

**Conduct procedure before the NCP
in specific instance related to an alleged breach of
the *OECD Guidelines for Multinational Enterprises***

(updated on 7 October 2019)

The role of the OECD National Contact Points (NCPs) is to promote OECD standards of responsible business conduct and in special situations to consider notifications of alleged breaches of the *OECD Guidelines for Multinational Enterprises* (OECD Guidelines), resulting from the activities of enterprises.

The procedures conducted by the NCP are based on the OECD Guidelines which are the so-called international soft law and constitute the international standard of responsible business conduct.

Poland is in the group of 48 states adhering to the OECD Guidelines and therefore recommends multinational enterprises operating in the country as well as Polish enterprises operating abroad to comply with the recommendations of the OECD Guidelines. This contributes to, among others, preventing or mitigating the adverse impacts which may occur in relation to the enterprises' activities.

This procedure specifies the manner of conduct before Poland's NCP in the event of a notification of an alleged breach of the OECD Guidelines by a multinational enterprise and was developed on the basis of Part II of the OECD Guidelines "Implementation Procedures of the OECD Guidelines for Multinational Enterprises."

Conducting cases in accordance with the manner specified in the procedure, the NCP strives to strengthen the standards of responsible business conduct, at the same time assuming that the responsible enterprise participates in economic, environmental and social development, cares for respect for human rights and the environment, conducts a dialogue with stakeholders and communicates reliably its actions.

This procedure consists of the following parts:

A. GENERAL RULES

- 1) Terms and abbreviations
- 2) General rules of conducting procedure before the NCP
- 3) Stages and duration of the procedure before the NCP
- 4) Who can submit a notification of an alleged breach of the OECD Guidelines?
- 5) To which NCP should a notification of an alleged breach of the OECD Guidelines be submitted?
- 6) What may a notification of an alleged breach of the OECD Guidelines be related to?
- 7) How are the OECD Guidelines interpreted?
- 8) Rules of maintaining transparency of the process and confidentiality
- 9) Rules of documenting the case in the procedure before the NCP

B. CONDUCT PROCEDURE BEFORE POLAND'S NCP

- I. Stage one: from receiving the notification to the preparation of an Initial Assessment
- II. Stage two: accepting the case to be conducted by the NCP and aiding the parties in resolving the dispute
- III. Stage three: ending the procedure before the NCP, publishing the Final Statement
- IV. Monitoring of the agreement
- V. Permitted exceptions to the conduct procedure before Poland's NCP

C. FLOW CHART OF CONDUCT PROCEDURE BEFORE THE NCP

A. GENERAL RULES

1) The most important terms and abbreviations

OECD Guidelines for Multinational Enterprises – OECD Guidelines

These are recommendations concerning standards of responsible business conduct for multinational enterprises developed by OECD Member States. The recommendations are addressed to multinational enterprises conducting their business or based in the states adhering to the OECD Guidelines. The recommendations included in the OECD Guidelines are in accordance with the law and international standards of responsible business conduct.

Multinational Enterprise

According to the OECD Guidelines,¹ such enterprises operate in all sectors of the economy and usually comprise companies or other entities established in more than one country and so linked that they may coordinate their operations in various ways.

While one or more entities may have a significant influence over the activities of others, the degree of autonomy of individual entities within the enterprise may vary for different multinational enterprises. They can be private, state or mixed property. The OECD Guidelines are addressed to all the entities within the multinational enterprise (parent companies and/or local entities). According to the actual distribution of responsibilities among them, all the entities are expected to cooperate and to assist one another to facilitate observance of the OECD Guidelines.

OECD National Contact Point – NCP

NCPs are established by the governmental administration of countries adhering to the OECD Guidelines. The task of the NCP is to:

- a) disseminate OECD standards of responsible business conduct,
- b) consider notifications of an alleged breach of the OECD Guidelines by multinational enterprises,
- c) and answer inquiries of other NCPs, business environment and non-governmental organisations, and governmental administrations of countries that did not adhere the OECD Guidelines.

