



OECD Guidelines for Multinational Enterprises  
**National Contact Point Peer Reviews**  
**SWITZERLAND**



## **ABOUT THE OECD GUIDELINES FOR MULTINATIONAL ENTERPRISES**

The OECD Guidelines are recommendations addressed by governments to multinational enterprises operating in or from adhering countries. They provide non-binding principles and standards for responsible business conduct in a global context consistent with applicable laws and internationally recognised standards. The OECD Guidelines are the only multilaterally agreed and comprehensive code of responsible business conduct that governments have committed to promoting.

## **ABOUT NCP PEER REVIEWS**

Adhering governments to the OECD Guidelines for Multinational Enterprises are required to set up a National Contact Point (NCP) that functions in a visible, accessible, transparent and accountable manner. During the 2011 update of the OECD Guidelines for multinational enterprises, NCPs agreed to reinforce their joint peer learning activities and, in particular, those involving voluntary peer reviews. The peer reviews are conducted by representatives of 2 to 4 other NCPs who assess the NCP under review and provide recommendations. The reviews give NCPs a mapping of their strengths and accomplishments, while also identifying opportunities for improvement.

## **ABOUT THIS DOCUMENT**

This report contains a peer review of the Swiss NCP, mapping its strengths and accomplishments and also identifying opportunities for improvement.

More information: <https://mneguidelines.oecd.org/ncps/>

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## TABLE OF CONTENTS

TABLE OF CONTENTS.....	3
1. SUMMARY AND KEY FINDINGS .....	4
2. INTRODUCTION .....	8
3. SWISS NCP AT A GLANCE.....	10
4. INSTITUTIONAL ARRANGEMENTS .....	11
5. PROMOTION OF THE GUIDELINES .....	17
6. HANDLING SPECIFIC INSTANCES .....	22
ANNEXES .....	34

## 1. SUMMARY AND KEY FINDINGS

This document is the peer review report of the Swiss National Contact Point (NCP) for the OECD *Guidelines for Multinational Enterprises* (the Guidelines). The implementation procedures of the Guidelines require NCPs to operate in accordance with the core criteria of visibility, accessibility, transparency and accountability. In addition, they recommend that NCPs deal with specific instances in a manner that is impartial, predictable, equitable and compatible with the Guidelines.

This report assesses conformity of the Swiss NCP with the core criteria and with the Procedural Guidance contained in the implementation procedures. The peer review of the Swiss NCP (hereinafter the ‘NCP’) was conducted by a team made up of reviewers from the NCPs of Chile, Germany and the UK, along with representatives of the OECD Secretariat. The peer review included an on-site visit that took place in Bern, Switzerland on 9 -11 November 2016.

The NCP observes its mandate of promoting the Guidelines and handling specific instances and functions well overall, in a visible, accessible, transparent and accountable manner. The NCP has introduced several changes in the past few years to further improve its performance and reputation amongst relevant stakeholders such as modifying its structure to create advisory bodies to support the NCP Secretariat and introducing procedural instructions for handling specific instances.

### **Key findings and recommendations**

#### *Institutional arrangements*

The NCP enjoys a good reputation amongst external stakeholders, as well as within the Swiss Government, and the staff of the NCP Secretariat is recognised to be highly knowledgeable, competent and responsive. At present the NCP Secretariat implements most NCP activities such as awareness raising, providing technical assistance on RBC and handling specific instances. The NCP is well resourced, allowing it to carry out its mandate under the Decision on the Guidelines and to deal with emerging issues as necessary.

The Swiss government has made important steps to modify the NCP’s structure to promote inclusiveness and impartiality in the past several years. In 2013 the Advisory Board was established to support the work of the NCP. The Advisory Board represents a broad range of stakeholders and is co-chaired by the State Secretary of Economic Affairs and another member of the Advisory Board. This provides high-level visibility for the activities of the NCP as well as a high-level forum for dialogue amongst stakeholders on RBC. In 2011 the NCP started working with “ad hoc working groups” comprised of relevant experts of the Swiss Federal Administration to provide technical support and advice on issues raised in specific instances. Members of the Advisory Board and participants in the ad hoc working groups have a strong commitment towards supporting the NCP.

The role of the Advisory Board is still being developed and the status of its advice with respect to the activities of the NCP is not fully clear. During discussions with representatives of the Advisory Board and ad hoc working groups, there appeared to be a lack of common understanding of their respective roles within the NCP structure. This issue also emerged during discussions with external stakeholders. This suggests that the government needs to clearly and accurately communicate on the NCP structure and the roles and responsibilities of the different parts in order to ensure that it is properly understood by these stakeholders, especially in relation to the handling of specific instances.

Currently the contribution of ad hoc working groups to the specific instance process is unclear, not always visible to parties and adds a procedural burden to the process. The NCP could consider

having the ad hoc working groups play a more active and visible role in specific instances or could streamline their role to make it less procedurally onerous, and to enable initial assessments to be completed more quickly.

	Findings	Recommendations
1.1	The NCP could consider clarifying the role and authority of the Advisory Board, particularly in relation to the status of the advice it provides with respect to specific instances.	The role of the Advisory Board is still being developed and the status of its advice with respect to the activities of the NCP is not fully clear.
1.2	The NCP should consider whether ad hoc working groups should play a more active and visible role in specific instances or, alternatively, whether their role could be streamlined to make it less procedurally onerous.	The contribution of ad hoc working groups to the specific instance process is unclear, not always visible to parties and adds a procedural burden to the process.

### ***Promotional activities***

Responsible Business Conduct (RBC) or Corporate Social Responsibility (CSR) issues enjoy a high profile in Switzerland. The NCP has an accessible and informative website which it keeps up to date and has also developed useful promotional materials.

The NCP is well known amongst the businesses and industry associations that participated in the review and is regularly involved in industry events to promote the recommendations of the Guidelines. The NCP could focus more attention on engagement, promotion and building relationships amongst civil society groups, particularly with NGOs, which seem to be less aware of the value of the specific instance mechanism and the activities of the NCP.

The NCP is also well-known within the government and has a high level of visibility. The NCP works closely with relevant agencies to promote policy coherence with respect to RBC, including with colleagues working on development, human rights, public procurement, export risk insurance, and trade and investment. The NCP should continue working closely with relevant agencies to ensure synergies with respect to promoting the Guidelines are maximised.

While the NCP is involved in several strategic initiatives and attends external events to promote awareness of the Guidelines it could be more proactive in organising its own events and activities to ensure audiences and messaging on the Guidelines is appropriately targeted.

	Findings	Recommendations
2.1	Civil society groups, particularly NGOs, seem less aware of the value of the specific instance mechanism and the activities of the NCP.	The NCP could focus more attention on awareness raising and relationship building with civil society. In this respect specific promotional events could be planned with civil society groups, particularly NGOs, to explain the potential benefits of the specific instance mechanism. The Advisory Board, which includes civil society representatives, could be instrumental in these outreach efforts.
2.2	The NCP promotes the Guidelines through participating in external events and strategic initiatives but does not organise many of its own promotional events.	The NCP could be more proactive with respect to promotion by organising its own promotional events and activities

### *Specific instances*

The NCP has handled 17 specific instances since its creation in 2000. Out of these, five were not accepted for further examination, 11 were accepted for further examination, one was withdrawn prior to initial assessment. Of the 11 cases accepted for further examination, the parties agreed to participate in mediation in 10 of the instances. Seven of these instances were closed at the time of writing and in all of them the parties reached some agreement as a result of the mediation.

Most parties to a specific instance proceeding interviewed by the peer review team noted that the NCP managed the process well including by clearly communicating with the parties about the procedure and being responsive to any questions. Furthermore nearly all the users of the system noted that while their participation in the process may have been difficult due to disagreements between the parties, some positive outcomes were reached as a result of the proceedings.

In 2011, the NCP developed procedural instructions for handling specific instances in response to the revision of the Guidelines and in order to improve the process. These rules were revised in 2014. The NCP has also introduced additional tools with the aim of improving the process such as a terms of reference template for meditation, a feedback form to assess parties' satisfaction with the process, and a follow-up procedure to assess the outcomes of any agreements made or recommendations included in a final statement. The NCP as well as users of the system have identified the length of specific instance proceedings as an ongoing challenge. Streamlining processes, specifically with respect to information gathering during the phase between submission and initial assessment could help to reduce the time involved.

In recent years, the NCP has received specific instances that raise complex conceptual issues, such as specific instances where the NCP has had to decide on the applicability of the Guidelines to sports associations and non-profit organisations. The NCP has made efforts to consider these issues and appropriately respond to them. Where complex conceptual issues arise which may have an impact on the interpretation of the Guidelines, the NCP could be more active in coordinating with other NCPs and the OECD Secretariat including through the channels allowed for in the Guidelines as appropriate, on reaching conclusions with respect to interpretations of the Guidelines.

Representatives of the business community were enthusiastic about the specific instance mechanism and noted it was a welcome alternative to legal proceedings with respect to dispute resolution. However, some representatives of civil society organisations stated that they do not

recognise the benefit of the specific instance mechanism as it does not offer outcomes beyond those that could be achieved through direct communication with enterprises.

Several stakeholders noted that final statements could be made more substantive in order to demonstrate the full added value of the specific instance mechanism to civil society and other parties, to encourage greater use. For example, recommendations to date have not provided guidance on how enterprises can better observe the recommendations of the Guidelines. Out of the seven final statements published by the NCP's where a mediation ended in agreement only one includes some indication of actual actions agreed to between the parties.<sup>1</sup> Statements could be made more substantive by including more meaningful recommendations as well as including more information on the content of agreements between parties. Under the current procedural instructions parties must agree to include content of their agreements in final statements, in line with the Procedural Guidance. The NCP should make efforts to encourage the parties to report agreed actions relevant to better observing the Guidelines, to ensure that relevant content is reported in final statements and that outcomes of specific instance processes are better monitored.

	Findings	Recommendations
3.1	The NCP as well as users of the system have identified the length of specific instance proceedings as an ongoing challenge.	The NCP could consider streamlining processes, specifically with respect to information gathering during the phase between submission and initial assessment to reduce the time involved.
3.2	Several stakeholders noted that final statements could be made more substantive in order to demonstrate the full added value of the specific instance mechanism to civil society and other parties, to encourage greater use of the specific instance mechanism.	The NCP could consider developing final statements which include more meaningful recommendations and make efforts to encourage the parties to report agreed to actions relevant to better observing the Guidelines.

Switzerland is invited to report to the Working Party on Responsible Business Conduct on follow up to all the Recommendations within one year of the date of presentation of this report.

<sup>1</sup> See final statement for Nestle and IUF (Indonesia) (2008), which states that the parties committed to include wage scales in their 2010-2011 collective bargaining agreement.

## 2. INTRODUCTION

### Background

The implementation procedures of the Guidelines require NCPs to operate in accordance with the core criteria of visibility, accessibility, transparency and accountability. In addition, the guiding principles for specific instances recommend that NCPs deal with specific instances in a manner that is impartial, predictable, equitable and compatible with the Guidelines. This report assesses conformity of the Swiss NCP with the core criteria and with the Procedural Guidance contained in the implementation procedures.

Switzerland adhered to the OECD Declaration on International Investment and Multinational Enterprises (Investment Declaration) in 1976. The OECD *Guidelines for Multinational Enterprises* (the Guidelines) are part of the Investment Declaration. The Guidelines are recommendations on responsible business conduct (RBC) addressed by governments to multinational enterprises operating in or from adhering countries. The Guidelines have been updated five times since 1976; the most recent revision took place in 2011.

Countries that adhere to the Declaration are required to establish National Contact Points (NCPs). NCPs are set up to further the effectiveness of the Guidelines and adhering countries are required to make human and financial resources available to their NCPs so they can effectively fulfil their responsibilities, taking into account internal budget priorities and practices.<sup>2</sup> NCPs are “agencies established by adhering governments to promote and implement the Guidelines. The NCPs assist enterprises and their stakeholders to take appropriate measures to further the implementation of the Guidelines. They also provide a mediation and conciliation platform for resolving practical issues that may arise.”<sup>3</sup>

The Procedural Guidance covers the role and functions of NCPs in four parts: institutional arrangements, information and promotion, implementation in specific instances and reporting. In 2011 the Procedural Guidance was strengthened. In particular, a new provision was added to invite the OECD Investment Committee to facilitate voluntary peer evaluations. In the commentary to the Procedural Guidance, NCPs are encouraged to engage in such evaluations.

