

OECD GUIDELINES FOR MULTINATIONAL ENTERPRISES

Guide for National Contact Points on Coordination when handling Specific Instances



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1. Introduction

All governments adhering to the OECD Declaration on International Investment and Multinational Enterprises are required to establish a National Contact Point (NCP). NCPs are mandated to further the effectiveness of the OECD Guidelines for Multinational Enterprises ('the Guidelines') by undertaking promotional activities, handling enquiries and contributing to the resolution of issues that arise relating to the implementation of the Guidelines in specific instances. The Guidelines do not provide a formal definition of 'specific instances', however the term is used to describe situations of alleged non-observance of the Guidelines brought to NCPs.¹ Between 2000 and 2017 over 400 specific instances have been submitted to NCPs. Over this period, most NCPs have developed rules of procedure and continue to refine their processes of handling specific instances to address challenges and improve outcomes.

The specific instance procedure is intended to provide a consensual, non-adversarial, "forum for discussion" for issues that arise relating to implementation of the Guidelines.² The issue of coordination between NCPs represents an ongoing challenge to NCPs in handling specific instances.

The Guidelines note that "generally, issues will be dealt with by the NCP of the country in which the issues have arisen." In cases where issues arise from an enterprise's activity in several adhering countries, NCPs are asked to consult with the NCP(s) of the other country/countries concerned and coordinate on who should lead the specific instance or act as the "lead NCP".

Specific instances are increasingly complex. The nature of global business operations and corporate structures today means that identifying the lead NCP can be challenging. For example, a multinational may be legally registered in a different jurisdiction from where it is headquartered. The multinational may also have subsidiaries and other operations spanning multiple jurisdictions. Since 2011, the scope of the Guidelines has increased to include business relationships and not just a company's direct operations expanding the scope of issues that can be raised and enterprises that can be linked to an impact.

Diversity across NCPs in terms of their level of functionality as well as variation in procedural rules for handling specific instances has meant that there has not been a consistent approach to coordination. Situations have arisen where lack of clarity and/or communication over which NCP should lead on a specific instance have resulted in delays and confusion. At times, NCPs have not systematically informed one another of specific instances being handled which concern companies or parties from another adherent's jurisdiction, or have mentioned another NCP in a public statement without prior notice. In other situations, submitters have filed specific instances with multiple NCPs concerning the same company and impact, which has created confusion on how to proceed.

1 Implementing the OECD Guidelines for Multinational Enterprises: The National Contact Points from 2000 to 2015, OECD (2016), <http://mneguidelines.oecd.org/OECD-report-15-years-National-Contact-Points.pdf>.

2 OECD Guidelines for Multinational Enterprises (2011), Procedural Guidance, Section I paragraph C, <http://mneguidelines.oecd.org/mneguidelines/>.

Additionally NCPs have raised the concern of “forum shopping” amongst submitters as a challenge to coordination.

Broadly, coordination on specific instance handling will be relevant in the following situations:

- a) Designation (where relevant) of a lead NCP and, accordingly, of supporting NCP(s).³
- b) Coordination between the lead NCP and supporting NCP(s).
- c) Coordination amongst NCPs where issues related to the same specific instance are raised with multiple NCPs and handled separately.

The paper seeks to consider current challenges in specific instance coordination amongst NCPs and identify good practice to help ensure consistency and encourage resolution of issues. It will seek to answer the follow questions:

- What does the Procedural Guidance say about coordination on specific instances between NCPs?
- How do NCPs coordinate on specific instances in practice?
- What are the perspectives of institutional stakeholders with respect to coordination on specific instances?
- What are some of the good practices for coordination on specific instances?

³ The Procedural Guidance does not include a definition of “lead NCP” or “supporting NCP”. In practice, a lead NCP is the NCP which takes the primary responsibility for the handling of a specific instance and holds decision making power with respect to the process. A supporting NCP may have a relationship to the specific instance and be involved in an assisting capacity. In practice, the role of supporting NCPs may be different across specific instances but may involve activities such as providing guidance on local context or facilitating logistics and/or communication in the supporting NCP’s country (as relevant), assisting with translation, or providing input in the context of initial assessment or final statement drafting.

2. Coordination on specific instances between NCPs under the Procedural Guidance

A. Designation of a lead NCP

What determines which NCP should handle a specific instance?

Unlike legal proceedings which are generally supported by detailed and sophisticated rules on venue and jurisdiction, the Procedural Guidance includes minimal language on these issues.

The Procedural Guidance of the Guidelines (Commentary, para 23) states that:
 “Generally, issues will be dealt with by the NCP of the country in which *the issues* have arisen.” (emphasis added)

The Procedure Guidance does not explicitly oblige NCPs to transfer specific instances to other NCPs in any circumstances. However it provides broad direction with respect to identifying which NCP should handle a specific instance – the NCP of the country where the issues have arisen.

The use of the term "issues" as opposed to "impacts" is important. If the sentence referred to impacts then the NCP that should handle a specific instance would be the one in the country where the harm or adverse impact occurred. However, the term “issues” is not synonymous with “impacts.” It is possible for one impact to give rise to several issues (or allegations). This is particularly true under the 2011 version of the Guidelines which expanded the responsibility of business beyond avoiding adverse impacts in their own operations to also managing risks across business relationships.

For example, consider the issue of trade in minerals used to finance local conflict and human rights abuse. The impact (local conflict and human rights abuse) gives rise to several issues related to responsibilities of commercial actors along mineral supply chains (e.g. the responsibility of mineral traders buying minerals linked to conflict financing, the responsibility of smelters processing the minerals, and the responsibility of the companies using those minerals in their products or manufacturing processes.) In this respect the underlying impact may give rise to multiple issues (or allegations) which implicate enterprises across various jurisdictions, and potentially, various NCPs.

Similarly, the "issues" in question could refer to a general policy set by a company at headquarter level which may lead to impacts in several locations. In such a case the location of the "issues" may be traced back to the location of the company headquarters.

The use of the word “generally” also suggests that some degree of flexibility is permitted when applying this provision.

As an overarching principle the Procedural Guidance (para I and I.C) also provides that: “The role of National Contact Points (NCPs) is to further the effectiveness of the *Guidelines* [and that] The National Contact Point will contribute to the resolution of issues that arise relating to the implementation of the Guidelines[...].”