Responsible business conduct / RBC

As defined by the OECD Guidelines, RBC means that enterprises should comply with applicable international regulations and standards in order to:

- a) contribute to economic, environmental and social development with a view to achieving sustainable development, and
- b) undertake actions aimed at preventing adverse impacts which may occur as a result of their operations or undertake actions aimed at mitigating such adverse impacts. The basis of these actions is a due diligence process.

Notification of an alleged breach of the OECD Guidelines

Notification of an alleged breach of the OECD Guidelines by a multinational enterprise submitted to the NCP on the form, available on the Poland's NCP website. The notification form should be completed in Polish.

¹ OECD Guidelines, Chapter I "Concepts and Principles," point 4.

Case / specific instance

The term “case” or “specific instance” refers to the subject of the notification of an alleged breach of the OECD Guidelines. The subject of the notification should include a description of the situation in which the alleged breach of the OECD Guidelines was committed along with an indication of Chapters of the OECD Guidelines which the alleged breach is related to.

2) General rules of conducting procedure before the NCP

Each NCP operates on the basis of the criteria indicated in the OECD Guidelines: **visibility, accessibility, transparency and accountability.**²

If the NCP receives a notification of an alleged breach of the OECD Guidelines by a multinational enterprise, it is required to respond to the notification in an **impartial, predictable, equitable and compatible with the OECD Guidelines.**³

3) Stages and duration of the procedure before the NCP

The procedure before the NCP covers three stages total duration of which should not exceed **12 months**.

Stage I	From receiving the notification to the preparation of an Initial Assessment (about 3 months from the receipt of the notification).
Stage II	From accepting the case for consideration by the NCP and preparation of the Initial Assessment. Includes helping the parties resolve the dispute.
Stage III	Includes preparation and publication of the Final Statement (not later than 12 months after receiving the notification), which ends the procedure before the NCP.

In justified cases, it is allowed to extend the procedure before the NCP, while the NCP expects the parties to the procedure to provide necessary information within the deadlines set so as not to delay the procedure.

4) Who can submit a notification of an alleged breach of the OECD Guidelines?

A notification of an alleged breach of the OECD Guidelines may be submitted by any party concerned, referred to as the “Notifier”. It may be an employee of a given enterprise or a group of employees, people other than employees or groups of people, trade unions, NGOs, etc.

The Notifier does not have to be at the same time affected by operations of the enterprise, but needs to prove its connection to the case.

5) To which NCP should a notification of an alleged breach of the OECD Guidelines be submitted?

Notification of a potential violation of the OECD Guidelines should be submitted to the NCP in the country where the alleged breach of the OECD Guidelines took place. If a NCP is not operating in this country, the notification should be submitted to the NCP in the country where the enterprise has its head office.

² OECD Guidelines, Part II “Implementation Procedures of the OECD Guidelines,” Commentary on the “Procedural Guidelines for NCPs,” para. 9.

³ OECD Guidelines, Part II “Implementation Procedures of the OECD Guidelines,” Commentary on the “Procedural Guidelines for NCPs,” para. 22.

Notification of an alleged breach of the OECD Guidelines submitted to Poland's NCP may concern a Polish multinational enterprise or a foreign multinational enterprise operating in Poland, with the reservation that the head office of the foreign multinational enterprise is located in one of the countries adhering to the OECD Guidelines.

6) In what language should a notification of an alleged breach of the OECD Guidelines be submitted?

For educational reasons and to increase the accessibility of the NCP, this procedure is posted on the NCP's website in Polish and in English, Russian and Ukrainian. However, the procedure before the NCP is conducted in Polish, hence the notification form of an alleged breach of the OECD Guidelines should be completed in Polish.

7) What may a notification of an alleged breach of the OECD Guidelines be related to?

Notification may be submitted in cases where a multinational enterprise fails to adhere to the recommendations provided for in the OECD Guidelines.

The submitting party should specifically determine the Chapters of the Guidelines that have been breached in their view, as well as describe and document the emerging situation, explaining why the submitting party believes the enterprise have breached the OECD Guidelines.

The OECD Guidelines consist of the following eleven chapters:

Chapter number	Chapter title
Chapter I	Concepts and Principles
Chapter II	General Rules
Chapter III	Disclosure
Chapter IV	Human Rights
Chapter V	Employment and Industrial Relations
Chapter VI	Environment
Chapter VII	Combating Bribery, Bribe Solicitation and Extortion
Chapter VIII	Consumer Interests
Chapter IX	Science and Technology
Chapter X	Competition
Chapter XI	Taxation

A model notification form of an alleged breach of the OECD Guidelines is available on the website of Poland's NCP.

