



# Guidance for grievance procedures

under the OECD Guidelines for Multinational Enterprises



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# 1 Introduction

The OECD Guidelines for Multinational Enterprises represent the most comprehensive government-supported instrument for promoting responsible business conduct in a global context. With this document the 36 OECD members as well as 12 other adhering countries encourage the positive contribution that multinational enterprises can make to sustainable development. This is intended to help avoid the risks that may result from global business activities. The OECD Guidelines provide voluntary principles and standards for responsible business conduct consistent with applicable laws and internationally recognised standards. They make recommendations for the conduct of international business focusing on transparency, human rights, employment and industrial relations, environmental protection, fight against corruption, consumer interests, science and technology as well as competition and taxation.

The adhering governments have agreed to implement the OECD Guidelines and set up National Contact Points (NCPs). The NCPs are designed to enhance the awareness and effectiveness of the OECD Guidelines and contribute to the resolution of issues and questions that arise relating to the implementation of the Guidelines. Austria's National Contact Point (German acronym: öNKP, for ease of understanding henceforth called Austrian NCP) is based within the Federal Ministry for Digital and Economic Affairs (German acronym: BMDW). The organisational unit responsible for the Austrian NCP is III/6a – the Austrian National Contact Point for the OECD Guidelines for Multinational Enterprises. The Austrian NCP's activities are supported by a Steering Committee composed of representatives of ministries, chambers, stakeholder groups and civil society.

If any complaint on alleged contraventions of the OECD Guidelines is filed with the Austrian NCP, it is processed in accordance with the Procedural Guidance included in the OECD Guidelines. The present publication provides an overview of the kind and mechanism of such a grievance procedure. No legally valid claims may be derived from this guidance.

## 1.1 An Overview of the OECD Guidelines

The OECD Guidelines cover the key areas of ethics within enterprises and are thus among the most comprehensive international guidelines for responsible business conduct:



### **General Policies**

Presentation of the objectives and basic recommendations for conduct of the OECD Guidelines.



### **Information Disclosure**

Obligation of an enterprise to inform on its business activities and their impact.



### **Human Rights**

Respect for human rights and due diligence at the business locations within the value chain.



### **Employment and Industrial Relations**

Protection of core labour standards as defined by the International Labour Organisation (ILO).



### **Environment**

Improvement of environmental sustainability by using Environmental Management Systems and following a precautionary approach.



### **Combating Corruption**

Prevention of bribery and unfair commercial practices through internal controls and transparency.



### **Consumer Interests**

Adoption of fair business, marketing and advertising practices and quality assurance of goods.



### **Science and Technology**

Enabling the transfer of knowledge to emerging and developing countries.



### **Competition**

Observance of competition laws with due regard to regulations applicable in the host countries.



### **Taxation**

Payment of tax liabilities that are due at home and abroad as well as cooperation with authorities.

## 2 The Grievance Procedure

The OECD Guidelines are the only government-supported international instrument for responsible business conduct with an integrated grievance mechanism. The National Contact Points (“NCPs”) in the adhering countries offer non-adversarial procedures, such as conciliation and mediation platforms, for complaints about alleged contraventions of the OECD Guidelines, thus closing a major gap in cross-border accountability of multinational enterprises.

The NCP-managed mediation process provides a framework for the parties concerned to enter into a constructive dialogue with stakeholders and consequently creates the basis for long-term joint processes of change. The parties enjoy greater control over the process of reaching an agreement than in formal procedures where a third independent entity takes a final decision. In most cases consensual agreement is also a less time consuming and less expensive alternative to formal or legal actions.

The objective of any grievance procedure is to have an open and constructive dialogue between the parties in order to achieve a common and tenable solution, thus contributing to the effectiveness of the OECD Guidelines. National Contact Points are no judicial authority, and complaints – so-called specific instances – are no formal legal cases. By the same token, mediation procedures are not intended to result in sanctions for alleged contraventions in the past. Rather, they seek to address the issue and find a solution that is satisfactory to both sides and sustainable for the future. The results of such a procedure can have major consequences, e.g. for the reputation of an enterprise or for public procurement and funding systems. For instance, official export credit agencies – in Austria Österreichische Kontrollbank – are urged to consider the concluding statements of NCPs in their decision-making processes.

### 2.1 Principles

Alongside general criteria guiding National Contact Points in carrying out their activities (in a visible, accessible, transparent and accountable manner), NCPs should deal with specific instances in a manner that is impartial, predictable, equitable and compatible with the OECD Guidelines.

### **Impartial**

NCPs should always ensure that complaints are addressed in an impartial and unbiased manner.

### **Predictable**

Clear and publicly available information on an NCP's role in a grievance procedure is to ensure that all parties have a clear picture of the procedure, its stages and timeframes as well as of the potential result.