The objective of peer reviews as set out in the core template for voluntary peer reviews of NCPs<sup>4</sup> is to assess that the NCP is functioning in accordance with the core criteria set out in the implementation procedures; to identify the NCP’s strengths and possibilities for improvement; to make recommendations for improvement and to serve as a learning tool for all NCPs involved.

This report was prepared based on information provided by the NCP and in particular, its responses to the NCP questionnaire set out in the OECD Core Template for voluntary peer reviews of NCPs<sup>5</sup> as well as responses to requests for additional information. The report also draws on responses to the stakeholder questionnaire which was completed by 29 organisations representing Swiss

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<sup>2</sup> Amendment of the Decision of the Council on the OECD Guidelines for Multinational Enterprises, para I(4)

<sup>3</sup> OECD Guidelines for Multinational Enterprises (2011), Foreword

<sup>4</sup> OECD, Core Template For Voluntary Peer Reviews of National Contact Points (2015), [DAF/INV/RBC\(2014\)12/FINAL](#)

<sup>5</sup> OECD, Core Template For Voluntary Peer Reviews of National Contact Points (2015), [DAF/INV/RBC\(2014\)12/FINAL](#)



enterprises, civil society, trade unions/representative organisations of the workers' own choosing (hereinafter worker organisations), international organisations, academic institutions and government agencies (see Annex I for complete list of stakeholders who submitted written feedback) and information provided during the on-site visit.

The peer review of the NCP was conducted by a peer review team made up of reviewers from the NCPs of Chile, Germany and the United Kingdom, along with three representatives of the OECD Secretariat. The on-site visit to Switzerland took place on 9 -11 November 2016 and included interviews with the NCP, other relevant government representatives and stakeholders. A list of organisations that participated in the review process is set out in Annex II. The peer review team wishes to acknowledge the NCP for the quality of the preparation of the peer review and organisation of the on-site visit.

The basis for this peer review is the 2011 version of the Guidelines. The specific instances considered during the peer review date back to 2004. The methodology for the peer review is that set out in the OECD Core Template for voluntary peer reviews of NCPs.<sup>6</sup>

### **Economic context**

There are approximately 593,000 enterprises in Switzerland<sup>7</sup>, 99% of which are SMEs (defined as companies with less than 250 employees). Almost 70% of Swiss SMEs have cross-border activities as exporters, suppliers or investors.<sup>8</sup> Services (71.4% of GDP) and industry (24.7% of GDP) are the main sectors of the Swiss economy. Within the services sector, financial services represent an important branch. The main industrial sectors are the pharmaceutical sector, the machinery industry and the food sector.<sup>9</sup>

Many leading global MNEs are headquartered in Switzerland and Switzerland has one of the highest rates of MNEs per capita in the world. MNEs (defined as companies with head offices in Switzerland and Swiss subsidiaries of foreign multinational companies) account for a large portion of the Swiss GDP (35%) and are major employers in Switzerland (approx. 25% of the total workforce).<sup>10</sup>

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<sup>6</sup> OECD, Core Template For Voluntary Peer Reviews Of National Contact Points (2015), [DAF/INV/RBC\(2014\)12/FINAL](#)

<sup>7</sup> Cf. Federal Statistical Office (2014): [www.bfs.admin.ch/bfs/de/home/statistiken/industrie-dienstleistungen/unternehmen-beschaeftigte/wirtschaftsstruktur-unternehmen.html](#) (only available in German).

<sup>8</sup> Cf. Credit Suisse (2014): Success Factors for Swiss SMEs Prospects and Challenges for Exports, pp. 18/19 ([http://www.s-ge.com/sites/default/files/private\\_files/CS-KMU-Studie\\_EN\\_neu\\_0.pdf](#)).

<sup>9</sup> Cf. Federal Statistical Office (2015): [www.bfs.admin.ch/bfs/en/home/statistics/national-economy/national-accounts/production.html](#)

<sup>10</sup> Information provided by SwissHoldings and the Swiss National Bank.

Switzerland is also ranked 7<sup>th</sup> globally in terms of foreign direct investment (FDI) invested abroad, its economy is ranked 19<sup>th</sup> globally in terms of GDP.<sup>11</sup> The inward stock of FDI, which represents the accumulated value of FDI in the Swiss economy over time, was USD 738 billion in 2015, equivalent to 109 percent of Swiss GDP (excluding FDI positions in Special Purpose Entities (SPEs)<sup>12</sup>). The outward stock of FDI excluding from resident SPEs was USD 1 025 billion in 2015, representing 151 percent of Swiss GDP. In 2015, Swiss exports of goods were USD 303 billion and exports of services were USD 113 billion while imports of goods were USD 250 billion and imports of services were USD 94 billion.

The main destinations for outward investment from Switzerland are the United States, Luxembourg, the Netherlands, Ireland, and the United Kingdom, and the most important sectors are finance and insurance (34% of total outward FDI stock) and manufacturing (34%), professional, scientific and technical services (15%), and wholesale and retail trade (12%).

### 3. SWISS NCP AT A GLANCE

**Established:** 2000

**Structure:** The NCP secretariat is located in one Ministry and is supported by an advisory board and inter-departmental ad hoc working groups.

**Location:** State Secretariat for Economic Affairs (SECO)

**Staffing:** NCP Secretariat- 1 staff member at 80% and 2 part time staff members (one at 40%, one at 20%)

**Website:** [www.seco.admin.ch/ncp](http://www.seco.admin.ch/ncp) (English version)

**Specific instances received:** 17

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<sup>11</sup> OECD FDI Assets (all resident units): <http://stats.oecd.org/Index.aspx?QueryId=64238#>

<sup>12</sup> Special Purpose Entities (SPEs) are entities whose role is to facilitate the internal financing of the MNE but that have little or no physical presence in an economy. By excluding such entities from their FDI statistics, countries have a much better measure of the FDI into their country that is having a real impact on their economy and a much better measure of the outward FDI that originated in their economy. SPEs represent respectively 14% and 8% of inward and outward FDI stocks of Switzerland at-end 2015.

## 4. INSTITUTIONAL ARRANGEMENTS

Under the Procedural Guidance of the Guidelines, Section I(A):

“Governments are accorded flexibility in how they organise NCPs provided they meet the “core criteria” of visibility, accessibility, transparency and accountability”

### Legal basis

The NCP was officially established in 2000. In 2013 the NCP was restructured to respond to revisions introduced in the 2011 version of the Guidelines.

As part of the restructuring, an Ordinance<sup>13</sup> was adopted by the Federal Council on 1 May 2013 giving the NCP a legal basis. The Ordinance provided the NCP with authority to approach enterprises with respect to specific instances. It also set out a fixed framework for the NCP’s structure. The Ordinance establishes the mandate of the NCP, outlines the responsibilities and structure of the Advisory Board and lists the tasks of the NCP Secretariat. These are described in more detail below.

### NCP Structure

The State Secretariat for Economic Affairs (SECO) hosts the NCP and the principal functions of the NCP are carried out by the members of the NCP Secretariat all of which are based in SECO. The NCP Secretariat is supported by an Advisory Board as well as ad hoc working groups which are temporary structures created for the purpose of supporting the handling of specific instances. The NCP has to date been classified by the NCP Secretariat as interagency in its structure since representatives of other departments of the Federal Administration serve as members on the Advisory Board as well as ad hoc working groups (see below). The OECD has defined interagency structures as “those where the NCP is composed of representatives of two or more Ministries.”<sup>14</sup> However, as the bulk of activities are driven by the NCP Secretariat and the effectiveness of interagency features such as consensus-based ad-hoc working groups and the Advisory Board is not always clear, the structure has been perceived by some stakeholders as a Mono-agency ‘plus’ arrangement. The OECD has defined Mono-agency ‘plus’ structures as those where “the NCP Secretariat is located in one Ministry and other Ministries or stakeholders are involved in the work of the NCP on an advisory basis.”<sup>15</sup>

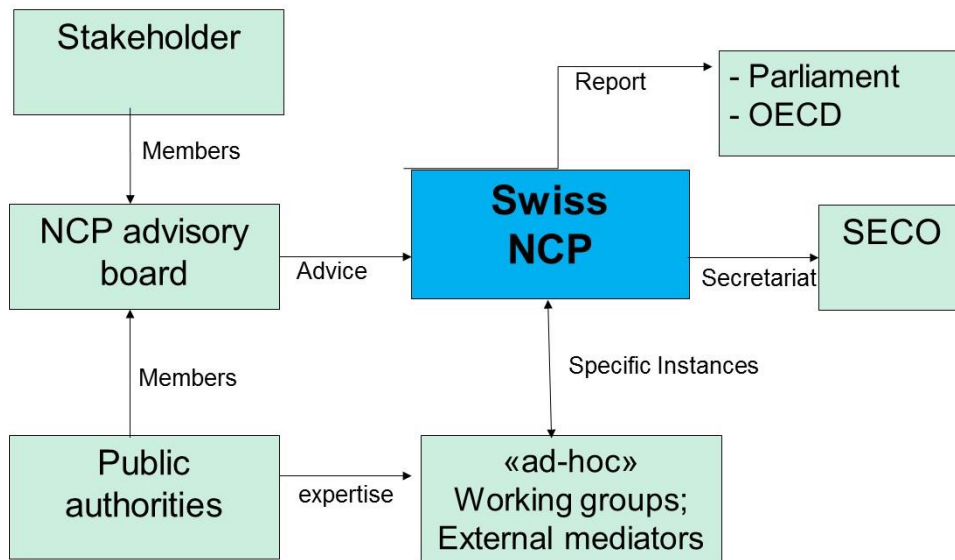
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<sup>13</sup> Ordinance on the Organisation of the National Contact Point for the OECD Guidelines for Multinational Enterprises and on its Advisory Board (NCPO-OECD) (May, 2013) available at [www.admin.ch/opc/fr/classified-compilation/20130820/index.html](http://www.admin.ch/opc/fr/classified-compilation/20130820/index.html) (hereinafter ‘Ordinance’).

<sup>14</sup> See OECD (2015) Implementing the OECD Guidelines for Multinational Enterprises: The National Contact Points from 2000 to 2015 <http://www.oecd.org/corporate/mne/15-years-of-ncps.htm>

<sup>15</sup> Id.

**Diagram 1: Structure of the Swiss NCP**



Source: NCP of Switzerland (2016), Organigram describing relationship between different parts of the Swiss NCP. On file with author.

### *NCP Secretariat*

#### Composition

The NCP Secretariat consists of one full time staff member and two part time staff members all based in SECO. One of the part time staff positions was only recently established to ensure adequate human resources for NCP activities. The staff of the NCP Secretariat is widely recognised amongst stakeholders as highly responsive, competent and knowledgeable with respect to RBC issues. There is also high level of institutional knowledge at the NCP, thanks in part to the presence of a senior staff member who has been involved with the NCP for the past eight years.

#### Function

Under the Ordinance<sup>16</sup> the NCP promotes the implementation of the Guidelines through Swiss-based, internationally-active enterprises. In particular, the NCP is tasked with:

- a) Promoting awareness and the dissemination of the Guidelines; and
- b) Accepting submissions raising specific instances

The NCP Secretariat is the principal focal point and leads on all NCP activity. In addition to the tasks set out above the NCP Secretariat also attends all relevant meetings at the OECD, develops annual reports, handles requests for information or technical advice, participates as an observer to meetings of the Advisory Board, helps to select new members to the Advisory Board and liaises with ad hoc working groups during specific instances. The NCP Secretariat staff is also responsible for CSR policy and issues within the government more broadly (see section on Policy Coherence below).

<sup>16</sup> Ordinance on the Organisation of the National Contact Point for the OECD Guidelines for Multinational Enterprises and on its Advisory Board (NCPO-OECD) (May, 2013), Art. 1

### *Advisory Board*

The Advisory Board was established in 2013 and serves as an advisory body to the NCP Secretariat. It has 14 members comprising:

- a) the State Secretary of SECO and three additional members of the Federal Administration (representing SECO, the Federal Department of Foreign Affairs and the Swiss Agency for Development and Cooperation);
- b) two representatives each from employers' federations, worker organisations, business associations, non-governmental organisations and academia

Full list of representatives:

State Secretary, State Secretariat for Economic Affairs  
Prof. Dr. iur., University of Zurich  
State Secretariat for Economic Affairs  
Federal Department of Foreign Affairs  
Swiss Agency for Development and Cooperation  
Swiss Association of Employers  
Swiss Associations of SME  
Swiss Association of Trade Unions  
Travail.Suisse Trade Union  
SwissHoldings  
Economiesuisse  
Alliance Sud  
Society for threatened peoples, Switzerland  
Prof. em., University of Zurich

Members and co-chairs of the Advisory Board are appointed by the Federal Council based on the proposal of the Federal Department of Economic Affairs, Education and Research (EAER). Members' terms last for four years, after which the NCP Secretariat leads the administrative procedure to reappoint them or to appoint new individuals. Members of the Advisory Board are appointed for the duration of a legislative period (four years) and can be reappointed at the end of the legislative period. The composition of the Advisory Board must reflect diversity criteria and must represent at least 30% women and men and must include at least one native speaker of Italian, French and German. Members of the Advisory Board are remunerated (except members of the Federal Administration) and the costs are born by the EAER.