8) How are the OECD Guidelines interpreted?

At any given moment of a case consideration procedure, if the NCP finds that the OECD Guidelines' provisions are unclear, it should take care of the interpretation. Therefore, the NCP:

- 1) analyses similar specific instance conducted by NCPs in other countries;
- 2) as the case may be, contacts NCPs in other countries;
- 3) in case of further doubts, applies for interpretation to the OECD Investment Committee.

In situations where it was necessary to clarify the way of understanding of the OECD Guidelines, information about this is included in the Final Statement.

9) Rules of maintaining transparency of the process and confidentiality

Pursuant to the OECD Guidelines, transparency of functioning is considered to be the general rule of the NCP's operation. Basic criteria for the NCP's actions are: visibility, accessibility, transparency, and accountability. These principles should contribute to the preservation of transparency of behaviour. However, in the case of procedures conducted by the NCP, it is important to preserve a balance between transparency and confidentiality of information in order to increase confidence in the NCP and procedures conducted by the NCP, as well as the effectiveness of adherence to the OECD Guidelines.

The NCP pays special attention to:

- a) protecting confidentiality of business information and other data, interests of the parties concerned,
- b) maintaining full confidentiality of meetings and talks with the parties concerned.

Moreover, the NCP assumes that personal details of individuals harmed as a result of an enterprise's operations can be included in published documents only if those individuals give their written consent.

During the procedure the NCP draws the parties' attention to the need to maintain **confidentiality** indicated in the OECD Guidelines⁴ and informs the parties that the proceedings may be discontinued if one or both of the parties do not respect the principle of confidentiality. The principle of confidentiality applies to both parties concerned and the NCP. Details of the proceedings before the NCP may not be distributed to the public in any way, without the consent of the parties and the NCP, subject to the provisions specified in the procedure.

Poland's NCP does not provide any information on pending proceedings. The basic way of communication of the NCP is its website where the NCP publishes current information about its activity and pending proceedings before the NCP.

10) Rules of documenting the case in the procedure before the NCP

All documents related to the procedure conducted before the NCP are kept in a case file. Specifically, these are:

- a) notification with attachments,
- b) correspondence kept with the parties,
- c) correspondence concerning the case with experts and other institutions,
- d) correspondence concerning the case kept with the OECD,
- e) notes made after each meeting concerning the case,
- f) Initial Assessment of the case, and for cases accepted by the NCP, Final Statement,
- g) other relevant supporting materials or documents.

An exception to the above-mentioned rules is documentation relating to the mediation process. Its course is confidential in whole. The only document that is generated is the agreement or summary of

⁴ OECD Guidelines, Part II "Implementation Procedures of the OECD Guidelines," Commentary on the "Procedural Guidelines for NCPs," para. 38.

talks agreed to by the parties. The agreement or the summary of talks may be published by the NCP as an element of the Final Statement only if the parties concerned agree to this.

The documentation of the case before the NCP, except for documents which are to be made public on the NCP's website, is confidential and is not subject to disclosure, e.g. in the mode of access to public information.

