

**PORTUGUESE NATIONAL CONTACT POINT  
FOR OECD GUIDELINES  
FOR MULTINATIONAL ENTERPRISES**

**Procedural Guidance for the Treatment of  
Specific Instances under the  
OECD Guidelines for Multinational Enterprises**

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## Scope of the Procedural Guidance for Handling Specific Instances

This Procedural Guidance for the Treatment of Specific Instances raised in the context of the *OECD Guidelines for Multinational Enterprises* aims to regulate and harmonize the procedures to be followed by the National Point of Contact structure in Portugal, in accordance with the provisions established in Part II of the *Guidelines - Implementation of Procedures of the OECD Guidelines for Multinational Enterprises*.

## Glossary

<p><b>Guidelines</b></p>	<p>The <i>OECD Guidelines for Multinational Enterprises</i> are recommendations addressed by Governments to multinational corporations, which aim to ensure that corporate operations are in line with government policies.</p> <p>These <i>Guidelines</i> also aim to strengthen the basis of mutual trust between companies and the communities in which they operate, help to improve the context of foreign investment and increase the contribution of multinational companies to sustainable development.</p> <p>The <i>Guidelines</i>, which are an integral part of the OECD Declaration on International Investment and Multinational Enterprises, provide voluntary principles and standards for business conduct consistent with the legal framework and internationally recognized standards.</p>
<p><b>Multinational Enterprises (MNEs)</b></p>	<p>Companies or other entities established in more than one country and linked together to coordinate their activities.</p>
<p><b>Specific Instance</b></p>	<p>Allegation of non-compliance with the <i>Guidelines</i> by a company, submitted to the National Contact Point. Specific Instance and Allegation of Inobservance are synonymous.</p>

<b>Stakeholder</b>	Natural or legal person affected by the alleged non-compliance with the <i>Guidelines</i> , even if indirectly or potentially.
<b>NCP</b>	National Contact Point with the responsibility of promoting and applying the <i>Guidelines</i> , which act as a debate forum on all matters concerning the <i>Guidelines</i> .
<b>PT NCP</b>	The Portuguese National Contact Point for the <i>OECD Guidelines for Multinational Companies</i> .
<b>Due Diligence</b>	Process through which companies identify, prevent, mitigate and account for the way they assess and manage the potential and/or real negative impact of their activities on human rights.
<b>Reporting Mechanism</b>	Alternative dispute resolution procedure whereby interested parties can raise concerns about the impact that a company has on their human rights, requesting the intervention of the NCP for the purpose of remedying those rights.

## Structure and Mission of the National Contact Point

The Portuguese National Contact Point (PT NCP) team is managed by the **Directorate-General for Economic Activities (DGAE)** and **aicep Portugal Global - Trade & Investment Agency (AICEP)**. It is the responsibility of the National Contact Point (NCP) to apply and promote, actively and properly, the dissemination of the *OECD Guidelines for Multinational Enterprises (MNEs)*. Within the scope of institutional monitoring, the NCP is responsible for preparing an annual activity report, participating in the annual NCP meeting, as well as monitoring the specific instances that result from the implementation of the *Guidelines*.

Regarding the application of the *OECD Guidelines for Multinational Enterprises*, the NCP's mission is to inform, mediate and reconcile the parties, so that the principles mentioned in the *Guidelines* are fully respected and implemented by companies. In this way, any interested party who considers that a company's actions or activities are not consistent with the *Guidelines*, can

file a formal complaint with the NCP about an alleged failure regarding compliance with the *Guidelines*.

The PT NCP may receive allegations of non-compliance with the *Guidelines* for MNEs established in the national territory, as well as allegations of non-compliance with multinational companies, with mainly national capital, when established in countries that do not adhere to the *Guidelines*. The allegation of non-compliance can be presented by any interested party, including associations and trade unions. This claim may also be filed on behalf of other interested parties if they are duly identified.