The Ordinance provides that the Advisory Board will be jointly chaired by the Director of SECO and another member of the Advisory Board. Currently the Advisory Board is co-chaired by State Secretary Marie-Gabrielle Ineichen-Fleisch, (Director of the State Secretariat of Economic Affairs), and Professor Christine Kaufmann, Chair for Constitutional and Administrative Law and for European and International Law of the University of Zurich.

Due to its composition the Advisory Board provides a platform for sharing diverse perspectives on RBC issues and all members of the Advisory Board recognise it to be an open and constructive body. Having the Advisory Board co-chaired by a State Secretary has helped raise the profile of the NCP's activities and the Guidelines to high levels of the government. Additionally, this composition provides stakeholders with direct access to engage with a senior policy maker.

## Function

Under the Ordinance the Advisory Board is tasked with:

- a) advising the NCP on its strategic orientation and on the application of the Guidelines and the NCP procedural instructions; and
- b) encouraging a dialogue between interest groups and contributing to the effective implementation of the Guidelines<sup>17</sup>

The NCP Secretariat provides information on ongoing specific instances (to the extent that confidentiality provisions allow it) to the Advisory Board and can ask for their guidance on certain issues. For example, the Advisory Board has advised on procedural issues in the context of specific instances such as modifications of the procedural guidance of the NCP, changes to the mandate of the ad hoc working groups<sup>18</sup> (see below for more information), and the criteria for selection of external mediators. See Annex III. However the Advisory Board has also advised the NCP Secretariat on specific questions of interpretation such as the applicability of the Guidelines to non-profit organisations or sports associations. The Advisory Board is also consulted with respect to the annual report of the NCP and the promotional activities of the NCP.

The Advisory Board meets at least twice a year. The meetings are confidential but summary minutes are made publically available (see section on Reporting below). The governance rules of the Advisory Board are included in the *Rules of Organization of the Advisory Board*<sup>19</sup> which includes information on the preparation and conduct of the meetings, drafting procedures, protocol, the duty of confidentiality and the remuneration of the members of the Advisory Board. Decisions within the Advisory Board are reached by consensus.

Members of the NCP Secretariat participate as observers to the Advisory Board and to answer any questions. In this respect they assist with the organisation of the Advisory Board meetings and development of the agenda and minutes for these meetings.

The Advisory Board's role is formally only advisory, and therefore the Advisory Board does not have formal decision making power in the context of specific instances or in other areas. In practice the NCP accepts the Board's advice as binding on it, but during the on-site visit members of the Advisory Board noted they do not regard their advice as binding on the NCP. The role of the Advisory Board is still being developed and the status of its advice with respect to the activities of the NCP is not fully clear. Some members of the Advisory Board have expressed interest in playing a more active role in the context of NCP activities and specific instances.

## Ad hoc Working Groups

The Ordinance provides that whenever a specific instance is raised with the NCP, the NCP Secretariat will set up an ad hoc working group made up of representatives of the Federal Administration to respond to the submission.<sup>20</sup> Ad hoc working groups have been set up for every specific instance accepted for further examination since 2011.

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<sup>17</sup> Ordinance, Art 2

<sup>18</sup> The Federal Administration is the term used throughout to refer to the Swiss Government

<sup>19</sup> [Rules of Organization of the Advisory Board](#), cf. *Geschäftsreglement des NKP-Beirats*, only available in German

<sup>20</sup> Ordinance, Art. 4

## *Composition*

Participants in ad hoc working groups are selected based on a decision of the Federal Council<sup>21</sup> which includes a list of agencies/departments of the Federal Administration which correspond to thematic chapters of the Guidelines. Where those chapters are referenced in a specific instance, representatives of those agencies are asked to take part in the ad hoc working group. The size of an ad hoc working group is thus dependent on the number of themes of the Guidelines at issue in a specific instance.

Ad hoc working groups also include members with specific country experience from SECO (Bilateral Trade Relations) as well as from the Ministry of Foreign Affairs (Swiss Development Cooperation or Sectoral Foreign Policies). One member of the NCP Secretariat also participates in ad hoc working groups to guide the process and ensure that the Guidelines are correctly interpreted and applied.

## *Function*

The website of the NCP provides that “specific instances are handled by an internal working group composed of members of the Federal Administration responsible for the issues addressed in a specific instance.”<sup>22</sup>

In practice, the NCP Secretariat plays the leading role with respect to handling specific instances. At the same time ad hoc working groups provide technical advice and support in their respective areas of competence on substantive issues where necessary. Ad hoc working groups review and provide comments on both initial assessments and final statements drafted by the NCP Secretariat. The groups decide on initial assessments and final statements on the basis of consensus. If the ad hoc working group does not reach consensus in the first place, discussion is continued until consensus is found. Ad hoc working groups do not participate in mediation but are informed of the outcomes to the extent that confidentiality provisions allow.

Ad hoc working groups meet with the NCP Secretariat generally 1–2 times during the phase of the initial assessment, 2–3 times during the mediation phase (this practice started in 2015) and once before closing a specific instance. Meetings during the mediation process were introduced in response to requests by some members of ad hoc working groups. In addition, at the start of a specific instance the NCP Secretariat can organise bilateral meetings between the ad hoc working group and each of the parties.

The role of the ad hoc working group is unclear to most stakeholders and to parties to a specific instance. Some parties to a specific instance noted that they understood that other members of the administration were involved in handling the specific instance but few were aware of their actual impact on decisions and none noted that they had met them directly. This lack of awareness may be reinforced by the fact that rules of procedure do not exist for the ad hoc working groups.

Currently ad hoc working groups add procedural burden on the specific instance proceeding as the NCP Secretariat must report back to them and seek their input throughout the process. However ad hoc working groups are not involved in mediation and during the on-site visit of the peer review

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<sup>21</sup> This Decision is not publically available.

<sup>22</sup> See website of the Swiss NCP (last accessed 25 January 2017)  
[www.seco.admin.ch/seco/en/home/Aussenwirtschaftspolitik\\_Wirtschaftliche\\_Zusammenarbeit/Wirtschaftsbeziehungen/NKP/organisation-und-kontaktaufnahme.html](http://www.seco.admin.ch/seco/en/home/Aussenwirtschaftspolitik_Wirtschaftliche_Zusammenarbeit/Wirtschaftsbeziehungen/NKP/organisation-und-kontaktaufnahme.html)

team, members of the ad hoc working groups did not seem aware they have final decision making power with respect to specific instances and parties to specific instances did not report meeting with them. For these reasons the value of their contribution to the process is unclear. On the one hand the NCP could consider having the ad hoc working groups play a more active and visible role in specific instances or, alternatively, it could streamline their role to make it less procedurally onerous, and to enable initial assessments to be completed more quickly. For example, a more active ad hoc working group could be involved in drafting statements, communicating with parties, and observing mediations. A more streamlined role could involve being available for consultation with respect to substantive issues as needed, without regular engagement through meetings during the process or involvement in reviewing initial or final statements.

## **Resources**

The NCP Secretariat is funded by the government budget and consists of one full time staff member, (80% of time dedicated to NCP activities) and two part time staff members (20%; and 40% of time dedicated to NCP activities). In times of high workload, a fourth person of the same team contributes to the handling of specific instances.

Additionally staff members of other units of SECO and the Federal Administration contribute time to NCP activities as needed through their involvement in ad hoc working groups to specific instances. Furthermore an annual budget of 50 000 CHF (approximately 46 000 EUR) is also provided to cover external mediators for specific instances. This is enough to cover approximately two mediations annually.

## **Reporting**

The NCP reports on an annual basis to the OECD Investment Committee in accordance with the Procedural Guidance. These reports are also published on the NCP website which includes annual reports from the year 2007 onwards.

The NCP also reports on its activities to the Swiss Parliament in a specific chapter of the annual Foreign Economic Policy Report<sup>23</sup>.

Additionally, activities included in the CSR Position Paper and Action Plan 2015–2019 of the Federal Council (described in detail below)<sup>24</sup>, which includes awareness-raising activities by the NCP, will be reported to the Federal Council in 2017.

The NCP Secretariat also reports on NCP activities (e.g. specific instance procedures, meetings of the OECD Secretariat) at the bi-annual meetings of the Advisory Board.

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<sup>23</sup> See Annual Foreign Economic Policy Report, page 57 and 60 at:  
[https://www.seco.admin.ch/seco/fr/home/Publikationen\\_Dienstleistungen/Publikationen\\_und\\_Formulare/Aussenwirtschafts/Berichte\\_zur\\_Aussenwirtschaftspolitik/bericht-zur-aussenwirtschaftspolitik-2016.html](https://www.seco.admin.ch/seco/fr/home/Publikationen_Dienstleistungen/Publikationen_und_Formulare/Aussenwirtschafts/Berichte_zur_Aussenwirtschaftspolitik/bericht-zur-aussenwirtschaftspolitik-2016.html)

<sup>24</sup> See Swiss CSR Position Paper and Action Plan (2015–2019) available at:  
[www.seco.admin.ch/seco/en/home/Aussenwirtschaftspolitik\\_Wirtschaftliche\\_Zusammenarbeit/Wirtschaftsbeziehungen/Gesellschaftliche\\_Verantwortung\\_der\\_Unternehmen/Positionspapier\\_und\\_Aktionsplan\\_BR.html](http://www.seco.admin.ch/seco/en/home/Aussenwirtschaftspolitik_Wirtschaftliche_Zusammenarbeit/Wirtschaftsbeziehungen/Gesellschaftliche_Verantwortung_der_Unternehmen/Positionspapier_und_Aktionsplan_BR.html)



	Findings	Recommendations
1.1	The role of the Advisory Board is still being developed and the status of its advice with respect to the activities of the NCP is not fully clear.	The NCP could consider clarifying the role and authority of the Advisory Board, particularly in relation to the status of the advice it provides with respect to specific instances.
1.2	Currently the contribution of ad hoc working groups to the specific instance process is unclear and not always visible to parties and adds procedural burden to the process.	The NCP could consider whether ad hoc working groups should play a more active and visible role in specific instances or, alternatively, whether their role could be streamlined to make it less procedurally onerous.

## 5. PROMOTION OF THE GUIDELINES

Under the Procedural Guidance of the Guidelines, Section I(B), NCPs are mandated to:

1. “Make the Guidelines known and available by appropriate means, including through on-line information, and in national languages;
2. Raise awareness of the Guidelines and their implementation procedures, including through co-operation, as appropriate, with the business community, worker organisations, other non-governmental organisations, and the interested public;
3. Respond to enquiries about the Guidelines.”

### Information and Promotional materials

#### *Promotional materials*

The NCP has prepared a flyer which provides information on the content of the different chapters of the Guidelines as well as on the functioning of the NCP. This flyer is available in German, French, Italian and English. Additionally a new comprehensive brochure about the implementation of the OECD Guidelines including best practices of Swiss companies, a self-evaluation test and comparison with other CSR instruments was launched in February 2017.

Members of the NCP have also published several articles on RBC.<sup>25</sup>

<sup>25</sup> See for example, [Johannes Schneider](#) (2012), Principes fondamentaux et instruments de la responsabilité sociale des entreprises, La Vie Economique, <http://dievolkswirtschaft.ch/fr/2012/12/schneider-6>; [Johannes Schneider](#), [Lukas Siegenthaler](#), (2011) Les principes directeurs de l’OCDE: pour une conduite responsable des entreprises multinationales. Law Vie Economique, <http://dievolkswirtschaft.ch/fr/2011/09/les-principes-directeurs-de-locde-pour-une-conduite-responsable-des-entreprises-multinationales/>; [Christian Etter](#) [Schweizer](#) (2015) Unternehmen handeln verantwortungsbewusst, Soziales Handeln, <http://www.sozial-handeln.ch/csr/schweizer-unternehmen-handeln-verantwortungsbewusst>

At the time of writing, the NCP is preparing a study to assess awareness of the Guidelines amongst enterprises and how awareness-raising and outreach strategies should be focused. The NCP should also consider expanding the awareness study to other stakeholder groups (such as civil society organisations) to assess their awareness of recommendations of the Guidelines and the NCP.