B. CONDUCT PROCEDURE BEFORE POLAND'S NCP

I. Stage one: from receiving the notification to the preparation of an Initial Assessment

- 1) Within 10 days from receiving the notification, the NCP shall:
 - a) confirm its receipt to the Notifier,
 - b) send a copy of the notification to the concerned enterprise, together with a request for an initial response,
 - c) inform NCPs in other countries that the notification was submitted, if the case concerns them due to the parent company's location or place of business.
- 2) Afterwards, the NCP shall start an **initial analysis of the case**, which covers verification of:
 - a) the identity of the Notifier and the reasons for its interest in the case,
 - b) whether the case is significant and justified,
 - c) whether there is a connection between the enterprise's activity and the case,
 - d) whether there are alternative appeal mechanisms or legal procedures in the case (including court proceedings),
 - e) whether execution of the procedure before the NCP is possible – if there is a procedure carried out before another body in the case,
 - f) whether similar cases have been considered (or similar procedures are being conducted) as part of other national or international procedures,
 - g) whether the NCP's involvement may contribute to the implementation of new good practices within the scope of responsible business conduct.
- 3) The NCP organises **separate meetings with each party** during which it presents the opportunities arising from cooperation with the NCP and discusses in detail the procedure before the NCP.
- 4) Then, the NCP analyses the information collected so far and decides whether or not to accept the case for consideration and prepares an Initial Assessment of the case.
- 5) If the NCP accepts the case, the **Initial Assessment** should include:
 - a) names of the parties,
 - b) a subject of the notification, including Chapters of the OECD Guidelines that it refers to,
 - c) a summary of actions that were undertaken by the NCP from the moment the notification was submitted,
 - d) justification of the NCP's decision on accepting the case for consideration,

- e) an explanation that the acceptance of the case for consideration does not mean the NCP confirms that the OECD Guidelines were breached,
 - f) an outline of consecutive stages of the procedure.
- 6) If the NCP does not accept the case, the Initial Assessment also functions as the Final Statement closing the procedure before the NCP, and should include:
- a) names of the parties (unless, for the good of the case, the NCP decides not to disclose the names of the parties),
 - b) a subject of the notification, including Chapters of the OECD Guidelines that it referred to,
 - c) a summary of actions that were undertaken by the NCP from the moment the notification was submitted,
 - d) justification of the NCP's decision on not accepting the case for consideration.
- 7) The draft Initial Assessment of the NCP is sent to the parties with a request to communicate any potential comments or propose records within 10 days from receiving the document.
- 8) The NCP makes a decision on whether to take the comments into account or not.
- 9) If the Initial Assessment requires further agreement with the parties, the NCP sends another draft Initial Assessment to the parties and sets a deadline for comments.
- 10) If an NCP in another country was informed about the case, the version of the Initial Assessment agreed with the parties concerned is sent to that NCP.
- 11) The Initial Assessment in its final version is published on the NCP's website in Polish and English.
- 12) Moreover, the NCP sends information about the publication of the Initial Assessment to the OECD Secretariat which places it in the database of cases conducted by the NCP (<http://mneguidelines.oecd.org/database/>).

II. Stage two: accepting the case to be conducted by the NCP and aiding the parties in resolving the specific instance

- 1) Having accepted the case for consideration, the NCP should make every effort to aid the parties in achieving an agreement. During this stage of the procedure, the NCP is specifically authorised to:
 - a) consult the case with public administration bodies, representatives of the business environment, employee organisations, non-governmental organisations, experts,
 - b) consult the case with NCPs operating in countries that the case concerns,
 - c) turn to the Investment Committee in the case of doubts related to the OECD Guidelines interpretation in a given situation;
- 2) Depending on the findings made during the analysis of the case, the NCP may propose to the parties concerned mediation or the so-called good offices, i.e. discussions with an active support of the NCP.
- 3) Mediation conducted by the NCP is in accordance with the principles of mediation which the parties concerned are acquainted with before it begins.

In particular:

- a) parties concerned join mediation voluntarily,
 - b) mediation is conducted by the NCP's mediator. In exceptional situations, mediation can be conducted by an external mediator whose labour cost is borne by the NCP,
 - c) mediation is confidential,
 - d) the NCP supports the parties in reaching an agreement in accordance with the OECD Guidelines.
- 4) Good offices, i.e. joint talks conducted with the support of the NCP, take place using mediation and negotiations techniques, with:
- a) the NCP providing efficient communication between the parties and a space to conduct talks,
 - b) the NCP supporting the parties in reaching an agreement that is in line with the recommendations of the OECD Guidelines,
 - c) the talks conducted preserving confidentiality,
 - d) with the consent of the parties and the NCP, talks may be held without the participation of the NCP. In such a case, the parties are required to successively inform the NCP of progress in the case.
- 5) If the enterprise concerned refuses to participate in mediation or good offices, the NCP examines the case on its own. The NCP then presents conclusions from the examination of the case to the parties and may again propose mediation or good offices. In the case of a repeated refusal to conduct mediation or good offices, the NCP continues its independent examination of the case.

