

40TH ANNIVERSARY of the
**OECD GUIDELINES
FOR MULTINATIONAL
ENTERPRISES**

HOW WOULD YOU MEASURE NCP PERFORMANCE?



#StepItUp / #OECDrbc

 **OECD Watch TUAC**

I. TUAC-OECD WATCH NCP PERFORMANCE INDEX: VERSION 1

2016 marks the 40th anniversary of the OECD Guidelines for Multinational Enterprises, the OECD's flagship instrument on responsible business conduct. Under the Guidelines, adhering governments have a binding obligation to establish National Contact Points (NCPs) to promote the Guidelines and handle cases of violations submitted by NGOs and Trade Unions. While some governments have taken the necessary steps to meet this responsibility, all too many have not.

The Trade Union Advisory Committee to the OECD (TUAC) and OECD Watch are jointly developing an Index to rank NCP performance. The aim is to change the status quo by creating pressure for positive change. The criteria and weightings for the Index are presented below, followed by two pages of consultation questions. **TUAC and OECD Watch welcome all feedback on those as well as other comments and suggestions before 1 August 2016, which can be sent to: tuac@tuac.org; info@oecdwatch.org**

INSTITUTIONAL ARRANGEMENTS

| Criterion | Weighting |
|---|-------------------|
| Taken adequate steps to address conflicts of interest in its structure/composition | 3 |
| Employs staff whose primary responsibility is to work on the OECD Guidelines | 3 |
| Taken adequate steps to involve a sufficient breadth of expertise in its structure/composition | 3 |
| Formally involves external stakeholders in the NCP structure/composition | 3 |
| In 2015 held at least 1 meeting of its organisational external stakeholders | 3 |
| Maintains an adequate web site with information on the OECD Guidelines, the National Contact Point, and how to file a specific instance | 3 |
| Reports publicly on its activities at national level in the national language(s) | 1 |
| Reports publicly on its annual expenditure | 1 |
| WEIGHTING for INSTITUTIONAL ARRANGEMENTS | 20 (20.0%) |

PROMOTIONAL ACTIVITIES

| Criterion | Weighting |
|--|-------------------|
| Publishes the OECD Guidelines in key national language(s) | 2 |
| Publishes key parts of its web site in both national and international languages | 2 |
| Has developed promotional materials on the Guidelines | 2 |
| In 2015 organised or co-organised at least 1 promotional events on the Guidelines | 2 |
| In 2015 either the NCP or the government conducted activities aimed at promoting the Guidelines abroad | 2 |
| WEIGHTING for PROMOTIONAL ACTIVITIES | 10 (10.0%) |

NCP PROCEDURES

| Criterion | Weighting |
|---|-------------------|
| Limits confidentiality requirements to the NCP mediation process and information obtained during the NCP process | 1 |
| Does not require complainants to stop campaigning against the company | 1 |
| Sets an appropriately low threshold for accepting specific instances, including where there are parallel proceedings | 2 |
| Allows complainants to withhold the identity of the complainants from the company | 2 |
| Publishes Initial Assessments of all specific instances on its web site, or has made a commitment to do so | 2 |
| Provides mediation at no cost to the parties, or has made a commitment to do so | 2 |
| Conducts in-country fact finding, or has made a commitment to do so | 2 |
| Publishes Final Statements with recommendations and Final Reports on its web site, or has made a commitment to do so | 2 |
| Makes a finding (determination) on whether the MNE has breached the OECD Guidelines when mediation is refused or fails, or has made a commitment to do so | 3 |
| Provides for follow-up of recommendations made in Final Statements/Final Reports, or has made a commitment to do so | 2 |
| Provides parties with a right of appeal on the basis that procedures have not been followed | 1 |
| WEIGHTING for NCP PROCEDURES | 20 (20.0%) |

POLICY COHERENCE

| Criterion | Weighting |
|--|-------------------|
| The government conditions access to economic and diplomatic support related to international trade and investment on compliance with the OECD Guidelines | 3 |
| The government has made a formal policy commitment to withdraw economic and diplomatic support related to international trade and investment from MNEs that refuse to participate in the NCP process | 3 |
| The Export Credit Agency has formal procedures for taking into account NCP Reports/Statements in their decisions on awarding companies export credit insurance | 2 |
| The development agency has formal procedures for taking into account NCP Reports/Statements in their decisions on awarding companies Official Development Assistance | 2 |
| WEIGHTING for POLICY COHERENCE | 10 (10.0%) |

PEER LEARNING

| Criterion | Weighting |
|---|-------------------|
| Undergone or signed up for NCP peer review | 3 |
| In 2015 attended 2 NCP meetings at the OECD | 2 |
| Since 2012 has organised at least 1 peer learning event | 2 |
| Since 2012 has developed peer learning tools | 2 |
| In 2015 participated in at least 1 peer learning event | 1 |
| WEIGHTING for PEER LEARNING | 10 (10.0%) |