## Website

The NCP has a website ([www.seco.admin.ch/ncp](http://www.seco.admin.ch/ncp)) where information on the Guidelines is available in the three official languages of Switzerland (French, German and Italian) as well as in English.

The website includes the following information:

- Contact details of the NCP;
- Annual Reports of the NCP to the OECD from 2007 onwards;
- The NCP's procedural instructions for handling specific instances;
- Initial assessments of specific instances brought since 2015 and final statements of all specific instances accepted for further examination;
- The Ordinance establishing the legal basis of the NCP;
- Information on the Advisory Board and summary minutes of their bi-annual meetings;
- Links to the OECD Guidelines website, OECD database on specific instance, SECO page on Corporate Social Responsibility, and OECD Global Forum on Responsible Business Conduct

In addition the NCP is also involved in creating a Swiss CSR web portal which will constitute an online platform which includes information on all CSR activities involving the Federal Administration including on specific topics, sectors and up to date information on events and instruments.<sup>26</sup>

## Promotional events

The NCP promotes the Guidelines and the work of the NCP at conferences, workshops and meetings hosted by the Federal Administration, enterprises, worker organisations, non-governmental organisations (NGOs) and other interested parties. Generally the NCP participates in externally organised events rather than organising its own. For example, in the 2015 annual report of the Swiss NCP, the NCP reported participating in seven externally organised events.<sup>27</sup> In 2016 the NCP organised one event and participated in seven external events. A summary of promotional events organised and attended in 2016 is included in Annex IV. In order to ensure that its outreach activities are strategic and to build awareness and understanding of the Guidelines and role of NCPs, the NCP could be more proactive with respect to promotion by organising its own promotional events and activities.

The NCP has a strong relationship and good reputation amongst the business representatives participating in the peer review. Several business leaders trust the expertise of the NCP with respect to RBC issues. The NCP could focus more attention on engagement and promotion and building

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<sup>26</sup> At the time of writing this platform was under construction and no hyperlink was available.

<sup>27</sup> OECD (2016), Annual Report on the OECD Guidelines for Multinational Enterprises 2015, <http://mneguidelines.oecd.org/2015-Annual-Report-MNE-Guidelines-EN.pdf>

relationships amongst civil society groups which seem less aware of the value of the specific instance mechanism and the activities of the NCP. In this respect specific promotional events could be planned with NGOs and other civil society groups, particularly NGOs, to explain the potential benefits of the specific instance process. This will require constructive engagement from NGOs and other civil society groups.

Several members of the Advisory Board noted that they recognise promotion as a shared responsibility with the NCP Secretariat and noted that they make independent efforts to promote the Guidelines amongst their networks. The strong engagement of the Advisory Board facilitates the promotional role of the NCP through creating additional channels for awareness raising and communication about the Guidelines and activities of the NCP. The review team welcomes this and notes that civil society members of the Advisory Board can make a particularly important contribution in support of outreach to the civil society community.

## **Promotion of Policy Coherence**

### ***CSR Action Plan***

In April 2015 a CSR Position Paper and Action Plan of the Federal Council (hereinafter CSR Action Plan) was adopted covering the period 2015-19.<sup>28</sup> The CSR Action Plan sets out the specific role of the Federal Administration in promoting CSR. The NCP coordinated the development of the CSR Action Plan and staff of the NCP Secretariat are among those tasked with its implementation. The CSR Action Plan includes four strategic directions to implement CSR by the federal government and contains an action plan with specific measures. These strategic directions are:

- Co-developing the CSR Framework conditions, through which Switzerland promotes the development and updating of effective and transparent CSR standards to create coherence, proportionality and harmonisation.
- Raising awareness amongst Swiss enterprises and providing them with support
- Promoting CSR in developing and emerging countries
- Promoting transparency

The Guidelines are referred to as a leading CSR framework in the CSR Action Plan and the role of the NCP in promoting the Guidelines is highlighted.

The NCP has communicated with stakeholders from enterprises, NGOs and academia about the activities related to the implementation of the CSR Action Plan. For example, in January 2016, the paper was presented and discussed at an event bringing together over 40 representatives of the private sector at the premises of the NCP at SECO.

In November 2015, a CSR Promotional Plan was introduced as part of the CSR Action Plan to raise awareness of CSR and specifically the Guidelines. The plan is aimed at enterprises based in Switzerland, especially SMEs. However it also includes awareness-raising activities for other groups such as NGOs, universities, etc.<sup>29</sup> Awareness-raising activities under the plan include:

- Presentations

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<sup>28</sup> Swiss CSR Promotional Plan (2015), [www.seco.admin.ch/seco/en/home/Aussenwirtschaftspolitik\\_Wirtschaftliche\\_Zusammenarbeit/Wirtschaftsbeziehungen/Gesellschaftliche\\_Verantwortung\\_der\\_Unternehmen/Prioritaeten\\_des\\_Bundes.html](http://www.seco.admin.ch/seco/en/home/Aussenwirtschaftspolitik_Wirtschaftliche_Zusammenarbeit/Wirtschaftsbeziehungen/Gesellschaftliche_Verantwortung_der_Unternehmen/Prioritaeten_des_Bundes.html)

<sup>29</sup> Id.

- Participation in dialogue forums / stakeholder dialogues
- Web information platforms
- Information materials

It also involves integration of CSR references in talking points for high-level government representatives, in dossiers for delegates involved in relevant international missions and trade diplomacy, in curricula developed by the government and training for Swiss diplomats, and in presentations to foreign delegates. The staff of the NCP Secretariat is involved in implementing the actions under this promotional plan.

### ***Internal collaboration on CSR***

As noted above the staff of the NCP Secretariat is also responsible for general CSR issues and policy in Switzerland. This provides for strong opportunities to promote the role of the Guidelines and the NCP in related policy areas. Aside from their activities within SECO, the staff of the NCP Secretariat engages with several other agencies and offices to promote RBC.

The NCP cooperates with Swiss embassies, Swiss Export Risk Insurance (SERV) and Switzerland Global Enterprise (S-GE), the entity mandated for export, import and investment promotion<sup>30</sup> to promote the Guidelines. For example:

- Future Swiss diplomats are trained on the content of the Guidelines (new training module started in 2016).
- Swiss embassies are provided with copies of the flyer on the Guidelines and may be involved in assisting NCPs in dealing with specific instances (see below for more information)
- SERV features the Guidelines on its website and considers them in applications for export risk insurance. Published specific instance reports (initial assessments and final statements) of the NCP are taken into account by SERV on a regular basis and information on exporters, buyers, and buyer countries mentioned in specific instance reports is considered in environmental, social and human rights due diligence conducted by SERV with respect to the enterprises it works with.
- Staff of the NCP Secretariat work closely with Department of Foreign Affairs (FDFA) and the SECO team co-responsible for promoting business and human rights through the framework of the UN Guiding Principles for Business and Human Rights (UNGPs). In this respect they identify joint opportunities for promotion.

### ***External collaboration on RBC***

In addition to engagement with relevant internal government bodies the NCP is also involved in external initiatives relevant to RBC.

The NCP participates in a public private partnership launched in 2015 to strengthen the UN Global Compact Network in Switzerland.

The NCP also closely follows the activities of the UN and in particular the Working Group on Business and Human Rights. In this context, the NCP participated in the development of the National

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<sup>30</sup> "Switzerland Global Enterprise" <https://www.s-ge.com/en>

Action Plan on Business and Human Rights (NAP) for Switzerland, published on 9 December 2016.

<sup>31</sup> Although it did not lead this process the NCP has been consulted on recommendations for the NAP and the NCP is recognised as a key body for implementation of the NAP. A *Baseline Study on the Business and Human Rights Situation in Switzerland* was developed in preparation for the development of the NAP and recognises the role of the NCP in implementing the Guidelines and as a dispute settlement body.<sup>32</sup>

In 2011, the NCP created together with the Austrian and German NCPs a peer learning platform for German speaking NCPs. Participation has since been extended to other Central European NCPs. The peer learning platform features an annual workshop.

### ***Engagement in the Proactive Agenda***

The NCP has been involved in several proactive agenda projects of the OECD in the following capacities:

- **Responsible Mineral Supply Chains:** A representative of the NCP participated in the multi-stakeholder advisory group during the elaboration of the *OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas*. A representative of the Economic Cooperation and Development Department (Trade Promotion) of the State Secretariat for Economic Affairs, which closely collaborates with the NCP, attends the meetings of the multi-stakeholder group with regard to the implementation of this guidance. The development and implementation of the guidance was partly funded by the State Secretariat for Economic Affairs.
- **Responsible Business Conduct in the Financial Sector:** A representative of the NCP Secretariat, a member of the Advisory Board and a representative of the Economic Cooperation and Development Department (Private Sector Development) of the State Secretariat for Economic Affairs are participating in the advisory group to this project. The development of the guidance was partly funded by the State Secretariat for Economic Affairs.
- **Responsible Agricultural Supply Chains:** The NCP closely collaborates with the representative of the Federal Office for Agriculture who participates in the advisory group.
- **Responsible Supply Chains in the Textile and Garment Sector:** A representative of the section International Labour Affairs of the State Secretariat for Economic Affairs participated in the OECD Roundtable on Due Diligence in the Garment and Footwear Supply Chain on October 1–2, 2015, in Paris and provided comments on drafts of the forthcoming *OECD Due Diligence Guidance for Responsible Supply Chains in the Garment and Footwear Sector* based on feedback from the NCP.
- The NCP uses and relies on guidance developed as part of the proactive agenda projects in promotion and awareness raising activities, when dealing with specific instances and handling enquiries as well as when developing guidance at the national level.

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<sup>31</sup> Swiss Federal Council (2016), National report and action plan on business and human rights, available at: [www.seco.admin.ch/seco/en/home/seco/nsb-news.msg-id-64884.html](http://www.seco.admin.ch/seco/en/home/seco/nsb-news.msg-id-64884.html)

<sup>32</sup> Swiss Centre of Expertise in Human Rights (SCHR) and University of Zurich Centre for Human Rights Studies (2014) Human Rights Implementation in Switzerland [www.ohchr.org/Documents/Issues/Business/NationalPlans/HRAndBusinessBaselineSwitzerland.pdf](http://www.ohchr.org/Documents/Issues/Business/NationalPlans/HRAndBusinessBaselineSwitzerland.pdf)

In addition to engagement with proactive agenda projects at the OECD the NCP is also contributing to the development of a CSR standard on commodity trading. As a first step, guidance for the implementation of the UN Guiding Principles on Business and Human Rights in the commodities industries is being prepared, which will include recommendations regarding human rights due diligence and reporting<sup>33</sup>.

### Requests for information

The NCP Secretariat often receives requests for information from the media with respect to specific instances. Requests for information are also received from enterprises, universities, and industry associations. Requests for information are normally answered within five working days. Stakeholders have noted that the NCP Secretariat is very reactive to requests, however they noted that they do not usually approach the NCP for technical advice on the Guidelines or RBC. The NCP could further promote its availability to provide technical advice on the Guidelines in the context of its promotional activities.

	Findings	Recommendations
2.1	Civil society groups, particularly NGOs, seem less aware of the value of the specific instance mechanism and the activities of the NCP.	The NCP could focus more attention on awareness raising and relationship building with civil society. In this respect specific promotional events could be planned with civil society groups, particularly NGOs, to explain the potential benefits of the specific instance mechanism. The Advisory Board, which includes civil society representatives, could be instrumental in these outreach efforts.
2.2	The NCP promotes the Guidelines through participating in external events and strategic initiatives but does not organise many of its own promotional events.	The NCP could be more proactive with respect to promotion by organising its own promotional events and activities.

## 6. HANDLING SPECIFIC INSTANCES

Under the Procedural Guidance of the Guidelines, Section I (C):

“[t]he National Contact Point will contribute to the resolution of issues that arise relating to implementation of the Guidelines in specific instances in a manner that is impartial, predictable, equitable and compatible with the principles and standards of the Guidelines.”

<sup>33</sup>

Cf. Recommendation 11 on p. 14/15 in the “Background report on commodities: implementation of recommendations well on the way” ([www.admin.ch/gov/en/start/documentation/media-releases.msg-id-58384.html](http://www.admin.ch/gov/en/start/documentation/media-releases.msg-id-58384.html)).

## Implementation in Specific Instances

The NCP has handled 17 specific instances and was a supporting NCP in one other since its creation in 2000. See table in Annex V for an overview of all specific instances filed.