Thus, while the Procedural Guidance provides broad direction on which NCP should handle a specific instance as outlined above, this should not override the implementation of the mandate of NCPs which is to contribute to the resolution of issues and offer a forum for discussion to deal with the issues raised in an efficient and timely matter. Where the issue(s) raised in a specific instance concern several NCPs care should be taken to ensure that decisions made with respect to designation of a lead NCP or to have multiple NCPs handle related issue(s) separately (see below), maximize the potential for the NCPs to contribute to the resolution of issues.

In which situations is it necessary to appoint a lead NCP?

The Procedural Guidance of the Guidelines (Commentary para 24) provides that:

“When issues arise from *an enterprise’s activity* that takes place in several adhering countries or from the activity of a group of enterprises organised as *consortium, joint venture* or other similar form, based in different adhering countries, the NCPs involved should consult with a view to agreeing on which NCP will take the lead in assisting the parties.” (emphasis added).

“The NCPs can seek assistance from the Chair of the Investment Committee in arriving at such agreement. The lead NCP should consult with the other NCPs, which should provide appropriate assistance when requested by the lead NCP. If the parties fail to reach an agreement, the lead NCP should make a final decision in consultation with the other NCPs.”

The above language covers situations where the activities of only one corporate entity are at issue, recognising that corporate entities may reflect complex organisations (i.e. consortiums, joint ventures, subsidiaries operating in various jurisdictions). For example, a specific instance related to the conduct of a subsidiary operating in one jurisdiction, with a holding company in a second jurisdiction and a parent company in third could potentially implicate three NCPs. In these situations it will be necessary to appoint a lead NCP.

The provision on appointment of a lead NCP does not cover situations where the conduct of various corporate entities, related to the same impact, is at issue. In these cases appointment of a lead NCP may not be necessary and the separate (but related) specific instances may be considered by several NCPs in parallel in order to correctly address the different issues raised (e.g. the activity of an enterprise causing a negative impact and the question of remediation on the one hand, and, on the other hand, the question of due diligence measures or RBC policy at a higher level in the value chain where an enterprise might be directly linked to an adverse impact). For example in 2011 a consortium of NGOs filed a specific instance related to alleged human rights impacts by the Pohang Iron and Steel Enterprise (POSCO), and its joint venture POSCO India Private Limited with three separate NCPs (Korea, Norway and the Netherlands). Although stemming from the same underlying impact the submission dealt with the activities of three separate enterprises, POSCO, NBIM and APG, and therefore raised three separate sets of issues (or allegations) (i.e. the activities of POSCO resulting in human rights impacts, and the due diligence approaches of NBIM and APG respectively). As such the NCPs of Korea, Norway and the Netherlands each handled the specific instance with respect to the issues raised involving the enterprise from their jurisdiction.

How should a “lead NCP” be identified?

The Procedural Guidance does not give direction on how NCPs should select the most appropriate lead but leaves it to the discretion of the NCPs involved. As this issue is left relatively flexible, in choosing a lead NCP a factor to consider should be reaching resolution of the issues and furthering the effectiveness of the Guidelines (see above). This consideration may be linked to the allegations raised in a submission. For example, if the issues in question relate to actions or decisions made at headquarters level of a company, the NCP based in the country of company’s headquarters may be best positioned to apply leverage and in reaching a resolution between the parties. Likewise if the issues in question relate to the actions or decisions of a specific subsidiary, the NCP based in the country of that subsidiary may be best positioned to lead the handling of the specific instance. The Procedural Guidance provides that NCPs may consult the Chair of the Investment Committee to reach agreement on who should lead on a specific instance. There has not been any such formal consultation so far. However, in practice, since the creation of the Working Party on Responsible Business Conduct (WPRBC) in 2013 the Chair of the WPRBC has provided informal guidance on such issues when requested by NCPs.

As a safeguard the Procedural Guidance furthermore provides that “[t]he [Investment] Committee will, with a view to enhancing the effectiveness of the *Guidelines* and to fostering the functional equivalence of NCPs: [...] b) consider a substantiated submission by an adhering country, an advisory body or OECD Watch on whether an NCP is fulfilling its responsibilities with regard to its handling of specific instances.”⁴ Thus where a lead NCP is not handling the specific instance in line with the Guiding Principles for Specific instances, i.e. in a manner that is impartial, predictable, equitable, or compatible with the Guidelines,⁵ the provision above may apply. In these situations, the supporting NCPs may also wish to assess the situation themselves before a submission is made to the Investment Committee.

B. Coordination between the lead NCP and supporting NCP(s)

How are NCPs called on to coordinate in the context of specific instances?

The Procedural Guidance of the Guidelines (Commentary, para 23) further provides that:

“Among adhering countries, such issues will first be discussed on the national level and, where appropriate, pursued at the bilateral level. The NCP of the host country should consult with the NCP of the home country in its efforts to assist the parties in resolving the issues. The NCP of the home country should strive to provide appropriate assistance in a timely manner when requested by the NCP of the host country.”

The above language relates to situations where an NCP is handling a specific instance involving the conduct of an enterprise in one adherent country which is headquartered in another adherent country. It makes clear that in these cases the NCP handling the specific instance (the host NCP) *should* consult with the NCP where the enterprise is headquartered

⁴ OECD Guidelines (2011) Procedural Guidance para II. 2

⁵ Id. Commentary on the Procedural Guidance for NCPs, para 22

(the home NCP). Therefore, at a minimum a home NCP should be informed of any ongoing specific instances related to enterprises headquartered in their jurisdiction. It further provides that the home NCP should provide assistance as requested.

Although the provision is specific to “home” and “host” NCPs, the underlying recommendation could be considered to be generally applicable and read to mean that a lead NCP should notify any relevant NCPs of ongoing specific instances and supporting NCPs should provide assistance to lead NCPs as requested.⁶ The form of assistance is not further defined in the Procedural Guidance.

C. Coordination amongst NCPs where issues related to the same specific instance are raised with multiple NCPs and handled separately

How can NCPs coordinate to ensure consistent interpretation of the Guidelines where similar issues are handled separately?

The Amendment of the Decision of the Council on the OECD Guidelines for Multinational Enterprises (para I.2), provides that: “National Contact Points in different countries shall co-operate if such need arises, on any matter related to the Guidelines relevant to their activities.”

The Procedural Guidance (para I. C 2.b-c) notes that:

“The NCP will [...] where relevant [...] consult NCPs in the in the country or countries concerned [and] seek the guidance of the [Investment] Committee if it has doubt about the interpretation of the Guidelines in particular circumstances.”

