offer of good offices could make a positive contribution to the resolution of the issues raised and would not create serious prejudice for either of the parties involved in these other proceedings or cause a contempt of court situation. In making such an evaluation, NCPs could take into account practice among other NCPs and, where appropriate, consult with the institutions in which the parallel proceeding is being or could be conducted.

Outcomes of the Initial Assessment

The NCP concludes the initial assessment by communicating its outcomes to the parties in order to preliminarily collect their comments and subsequently by sending the definitive text.

If the NCP decides that the issue does not merit further examination, it discloses this information through a statement published on its website. Without prejudice to the safeguards to protect confidentiality, the statement discloses the identity of the parties and describes the issue raised and the reasons for the decision of the NCP.

If, on the other hand, the NCP decides that the issue merits further examination, it communicates this decision to the parties and offers them its good offices. The NCP announces the closure of the initial assessment phase and it may decide not to publish the document where such a decision could favour the agreement between the parties.

Assistance to the Parties

The parties, within the time established by the NCP, communicate to the NCP if they accept the offer of good offices.

The parties agree with the NCP the person in charge of conducting the conciliation / mediation phase that is identified, based on the proposal of the NCP, who could be:

- a. a member of the Secretariat or a member of the NCP Committee, not involved in the

- initial assessment of the case, or
- b. a personality outside the NCP who satisfy the criteria of competence and authoritativeness.

The parties sign the terms of reference (ToR) of the mediation / conciliation prepared by the NCP, committing themselves to comply with the rules established therein, including the provisions regarding their conduct, the powers of the conciliator / mediator and the protection of confidentiality.

The parties are required to respect the confidentiality of the procedure, in relation to documents, facts, arguments and other information submitted by the parties, in order to protect the confidentiality of the parties and to in order to foster a peaceful and profitable climate for the resolution of the issues.

Where necessary, the NCP bears the costs related to the services offered by the mediator/conciliator. The members of the NCP, including the members of the Committee, operate *pro bono*.

Conclusion of the Phase of Assistance to the Parties: Agreement or Final Statement

The desired conclusion of the phase of assistance to the parties consists in reaching an agreement between them.

However, this phase can also lead to one of the following conclusions¹⁴:

- at least one of the parties refuses the offer of good offices;
- at the expiry of the deadline, or of any further extension, the parties do not reach an agreement;
- before the expiry of the deadline, at least one of the parties declares it is not willing to engage and to participate in good faith in the procedure;
- it proves objectively impossible to reach the agreement.

If the parties reach an agreement, they have to address how and to what extent the content of the agreement is to be made publicly available. Within three months after the achievement of the agreement, the NCP, after consulting the parties, publishes on its website a report describing the issues raised and the procedures initiated in assisting the parties, indicating the date of the agreement reached and exposing, to the extent agreed by the parties, the contents of the agreement.

¹⁴ Unless the NCP decides to offer its good offices only to the parties that have accepted them.



If no agreement is reached, the NCP - after accomplishing all the activities considered still necessary for a correct understanding of the case - adopts a final statement and publishes it on its website. This final statement identifies the parties, describes the issues raised, the reasons why the NCP decided that the issues raised merit further examination and the procedures the NCP initiated in assisting the parties. The NCP will make recommendations on the implementation of the Guidelines as appropriate, these recommendations should be included in the statement.

Assistance after the Conclusion

If the parties that have reached an agreement require the NCP to assist them in the implementation of the agreement, the NCP can do so in the terms arranged with the parties.

In the case of a final statement containing recommendations addressed by the NCP to one or both parties, the NCP, when appropriate, verifies how they implement them, by requesting the parties - after one year from the publication of the declaration - to draw up a short report to be published on the NCP website.

The NCP is entitled to publish on its website information on the steps taken and on the results achieved after the conclusion of the procedure.

Indicative Timeframe

The NCP seek to conclude the initial assessment within three months. This deadline may be extended in cases where the NCP recognizes the need to gather additional information deemed necessary in order to adopt an informed decision. In such cases the NCP informs the parties. In any case, the NCP gives priority to the parties' interest in producing memories and documents in support of their respective positions.

In the case of assistance to the parties in resolving the issues raised, the NCP engages to facilitate the prompt resolution of the issues. The progress of the good offices depends on the parties. Nevertheless, after having consulted them, the NCP establishes a reasonable timeframe for resolving the issues raised, taking into account the indicative twelve-month deadline for the conclusion of the procedure. After consulting again the parties, should the parties fail to reach an agreement by the deadline, the NCP can decide to continue to assist them by setting a reasonable deadline.

As a general principle, the NCP is committed to conclude the procedure within 12 months after reception of the specific instance, but may extend this deadline when the circumstances require so, for example when the matter is raised in a non-member country.

In case of conclusion of the procedure the NCP publishes its final declaration or report within three months.

Sharing Information with the OECD and with Other Institutions

The NCP:

- in the Annual Report of the Italian NCP to the OECD Investment Committee, provides the requested information on all the specific instances that have been submitted or concluded during the period of reference or are in the initial assessment phase or in the phase of assistance to the parties; this information is entered by the OECD in a database which is regularly updated in relation to individual cases;
- can seek the guidance of the Investment Committee if any doubt arises about the interpretation of the Guidelines in the management of a specific instance; in this case it decides whether to suspend the time-limit of the current proceeding and promptly informs the parties of the referral of the matter and of the suspension of the terms;
- in order to promote the coherence of public policies, if deemed appropriate and useful, the can decide to transmit its final statements and reports to the bodies / authorities / public administrations / competent for the subject matters.



Annex:
Procedures for the Specific Instance to the NCP (scheme)



Duration of the procedure: approximately 1 year from the submission

- Initial assessment phase (approx. 3 months)
- assistance to the parties phase
- Positive outcome
- Negative outcome
- Publication and conclusion of the procedure
- Subject to the opinion of the NCP Committee