Most parties to a specific instance proceeding interviewed by the peer review team noted that the NCP managed the process well including by clearly communicating with the parties about the procedure and being responsive to any questions. Furthermore nearly all the users of the system noted that while their participation in the process may have been difficult due to disagreements between the parties, some positive outcomes were reached as a result of the proceedings.

### Box 1. Outcomes of specific instances handled by the Swiss NCP

Out of the 17 specific instances submitted to the NCP, 11 were accepted for further examination at the initial assessment stage,<sup>34</sup> five were not accepted,<sup>35</sup> one was withdrawn by the submitter before initial assessment<sup>36</sup>

Out of the five specific instances not accepted for further examination:

- One was not accepted as it was deemed to be missing an ‘international dimension.’<sup>37</sup> In reaching this conclusion the NCP consulted with the OECD Investment Committee on this issue.
- One was not accepted as the issues raised were not related to a Swiss-based enterprise and the party raising the issue misrepresented itself and its relationship to the issue in the matter.<sup>38</sup>
- One was not accepted because it would not have contributed to the purposes of the Guidelines because the submitting party refused to provide additional information and to participate in a possible dialogue led by the NCP.<sup>39</sup>
- One was not accepted as the issues in question arose 10 years prior and had been treated in several legal proceedings and dismissed.<sup>40</sup>

<sup>34</sup> Nestle and IUF (Russia) (2008); Nestle and IUF (Indonesia)(2008); Triumph and Triumph International Thailand Labour Union, et al. (2009); Paul Reinhart AG and ECCHR Berlin (2010); Ecom Agroindustrial Corp and ECCHR Berlin (2010); Louis Dreyfus Commodities Suisse and ECCHR Berlin (2010); Glencore International AG and Berne Declaration, et al. (2011); Holcim and Pragatisheek Cement Shramik Sangh (PCSS) (2012); Holcim and Institute for Policy Research and Advocacy ELSAM, et al. (2015); FIFA and BWI(2015); Survival International and WWF (2016)

<sup>35</sup> Swatch and SMUV, UNIA (2004); Panalpina and Free Congo/Krall Metal Congo (2005); Nestle and Baby Milk Action (2009); Societe Generale de Surveillance (SGS) and Le collectif des anciens travailleurs de SGS Morila/Bougouni/Sikasso (2015); FIFA and ADHRB (2016).

<sup>40</sup> Nestle and IUF (2009)(India)

<sup>37</sup> Swatch and SMUV, UNIA (2004)

<sup>38</sup> Panalpina and Free Congo/Krall Metal Congo (2005)

<sup>39</sup> Nestle and Baby Milk Action (2009)

<sup>40</sup> Societe Generale de Surveillance (SGS) and Le collectif des anciens travailleurs de SGS Morila/Bougouni/Sikasso (2015)

- One was not accepted because the OECD Guidelines were not applicable to the responding party in the specific circumstances.<sup>41</sup>

Of the 11 cases accepted for further examination, the parties agreed to participate in mediation in 10 of the cases. Two of these cases are currently undergoing mediation<sup>42</sup> and for one case the mediation is being prepared<sup>43</sup>. The remaining seven cases accepted for further examination were concluded at the time of writing and all resulted in some level of agreement:

- In one case agreement was reached in a parallel process outside of the NCP specific instance proceeding.<sup>44</sup>
- In three cases partial agreement was achieved through the specific instance proceeding.<sup>45</sup>
- In three cases agreement was achieved through the specific instance proceeding.<sup>46</sup>

### **NCP Procedural Instructions**

The NCP procedural instructions were issued in October 2011 and a revised version (currently in use) was published in November 2014. The procedural instructions have been available on the NCP website since 2013.

#### ***Submission of specific instances***

The NCP procedural instructions state who can bring a specific instance and which NCP should be contacted. The procedural instructions also list the information that should be included in a submission including:

- Details of the party raising the issues and of the multinational enterprise concerned; and
- Explanation of the issue and its link to relevant chapter(s) of the Guidelines and the multinational enterprise(s) concerned.

Under the NCP procedural instructions the NCP confirms receipt of the submission in writing within ten working days, informs the submitter that the complaint will be shared with the enterprise and notifies the enterprise concerned. The NCP contacts the enterprise headquarters to identify the relevant contact with whom to share the complaint. The enterprise is then given the opportunity to respond and is informed that the answer given will be communicated to the party that has raised the specific instance. Generally the NCP then also shares the enterprise's response with the submitter for their comments.

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<sup>41</sup> FIFA and ADHRB (2016)

<sup>42</sup> Holcim and Institute for Policy Research and Advocacy ELSAM, et al. (2015); FIFA and BWI (2015).

<sup>43</sup> WWF and Survival International (2016)

<sup>44</sup> Nestle and IUF (Russia) (2008)

<sup>45</sup> Nestle and IUF (Indonesia) (2008); Glencore International AG and Berne Declaration, et al. (2011); Holcim and Pragatisheek Cement Shramik Sangh (PCSS) (2012).

<sup>46</sup> Paul Reinhart AG and ECCHR Berlin (2010); Ecom Agroindustrial Corp and ECCHR Berlin (2010); Louis Dreyfus Commodities Suisse and ECCHR Berlin (2010)



In parallel, the NCP Secretariat assembles an ad hoc working group to support the specific instance proceeding. As noted above participants to the ad hoc working groups are selected based on the theme(s) raised in the complaint. The NCP Secretariat, where relevant, also informs the Swiss embassy in the country where the issues in question arose. Embassies can sometimes facilitate the process by arranging a face to face meeting with parties in country to collect additional information and report back to the NCP Secretariat as necessary.

Once a submission is filed and communicated amongst the parties the NCP invites the parties involved to take part in a meeting with the NCP Secretariat, either individually or together, in order to explain the role of the NCP and discuss how to proceed. During this meeting the ad hoc working group may also be present with the NCP Secretariat and the parties. Former users of the system who were present at the on-site visit stated they did not participate in initial face-to-face meetings and did not meet members of the ad hoc working groups, although all stated that the process was adequately explained to them by the NCP Secretariat.

### ***Initial assessment***

The NCP procedural instructions include a list of criteria to take into account when making an initial assessment of whether a submission merits further examination. In addition to criteria set out in the Procedural Guidance,<sup>47</sup> there is an additional requirement that sufficient evidence related to the alleged breach of the Guidelines must be provided.

Initial assessments are based on the information provided by the original complaint, the enterprise's response to the complaint and additional information which the NCP can obtain from other parties, including members of the ad hoc working group, embassies or government contacts on the ground.

The initial assessment is drafted by the NCP Secretariat and then reviewed and revised if necessary by the ad hoc working group. Consensus is needed among the ad hoc working group with respect to outcomes of initial assessments. On one occasion not all participants in the ad hoc working group agreed initially and the matter was discussed until consensus was reached.

Initial assessments are also presented to the Advisory Board. Depending on the timing of the specific instance proceeding, this may occur after the statements are already completed or before they are completed, in which case the opinion of the Advisory Board may be taken into account with respect to procedural issues.

Both the NCP and parties to specific instance procedures have noted that the length of proceedings represents a challenge and that shortening or streamlining procedures could be useful.

The NCP could consider trying to streamline the phase of the process from submission of a complaint to initial assessment in order to minimize the length of proceedings. Part of this streamlining could be achieved through reviewing the role of the ad hoc working group (as noted above), to either take a leading role in specific instance proceedings or provide advice as needed on an ad hoc basis. The NCP could consider what other aspects of the process could be eliminated or shorted at this phase, including whether initial assessments could be concluded based only on the information provided by the parties. Clearly indicating the required information and format for specific instance submissions through providing submission templates, example submissions, or additional instructions on submitting a specific instance can also help to avoid delays caused by

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<sup>47</sup>

OECD Guidelines for Multinational Enterprises (2011), Commentary on Procedural Guidance, para. 25

requests for additional information or clarification with respect to submissions containing insufficient information.

### *Use of good offices*

The NCP procedural instructions provide that the NCP's main task is to facilitate communication between the parties and provide a discussion forum for the parties to agree on the essential facts of the case, consider the Guidelines, and discuss possible solutions.

The NCP may lead the discussions itself or engage an external mediator. This decision is flexible although since 2010, all specific instances which have gone to mediation (seven specific instances)<sup>48</sup> have used an external mediator. In one of these specific instances an external mediator oversaw the first meeting between the parties but the second meeting between the parties was overseen by a member of the NCP Secretariat. The staff of the NCP Secretariat includes a former professional mediator. However the NCP has noted that use of an external mediator helps to protect the impartiality of the process.

In 2015, the Advisory Board created a set of criteria for the selection of professional external mediators which includes knowledge of the Guidelines and the NCP. See Annex III. Both parties must formally approve the appointed mediator. The NCP generally provides parties with several options and selects the mediator that both parties agree to.

Prior to mediation the NCP Secretariat has a briefing with the mediator to explain the Guidelines and discuss expectations and possible outcomes of mediation. The mediator receives a written documentation, which is explained in a meeting. The documentation includes at least:

- Information on the specific instance procedure
- Submission
- Initial Assessment
- Correspondence with parties
- Draft terms of reference for dialogue
- Draft contract for mediator

During the mediation meetings with the parties a member of the NCP Secretariat is also present to assist the mediator mainly with respect to procedural issues, but if necessary also with understanding the application of the Guidelines. The freedom of information laws of Switzerland do not oblige the NCP member which participates in the mediation to disclose the outcome of mediations.

Prior to mediation a terms of reference is also agreed to between the parties. A standard terms of reference (see Annex VI) is usually built upon and modified as needed by the parties and covers the objective, the scope of mediation, process, issues to be discussed, expected results, confidentiality provisions, as well as details as to who will participate in the mediation and the timing and location of the meetings. The terms of reference are generally signed by both parties, the mediator and the NCP

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<sup>48</sup> Paul Reinhart AG and ECCHR Berlin (2010); Ecom Agroindustrial Corp and ECCHR Berlin (2010); Louis Dreyfus Commodities Suisse and ECCHR Berlin (2010); Glencore International AG and Berne Declaration, et al. (2011); Holcim and Pragatisheek Cement Shramik Sangh (PCSS) (2012); Holcim and ELSAM (2015); FIFA and BWI (2015)

Secretariat. The terms of reference also define how meetings are summarised and how final statements are elaborated.

The NCP Secretariat and participants to the specific instance process have noted that it is preferable to avoid spending a long amount of time negotiating terms of reference as this can distract from the mediation itself. Having a template helps mitigate the risk of protracted negotiation of terms of reference.

The NCP has noted that unrealistic expectations regarding possible outcomes by submitters of specific instances are an ongoing challenge. In response to this challenge mediators are asked to communicate possible realistic outcomes for both parties at the beginning of the procedure in order to manage expectations.

The NCP procedural instructions note that parties are not obliged to participate in discussions (or mediation). Of the 11 specific instances accepted for further examination, 10 went to mediation and one did not because the parties could not agree on the terms of reference for the mediation offered.<sup>49</sup>

Discussions normally take place at the premises of the NCP in Bern. The language spoken during the proceedings is determined by the NCP in advance within the terms of reference.

Costs of mediation are borne by the NCP. Also the NCP procedural instructions allow that the NCP can provide the parties with financial assistance in well-founded exceptional cases. To date no financial assistance has been provided to parties to a specific instance, however it has only been requested once and in that instance the parties found other means to finance their participation.

The NCP has identified language constraints and the costs to parties of attending mediation meetings at the premises of the NCP as a challenge, specifically with respect to issues arising in non-adhering countries. These challenges were also noted by various stakeholders and participants to the process who noted that cost barriers prohibited participation in the process by parties based outside Switzerland such as local communities or worker organisations in developing countries.

The NCP has attempted cost saving mechanisms such as video meetings, as well as engaged its local contacts at embassies to try and overcome some of these barriers.

At the conclusion of mediation the mediator develops a report describing the outcome of the mediation. This report is signed by parties but is not meant to represent a contract or formal agreement amongst the parties.

## ***Reports and statements***

### *Initial assessments*

Under the NCP procedural instructions once the initial assessment phase has been completed, the NCP provides a written report stating whether or not the specific instance will be accepted (the initial assessment report).

The NCP began publishing initial assessments in 2014 in an attempt to promote transparency as well as in response to frequent campaigning to ensure that objective and accurate information about the status of the specific instance is in the public domain. Since the introduction of the revised NCP

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<sup>49</sup>

Triumph International and Triumph International Thailand Labour Union et. al (2009)

procedural instructions in 2014, initial assessment reports have been published for all specific instances and are available on the website of the NCP.