III. Stage three: ending the procedure before the NCP, publishing the Final Statement

- 1) The procedure before the NCP ends in the preparation and publication of the Final Statement of the case. Final Statement should specifically include:
 - a) formal information:
 - o date of receiving the notification,
 - o names of the parties concerned: the submitting party and the enterprise that the notification concerns,
 - b) Chapters of the OECD Guidelines that are identified as the subject of the notification,
 - c) a summary of actions undertaken by the NCP in relation to the case,
 - d) a summary of the notification,
 - e) the position of the enterprise that the notification concerns,
 - f) assessment of the case by the NCP,
 - g) information that the parties joined mediation or talks conducted with the support of the NCP,
 - h) conclusions from the procedure before the NCP,
 - i) information on planned monitoring,
 - j) if justified, additional information.

- 2) If the parties reach an agreement, the NCP describes it in the Final Statement. The text of the agreement or its fragments may be made public together with the Final Statement only if the parties agree to such publication.
- 3) If the parties do not reach an agreement, the NCP describes it in the Final Statement.
- 4) If justified, the NCP may also include in the Final Statement recommendations for the enterprise on actions allowing to avoid breaches of the OECD Guidelines in the future.
- 5) The NCP determines in the Final Statement a date when both parties concerned will be asked to present information on the progress made and the implementation status of the concluded agreement.
- 6) The draft Final Statement of the NCP is sent to the parties with a request to communicate any potential comments or propose records within 10 days from receiving the document.
- 7) The NCP makes a decision on whether to take the comments into account or not.
- 8) If the Final Statement requires further agreement with the parties, the NCP sends another draft Final Statement to the parties and sets a deadline for comments.
- 9) If an NCP in another country was informed about the case, the version of the Final Statement agreed with the parties concerned is sent to that NCP.
- 10) The Final Statement in its final version is published on the NCP's website in Polish and English.
- 11) The NCP sends information about the publication of the Final Statement to the OECD Secretariat which places it in the database of cases conducted by the NCP (<http://mneguidelines.oecd.org/database/>).

IV. Monitoring of the agreement

- 1) The Final Statement includes a date when both parties concerned will be asked to present information on the progress made and the implementation status of the concluded agreement.
- 2) The NCP may invite parties to a meeting to discuss details of the implementation of the agreement or to assess the progress made by the enterprise in adhering to the OECD Guidelines.
- 3) After obtaining the above-mentioned information the NCP prepares a note which specifically includes:
 - a) basic information about the case and the parties concerned,
 - b) information on the agreement concluded between the parties,
 - c) information on steps undertaken by the parties to implement them,
 - d) an explanation of the occurred situation, if execution of the agreement was conducted in a manner different than assumed or the enterprise failed to comply with the agreement.
- 4) The draft note of the NCP is sent to the parties with a request to communicate any potential comments or propose records within 10 days from receiving the document.
- 5) The NCP makes a decision on whether to take the comments into account or not.
- 6) If the note requires further agreement with the parties, the NCP sends another draft note to the parties and sets a deadline for comments.

- 7) If an NCP in another country was informed about the case, the version of the note agreed with the parties concerned is sent to that NCP.
- 8) The note in its final version is published on the NCP's website in Polish and English.
- 9) The NCP sends information about the publication of the note on monitoring of the case to the OECD Secretariat which places it in the database of cases conducted by the NCP (<http://mneguidelines.oecd.org/database/>).

V. Permitted exceptions to the conduct procedure before Poland's NCP

- 1) In special cases, for the good of the case, the NCP may decide not to make the Initial Assessment public.

In such cases, the Initial Assessment remains only in the case file kept by the NCP and is a confidential document of the NCP intended only for the parties concerned, which is not subject to publication on the NCP's website nor is it made available to the OECD Secretariat.

- 2) In special cases it is possible to withdraw the notification by the submitting party.

This may occur when the parties reach an agreement before the first stage of the procedure and Initial Assessment are completed. Once the NCP accepts the case for consideration and moves to the second stage of the procedure, it is not possible to withdraw the notification.

- 3) Poland's NCP reserves the right, in special cases, to allow other exceptions to this procedure.