

Decree establishing the Dutch National Contact Point (NCP) for the OECD Guidelines for multinational enterprises

No. WJZ 7020203

The Minister for Foreign Trade, acting in agreement with the Minister of Foreign Affairs, the Minister of Social Affairs and Employment and the Minister of Housing, Spatial Planning and the Environment;

hereby decrees:

Section 1

In this Decree, the following terms shall be understood to mean:

- a. the Minister: the Minister of Economic Affairs;
- b. the NCP: the National Contact Point for the OECD Guidelines for multinational enterprises.

Section 2

1. There shall be a National Contact Point for the OECD Guidelines for multinational enterprises.
2. The duties of the NCP shall be:
 - a. to propagate the OECD Guidelines for multinational enterprises, and
 - b. to consider reported specific instances of alleged violations of the Guidelines or elements thereof.

Section 3

1. Unless the effective application of the Guidelines is best served by confidentiality, the NCP, having considered a specific instance, shall prepare a statement on the subject and submit it to the Minister.
2. Within one month of receiving this statement, the Minister, after consulting the Minister or Ministers concerned, shall add his or her findings to the statement.
3. The NCP shall submit the statement, together with the Minister's findings, to the parties involved in the specific instance and publish this information on the NCP website.

Section 4

1. The NCP shall consist of a chairman, who is also a member, and up to four members.
2. The members shall be appointed by the Minister and may be suspended and dismissed by the Minister after the latter has consulted the Minister of Foreign Affairs, the Minister of Social Affairs and Employment and the Minister of Housing, Spatial Planning and the Environment.
3. The members shall contribute their knowledge and expertise in a personal capacity and shall not act as representatives of a specific interest group.

Section 5

1. Furthermore, the NCP shall comprise up to four advisory members.
2. The advisory members shall represent the Minister of Economic Affairs, the Minister of Foreign Affairs, the Minister of Social Affairs and Employment and the Minister of Housing, Spatial Planning and the Environment. The latter three advisory members shall be appointed by the Minister on the recommendation of the Minister of Foreign Affairs, the Minister of Social Affairs and Employment and the Minister of Housing, Spatial Planning and the Environment, respectively.

Section 6

The Minister shall provide for the NCP secretariat.

Section 7

1. The NCP shall determine its own working procedure.
2. The documents concerning the NCP's activities shall be administered in accordance with the procedures applicable at the Ministry of Economic Affairs. Upon termination of the NCP's activities, the documents shall be kept in the archives of that Ministry.

Section 8

1. Before 1 June of each year, the NCP shall draw up a report of its activities, findings and results and submit this annual report to the Minister. The Minister shall send the annual reports to the OECD.
2. At the Minister's request, the chairman shall provide an interim verbal report of the NCP's activities.

Section 9

The NCP shall draft an evaluation report addressing the effectiveness of its performance. The NCP shall submit this report to the Minister before 1 January 2010.

Section 10

1. This Decree shall enter into force on the second day after the publication date of the Government Gazette.
2. This Decree shall remain valid until 1 April 2010.

Section 11

This Decree shall be cited as: Decree establishing the NCP [*Instellingsbesluit NCP*].

This Decree and the explanatory notes shall be published in the Government Gazette and copies shall be sent to the parties involved.

The Hague, 16 February 2007

Minister for Foreign Trade,

C.E.G. van Gennip

Explanatory notes

General

The OECD Guidelines for multinational enterprises establish how the authorities of the OECD member states expect multinational enterprises to conduct themselves. They contain a number of voluntary principles and standards for corporate social responsibility and cover such issues as information provision, labour, the environment, fighting corruption, consumer interests, knowledge transfer, competition and taxation. The voluntary nature does not alter the fact that enterprises may be 'held to account' for not complying with the OECD Guidelines. This may take the form of proceedings before the National Contact Point for the OECD Guidelines for multinational enterprises (NCP).

Task of the NCP

The NCP has the following two tasks: to propagate the Guidelines, which includes raising awareness of the NCP's purpose and working method among enterprises and other stakeholders, and to consider specific instances submitted to the NCP of alleged violations of the Guidelines or elements thereof.

Studies have shown that SMEs in particular are not or hardly aware of the Guidelines or the NCP. An increasing number of SMEs are entering markets that may entail a risk in terms of socially responsible business practices.

This is why the launch of the revised NCP is accompanied by a release of funds for additional information provision, especially via the knowledge centre for corporate social responsibility: CSR Netherlands. The NCP has to carry out its duties in compliance with the text of the Guidelines established in 2000 and with the additions (e.g. agreements on interpretations) or amendments to this text that have been or will be adopted by the OECD Investment Committee. In preparing such additions or amendments, the representative of the Netherlands on the Investment Committee will consult the NCP. An NCP representative will be part of the Dutch delegation to the Annual Meeting of NCPs.

Proceedings

The NCP must assess the admissibility of a specific instance on the basis of the Guidelines themselves and the 'Procedural Guidance' provided by the OECD as part of the Guidelines. The role of an NCP as outlined in the Procedural Guidance is primarily that of a mediator, without any legal connotations.

Account must also be taken of the Investment Nexus accepted by the OECD in 2003. This concept was addressed earlier in the letter to the Lower House of Dutch Parliament of 16 February 2005 (Parliamentary Papers II 2004/05, 29 439, no. 5). In assessing the admissibility of a specific instance, the NCP must broadly interpret this Investment Nexus. Rather than focusing on the ownership structure, consideration must be given to aspects such as the extent of influence the Dutch enterprise can exert over the foreign enterprise involved in the specific instance, the extent to which the foreign enterprise depends on the Dutch enterprise in terms of sales, the extent to which the products are marketed in the Netherlands as the own products of the Dutch enterprise, the sustainability of the cooperation between the two enterprises, etc.

A statement from the NCP must be drawn up as soon as possible after the consideration of a specific instance declared admissible has been completed. Even if its mediation is unsuccessful, the NCP will have the authority to draw up a statement in which it expresses an opinion on the alleged violations.

Composition of NCP

The OECD Guidelines for multinational enterprises were revised in 2000. Every country which endorses these revised Guidelines undertakes to set up an NCP. The Dutch NCP consisted of officials from the Ministry of Economic Affairs (primarily responsible), the Ministry of Foreign Affairs, the Ministry of Social Affairs and Employment, and the Ministry of Housing, Spatial Planning and the Environment. Based on a study completed in 2006 into five years of NCP, it was decided to set up a more independent NCP with a non-official chairman and up to four non-official members. In addition, the NCP has advisory members who are officials of the aforesaid Ministries. The latter members advise the non-official members on matters such as the interpretation of the Guidelines. All decisions (e.g. admissibility, proceedings, statement, etc.) are made by the non-official members.

Working method

The same study revealed criticism of the drawn-out handling of specific instances and the insufficient level of transparency in respect of procedures and criteria. The analysis of specific instances considered shows that the lengthy processes were often attributable to a lack of manpower at the NCP secretariat. The introduction of the new NCP means that the Ministry of Economic Affairs will structurally provide for an adequate secretariat.

The new NCP will be instructed to give priority to clarifying and publishing the successive steps in the specific instance consideration process, including indications of processing times.

Evaluation report

Based in part on the evaluation report to be drafted in 2009, a decision will be taken on whether to extend the operating period of the NCP in its current form.

Minister for Foreign Trade, C.E.G. van Gennip