### *Final statements*

As set out in the NCP procedural instructions:

- If the NCP decides the issues raised do not merit further consideration it publishes an explanation and a summary of the main reasons for its decision on the website of the NCP.
- If the parties reach an agreement and find a solution to the dispute or a further means of resolving the dispute, the NCP publishes a final statement. Information on the results of the discussion is only included in the published statement with the express consent of the parties involved.
- If no agreement is reached or if one of the parties is not willing to take part in the proceedings, the NCP also makes this information publicly available in a final statement. The statement includes a summary of the reasons why no agreement was reached.

The NCP develops final statements for specific instances that reach mediation based upon on the report developed by the mediator. Parties to the specific instance are asked to indicate which parts of the report can be included in final statements. Out of the seven final statements published by the NCP only one includes some indication of actual actions agreed to between the parties.<sup>50</sup> Publishing this information could promote further transparency of the procedure, better advertise positive outcomes as well as help ensure parties implement the agreements. Under the current procedural instructions parties must agree to what is included in a final statement with respect to the content of their agreements, in line with the Procedural Guidance of the OECD Guidelines. The NCP should make efforts to encourage the parties to report agreed to actions relevant to better observing the Guidelines to ensure that relevant content is reported and that outcomes of specific instance processes are better monitored.

The NCP procedural instructions specify that the task of the NCP is to encourage discussion between the parties involved rather than establish whether or not a breach of Guidelines has taken place. The NCP does not make determinations in its specific instance statements.

The NCP procedural instructions provide that the NCP may include recommendations for implementation of the Guidelines in its statements. The NCP publishes recommendations in instances where parties do not manage to resolve the issue. Three out of the seven published final statements include recommendations from the NCP.<sup>51</sup> Recommendations to date have been quite general (i.e. that the parties continue to engage, that the terms of an agreement are respected) and do not provide guidance on how enterprises can better observe the recommendations of the Guidelines. The NCP should include recommendations about the implementation of the Guidelines, as appropriate, in its final statements.<sup>52</sup>

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<sup>50</sup> See final statement for Nestle and IUF (Indonesia) (2008), which states that the parties committed to include wage scales in their 2010-2011 collective bargaining agreement.

<sup>51</sup> Nestle and IUF (Indonesia) (2008); Glencore International, et al. (2011); Holcim and Pragatisheek Cement Shramik Sangh (PCSS) (2012);

<sup>52</sup> OECD Guidelines for Multinational Enterprises (2011), Commentary on the Procedural Guidance for NCPs, para 35

Under the NCP procedural instructions, before the final statement is issued, the NCP gives the parties the opportunity to comment on a draft statement. Parties are asked to comment on the facts but not the substance. If there is no agreement between the NCP and the parties about the wording of the statement, the NCP makes the final decision.

Final statements have been published for all specific instances accepted for further examination and are available on the website of the NCP. Statements have been published for all specific instances not accepted for further examination since the introduction of the revised NCP procedural instructions in 2014 and are available on the website of the NCP.

Several stakeholders noted that final statements could be made more substantive in order to demonstrate the full added value of the NCP process to civil society and other parties, to encourage greater use of the specific instance mechanism. This could be achieved by including more meaningful recommendations in statements, as well as including more information on the content of agreements between parties as discussed above.

Furthermore, stakeholders have also noted that publication of statements on the website often goes unnoticed. The NCP could consider means by which final statements could be more widely disseminated.

#### **Box 2. ECOM and ECCHR Berlin (NGO)**

In October 2010 the Swiss NCP received a request for review from the NGO European Center for Constitutional and Human Rights (ECCHR) alleging that Ecom Agroindustrial Corp. Ltd., a Swiss multinational enterprise, had not observed the general policies, and employment and industrial relations provisions of the Guidelines in Uzbekistan. More specifically it was alleged that there was the possible presence of child labour in the company's cotton supply chain. This was one of three submissions that the Swiss NCP received regarding cotton sourcing from Uzbekistan, the other two concerned Paul Reinhart AG and Louis Dreyfus.

The NCP undertook an initial assessment of the specific instance and concluded that it merited further examination. It contacted the parties involved and offered to facilitate a dialogue so as to reach a resolution. The parties accepted the NCP's mediation offer and, following dialogue and discussions which took place between September and November 2011 the parties reached an agreement on the issues raised.

The specific instances involving Uzbek cotton represent the first for which the NCP employed an external mediator. A party to the proceedings noted that the specific instance was well handled and that the NCP clearly explained the procedures and was responsive to the parties involved. However it was also noted that the fact that the NCP only publishes information expressly consented to by both parties in the final statements deprives final statements of meaningful substance. None of the final statements for the specific instances about cotton sourcing from Uzbekistan (ECOM Paul Reinhart AG and Louis Dreyfus) describe what, substantively, was agreed to amongst the parties and none provide recommendations on how the enterprises could behave more responsibly (e.g. through improving their supply chain due diligence etc.).

#### *Follow up*

The NCP procedural instructions provide that in consultation with the parties, the NCP may envisage specific follow-up activities. Six of the seven final statements include references to follow up. In two of these specific instances follow-up was to be undertaken by the NCP and in four follow up was undertaken by an external party as agreed by the parties to the specific instance.<sup>53</sup> Where

<sup>53</sup> Nestle and IUF (Indonesia)(2008); Paul Reinhart AG and ECCHR Berlin (2010); Ecom Agroindustrial Corp and ECCHR Berlin (2010); Louis Dreyfus Commodities Suisse and ECCHR Berlin (2010); Glencore International AG and Berne Declaration, et al. (2011); Holcim and Pragatisheek Cement Shramik Sangh (PCSS) (2012)

agreement is reached through mediation, the NCP Secretariat also asks parties to report back in six months on the outcomes of their agreement. This process was introduced in 2014. These reports are not published so as to ensure the process is not reopened.

The NCP could consider more systematic follow up to recommendations and/or agreements reached in specific instances. For example, it could provide guidance or recommendations about how agreements between parties resolving specific instances can be implemented and provide feedback on implementation when parties report on the outcomes of their agreements.

### *Feedback to the NCP*

Under the NCP procedural instructions, upon conclusion of the proceedings the NCP provides the parties with a questionnaire to capture feedback on the procedure (see Annex VII for template questionnaire). This questionnaire allows the parties to assess the work carried out by the NCP and to suggest improvements. It also allows the NCP to evaluate the process and record other outcomes which may otherwise be difficult to capture. This process was introduced in 2014 and to date only one questionnaire has been completed (see Box 3 below for further information).

#### **Box 3. Holcim and Pragatisheel Cement Shramik Sangh (PCSS) (2012)**

In January 2012, the Swiss NCP received a submission from the trade union Pragatisheel Cement Shramik Sangh (PCSS) alleging that ACC Limited and Ambuja Cement Limited, controlled by Holcim Group, had not observed the general policies, human rights, and employment and industrial relations provisions of the Guidelines in India. The NCP accepted the submission for further examination and offered its good offices to the parties, which was accepted by both parties. Two mediation meetings took place in September 2013 and October 2014. The mediation resulted in partial agreement between the parties.

In a feedback form completed by IndustriALL, the international trade union representing PCSS in the proceeding, it was noted that while the NCP provided excellent mediation it focused very much on facilitating discussion rather than analysing the issues in question or proposing possible solutions.

During the on-site visit representatives from IndustriALL as well as Holcim noted that the specific instance proceeding was a constructive process that led to positive results, including improved relationships between the parties. They also noted that the NCP had acted professionally in handling the specific instances, although the length of the procedure, which lasted nearly three years, presented challenges in coming to a meaningful agreement and avoiding adverse impacts on the ground.

### *Timeliness*

The NCP procedural instructions provide three months for initial assessments. In addition, other deadlines may be determined in the terms of reference for mediation developed for each mediation. Deadlines are handled with a certain degree of flexibility taking into account the complexity of cases.

Since 2010, initial assessments took over three months for eight<sup>54</sup> of the nine specific instances which underwent initial assessment. Information about the dates of initial assessment was not

<sup>54</sup> Paul Reinhart AG and ECCHR Berlin (2010); Ecom Agroindustrial Corp and ECCHR Berlin (2010); Louis Dreyfus Commodities Suisse and ECCHR Berlin (2010); Glencore International AG and Berne Declaration, et al. (2011); Holcim and Pragatisheel Cement Shramik Sangh (PCSS) (2012) ; Societe Generale de Surveillance (SGS) and Le

included in the final statements for specific instances prior to 2010 and is therefore not publically available. In 15 of the 16 closed specific instances,<sup>55</sup> the NCP closed the specific instance within 19 months of the submission of a complaint.

The NCP has identified meeting the deadlines of specific instance procedures as a principal challenge in handling specific instances due to the complexity of cases. Early users of the system noted some dissatisfaction with the length of the process but likewise recognised that this has been improved by the NCP, specifically through the introduction of timeframes within their procedural instructions. Streamlining the process from submission of the specific instance to the conclusion of the initial assessment as described above may assist in improving the timeliness of proceedings.

#### **Box 4. Nestle and IUF (Russia, Indonesia, India)**

From 2008-2009 the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Association (IUF) brought several specific instances concerning Nestle to the Swiss NCP. All of the specific instances raised issues under the employment and industrial relations provisions of the Guidelines, more specifically the issues in question concerned the right to collective bargaining and, in particular, to negotiation of wages.

Parties to the case noted that the NCP clearly and professionally communicated with them about the specific instance process. It was noted that delays in the proceedings, particularly during the initial assessment phase, decreased the effectiveness of the proceedings. It was also recognised that issues with delays in proceedings has been largely addressed with the introduction of indicative timeframes, but that efforts should be made to organise mediation as soon as possible after the submission of a complaint. The representative from IUF also noted that final statements are one of the most useful outcomes of the specific instance process and therefore should be drafted to be as impactful as possible.

#### *Confidentiality and Transparency*

Under the NCP procedural instructions the NCP makes clear that all written information received will be shared with the other parties involved, unless there are valid reasons for information to be retained (e.g. enterprise confidentiality). Furthermore, unless there is good reason not to do so (e.g. protection of individuals), the NCP publishes the names of the parties involved in its written statement. To date, the NCP has included the names of the parties involved in all of the written statements it has published.

Under the NCP procedural instructions, results of the discussions are recorded in writing and made available to the parties, however parties are subject to confidentiality rules with respect to the proceedings.

The NCP procedural instructions provide that procedures will remain confidential during the mediation process. This means that any information or opinions expressed by a party during specific instance proceedings remain confidential, unless that party expressly states that they may be made public. Details with regard to confidentiality rules are also agreed in the terms of reference for the proceedings.

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collectif des anciens travailleurs de SGS Morila/Bougouni/Sikasso (2015); FIFA and BWI (2015) ; FIFA and ADHRB.

<sup>55</sup> The exception was Holcim and Pragatisheek Cement Shramik Sangh (PCSS) (2012) which was closed within nearly three years.

The NCP procedural instructions note that at the start of the proceedings, the NCP highlights the need for confidentiality set out in the Guidelines. It informs the parties that it reserves the right to stop the proceedings if either one of the parties does not respect this confidentiality. To date, the NCP has not yet had to invoke this provision.

### *Campaigning*

The NCP also seeks to explain the possible negative consequences of public campaigning during the mediation process to the parties. The NCP noted that external campaigning is an ongoing challenge in handling specific instances and described two occasions where campaigning created difficulties in encouraging dialogue amongst the parties.<sup>56</sup> However in both cases the specific instances were resolved with partial agreement between the parties.

### *Parallel proceedings*

The NCP procedural instructions note that ongoing or concluded parallel legal proceedings will not prevent the NCP from accepting a specific instance. In each case the NCP assesses whether or not an offer to mediate would make a positive contribution to the resolution of the issues raised or if it would prejudice either of the parties involved in other proceedings.

To date the NCP has referenced concluded parallel legal proceedings as a reason for not accepting a specific instance for further examination on one occasion.<sup>57</sup> In this case the issues in question had arisen 10 years prior and had already been adjudicated by domestic courts.

### *Cooperation with other NCPs*

According to the NCP procedural instructions where a specific instance concerns more than one NCP, the NCPs concerned decide which of them will assume the lead for the specific instance. If the Swiss NCP is not responsible for a particular case, it forwards the specific instance to the responsible NCP and informs the party that has raised the instance. If the multinational enterprise has a connection with Switzerland, the Swiss NCP will provide or offer appropriate support to the responsible NCP as requested.

