

Business at OECD (BIAC) comments on the Secretariat paper on the 20th anniversary of the NCP system

Business at OECD (BIAC) welcomes the **development of a Secretariat report to mark the 20th anniversary of the NCP system** and appreciates the opportunity to submit comments in this process. In this context, we underline that a **distinction** should be made between the **fact-finding analysis of how the system has worked** and the **Secretariat recommendations** for the way forward.

The NCP system constitutes a **unique remedy mechanism** that has to date been in place for 20 years. **Business supports NCPs as a mediation platform** where parties can come together in good faith in order to look for future-oriented solutions that are in the interest of all. This requires that parties engage in good faith. However, **more must be done** to leverage the full potential of NCPs and reinforce trust in the system.

A well-functioning NCP system

Under the MNE Guidelines, **adhering governments have to establish a National Contact Point**, which should work to increase awareness of the MNE Guidelines and promote their implementation, respond to questions regarding the implementation of the MNE Guidelines and contribute, as non-judicial grievance mechanism, to the resolution of issues that arise in relation to the implementation of the Guidelines.

We would like to underline that the *three* functions of the NCP must be given due attention. It should also be borne in mind that **adhering governments have to respect the procedural guidance** of the MNE Guidelines and **follow the core criteria** of visibility, accessibility, transparency, and accountability, while they have **flexibility** as to how they organize their NCP.

As outlined in our [joint BIAC-TUAC-OECD Watch statement from 2015](#), governments have **not only a responsibility to set up an NCP but also to ensure that NCPs are sufficiently equipped** in order to fulfil their objectives, as set out in the OECD Guidelines. Yet, as *the report underlines nearly half of NCPs only have dedicated part time staff, and in 2019, 31 NCPs did not have a dedicated operational budget for the year*, implying that they had to apply for funds for most expenses.

Another striking finding of the report is that *close to 25 % of NCPs do not include stakeholders in their structure*. Such **involvement** should occur through representative bodies, i.e. in the case of business through national business/employers' organizations, in order to provide broad-based and unbiased input into the process.

Recommendations to the OECD:

- Actively help NCPs that are not working well with targeted advice and capacity building.
- Advance on peer-reviews of NCPs which have not yet participated in the process.
- Provide additional support to NCPs outside of the NCP peer review process (e.g. information sharing, technical assistance) in order to improve the functioning of the NCPs.

This is also necessary to **ensure a level playing field among NCPs and avoid forum shopping**.

We further recognize that **cases are becoming increasingly complex**, involving new issues and/or multiple NCPs, which is underlined by the finding in the report that in 2019, *two thirds of cases received involved at least two NCPs, compared to about one third in 2012* as indicated in the report.

Recommendations to the OECD:

- The OECD should enable exchanges of experiences and best practices and foster cooperation between NCPs as appropriate.

It is essential to make sure that **NCPs are following the specific instance process** set out in the MNE Guidelines. This requires that NCPs are not only sufficiently equipped, but also that NCP staff are also effectively trained.

Recommendations to the OECD:

- Make sure that NCPs are operating according to the procedural guidance set out in the MNE Guidelines.

A well-known and well-understood NCP system

As we have stressed in previous consultations, the **OECD MNE Guidelines are still not sufficiently well known**. As a result, **too many companies are still unfamiliar with the NCP system**. Relatedly, the report notes that *the majority of NCPs have low promotional activity, with few or no events per year, and such limited outreach and exposure reduces the public's knowledge*.

Recommendations to the OECD:

- Develop increased and more user-friendly communication about the practical functioning of the NCPs to help companies to better understand the role of NCPs as well as the MNE Guidelines.
- Ensure that all NCPs have a public website and practical information about their function and the procedure.

A trusted NCP system

Businesses have in some cases expressed **concerns regarding the respect of confidentiality and impartiality of the process**, which can prevent companies from becoming engaging with trust in a specific instance process.

It is important for business that the parties involved in a specific instance procedure engage on fair and equitable terms, with due respect of the confidentiality of sensitive information. Confidentiality of the proceedings, including oral statements, and confidential written materials shared throughout the duration of the process must be maintained.

In addition, despite efforts by the OECD and some NCPs, campaigning is still an issue which negatively impacts some specific instances and affects companies' trust in the process. **Aggressive campaigning** leads to antagonising parties instead of bringing them together in a constructive attitude. It is therefore not compatible with constructive consensus-building, and is counter-productive to building broad-based trust in the process.

Recommendations to the OECD:

- Encourage NCPs to ensure that the procedural guidance is being respected by all parties and to intervene if confidentiality is being violated, or when the NCP procedure is being misused for political purposes.
- Ensure that NCPs communicate clearly at the outset of an instance that all parties must approach the process in good faith with a willingness to engage in a constructive dialogue.

The fact that the **public perception** of a company being involved in a specific instance is that a **company has done something wrong** may serve as a disincentive to engage. It should be clearly understood that involvement in an NCP specific instance does not automatically imply that the company has not acted in accordance with the MNE Guidelines.

Recommendations to the OECD:

- Promote understanding that the purpose of the NCP procedure is to help parties work constructively towards a solution, which is to the advantage of all parties, and that the initiation of a specific instance does not automatically imply that the MNE has failed to observe the Guidelines.
- On the contrary it should be welcomed when companies engage constructively in the process.

Finally, we would also like to underline that any **exertion of pressure against submitters of specific instances** is not compatible with the NCP system. In this context, we would like to refer to our [joint BIAC-TUAC-OECD Watch statement from March 2020](#), where we underlined our strong conviction that no submitter filing a specific instance with an NCP should face repercussions for doing so.

The road ahead

Looking ahead we underline:

- Adequate resources across the board are required to ensure a sound functioning of the NCP system and a level playing field. Good faith and alignment with the procedural guidelines is further essential to foster trust by the part of all stakeholders involved.
- While it must be ensured that NCPs can operate efficiently, adhering governments have flexibility in organising their NCPs.
- As far as outside consultation is concerned, seeking dialogue with representative groups, such as representative business/employers' organizations is critical.
- Fostering cooperation is important as an increasing number of cases are being dealt with by multiple NCPs.
- The OECD has an important role to play with regard to monitoring efforts. It should make continued efforts to conduct peer-reviews but should also apply a dedicated focus on capacity building where needed.
- Ensuring that the NCP process is trusted is key to enable stakeholders to work together constructively towards future oriented solutions.