Where NCPs are considering related issues (or allegations) concerning different enterprises in parallel, it is important that NCPs interpret the expectations of the Guidelines consistently. This will only be an issue in select circumstances – i.e. where the handling of a specific instance requires interpretation of the Guidelines and where the circumstances surrounding the specific instances being handled in parallel (including the issues or allegations raised) are sufficiently similar.

In this respect the Guidelines broadly encourage cooperation amongst the NCPs on substantive matters related to them. Where interpretation issues arise, NCPs are encouraged to co-operate with one another to ensure they reach consistent conclusions. They can also consult the Investment Committee (or WPRBC) where doubts exist about the interpretation of the Guidelines.

As a final safeguard against inconsistent interpretation of the Guidelines the Procedural Guidance also provides that the IC may “consider issuing a clarification where an adhering country, advisory body, or OECD Watch makes a substantiated submission on whether an NCP has correctly interpreted the Guidelines in specific instances.”⁷

⁶ Generally a “home” NCP is considered to be the NCP in the country where the relevant company is headquartered while the “host” NCP may be the NCP in the country where the company has operations and/or where impacts took place. Although the language of the Procedural Guidance implicitly assumes the “host” NCP to be acting as the lead NCP these roles may be varied in practice.

⁷ OECD Guidelines (2011), Procedural Guidance, para II. 2 (c)

How should an NCP react where it receives a submission involving a specific instance which has been handled by another NCP?

The Procedural Guidance of the Guidelines (Commentary, para 25) provides that:

“In making an initial assessment of whether the issue raised merits further examination, the NCP will need to determine whether the issue is bona fide and relevant to the implementation of the Guidelines. In this context the NCP will take into account [...] how similar issues have been, or are being, treated in other domestic or international proceedings.”

It additionally provides (Commentary, para 26) that:

“When assessing the significance for the specific instance procedure of the other domestic or international proceedings addressing similar issues in parallel, NCPs should not decide that issues do not merit further consideration solely because parallel proceedings have been conducted, are under way or are available to the parties concerned.”

The Procedural Guidance does not preclude NCPs from considering submissions already handled by other NCPs. Indeed, it explicitly notes that existence of parallel proceedings, on their own, are not sufficient to decide that the issues raised do not merit further consideration. Therefore, where a NCP receives a submission that involves issues that have been or are being treated at another NCP it should proceed by “evaluat[ing] whether an offer of good offices could make a positive contribution to the resolution of the issues raised and would not create serious prejudice for either of the parties involved in these other proceedings[...].”⁸

⁸ Id. para 26

3. How do NCPs coordinate on specific instances in practice?

Twenty three NCPs (64%) out of the 36 NCP which have published rules of procedure or terms of reference for handling of specific instances include provisions describing coordination with other NCPs. The detail and scope of the provisions vary, however, at minimum nearly all include broad direction with respect to identifying which NCP should handle a specific instance and indicating that in some situations another NCP may be more appropriate. See Annex A for a complete list and text of the provisions.

Developing procedures about coordination of specific instances with other NCP can be useful to ensuring that coordination practices are institutionalised at the level of the NCP and applied consistently. However, in order to promote efficient coordination some consistency across these provisions should be aimed for across the NCP network.

Out of the 23 NCPs which responded to a survey on coordination amongst NCPs in specific instances, 13 (57%) noted that they systematically ask submitters whether they have also filed a submission with other NCPs. This practice can likewise be helpful to facilitating coordination.

Several NCPs responding to the survey (Australia, Canada, France, Germany, Norway and Peru) identified that they, on at least one occasion, transferred the handling of a specific instances to another NCP. In some instances a transfer occurred where a specific instance was submitted to multiple NCPs and one lead was selected. In other situations a submission was filed with one NCP and a different NCP was determined to be more competent to handle the specific instance. Transferring of specific instances has occurred at the beginning of a procedure as well in the course of a procedure in response to evolving circumstances of a specific instance. Several NCPs emphasized that in all circumstances buy-in from parties with respect to the transfer of a specific instance is important to achieving success in the process.

About 45% of all specific instances handled between 2011 and 2015 (75 specific instances) involved a supporting NCP. Among these specific instances the role of the supporting NCP has been quite varied. In some cases supporting NCPs have been actively engaged in the process. For example, through contributing to the coordination of the specific instances and monitoring or following up on the results of the specific instances as relevant. In other cases, supporting NCPs have been less active.

Most NCPs responding to the survey noted that there may be scope for supporting NCPs to play an active role in facilitation the specific instance process. For example, where relevant, through: assisting with on the ground fact-finding (where this is feasible and part of both NCPs' regular procedures), supporting with translations (understanding that this should not be an obligation on the part of the supporting NCP and may be subject to resources); helping with logistics and communications in the NCP's home country (as needed and agreed to by the lead NCP) and inputting into initial assessments and final statements (with the understanding that the lead NCP has final decision making power in specific instances and the language of final statements).

4. Good practice on coordination among NCPs on specific instances

Drawing on experience of NCPs and other stakeholders, and in line with the Procedural Guidance several good practices can be identified with respect to coordination on specific instances amongst NCPs.

Including guidance about coordination of NCPs in the handling of specific instances in rules of procedure or terms of reference for handling specific instances

In order to promote predictability and transparency it can be useful to develop clear processes around coordination of specific instances with other NCPs and include them in rules of procedure or terms of reference for handling specific instances. This will allow parties to understand how coordination amongst NCPs is handled and ensure that coordination practices are institutionalised at the level of the NCP and applied consistently. In order to promote efficient coordination some consistency across these processes should also be aimed for across the NCP network.

Systemically asking submitters to identify whether they have filed a specific instance with other NCPs

Systematically asking submitters to identify whether they have filed a specific instance with other NCPs (and to identify which ones) can be useful to enhancing awareness of parallel processes and thereby facilitating coordination. This can be done, for example in a template submission form, or as part of required information in submissions in rules of procedure for the specific instance process.