### **Equitable**

NCPs should ensure that the parties can engage in the process on fair and equitable terms. All parties are given reasonable access to sources of information relevant to the issue and procedure.

### **Compatible with the OECD Guidelines**

NCPs should operate in accordance with the principles, standards and procedural guidance contained in the Guidelines.

In addition, the effectiveness of the specific instances mechanism relies on the active and constructive cooperation and good faith behaviour of all the parties involved. Good faith behaviour in this context means, inter alia, maintaining confidentiality where appropriate, responding in a timely fashion and issuing statements, genuinely engaging in the process with a view to finding a solution, and refraining from misrepresenting the process or from taking reprisals against parties involved in the procedure.

## 3 Stages of the Procedure

Any person or entity can file a complaint against a multinational enterprise which allegedly contravened the OECD Guidelines. The complaint is to be addressed to the competent NCP. As a matter of principle, the competent NCP is the one located in the country where the potential contravention took place. If no NCP is set up in this country, the complainant may turn to the NCP of the country where the enterprise is headquartered. Moreover, the Austrian NCP may handle complaints when there is another relevant interest in handling it and when there is no other way to ensure that the complaint will be handled. If the competent NCP finds that the issue raised merits further examination, a mediation process will be initiated in an attempt to reconcile the complainant and the enterprise, take a critical look at the allegations and resolve the issue by agreement of the parties involved. This is intended to foster observance of the OECD Guidelines and develop a sustainable solution within the meaning of the Guidelines.

The results of the process – even in the absence of agreement – will be published on the involved NCP's website as well as in the OECD database, thus making the process transparent and generally accessible. For improving the effectiveness of the OECD Guidelines it will be essential that the agreement reached and/or the recommendations made by the NCP are actually implemented.

### 3.1 Receipt and Assessment of a Complaint

Anyone having a reasonable interest in the issue at hand can file a complaint or enquiry with the National Contact Point, meaning that issues can be raised by worker organisations and other non-governmental organisations, affected groups of the population, individuals or other stakeholders.

In any case, the complainants must state their interests and intentions and provide consistent and well-founded arguments for the issue raised in good faith. As a matter of principle, complaints must be directed at multinational enterprises operating or located in an OECD country or another adhering country. The purported contravention of one or several provisions of the OECD Guidelines must have taken place within the worldwide activities of the enterprise.

The issue should be filed in the country in which the purported contravention of the OECD Guidelines took place. If there is no NCP in this country, the issue must be raised with the NCP of the country in which the enterprise in question is headquartered. Furthermore, the Austrian NCP is authorised to handle complaints in cases where there is another relevant interest involved or when a complaint cannot be handled otherwise. Complaints must be filed in writing with the competent NCP. A list of all National Contact Points is available from the OECD Guidelines website <http://mneguidelines.oecd.org>. As a rule, the language of a case submitted to the Austrian NCP is German, but occasionally a complaint may also be dealt with in the OECD languages English or French.

### How does the Austrian NCP assess a complaint?

Having received a complaint the Austrian NCP will confirm its receipt in writing. In a first step, the Austrian NCP will check the complaint for completeness. For this purpose the following requirements must be met:

- Complaints must not be filed anonymously with the Austrian NCP – the complainant must be named and provide appropriate contact details.
- The company concerned (respondent) must also be clearly identified.
- The alleged contravention must fall within the scope of the OECD Guidelines and be specified in the complaint.
- The complainant must be able to explain its legitimate interest in the issue at hand and file the complaint on a bona fide basis.

If the complaint is deemed to be complete, the Austrian NCP will check whether it actually is the competent body. If this is not the case, the complainant will be immediately informed of this fact.

In a next step, the Austrian NCP will determine the relevance of the received complaint and initially assess whether it merits further examination. For this purpose the following criteria are essential:

- The complaint must be directed at a multinational enterprise, i.e. an enterprise operating cross-border.
- There must be a link between the claimed wrongdoing and the worldwide activity of the respondent or its business partners including suppliers and subcontractors.
- In addition, the Austrian NCP will check whether the same facts have already been assessed by local procedures or are currently being legally treated. Any pending or completed suit does not necessarily constitute grounds for the Austrian NCP to reject a complaint.

In the course of this initial assessment, the Austrian NCP informs the respondent on the contents of the complaint to give it the opportunity to comment. The Austrian NCP will conclude initial assessment within three months of receipt of the grievance whenever possible and will state adequate reasons for its decision. If the issue raised is considered to be of relevance and accepted for further examination, the Austrian NCP will communicate – where this has not yet been done – the complaint to the respondent asking for comment. The Austrian NCP will try to enlist the voluntary cooperation of the respondent in the procedure.