The NCP has handled two specific instances with the help of supporting NCPs.<sup>58</sup>

When acting as a supporting NCP, the Swiss NCP will follow the lead NCP with respect to how active a role to take. The NCP has one final statement on its website which describes its own role as a supporting NCP on a specific instance that was led by the NCP of Australia. According to the final statement, the Swiss NCP attended a meeting with the stakeholders involved in London where it was decided that the Australian NCP would take the lead on the case. Subsequently the Swiss NCP kept close contact with the Australian NCP and reported on the conclusion of the specific instance.<sup>59</sup>

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<sup>56</sup> Glencore International, et al. (2011); Holcim and Pragatisheek Cement Shramik Sangh (PCSS) (2012);

<sup>57</sup> Societe Generale de Surveillance (SGS) and Le collectif des anciens travailleurs de SGS Morila/Bougouni/Sikasso (2015)

<sup>58</sup> Canada in Glencore International AG and Berne Declaration et al. (2011); Germany and Austria in Panalpina and Free Congo/Krall Metal Congo (2005)

<sup>59</sup> See Final Statement El Corejon, Colombia (2009), [www.seco.admin.ch/seco/en/home/Aussenwirtschaftspolitik\\_Wirtschaftliche\\_Zusammenarbeit/Wirtschaftsbeziehungen/NKP/Statements\\_zu\\_konkreten\\_Faellen.html](http://www.seco.admin.ch/seco/en/home/Aussenwirtschaftspolitik_Wirtschaftliche_Zusammenarbeit/Wirtschaftsbeziehungen/NKP/Statements_zu_konkreten_Faellen.html)



Additionally, the NCP could be more active in coordinating with other NCPs on substantive issues. As noted, in recent times several complex specific instances have been submitted to the Swiss NCP, several which have required the NCP to consider how MNEs should be interpreted under the Guidelines. Conclusions on these issues were reached based on the advice of the Advisory Board. As these interpretations may create a general level of expectation with respect to how other NCPs should handle similar specific instance submissions in the future, it would be useful to consult broadly with other NCPs as well as the OECD Secretariat, including through the channels allowed for in the Guidelines as appropriate, when important questions of interpretation are being considered in the context of specific instances.

### *Requests for clarification*

The NCP has previously asked the OECD Secretariat for clarification or guidance on issues related to specific instances. On one occasion the NCP asked the Investment Committee for clarification regarding a specific instance which did not have an international dimension which resulted in a report on this issue by the Chair of the Investment Committee.<sup>60</sup>

	Findings	Recommendations
3.1	The NCP as well as users of the system have identified the length of specific instance proceedings as an ongoing challenge.	The NCP could consider streamlining processes, specifically with respect to information gathering during the phase between submission and initial assessment to reduce the time involved
3.2	Several stakeholders noted that final statements could be made more substantive in order to demonstrate the full added value of the specific instance mechanism to civil society and other parties, to encourage greater use of the specific instance mechanism.	The NCP could consider developing final statements which include more meaningful recommendations and make efforts to encourage the parties to report agreed to actions relevant to better observing the Guidelines.

<sup>60</sup>

The Chair's report is available at: [www.oecd.org/daf/inv/mne/35387363.pdf](http://www.oecd.org/daf/inv/mne/35387363.pdf).

## ANNEXES

### ANNEX 1: LIST OF ORGANISATIONS WHICH RESPONDED TO THE NCP PEER-REVIEW QUESTIONNAIRE

Alliance Sud  
BIAC  
Building and Wood Workers' International  
Defend Job Philippines  
ECOM Agroindustrial Corp. Ltd.  
Economiesuisse  
European Center for Constitutional and Human Rights  
fast4meter  
Federal Department of Foreign Affairs (Sectoral Foreign Policies Division, Human Security Division)  
FIFA  
Glencore  
Global Compact Network Switzerland  
IndustriALL (former ICEM)  
Lafarge Holcim  
OECD Watch  
Public eye (formerly Berne Declaration)  
SECO (Labour Directorate, International Labour Affairs)  
Society for Threatened Peoples Switzerland  
Swiss Agency for Development and Cooperation (SDC), Federal Department of Federal Affairs  
Swiss Employers Confederation  
Swiss Export Credit Agency, SERV  
Swiss Federation of Small and Medium Enterprises  
SwissHoldings  
TopikPro  
Travail.Suisse  
UBS  
University of St. Gallen, Institute for Business Ethics

## ANNEX 2: LIST OF ORGANISATIONS WHICH PARTICIPATED IN THE PEER REVIEW

### Business representatives and business and other associations

SwissHoldings  
Economiesuisse  
Swiss Federation of SMEs  
UBS  
Syngenta  
FIFA  
ECOM Agroindustrial Corp Ltd.  
Holcim  
Nestlé

### Trade Unions and working organisations

Swiss Association of Trade Unions  
Travail.Suisse  
TUAC  
IndustriALL Global Union  
International Union of Food, Agricultural, Hotel, Restaurant, Catering,  
Tobacco and Allied Workers' Association - IUF

### Civil society

Society for threatened peoples - CH  
Alliance Sud  
Public Eye; former Berne Declaration  
OECD Watch

### Government

Federal Department of Foreign Affairs, Sectoral Foreign Policies  
Division  
Federal Department of Foreign Affairs, Human Security Division  
Federal Department of Foreign Affairs, Swiss Agency for  
Development and Cooperation  
Federal Office for the Environment  
SECO, International Labour Affairs  
SECO, Bilateral Economic Relations  
SECO, Export and Investment Promotion  
SECO, Economic Cooperation and Development, Trade Promotion  
Swiss Export Risk Insurance  
Federal Office of Construction and Logistics

### Other

Professional Mediator  
University of Zurich

### **ANNEX 3: CRITERIA FOR SELECTION OF EXTERNAL MEDIATORS**

*Preliminary remark: These criteria are indicative and not a cumulative requirement. They have been established based on the discussions of the NCP Advisory Board.*

- Mediation training<sup>61</sup> and/or practical mediation experience
- Working experience in issues concerning responsible business conduct
- Working experience abroad
- Mediation experience concerning engagement with private sector actors and NGO/trade unions (e.g. experience with stakeholder engagement)
- Know-how about the local context / culture of concerned area
- Language and communication skills
- Know-how about the OECD Guidelines and the NCP mechanism
- Know-how about the concerned industry sector (e.g. specific challenges)
- Neutrality concerning the issues raised and the parties (absence of conflict of interest; the mediator pledges not to give testimony or represent a party in a possible judicial process related to the specific instance)
- Availability (time)
- Acceptance by all parties

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<sup>61</sup>

No requirement of a specific diploma.

#### **ANNEX 4: PROMOTIONAL EVENTS ORGANISED BY THE SWISS NCP IN 2016**

- Implementation of the CSR Action Plan (Berne, 28 January 2016): Information and dialogue regarding the implementation of the CSR Action Plan including the OECD Guidelines with around 40 stakeholders from business, NGO, trade unions, Federal administration and academia.
- Brown Bag Lunch at SECO (Berne, 16 February 2016): Presentation of the NCP and its ongoing specific instance proceedings for around 100 public servants from SECO.
- Swiss Sustainable Finance (Zürich 9 March 2016): Public event addressing how new soft and hard law requirements challenge the financial sector; information and panel discussion, including presentation of a representative of the NCP, with around 100 professionals mainly from business (c.f. [www.sustainablefinance.ch/en/past-ssf-events-\\_content---1--3038.html#anchor\\_SSAXZT](http://www.sustainablefinance.ch/en/past-ssf-events-_content---1--3038.html#anchor_SSAXZT)).
- Swiss Federal Institute of Technology (Zürich, 22 March 2016): Information and discussion on the CSR Action Plan, the Guidelines and sector specific information on commodities with around 30 students from a Master degree program.
- OECD NCPs work and construction sector (London, 15 April 2016): Information and discussion about RBC in the construction sector; a representative of the Swiss NCP shared experiences regarding the handling of a submission related to the construction sector.
- CSR Group of Swissholdings and Economiesuisse (Berne, 28 June 2016): Information and discussion about the CSR Action Plan and the Guidelines with around 25 members of the two business associations.
- Swiss Employers Federation (Schaffhausen, 18 August 2016): Information and discussion about the OECD Guidelines and the NCP with directors of different sectoral and regional associations (around 50 participants).
- Workers and human rights in the construction sector (University of Zurich, 24 August 2016): Presentation of the Guidelines and the NCP and panel discussion with around 10 participating enterprises from the construction sector.

**ANNEX 5: OVERVIEW OF SPECIFIC INSTANCES HANDLED BY  
THE SWISS NCP AS THE LEADING NCP**

	<b>Enterprise</b>	<b>Submitter</b>	<b>Host country<sup>1</sup></b>	<b>Chapter of the Guidelines</b>	<b>Date of submission</b>	<b>Date of closure</b>	<b>Outcome</b>
1	Swatch	SMUV, UNIA (worker organisation)	Switzerland	Employment and Industrial Relations	April 2004	Unknown	Not accepted for further examination due to the fact that the submission was missing an international dimension.
2	Panalpina	Free Congo/Krall Métal Congo (NGO)	DRC	Various	17 May 2005	Unknown	Not accepted for further examination as the issues raised were not in any relevant way related to a Swiss-based enterprise or to the OECD Guidelines.
3	Nestlé	International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Association (IUF) (worker organisation)	Russia	Employment and Industrial Relations	11 Feb 2008	11 June 2008	Concluded with agreement reached external to the NCP process.
4	Nestlé	International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Association (IUF) (worker organisation)	Indonesia	Employment and Industrial Relations	22 Oct 2008	24 July 2010	Concluded with partial agreement between the parties.
5	Nestlé	International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Association (IUF) (worker organisation)	India	Employment and Industrial Relations	11 May 2009	05 February 2010	Withdrawn by submitter prior to initial assessment.
6	Nestlé	Baby Milk Action (NGO)	Various	Various	11 June 2009	Unknown	Not accepted for further examination as the handling of the specific instance would not have contributed to the purposes of the OECD Guidelines.
7	Triumph International	Triumph International Thailand Labour Union, et al. (worker organisation)	Thailand / Philippines	Employment and Industrial Relations	02 Dec 2009	14 January 2011	Concluded without agreement between the parties as there was no agreement on the terms of reference for the mediation.
8	Paul Reinhart AG	ECCHR Berlin (NGO)	Uzbekistan	Employment and Industrial Relations, Human Rights	22 Oct 2010	07 March 2012	Concluded with agreement between the parties.
9	Ecom	ECCHR Berlin (NGO)	Uzbekistan	Employment and Industrial Relations, Human Rights	22 Oct 2010	22 Dec 2011	Concluded with agreement between the parties.

	Enterprise	Submitter	Host country <sup>1</sup>	Chapter of the Guidelines	Date of submission	Date of closure	Outcome
10	Louis Dreyfus	ECCHR Berlin (NGO)	Uzbekistan	Employment and Industrial Relations, Human Rights	23 Dec 2010	17 Feb 2012	Concluded with agreement between the parties.
11	Glencore International AG	Berne Declaration, et al. (NGO)	Zambia	Taxation	12 April 2011	28 Nov 2012	Concluded with partial agreement between the parties.
12	Holcim	Pragatisheel Cement Shramik Sangh (PCSS) (worker organisation)	India	Employment and Industrial Relations, Human Rights	07 January 2012	18 Dec 2014	Concluded with agreement between the parties.
13	Holcim	Institute for Policy Research and Advocacy ELSAM; Fransiscans International; Sitas Desa; PPAB; KPA; TuK Indonesia; AURIGA (multi-stakeholder consortium)	Indonesia	Concepts and Principles, general policies, human rights	19 March 2015	Ongoing	Accepted for further examination and ongoing.
14	Société Générale de Surveillance (SGS) / Analabs	Le collectif des anciens travailleurs de SGS Morila/Bougouni/Sikasso (individual and worker organisation)	Mali	Employment and Industrial Relations	11 May 2015	18 Nov 2015	Not accepted for further examination as the issues in question arose over 10 years ago and have been treated and subsequently dismissed within several legal proceedings due to lack of sufficient evidence and statute of limitations issues.
15	Fédération Internationale de Football Association (FIFA)	Building and Wood Workers' International (BWI) (worker organisation)	Qatar	General Policies, Human Rights	28 May 2015	Ongoing	Accepted for further examination and ongoing.
16	Fédération Internationale de Football Association (FIFA)	Americans for Democracy and Human Rights in Bahrain (ADHRB) (NGO)	Bahrain	Human rights, General policies	11 Feb 2016	Ongoing	Not accepted for further examination because the OECD Guidelines were not applicable to the responding party in the specific circumstances.
17	World Wide Fund for Nature (WWF) International	Survival International Charitable Trust (NGO)	Cameroon	General policies, Human rights	19 Feb 2016	Ongoing	Accepted for further examination and ongoing.