Early notification and consultation amongst NCPs

Where a submission is filed with one NCP that implicates another/other NCP(s) the other NCP(s) should be notified about the submission as soon as possible, ideally within a few days of receiving the submission. Early notification and consultation will be relevant:

- a) Where the submission concerns a company that is headquartered or legally registered in the jurisdiction of another/other NCP(s) or raises issues arising in the jurisdiction of another/other NCP(s). In this situation the relevant NCPs may arrange a meeting to discuss (as relevant) whether the specific instance should be handled by another NCP. They may also consider whether the other NCP(s) should be involved in the specific instance in a supporting role.
- b) Where a submission is filed concurrently with multiple NCPs. In this situation it may be necessary to arrange a discussion to 1) decide whether a lead NCP should be appointed and who the lead NCP and supporting NCPs (where relevant) should be, or 2) whether each NCP can handle aspects of the submission in parallel.
- c) Where a submission is filed with [an] NCP[s] after it has already been handled by another NCP. In this situation the NCP may wish to consult with the NCP that previously handled the specific instance as part of its initial assessment process.

It is important that notification and consultation amongst NCPs occur before communicating a decision about the submission to parties (i.e. which NCP will lead the handling of a specific instance, the conclusions of an initial assessment). Decisions around

which NCPs will handle a specific instance should be taken as soon as possible after a submission has been received to avoid delays and uncertainty among parties.

Identifying a lead NCP

Where NCPs determine it is necessary to identify a lead NCP, to the extent possible, the relevant NCPs should seek to come to an agreement by consensus on which NCP will lead. Where NCPs are not able to come to a decision on the basis of consensus they should consult the Chair of the Working Party on Responsible Business Conduct or OECD Secretariat for guidance. In identifying the lead NCP care should be taken to ensure that the decision considers the potential for the NCP to contribute to the resolution of issues and further the effectiveness of the Guidelines.

Early filing on the OECD database

Filing an entry in the OECD specific instance database at the stage of submission (to the extent confidentiality concerns allow) can be a good way of sharing general information on ongoing specific instances to promote improved coordination. These entries can be updated as initial assessments or final statements are issued.

Engaging with parties with respect to coordination decisions

Although decisions about which NCPs will be involved in the handling of specific instances and in what capacity should rest with the relevant NCPs, getting the buy-in of the parties with respect to those decisions can be important for the ultimate success of the process. In this respect, NCPs should notify the submitting party (and where relevant the company involved in the specific instance) that a notification/consultation will take place with other relevant NCPs on this issue. The submitting party (and where relevant the company involved in the specific instance) should be notified of the conclusions of the discussion and as relevant, the reasons why certain decisions were taken.

Where a specific instance is to be transferred to another NCP after proceedings have already commenced the proposal to transfer the case should be raised with parties ahead of time and the reasons for the decision should be provided.

Agreeing to the role of the supporting NCPs

Where a specific instance is handled with the assistance of a supporting NCP the lead and supporting NCP should discuss the potential role of the supporting NCP. In this respect lead NCPs may identify ways in which the assistance of the supporting NCP would be helpful with respect to the handling of the specific instance.

Supporting NCPs should indicate their capacity and willingness to support on certain elements of the specific instance handling. Subject to resources and the identified needs of the lead NCP, supporting NCPs should seek to play an active role in facilitating the handling of specific instances to the extent possible. Additionally supporting NCPs should ensure they consult with lead NCPs and defer to their preferences with respect to taking any action involving the specific instance (such as communication with parties, publication of statements etc.).

Lead NCPs should provide updates to supporting NCPs on the handling of a specific instance and may share initial and final statements with supporting NCPs for information

and/or comment, understanding that final decision making power with respect to the drafting of initial and final assessments rests with the lead NCP.

In some instances, in order to meaningfully engage supporting NCP(s) in the process, a lead NCP may share information provided by the parties with the supporting NCP(s). In this respect confidentiality policies and conditions should be discussed between the lead and supporting NCP prior to the sharing of any confidential information. Such information should only be shared where doing so would not violate the lead NCP's confidentiality policy or agreements around confidentiality with parties.

Both the lead and supporting NCPs should discuss and agree to the frequency and mode of communication with respect to the ongoing specific instance (e.g. weekly or ad hoc phone calls, emails updates, etc.) at the beginning of the process and as circumstance evolve necessitating different forms of communication.

The role of the supporting NCP should be clearly explained to parties. Particularly it should be noted that final decision-making power with regard to the specific instance rests with the lead NCP.

Coordination on issues of interpretation

Where NCPs are considering related issues, raised against different enterprises in parallel, and an issue of interpretation of the Guidelines arises it is important that they consult with other relevant NCPs. Where there is uncertainty they may request clarification from the Investment Committee, to ensure consistent interpretation of the Guidelines.

5. NCP Coordination scenarios

In order to illustrate potential challenges and application of good practices in specific instance coordination the following scenarios are provided:

Scenario A: A trade union makes a submission at three different NCPs regarding the conduct of three separate enterprises with a relationship to the same impact. Each NCP decides to handle the specific instance separately involving the enterprise headquartered in its country.

As the specific instance concerns three different enterprises under the Procedural Guidance it is not necessary to appoint a lead NCP to consider the submissions together. The three NCPs should consult with one another throughout the handling of the specific instance to ensure consistent interpretation of the Guidelines. Where there is uncertainty or disagreement they should consult with the Investment Committee, to ensure against inconsistent findings.

Scenario B: An NGO submits a specific instance regarding human rights abuse associated with the conduct of Coal Co., with respect to its operations in country A. Coal Co. is headquartered in country B. Country A and country B are both adherents to the OECD Investment Declaration. The NCP in country A is not functioning (for example, it does not have a website or an email address to submit specific instances, it does not report to the Investment Committee, and it does not have a procedure for handling specific instances). Country B has a functioning NCP.

Country A and country B should consult with one another to decide on who should take the lead in the specific instance. Where it is not possible for the NCP in country B to consult with the NCP of country A, the NCP of country B should consult the Chair of the WPRBC as to who should take the lead on the specific instance. As the NCP in country B is more likely to act upon the case and further the effectiveness of the Guidelines this should be a driving consideration. In this case the NCP of country A should take an active role to the extent needed and possible in supporting the specific instance process for example in helping to collect information, coordinating with local parties, and reporting back to local parties as needed.

Scenario C: An individual submits a specific instance to three NCPs regarding impacts of a subsidiary of Multi Co. The impacts in question took place in country A, the legal headquarters of the subsidiary of Multi Co. are in country B and the headquarters of Multi Co. are in country C. NCPs in countries A, B, and C notify one another and agree together that the NCP in country A should take the lead. NCP A does not handle the specific instance according to the Guiding Principles for Specific instances.