If the Austrian NCP deems that the formal criteria are met and believes that the issue raised merits further examination, the complaint will be accepted. If one or several criteria are not met or the issue does not merit further consideration, the Austrian NCP will refuse to deal with the complaint or, where appropriate, refer it to another competent National Contact Point.

In either case, the Austrian NCP will lay down the results of the initial assessment in a written form and publish this document on its website. If the complaint is accepted, the Austrian NCP will inform the parties involved and the general public on why the issue merits further examination and will present the reason for complaint, the pertaining chapters of the OECD Guidelines and their relevance. If it refuses to consider the complaint, the corresponding statement will include a summary of the issues raised and the main reasons for refusal.

In addition the Austrian NCP offers all the stakeholders in the issue individual or joint meetings in order to explain the procedure in greater detail and the framework for action available to the NCP. More specifically, the Austrian NCP will draw attention to the need for transparency, meaning that all and any information submitted by the parties will be made available to all stakeholders. The Austrian NCP will also encourage the parties to seek agreement outside the formal grievance mechanism, thus creating an important basis for further dialogue.

### **What is the effect of ongoing judicial proceedings and national law on the grievance procedure?**

Observance of the OECD Guidelines is voluntary – they are non-binding standards for business conduct which are neither a substitute for nor will they override domestic law and regulation. While the OECD Guidelines may extend beyond national law, they may not place an enterprise in situations that are in conflict with applicable law. Consequently, a complaint may be accepted by the Austrian NCP even if the enterprise

complied with all legal requirements. Any judicial proceedings, running in parallel or already concluded, which concern the issue raised will thus not constitute a compelling reason for the Austrian NCP to refuse the complaint. Rather, it will review each specific instance in view of whether conducting a grievance procedure will add value to the effectiveness of the OECD Guidelines and no negative effects will be expected on other proceedings.

### **How should enterprises deal with a complaint?**

Enterprises at which complaints are directed will be informed by the Austrian NCP of this fact in the course of initial assessment and invited to comment. A complaint is always linked to the OECD Guidelines for Multinational Enterprises. Therefore enterprises should, first and foremost, familiarise themselves with the Guidelines and the related allegations. The German version of the OECD Guidelines and their summary are available from the Austrian NCP's website: <http://www.oecd-leitsaetze.at>.

Basically, no one is obliged to participate in the grievance procedure. This procedure should, in any case, be understood as a valuable source of learning: the best result within the meaning of responsible business conduct will be achieved if all stakeholders cooperate in a constructive manner and jointly devise sustainable solutions. Active participation in the procedure and a clear representation of their standpoint can help enterprises to prepare the ground for finding joint solutions to the problem with their stakeholders. Mediation is an efficient and cost-effective means of initiating long-term joint processes of change and strengthening the relationship to stakeholders.

If the Austrian NCP decides to further examine a complaint, the respondent should not consider this to be an accusation of having disregarded the OECD Guidelines. It simply means that the issues raised concern the application of the Guidelines, while a more detailed examination of their contents will only take place during the actual mediation process.

### **What can enterprises do to avoid complaints under the OECD Guidelines?**

Due diligence is a key concept of the OECD Guidelines. In implementing the requirements of the Guidelines, enterprises should carry out risk-based due diligence to identify and prevent actual and potential adverse impacts of their business activities.

## 3.2 The Mediation Process

If the issue raised is accepted for further examination, the Austrian NCP will offer the parties its impartial mediation offices. If all parties are open for talks, the Austrian NCP will assume the role of a neutral discussion forum. A tenable and joint solution is to be found through consultations with the stakeholders. The procedure is based on talks between the parties and written comments as well as on information from competent authorities, experts or other NCPs, while the Steering Committee of the Austrian NCP can provide advice.

A possible agreement primarily depends on the good will of both sides – all parties need to act in good faith. The parties may reject the Austrian NCP's mediation services. In addition, the Austrian NCP may discontinue the procedure at any time if one or several parties show(s) insufficient readiness to engage in the mediation process in a constructive manner. Any costs incurred under the mediation procedure are borne by the parties involved.

### How does mediation work?

In a first step, the Austrian NCP will discuss with the parties what they expect of the process and how it should be designed in concrete terms. The mediation process can take on any form which is suitable for resolving the issue and agreed on by the parties and the Austrian NCP. At the beginning both parties will have the opportunity to present and substantiate their view of the matter. The Austrian NCP is responsible for the procedure, assists in the dialogue and may propose solutions. If a party rejects these attempts at conciliation and mediation, or if no agreement can be reached, the procedure will be discontinued by the Austrian NCP and concluded with a final statement (see p. 14).

The Austrian NCP can conduct mediation itself or, with the agreement of all parties, commission an external facilitator or mediator to do so, the important aspect being that this person is impartial and that there is no conflict of interests. An external mediator offers advantages whenever he or she has expertise related to the issue raised or experience with similar cases. The results of the dialogue will be recorded in writing for both parties. This summary report will subsequently be an essential component of the concluding document. In the case of an external mediator, the Austrian NCP will be informed on the progress of mediation on a regular basis.