1. The country where the issues in the specific instance arose.

## ANNEX 6: MEDIATION TERMS OF REFERENCE

### National Contact Point of Switzerland

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#### Terms of reference for mediation

**Specific Instance regarding** [name of the responding party] **submitted by** [name of the submitting party]

[City, Date]

*Confidential*

#### 1. OBJECTIVE

- a. The objective of the mediation is to contribute to a mutually satisfying resolution of the issues raised in the above-mentioned specific instance through discussion between the parties and mutual agreement.
- b. The NCP of [ ] (NCP) will facilitate this mediation.
- c. The specific instance procedure will be concluded by a Final Statement published by the NCP.

#### 2. SCOPE OF MEDIATION

The mediation will be based on the Initial Assessment of 1[date] (see annex) accepting the specific instance for further consideration according to the OECD Guidelines for Multinational Enterprises (the Guidelines). According to the Initial Assessment the NCP has offered to facilitate a mediation on this case.

#### 3. PROCESS

The NCP is working with an external mediator. The process for conducting the mediation will be determined by the mediator in accordance with the procedural guidance of the NCP, the Guidelines and these terms of reference.

The process will include:

- a. the agreement of both parties to the terms of reference;
- b. disclosure of all documents received by the NCP to the mediator;
- c. a mediation between the parties with the aim of contributing to a resolution of the issues raised;
- d. representatives of the NCP will participate in the meetings and assist the mediator if necessary;
- e. the mediator is entitled to contact both parties before and between the mediation meetings for an exploratory exchange or to provide them the opportunity to submit additional information outlining their position on the issues; parties are entitled to contact the mediator for support;
- f. during mediation meetings, parties have the possibility to gather in individual groups for consultation;
- g. the outcome of mediation meetings will be summarized by the mediator and the NCP and submitted to the parties for agreement;
- h. if the mediation is successful, joint conclusions or an agreement between both parties will be drafted by the mediator and the NCP in cooperation with both parties. The parties should address in their agreement how and to what extent the content of the agreement is to be included in the NCP's Final Statement on this specific instance. The NCP will, at least, make



public in a Final Statement whether a mediation could be established and an agreement could be reached.

- i. if the mediation is not successful or one of the parties is not willing to take part in the proceedings, the NCP will close the case and also publish a Final Statement. The statement includes a summary of the reasons why no agreement was reached.

#### **4. ISSUES TO BE DISCUSSED**

The issues to be discussed are based on the Initial Assessment of [date] (see annex). They refer to [according to the specific instance] with respect to the provisions of Chapter [number and title], [number and title] and [to be completed according to the Initial Assessment] of the Guidelines: [to be completed according to the Initial Assessment]

#### **5. EXPECTED RESULTS**

- a. Mutual understanding and, if needed, clarification on the issues raised in the submission.
- b. Joint conclusions or an agreement between both parties drafted by the mediator and the NCP in accordance with both parties. The parties should address in their agreement how and to what extent the content of the agreement is to be included in the NCP's Final Statement on this specific instance. Possible disagreement is as well reported.
- c. Depending on the outcome of the discussions, comply with further activities (e.g. specific follow-up activities) agreed during the proceedings.

#### **6. CONFIDENTIALITY**

In order to establish an atmosphere of trust, parties concerned agree to maintain confidentiality:

- a. In accepting these terms of reference, the parties agree to abstain from disclosing or commenting on any information and on views provided during the proceedings by the other party or the mediator on the content of this specific instance (such as documents or copies of process-related documents, etc.) except as may be contained in the Final Statement or as the other party might agree.
- b. If sensitive business information is provided or discussed during the meetings of the NCP, special requirements concerning the treatment of confidential information can be agreed upon by the parties involved in this specific instance.
- c. After completion of the proceedings, parties concerned remain committed to treat information received during the proceedings confidentially and not to disclose or comment on it by any means or through others unless both parties have agreed to such a disclosure.
- d. The specific instance will be concluded by a Final Statement issued by the NCP. No other public communication will be made by the NCP or the mediator during or after the proceedings.
- e. If the parties concerned reach agreement on the issues raised, the parties should address in their agreement how and to what extent the content of the agreement is to be included in the Final Statement of the NCP. If the parties concerned have not reached an agreement on the issues raised, information and views provided during the proceedings by the other party will remain confidential, unless the other party agrees to their disclosure.
- f. The above mentioned confidentiality rules apply to all members and related parties.
- g. If these provisions are breached by a party, the NCP will discontinue the proceedings and state the reason in its Final Statement.

#### **7. PARTICIPATION**

The following persons will participate in the mediation meetings:

- a. Submitting party: [name]

[names of participating persons]

- b. Responding Party: [name]  
[names of participating persons]
- c. Mediator:
  - [name]
- d. NCP:
  - [name]

**8. TIMING/LOCATION**

- a. The mediation will begin after the approval of the terms of reference by all parties and will aim to conclude within [number] months.
- b. The mediation meetings will take place at the premises of the NCP in [city], [address].
- c. Date of the first meeting: [date]
- d. During this meeting, the parties will decide with the mediator on the opportunity of (a) further meeting(s) and, if necessary, on the possible dates of such a meeting.

**9. LANGUAGE**

- a. All discussions and communication will take place in [language].
- b. The NCP cannot provide for any translation of documents.
- c. The Final Statement will be published in [language] on the NCP's website and be transmitted to the OECD Secretariat, pursuant to the standard procedure.

**10. ANNEXE**

Initial Assessment [title, date]

[to be signed by:]

For the submitting party For the responding party

[Names]

[Names]

Mediator

For the NCP

[Names]

[Names]

## ANNEX 7: TEMPLATE FEEDBACK QUESTIONNAIRE FOR PARTIES TO A SPECIFIC INSTANCE

### National Contact Point of Switzerland

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#### Feedback to the Swiss National Contact Point for the OECD Guidelines for Multinational Enterprises (Swiss NCP)

**Please fill in before answering the questions:**

Your name, organization and function:

Concerned NCP case:

Your role in concerned NCP case:

Date:

#### A) GENERAL INFORMATION

This request for feedback provides the participating parties with the possibility to share their experiences with the Swiss NCP. It also has the aim of helping the NCP improve its practices for new “specific instances” (cases), by learning from past cases. The feedback form is sent to parties 3 to 6 months after the end of a procedure at the Swiss NCP. Participation in this survey is voluntary, but the NCP encourages parties to share their experiences.

#### Confidentiality

Please tell us if part or all the information shared in this feedback form is to be kept confidential and reply to the following questions:

- 1) Can the information provided be shared with the other party involved in the same specific instance?
  - a) Yes
  - b) No
  - c) If only partially, please specify the questions that cannot be shared:
  
- 2) Can the information provided be shared with the multi-stakeholder advisory board of the Swiss NCP?
  - a) Yes
  - b) No
  - c) If only partially, please specify the questions that cannot be shared:

Answers to the subsequent questions: If your response to a question is “no”, please provide additional information or a specific example, which helps us to better understand the response. If the answer is “yes”, additional information or a specific example is also appreciated.

## **B) CONTRIBUTION OF THE NCP TO THE RESOLUTION OF ISSUES AND CORE CRITERIA FOR THE FUNCTIONAL EQUIVALENCE IN THE ACTIVITIES OF NCPs<sup>62</sup>**

*“The National Contact Point will contribute to the resolution of issues that arise relating to implementation of the Guidelines in specific instances in a manner that is impartial, predictable, equitable and compatible with the principles and standards of the Guidelines.”<sup>63</sup>*

### **Predictability of the NCP and conformity with the Procedural Guidance of the Swiss National Contact Point**

- 3) In your opinion, did the Swiss NCP act in conformity with its own Procedural Guidance (the version in force at the time the complaint was received)?
  - a) Yes
  - b) No
  - c) Please share any other comments:

### **Compatibility with the principles and standards of the Guidelines**

- 4) In your opinion, was the action of the Swiss NCP compatible with the principles and standards of the Guidelines?
  - a) Yes
  - b) No
  - c) Please share any other comments:

### **Impartiality and Equitability**

- 5) In your opinion, did the Swiss NCP treat this specific instance impartially and equitably?
  - a) Yes
  - b) No
  - c) Please share any other comments:

### **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.”*

- 6) Given the above description of these criteria, is the Swiss NCP accessible for external parties?
  - a) Yes
  - b) No
  - c) Please share any other comments:

### **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 offices” in implementing the Guidelines in specific instances, it will be in the interests of their effectiveness to take appropriate steps to establish*

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<sup>62</sup> According to: (OECD Guidelines 2011) Commentary on the Implementation Procedures of the OECD Guidelines for Multinational Enterprises; I. Commentary on the Procedural Guidance for NCPs

<sup>63</sup> According to: (OECD Guidelines 2011) I) Procedural Guidance of the OECD Guidelines, C. Implementation in Specific Instances

*confidentiality of the proceedings. Outcomes will be transparent unless preserving confidentiality is in the best interests of effective implementation of the Guidelines.”*

- 7) Given the above description of this criteria, did the Swiss NCP act in a transparent manner?
  - a) Yes
  - b) No
  - c) Please share any other comments:

### **C) FURTHER FEEDBACK TO THE NCP**

- 8) Did the NCP satisfactorily deal with this specific instance?
  - a) Yes
  - b) No
  - c) Please share any other comments, referring if possible to the three stages of the process (Initial Assessment, Mediation, and Conclusion of the Specific Instance).
- 9) Did the NCP satisfactorily explain the timeframes and its role in facilitating dialogue and mediation?
  - a) Yes
  - b) No
  - c) Please share any other comments:
- 10) Did the NCP satisfactorily help to facilitate dialogue and mediation and build trust between the parties?
  - a) Yes
  - b) No
  - c) Please share any other comments:
- 11) If appropriate, did the independent mediator contracted by the NCP satisfactorily help to facilitate dialogue and mediation and build trust between the parties?
  - a) Yes
  - b) No
  - c) Please share any other comments:
- 12) If appropriate, did the independent mediator act impartially?
  - a) Yes
  - b) No
  - c) Please share any other comments:
- 13) In your view, are the processing times of the NCP proceedings sufficient to satisfactorily address the issues at stake?
  - a) Yes
  - b) No
  - c) Please share any other comments:
- 14) Did the NCP respond in a timely manner and provide sufficient good/useful information upon request?

- a) Yes
  - b) No
  - c) Please share any other comments:
- 15) Were the parties granted sufficient time to provide an input to the NCP and comment on drafts?
    - a) Yes
    - b) No
    - c) Please share any other comments:
  - 16) Did mediation contribute to the solution of the case?
    - a) Yes
    - b) No
    - c) Please share any other comments:
  - 17) Was the Swiss NCP the right body to deal with this matter?
    - a) Yes
    - b) No
    - c) If no, please explain which body might be addressed in this matter:
  - 18) To what extent do you feel that the complaint has contributed to your party finding out about facts and information that were not known to you previously?
  - 19) How would you characterize the framework / terms of reference for mediation? If the framework could be different, in what way?
  - 20) What did you achieve through the final statement or joint declaration in terms of results in relation to what you think you could have achieved if you had not gone into mediation?
  - 21) If appropriate, do you consider that you have followed the agreed actions of a final statement or joint declaration?
    - a) Yes
    - b) No
    - c) If no, please explain the reasons:
  - 22) To what extent has your organization / enterprise learned from the process?
  - 23) Has the basis for future cooperation with the other party changed? If so, how?
  - 24) If appropriate, what expectations do you have for further follow-up to the final statement or the joint declaration?
  - 25) Do you have any further comments?

*Thank you for your cooperation, it is much appreciated!*

Swiss National Contact Point for the OECD Guidelines for Multinational Enterprises  
 State Secretariat for Economic Affairs (SECO)  
 Holzikofenweg, CH-3003 Berne  
 E-Mail: [ncp@seco.admin.ch](mailto:ncp@seco.admin.ch) | Phone: +41 31 323 12 75

## **National Contact Point Peer Reviews: Switzerland**

Governments adhering to the OECD Guidelines for Multinational Enterprises are required to set up a National Contact Point (NCP) that functions in a visible, accessible, transparent and accountable manner.

This report contains a peer review of the Swiss NCP, mapping its strengths and accomplishments and also identifying opportunities for improvement.