Where an NCP is not handling a specific instance in line with the Guiding Principles for Specific instances, adhering governments, advisory bodies or NCPs may make a substantiated submission to the Investment Committee that the NCP is not fulfilling its responsibilities with regard to its handling of specific instances. In these situations, the supporting NCPs may also wish to assess the situation themselves before making a submission to the Investment Committee.

Scenario D: A community group makes a submission to an NCP in country A where Steel Co. is headquartered. The submission concerns the human rights impacts of an enterprise hired by a subsidiary of Steel Co. based in country B following a community relocation in

country B. When the NCP in country A receives the submission, they inform the NCP in country B. The NCP in country B wishes to handle the specific instance directly and requests a transfer of the case.

The Procedural Guidance provides that generally, issues will be dealt with by the NCP of the country in which the issues have arisen. The use of the word “generally” suggests that some degree of flexibility is permitted when applying this provision. There is no requirement under the Procedural Guidance for the NCP in country A to transfer the specific instance. Furthermore the Procedural Guidance encourages NCPs to reach resolution on where the case should be handled. As such, the NCP receiving the submission may still handle the case.

Scenario E: An NGO makes a submission to the NCP based in country A. The submission concerns the due diligence policy of a joint venture company owned by MNEs based in country A and B (respectively) that provides surveillance technology services to country C, which allegedly used the services to spy on their citizens in violation of their human rights. The NCP based in country A decides not to accept the specific instance for further examination noting that it would not further the effectiveness of the Guidelines as the joint venture already has strong due diligence processes in place. The NGO resubmits to the NCP of country B. The NCP of country A maintains that the NGO cannot bring the same claim to multiple NCPs and that this could be characterized as forum shopping.

The Procedural Guidance does not preclude NCPs from considering submissions already handled by other NCPs. The NCP of country B may undertake initial assessment of the submission. In undertaking its initial assessment it should consult with NCP of country A to ensure it understands why the specific instance was not accepted for further examination and use that information in making its own assessment of whether an offer of good offices could make a positive contribution to the resolution of the issues raised.

Annex A. NCP polices on coordination in handling specific instances

	Rules of procedure for handling specific instances	Policy on NCP coordination	Language of Policy
Argentina	Yes	No	NA
Australia	Yes	Yes	“20. In making its initial assessment the AusNCP may determine to consult with the National Contact Point(s) of other OECD Guidelines for MNE’s adhering country with a view to: 21.1. seeking advice from the other NCP regarding the complaint; 21.2. involving the other NCP in the complaint process; 21.3. transferring the complaint to the other NCP if this is considered appropriate and agreed by the NCP’s involved in the matter.”
Austria	Yes	Yes	“In case the Austrian NCP does not consider itself competent, the complainant shall be immediately informed hereof. Should, however, the Austrian NCP come to the conclusion that the competence of another National Contact Point is to be assumed where applicable, this shall, following a possible contacting of a foreign NCP presumably competent in the opinion of the Austrian NCP, be communicated to the complainant.”
Belgium	Yes	No	NA
Brazil	Yes	No	NA
Canada	Yes	Yes	“Appropriate NCP for filing a request for review: - 6.1. Generally, issue(s) will be dealt with by the NCP in whose country the issue(s) have arisen. - 6.2. Should the country where the issue(s) has/have arisen not adhere to the Guidelines and not have an NCP, then the request for review may be submitted to the NCP in the MNE’s home country if the home country adheres to the Guidelines. - 6.3. Thus, the Canadian NCP may deal with all issue(s) that arise in Canada relating to the activities of any MNE operating in Canada (including a Canadian MNE operating in Canada), as well as the operations of Canadian MNEs operating in countries that do not have an NCP.”

	Rules of procedure for handling specific instances	Policy on NCP coordination	Language of Policy
			6.4. Cases of multi-jurisdictional specific instances that involve cooperation with NCPs of other countries will be dealt with on a case by case basis. In such cases, normally one of the NCPs will assume the lead with respect to the processing of the specific instance. Other NCP(s) may act as supporting NCPs to the lead NCP.”
Chile	Yes	No	NA
Colombia	Yes	Yes	“If Specific Instances involve the operation of a Multinational Enterprise in multiple Adherent Governments or the operation of a group of companies organized as consortiums, joint ventures or similar association schemes in different Adherent Governments, the Colombian National Contact Point should: a. When required, consult with other NCPs involved in order to define the lead NCP and agree upon the participation of other NCPs. b. When necessary to decide upon the lead and supporting NCPs, request the assistance of the President of the OECD Investment Committee and of the OECD Secretariat.”
Costa Rica	Yes	Yes	“Additional consultations: the NCP’s Technical Secretariat will assess whether it is convenient to consult with one or more of the following instances, as appropriate: a. Other National Contact Points. b. Collegiate bodies related to the provisions contained in the Guidelines. c. Experts with knowledge in the areas of the Guidelines or the specific case.”
Czech Republic	Yes	No	NA
Denmark	Yes	Yes	“The Danish NCP will in relation to coordinating with other NCPs follow the OECD Guidelines. This means, that specific instances should be dealt with by the NCP in the country where the specific instance occurred. Other relevant NCP’s should be included in the process. Moreover, the NCP’s can contact the investment committee in order to clarify which NCP should take on the case.”
Egypt	No	NA	NA
Estonia	No	NA	NA
Finland	Yes	Yes	“When the Ministry has received a complaint, the NCP will assess, whether the complaint merits further consideration (this is called an initial assessment). This process includes a review of the complaint, asking for a statement from the company involved, communication between parties, and possibly consulting other NCPs.”
France	Yes	Yes	“Where the issues raised merit further examination, the NCP shall offer its good offices to help the parties involved to resolve them. For this purpose, the NCP shall consult with these parties and, where appropriate (...)Consult the NCP(s) in the other country or countries concerned.”
Germany	Yes	Yes	“b) Regional competence By default, complaints will be handled by the NCP of the country in which the issues at hand have arisen, meaning that the German NCP does not usually deal with issues that have arisen in another country adhering to the Guidelines. Such complaints will be forwarded to the competent NCP. If the complaint relates to parts of companies or operations in more than one adhering country, the German NCP will consult with the other NCPs affected on how to proceed.