OUTCOMES

| Criterion (Direct) | Weighting |
|--|-------------------|
| Percentage of accepted NGO and Trade Union specific instances where the NCP offered mediation | 3 |
| Percentage of accepted NGO and Trade Union specific instances, where the parties failed to reach agreement, in which the NCP made public recommendations | 3 |
| Percentage of accepted NGO and Trade Union specific instances, where the parties failed to reach agreement, in which the NCP made a determination | 3 |
| Percentage of accepted NGO and Trade Union specific instances where the NCP provided for follow-up | 3 |
| Percentage of NGO and Trade Union specific instances either completed within the indicative timescales or extended with the agreement of the parties | 3 |
| Percentage of accepted NGO and Trade Union specific instances in which the complainants stated that they were satisfied with the NCP | 3 |
| Criterion (Indirect) | |
| Percentage of NGO and Trade Union specific instances accepted by the NCP | 3 |
| Percentage of accepted NGO and Trade Union specific instances where the company agreed to participate in mediation | 3 |
| Percentage of accepted NGO and Trade Union specific instances where parties reached agreement | 3 |
| Percentage of accepted NGO and Trade Union specific instances that delivered remedy where remedy was requested | 3 |
| WEIGHTING for OUTCOMES | 30 (30.0%) |

II. CONSULTATION ON TUAC-OECD WATCH NCP PERFORMANCE INDEX: VERSION 1

Consultation Questions

A. CATEGORIES FOR ASSESSING NCP PERFORMANCE

1. Do you agree with the proposed categories for assessing NCP performance?

- a. Institutional Arrangements
 - YES
 - NO
- b. Promotional Activities
 - YES
 - NO
- c. NCP Procedures
 - YES
 - NO
- d. Policy Coherence
 - YES
 - NO
- e. Peer Learning
 - YES
 - NO
- f. Complaint Outcomes
 - YES
 - NO

2. Please specify what suggested changes you would make, if any?

- a. Which categories would you amend?

- b. Which categories would you delete?

- c. What categories would you add?

3. Please order the categories from 1-6 according to their relative importance (assign 1 to the category you consider to be the most important and 6 to the category you consider to be least important). Add other suggested categories as required.

- Institutional Arrangements
- Promotional Activities
- NCP Procedures
- Policy Coherence
- Peer Learning
- Complaint Outcomes

¹ The performance criteria are on-line at: www.tuacoecdmguidelines.org/Questions.asp and www.oecdwatch.org/ncp-ranking.
The consultation questions are on-line at www.oecdwatch.org/ncp-ranking

4. What weightings would you give to each of the categories?

| | | |
|----------------------------|--|-------------|
| Institutional Arrangements | | % |
| Promotional Activities | | % |
| NCP Procedures | | % |
| Policy Coherence | | % |
| Peer Learning | | % |
| Complaint Outcomes | | % |
| TOTAL | | 100% |

5. Please provide any other comments on categories.

B. INDICATORS FOR ASSESSING NCP PERFORMANCE

6. Do you agree that the indicators should include NCP **best practices** (such as determination, consequences), even if not required by the Guidelines?

- YES
 NO

7. If so, do you consider it important to distinguish clearly between indicators on **required measures** and indicators on **measures that go beyond** the Guidelines.

8. Do you agree that the Index should include **outcome** as well as **process** indicators?

Process Indicators

9. Are there any **process** indicators that you would amend or delete? Please list

10. Are there any **other process** indicators that you would add? Please list

Outcome Indicators

11. How would you deal with the fact that some NCPs have **no cases**?

12. How would you deal with NCPs that have a **low number of cases**?

13. How would you deal with the fact that there may be **frivolous cases**?

14. Would you distinguish between outcome indicators that are a **direct measure** of NCP Performance (e.g. % of final statements where the NCP made recommendations) and those which may be **affected by other factors** (e.g. % of accepted cases in which companies came to the table).

C. PRESENTATION OF RESULTS

15. How would you present the results?

a. Country scores: with the NCPs ordered from 1-46

- YES
 NO

b. Country ratings: NCPs are grouped into categories based on their score

- YES
 NO

16. If categories, then which of the following would you consider appropriate:

1. NGOs and Trade Unions can file a complaint to the NCP with confidence
 2. NGOs and Trade Unions can file a complaint to the NCP
 3. NGOs and Trade Unions can file a complaint to the NCP, but as a last resort
 4. Non-functioning NCP: NGOs and Trade Unions should not file a complaint
 Other suggested category

The criteria and weightings can be accessed on-line at:

www.tuacoecdmguidelines.org/questions.asp; and www.oecdwatch.org/ncp-ranking

The consultation questions can be accessed on-line at: www.oecdwatch.org/ncp-ranking

The TUAC OECD-Watch Index will be launched in November 2016