When presenting these allegations of non-compliance, it is the responsibility of the PT NCP structure to ensure the respective treatment of specific instances, in accordance with the provisions of the *Guidelines*, namely:

- Make an initial assessment of the issues raised, in order to assess whether they justify further analysis;
- Whenever a more in-depth analysis is necessary, trigger the mediation mechanism to support the parties involved in resolving the specific instance;
- Prepare a final statement that should also be made available to the public.

## Initial considerations on the mediation role of the PT NCP

The PT NCP is governed by the principles of visibility, accessibility, transparency and responsibility.

The mediation process is voluntary and aims to provide a procedure for an alternative dispute resolution that is quick and inexpensive to resolve the specific instances presented.

In this context, it is up to the PT NCP, as a mediator, to promote and facilitate communication between parties and make proposals that aim to obtain an agreement within the framework of the principles and standards of business conduct recommended in the *Guidelines*.

In order to frame the concept of mediation, the PT NCP adopts the definition described in the European Code of Conduct for Mediators, with mediation being understood as “*any structured process, however named or referred to, whereby two or more parties to a dispute attempt by themselves, on a voluntary basis, to reach an agreement on the settlement of their dispute with the assistance of a third person – hereinafter “the mediator”*”.

The parties should not use the mediation mechanism as a way of obtaining information for purposes other than those provided for in the mediation process.

## Steps in the process of analysing specific instances

### 1<sup>st</sup> Step | Reception and initial assessment of the specific instance

#### Article 1. Reception of the specific instance

1. Whenever a multinational enterprise or its subsidiary does not observe one or more principles described in the eleven chapters of the *Guidelines*, a specific instance can be submitted to the PT NCP.
2. The request for the submission of the allegation of non-compliance must be made in writing, using the standard form provided for that purpose, and must be addressed to the PT NCP by letter or email (pcn.portugal@dgae.gov.pt).
3. The application must contain the following elements:
  - a. The Identification of the claimant;
  - b. In the case of allegations on behalf of other parties, clear identification of those is necessary;
  - c. Express indication of the tax address or email address chosen for contact and notification by PT NCP;
  - d. Identification of the person responsible for contact with the PT NCP, namely the indication of the name, email address and telephone contact;
  - e. Identification of the company object of the specific instance, namely name of the representative in Portugal, address for sending correspondence, e-mail address and telephone contact;
  - f. Description of the facts on which the allegation of non-compliance with the *Guidelines* is based;
  - g. Clear and precise indication of the *Guidelines* on which the alleged non-compliance is based, namely the reference to the chapter(s), number(s) and subparagraph(s);

- h. Evidence that corroborates the factual elements mentioned by the claimant within the scope of the specific instance presented;
  - i. Declaration indicating which information should be considered confidential during the process of handling the specific instance;
  - j. Express declaration of consent or non-consent to the disclosure of the claimant's identity to the company object of the alleged non-compliance with the *Guidelines*;
  - k. Description of evidence of any steps taken by the claimant to mitigate the non-compliance;
  - l. All relevant information within the scope of the alleged non-compliance that has been transmitted, through formal channels, national and/or international administrative and/or judicial bodies.
4. Once the allegation is presented by the interested party, duly identified or on behalf of it, the application is analysed to check whether all the conditions are met to be accepted by the PT NCP.
  5. If there are any omissions in the substantial content of the application received, it is up to the PT NCP to try to make up for the deficiency in the application, requesting due clarification and / or adding the missing elements within a maximum period of 15 days after receiving the application.
  6. The claimant must provide the requested clarification and / or add the requested information within a maximum period of 15 days.
  7. All specific instances that do not contain the essential elements or to which the elements subsequently requested by the PT NCP within the period referred to in the previous paragraph will be excluded.