	Rules of procedure for handling specific instances	Policy on NCP coordination	Language of Policy
			<p>If the complaint relates to activities in a non-adhering country, the complaint will usually be handled by the NCP in the company's home country, which will take action as necessary and deal with any proceedings that may arise from the complaint.</p> <p>In cases where a different NCP is in charge of dealing with a complaint that pertains to a company registered in Germany, the German NCP will follow the proceedings and co-operate with the competent NCP. This co-operation is mandatory – particularly in cases where there are grounds to believe that a German part of the company might have a share in the responsibility for a possible breach of the Guidelines. This would be the case, for instance, if a decision or order that has played a decisive role in the matter that has given rise to the complaint can be traced back to the company's headquarters in Germany....</p> <p>c) General notes on procedure ... If the NCP is unsure as to how to interpret the Guidelines in a particular case, the NCP is free to consult with other NCPs and/or seek the guidance of the OECD Committee on International Investment and Multinational Enterprises.”</p>
Greece	Yes	No	NA
Hungary	Yes	Yes	“The specific instance case is to be filed in the country where the alleged breaching of the Guidelines emerged. It is also possible to file the case with the NCP of the country from where the company is originated, especially when the alleged breaching of the Guidelines occurs in a non-adhering country. If the complaint concerns several adhering countries or the complaint is submitted to several NCPs, the NCPs should co-operate and agree on the lead NCP.”
Iceland	No	No	NA
Ireland	Yes	Yes	“An initial assessment will be made of whether the issues raised are appropriate and valid for consideration of Ireland's NCP [...] including: Whether it is appropriate for consideration of by Ireland's NCP and/or that of another adhering country.”
Israel	No	NA	NA
Italy	Yes	forthcoming	Italy is currently developing a handbook for the handling of specific instances which will include a chapter on “Identification of the NCP and Coordination between NCPs.”
Japan	Yes	No	NA
Jordan	No	NA	NA
Korea	Yes	Yes	“Generally, a complaint is submitted to the NCP of the country in which the issues have arisen. But, in the event that guideline-related issues arise in a non-adhering country in which an NCP has not been established, a complaint could be submitted to NCP of the respondent's home country.”

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Latvia	No	NA	NA
Lithuania	Yes	Yes	“Lithuanian NCP’s competency to examine the specific instance indicated in the complaint. When ascertaining Lithuanian NCP’s competency, it shall be assessed whether the complaint is related to the activities or conduct of a Lithuanian multinational enterprise operating abroad or those of a multinational enterprise operating in Lithuania. In the event that the indicated circumstances are related to the enterprises of other adhering countries or their activities, the Lithuanian NCP may contact and consult the National Contact Points of such countries in order to identify and agree which country’s National Contact Point should assume a leading role in solving the specific instance.”
Luxembourg	Yes	Yes	“The Luxembourg NCP will by principle accept handling Specific Instances stemming from any party claiming an interest – individuals, local communities, NGO’s, worker organisations, other interested parties – in an alleged breach of the OCDE Guidelines by a multinational enterprise, including non-for-profit legal entities, headquartered in Luxembourg when Specific Instances occur (or the impact occurred) in countries that are not adherents to the Guidelines and thus do not have NCP’s, or for issues originating in Luxembourg, whether the enterprise is foreign or domestic. Where there are more countries involved, including Luxembourg, the Luxembourg NCP will accept handling the case if no other NCP will lead the case or join in.”
Mexico	Yes	No	
Morocco	Yes	Yes	<p>« Coordination entre les PCN dans des circonstances spécifiques. Généralement, les questions sont traitées par le PCN du pays dans lequel elles ont été soulevées. S’il s’agit de pays adhérents, ces questions seront d’abord examinées à l’échelon national et ensuite, le cas échéant, abordées dans un cadre bilatéral. Dans le cadre de ses efforts visant à aider les parties en présence à résoudre la question, le PCN du pays d’accueil doit consulter le PCN du pays d’origine.</p> <p>Ce dernier doit s’efforcer de fournir promptement l’aide appropriée qui lui aura été demandée par le PCN du pays d’accueil. Lorsque des questions concernant des activités exercées par une entreprise dans plusieurs pays adhérents, ou des activités exercées par un groupe d’entreprises organisées en consortium, en coentreprise ou autre structure similaire et installées dans différents pays adhérents, les PCN concernés doivent se consulter afin de se mettre d’accord sur le PCN qui sera au premier chef chargé d’aider les parties. Les PCN peuvent demander l’aide du président du comité de l’investissement pour parvenir à un tel accord. Le PCN principal doit consulter les autres PCN qui devront lui fournir à sa demande l’assistance appropriée.</p> <p>Faute d’accord entre les parties, le PCN principal devra prendre une décision finale en concertation avec les autres PCN. Si des questions se rapportant aux principes directeurs se posent dans des pays non adhérents, les PCN des pays d’origine prendront des mesures afin de parvenir à une meilleure compréhension des questions soulevées. S’il peut se révéler parfois impraticable d’accéder à certaines informations utiles, ou de réunir toutes les parties impliquées, le PCN peut être néanmoins à même de procéder à des investigations. Entrer en contact avec la direction de l’entreprise du pays</p>

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			d'accueil et, éventuellement, avec les ambassades et les autorités compétentes du pays non adhérent, peut faire partie de ces mesures. [...] Les parties impliquées devront être avisées des limitations inhérentes à la mise en œuvre des principes directeurs dans les pays non adhérents. Les problèmes posés par l'application des principes directeurs dans les pays non adhérents pourraient également être examinés lors des réunions des PCN afin de contribuer à accroître l'expérience relative au traitement des questions soulevées dans ces pays. »
Netherlands	Yes	No	NA
New Zealand	Yes	Yes	"To complain about the activity of a multi-national business that happened in another country, you will need to contact the national contact point of that country. If that country does not adhere to the guidelines and does not have a national contact point, you will need to raise the issue with the national contact point of the country where the business is headquartered."
Norway	Yes	Yes	"- DECIDING WHETHER A CASE MERITS FURTHER CONSIDERATION (INITIAL ASSESSMENT -the NCP will take into account: Whether the Norwegian NCP is the correct entity to assess the complaint. In this context, the NPC will consider whether the complaint concerns a Norwegian company's activities or alleged conduct in Norway. If the complaint concerns other countries' NPCs, the NCPs concerned should consult with each other to agree on which one should lead the work to assist the parties."
Peru	Yes	Yes	"3. OBLIGATIONS (...) - If it is the case, coordinate with the corresponding national organizations and/or internationally with OECD experts and/or other national contact points that may be relevant for the Specific instance. 6. GENERAL PROVISIONS (...) 6.2. The NCP can, if considered relevant, in order to collaborate with a solution to the Specific Instance presented, at any stage of the procedure; consult public institutions, other National Contact Points, or experts in the subjects under analysis in the Specific Instance. 6.3. When the Specific Instance involves the participation of more than one NCP, the NCP, if appropriate, shall report and coordinate with the other national contact points in order to define roles, competences and tasks during the procedure. 7. PROCEDURE 7.1. Presentation of the Specific Instance and the Initial Evaluation Stage (...)"