As a general principle, all dialogue will take place in the Austrian NCP's offices in Vienna. If it serves the procedure, the dialogue may take place elsewhere, subject to the agreement of both parties. The language of the procedure will be specified with the parties in advance – as a rule it is German, but occasionally the parties may agree on the OECD languages English or French.

### **How is confidential information handled during the procedure**

The Austrian NCP is committed to two principles and required to strike a balance between them: confidentiality and transparency. Basically, all parties are given access to all relevant information concerning the issue raised and the procedure. Although the existence and results of a grievance procedure are made public the issues dealt with and any views expressed during the proceedings are subject to confidentiality, always providing that they have become known solely within the proceedings or if the justified interests of the parties or of any third parties (such as the protection of life and limb, preservation of business or company secrets) require such confidentiality. This is to ensure that no party is put at a disadvantage through disclosure of information during mediation proceedings. All parties should be aware of the possible impact of public appearances or declarations on the success of the procedure. Disclosures, if any, will require the consent of all parties.

The Austrian NCP will not provide any information on ongoing proceedings in order not to jeopardise its mediation efforts. Sensitive data and information as well as business secrets are subject to confidentiality both during the procedure and after its conclusion. In some cases, the identity of the parties involved may be kept confidential, e.g. if its disclosure could be of disadvantage to one or both parties.

### **What is the timeframe for a grievance procedure?**

A grievance procedure should be completed within one year and delays should be avoided. Initial assessment of an issue by the Austrian NCP should not take longer than three months, while the duration of the ensuing mediation process will depend on the specifics of the instance as well as on stakeholder engagement and the parties' readiness to enter into a dialogue and agreement. It takes, in the best case, between six and twelve months. The report should be drafted within, at most, three months after the conclusion of the procedure as defined in the OECD's Procedural Guidance.

However, there may be external factors that can delay the procedure, e.g. when translation services are needed or advice is sought from other National Contact Points.

As a rule, grievance procedures concerning issues raised in a non-adhering country take longer. Therefore the above timeframes are to provide orientation rather than rigid deadlines. Nevertheless the parties will be informed about any departure from the planned timeframe and the reasons why.

### Can the parties achieve agreement also outside the grievance procedure?

Agreement outside the formal procedure is possible at any time, and at the start of the procedure, the Austrian NCP will expressly encourage the parties to seek such agreement. If the parties are working towards such an agreement on key points of the complaint, the Austrian NCP must be informed in writing thereof. If this attempt fails, the mediation process can be resumed at any time. If agreement is reached outside the procedure, this will be made public by the Austrian NCP in its final statement.

## 3.3 Conclusion of the Grievance Procedure

The purpose of a grievance procedure always is to ensure that the parties reach agreement on a sustainable and tenable solution and thus on a more effective application of the OECD Guidelines. Any complaint addressed to the Austrian NCP will be concluded with a final document published on the NCP's website. Depending on the progress made and results achieved in the proceedings the final document contains the following:

- If the complaint is not accepted for further examination, the Austrian NCP will write a statement presenting the issues raised and the major reasons for the Austrian NCP's decision that these issues do not merit further consideration.
- If the parties are able to reach an agreement, a joint and final statement will be drafted in which the issues raised, the course of the procedure and the agreement reached will be discussed, including arrangements and obligations agreed by the parties as well as deadlines and possible steps for compliance with these obligations. The exact contents of the agreement will only be made publicly available to the extent expressly authorised by the parties.
- If the parties involved fail to reach agreement on major aspects of the issues raised or if the procedure is discontinued owing to the lack of engagement of one party, the Austrian NCP will issue a final statement presenting the alleged contraventions as well as the reasons for disagreement between the parties and discontinuation of its efforts at mediation. Occasionally, this statement may also include observations and recommendations of the NCP on a more effective implementation of the OECD Guidelines.

Prior to any publication, the Austrian NCP provides an opportunity for the parties to comment on the draft statement. If no agreement can be reached on the wording of the document, the Austrian NCP's will take a final decision.

The publication of the final document is not intended to bring an abrupt end to the grievance procedure. Rather, it will now be up to the enterprise to implement the Austrian NCP's recommendations on a voluntary basis and thus to make an important contribution to sustainable development through more responsible business conduct in a global context. Moreover, the parties may provide follow-up activities which, if so requested by the parties, may be accompanied by and harmonised with the Austrian NCP.

## 4 Contact

More information on the OECD Guidelines, the National Contact Points and the grievance procedure can be obtained from the Austrian National Contact Point at the Federal Ministry for Digital and Economic Affairs:

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