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			7.1.4 In case that, from reading the Specific Instance, it is concluded that a coordination with other NCPs is required in order to determine who shall lead the procedure of the Specific Instance, the NCP shall proceed to make coordination. Depending on the results of said coordination, the NCP shall proceed according to Paragraph 7.1.3 or shall issue its Initial Evaluation Report, as appropriate.”
Poland	Yes	Yes	“Within 10 days from receiving the notification, the NCP will: <ul style="list-style-type: none"> – confirm its receipt to the submitting party – send a copy of the notification to the concerned enterprise, together with a request for an initial response – inform NCPs in other countries that the notification was submitted, if the specific instance concerns them due to the parent company’s location or place of business.”
Portugal	No	NA	NA
Romania	No	NA	NA
Slovak Republic	No	NA	NA
Slovenia	No	NA	NA
Spain	Yes	Yes	<p>“8. RELATIONSHIP WITH OTHER NCPs</p> <p>a) The NCP will collaborate with the NCPs of other adherent states of the Guidelines to resolve a specific instance. If one of the parties of a specific instance is a multinational from one of the NCP’s country that is present in the country of the other NCP, both parties should decide which NCP will lead the specific instance.</p> <p>b) When issues arise from an enterprise’s activity that takes place in several adhering countries or from the activity of a group of enterprises organised as consortium, joint venture or other similar form, based in different adhering countries, the NCPs involved should consult with a view to agreeing on which NCP will take the lead in assisting the parties. The NCPs can seek assistance from the Chair of the Investment Committee in arriving at such agreement.</p> <p>c) In the case of specific instances that take place in non-adherent countries, the NCP will try to gather as much information as possible through its diplomatic representations and, where appropriate, the corresponding Governments. The Guidelines can’t substitute national legislation or prevail over it, and they shouldn’t create contradictory obligations for the company. Nevertheless, the actions of the NCP should induce the companies to respect the Guidelines without infringing national laws.”</p>
Sweden	No	NA	NA
Switzerland	Yes	Yes	“A specific instance must be raised in the country in which the alleged breach occurred. If this country does not have an NCP, the issue should be raised in the country where the multinational company has its headquarters. The Swiss NCP is therefore responsible for cases in which multinational companies from other signatory states have allegedly acted in breach of the Guidelines. It is also responsible in cases where a Swiss enterprise abroad is involved in a country that does not

	Rules of procedure for handling specific instances	Policy on NCP coordination	Language of Policy
			have its own NCP. If the specific instance concerns more than one NCP (e.g. if the company involved is owned by several multinational enterprises or in the case of holding companies), the NCPs concerned decide which of them will assume the lead for the specific instance. If the Swiss NCP is not responsible for a particular case, it forwards the specific instance to the responsible NCP and informs the party that has raised the instance. If the multinational enterprise has a connection with Switzerland, Switzerland's NCP will on request provide or offer appropriate support to the NCP in the host country."
Tunisia	No	NA	NA
Turkey	Yes	No	NA
United Kingdom	Yes	No	NA
United States	Yes	Yes	"[T]he U.S. NCP informs any other relevant NCPs (host country NCP/home country NCP) of the receipt of [a] request, forwards a copy of the request to any such NCP, and requests its views on how best to proceed, referring to the Procedural Guidance to the Guidelines. If it is determined that the U.S. NCP should not take the lead, the U.S. NCP informs the parties of this fact and refers them to the appropriate lead NCP. The U.S. NCP will continue to consult with the lead NCP and provide assistance, as appropriate."
Total Yes	36	23	

Annex B. Stakeholder perspective on coordination amongst NCPs on specific instances

Several stakeholders and parties to specific instance have stressed the importance of good co-ordination between the NCPs in effectively handling specific instances – notably during NCP Peer Reviews and at the occasion of meetings with civil society.

Business and Industry Advisory Committee to the OECD (BIAC):

In a global and often complex investment environment, NCPs are playing an important role in promoting and ensuring responsible business conduct in line with the Guidelines. BIAC has consistently underlined the importance of effective implementation of the Guidelines at a global level as well as a correct understanding of the NCP process as a mediation platform where relevant parties come together to work constructively towards a future-oriented solution that is in the interest of all parties. It is important to recall that NCPs must act as an independent and objective platform to ensure that companies and other stakeholders can engage in the process with trust. While the experience with the process is clearly mixed, some specific instances have shown that if the process is correctly understood by all parties involved, it has the potential to lead to progress on the ground and to effectively address the issues raised.

As a general rule, issues will be dealt with by the NCP of the country in which a specific instance has arisen. At the same time, the NCP of the host country is encouraged to consult with the NCP of the home country in resolving a specific instance. When issues arise from an enterprise's activity that takes place in several adhering countries or from the activity of a group of enterprises based in different adhering countries, the NCPs involved consult with a view to agreeing on which NCP will take the lead in assisting the parties.

This complexity can in some cases lead to forum shopping on the basis of the shareholding argument of the parent company. However, turning automatically to the NCP that seems most active is not in the interest of a global level playing field and is not conducive to a global improvement of NCPs. BIAC has therefore underlined that all NCPs should function effectively and in an accessible and transparent manner. To address some of the questions that may come up when NCPs must coordinate, BIAC calls for an active role of the OECD:

- The OECD should help clarify how to determine the leadership on a specific instance when several NCPs are involved to avoid forum shopping, taking into account that as a general rule issues should be dealt with by the NCP of the country in which this issue has arisen. The OECD should develop guidance and share best practices to ensure a prompt, efficient and satisfactory coordination.
- The OECD should offer support when an NCP is not collaborative or does not share information on a specific instance with other concerned NCPs as this can have a negative impact on the good offices process and the resolution of the issues at stake.
- Further clarity would also be helpful on the process regarding communication between NCPs, e.g. if an NCP quotes another NCP in a communique, then it

should first alert the concerned NCP which should be allowed to comment. Any NCP should have a “right of reply” to a communique published by another NCP in a specific instance that involves several NCPs.

Trade Union Advisory Committee to the OECD (TUAC):

The National Contact Points (NCPs) are the bedrock of the OECD Guidelines for Multinational Enterprises. NCP effectiveness in handling specific instances determines the extent to which the ambitions of the OECD Guidelines translate into real change on the ground for workers and communities around the world. There is no better publicity than ‘NCP success stories’ passed on by workers and communities through their local and international networks. On the other hand, stories of cases languishing or non-functioning or poorly functioning NCPs do long-lasting, if not irremediable, damage as either the NCP in question or the Guidelines as a whole are struck off the list of potential tools for accessing remedy.

Furthering Effectiveness

TUAC, therefore, strongly welcomes the OECD’s efforts to spell out the flexibility provided for under the rules of the Procedural Guidance on the coordination of NCPs in the handling of specific instances. This flexibility was already apparent after the 2011 update, when it was recognised that “issues” relating to the failure of due diligence occurred in the home country, and that the home country NCP should therefore handle the case.

It is appropriate that the OECD has now identified the guiding maxim for NCP coordination in handling cases as “*to further the effectiveness of the Guidelines*”. This should be interpreted to mean that complainants can choose for themselves the NCP to which to file a specific instance, and that the selected NCP is free to handle the specific instance, even where the case has been rejected by another NCP. The reasons trade unions may prefer to file a specific instance at one NCP, rather than another, vary from case to case, but include: a lack of trust and confidence in the government, for example, in countries where trade unions are repressed; the need to engage company headquarters or investors; differences in the reputation/capacity of the NCPs; variations in the perceived leverage of the NCPs in terms of bringing the company to table.

Given the considerable human and financial resources involved in filing a specific instance under the Guidelines, it is right that complainants can choose to “*maximise the potential for NCPs to contribute to the resolution of the issues*” by filing the specific instance at the NCP of their own choice. It is also right that NCPs should respect the choices that they have made.

Aligning NCP Procedures across the NCP Network

NCPs must ensure that their own procedures on handling specific instances fully reflect this flexibility by making clear that the complainants are free to choose whether to file at the home or the host country NCP, regardless of where the issues have arisen, or considerations of NCP capacity. TUAC considers that embedding this flexibility throughout the NCP Network will help to increase both the overall number of cases and the number of ‘NCP success stories’.

Transparency of Non-functioning NCPs

Finally, it is important to recognise that in a small number of countries there is quite simply *no NCP to cooperate with*, because either the NCP does not exist, or it is not functioning. It is essential that all NCPs and all complainants know which NCPs are non-functioning, in order to avoid wasting time and resources trying to coordinate with them. One way to achieve such transparency would be to publish an on-line list of non-functioning NCPs. Such a list has precedence at the OECD in the area of tax transparency.

OECD Watch:

The OECD's NCP grievance mechanism offers victims of corporate misconduct a vital opportunity to seek remedy for the harms they have incurred. The mandate of NCPs is to enable discussion and resolution of disputes related to such harms through offering a forum that is visible, accessible, transparent, accountable, impartial, predictable, equitable, and compatible with the OECD Guidelines for MNEs. The Procedural Guidance deliberately endorses a flexible approach to NCP coordination to enable pragmatic resolution of disputes. OECD Watch welcomes this scoping paper's effort to highlight and explore the scope of that flexibility.

Paragraph 23 of the Commentary to the Procedural Guidance states that, "Generally, issues will be dealt with by the NCP of the country in which the issues have arisen" (emphasis added). This clause has often been interpreted to mean that the host-country NCP, when one exists, should handle the specific instance. However, this scoping paper rightly points out that "issues" are not the same as impacts, but can implicate the responsibilities of enterprises in the host as well as the home country, such as in respect of policies or due diligence practices undertaken at the headquarters level that violate the Guidelines. Moreover, beyond this, the term "generally" grants NCPs an additional layer of flexibility in determining whether the host- or home-country NCPs should handle a specific instance.

One implication of the flexibility preserved in paragraph 23 is that when a complaint is filed in more than one NCP's jurisdiction, pragmatism and flexibility should guide NCPs in determining which should lead, and how they can best coordinate, to meet their mandate and ensure remedy for the complainants. For example, if a host-country NCP is non-functioning or poorly functioning and lacks capacity to effectively resolve a dispute, then the Guidelines permit the home-country NCP, if better able to respond to the complaint, to serve as lead on the case. Under the "general" flexibility of Paragraph 23, the home-country NCP indeed has jurisdiction to handle a complaint even where the host-country NCP would prefer to handle the complaint itself, and is capable of doing so.

Another implication of the flexibility preserved in paragraph 23 is that complainants, too, have flexibility in determining where to file their complaint to ensure the issues affecting them are effectively dealt with. Impacted communities or workers are free to file a complaint with the home-country NCP of an enterprise – and, where appropriate, the home-country NCP of a buyer or investor – if the home-country NCP(s) have jurisdiction over the issues, and if the complainants feel that the home-country NCP(s) will be better able to fulfil the NCP mechanism's mandate of advancing compliance with the Guidelines.

In the context of NCP coordination, OECD Watch would also like to emphasize that one NCP's rejection of a complaint does not preclude another NCP from accepting it. The Procedural Guidance states clearly that parallel proceedings – which includes proceedings at another NCP – are not an automatic bar to further consideration by a second NCP. If a second NCP determines its engagement could contribute to a successful resolution of the issues, then it may proceed. In such a case, the NCPs handling the case may reach differing conclusions on the same facts. In the interest of predictability of the NCP system as a whole, OECD Watch encourages NCPs to communicate extensively with each other and with the OECD Secretariat to avoid reaching differing outcomes. If needed, the NCPs should seek clarification from the Investment Committee on correct interpretation of the matter, including by means of a request for clarification. This communication and coordination will drive toward the goal of predictable and consistent application of the Guidelines in specific instances.

Ideally, NCPs' rules of procedures should reflect these flexible rules on NCP coordination, to ensure complainants understand when and where they may file their complaints.

If undertaken with the goal of maximizing accessibility of the NCP system and the potential to meaningfully resolve disputes, NCP coordination can promote upward harmonization of practices through peer-learning, increase functional equivalence between NCPs, and better facilitate access to remedy for victims of corporate misconduct.

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