## **Article 2. Admission Check of Specific Instance Application**

1. Upon receipt of the specific body, the PT NCP shall carry out an assessment of the relevant body to verify that its content falls within the scope of *the Guidelines*. To this end, the PT NCP may consult competent authorities in this matter, as well as NCP of the country(ies) which are relevant in the context of the accepted claim.
2. For the purposes of assessing the specific body, the following criteria shall be considered:

- a. Competence of the PT NCP to assess the alleged non-compliance in the implementation of the *Guidelines*;
  - b. Identity of the claimant and assessment of the reasons for the legitimate interest in the proceedings submitted;
  - c. Delimitation of the subject matter of the claim and presenting verifiable facts, evidence and circumstances;
  - d. Relationship between the activities of the company, the subject of the complaint and the questions raised in the context of the application for alleged non-compliance;
  - e. Application of the *Guidelines* to the specific instance presented.
3. The assessment may also consider the decisions of other NCP regarding similar allegations under other national or international procedures.

### **Article 3. Preparation and submission of the initial assessment report on the admissibility of the specific instance**

1. After analyzing the specific instance, PT NCP prepares an initial assessment report, which must contain a proposal to reject or admit the allegation.
2. The initial assessment report must contain the following elements:
  - a. The identification of all relevant parties in the specific instance;
  - b. The object of the specific instance presented and the identification of the *Guidelines* that, allegedly, were not observed;
  - c. The description of all the steps taken by PT NCP;
  - d. The rationale for acceptance or rejection of the specific instance;
  - e. The object of the specific instance presented and the identification of the *Guidelines* that, allegedly, were not observed;
  - f. The description of all the steps taken by PT NCP;
  - g. The rationale for acceptance or rejection of the specific instance.
3. A specific instance is rejected by the PT NCP when one of the following situations occurs:
  - a. The reasoning for the alleged non-compliance with the *Guidelines* is insufficient;
  - b. The claim is manifestly unfounded;



- c. The claim does not fall within the scope of the *Guidelines*.
4. The document with the proposal of the decision by the PT NCP is sent to the interested parties in the specific instance, which can, within a maximum period of 15 days, submit comments or possible corrections to the initial evaluation proposal to the PT NCP.
5. The PT NCP will be responsible for analyzing, within a maximum period of 15 days, the pertinence of the elements added by the interested parties within the scope of the specific instance presented.
6. After the expiry of the consultation period of the parties involved in the specific instance, the document with the final version of the initial assessment report of the admissibility of the specific instance will be sent to the parties involved in the process.

## 2<sup>nd</sup> Step | Admission of the specific instance by the PT NCP and mediation process

### Article 4. Mediation Process

1. Once a specific instance is admitted, the PT NCP starts a mediation process between the parties.
2. The mediation can be carried out by a mediator appointed by PT NCP or by a suitable mediator appointed by the parties directly involved in the specific instance.
3. The role of the mediator will be to establish an informal communication between the parties, to openly discuss the matter presented at a specific instance, and may not raise other issues not previously admitted, at the request of the process by PT NCP.
4. The result of the mediation is expressed in the document called the “Mediation Agreement”, which must contain all information related to the mediation process, except information considered confidential.
5. Within the scope of the parties' mediation and conciliation process, the principles of confidentiality, equality and impartiality must be respected.
6. If the mediation process fails, the PT NCP must verify whether there is a possibility of proposing an external mediation.

7. If the parties refuse the mediation process promoted by the PT NCP, the refusal and its causes must be included in the final declaration of PT NCP on the specific instance.

### 3<sup>rd</sup> Step | Preparation and publication of the PT NCP Final Declaration

#### Article 5. Final Declaration of agreement between the interested parties

1. Whenever the parties reach an agreement, the mediation process is considered concluded and the PT NCP must prepare a final declaration.
2. The Final Declaration must include the following elements:
  - a. Description of the claim submitted and identification of the chapters/paragraphs of the *Guidelines* that were not observed;
  - b. Identification of the parties involved (claimant and company subject to the claim) whenever there is no request for confidentiality;
  - c. Description of the process in dealing with the specific instance containing, in particular, the reasoning that was used as the basis for the conclusions;
  - d. Description of the terms of the agreement between the parties and the results achieved;
  - e. Inclusion of specific recommendations to the company subject to the specific instance, which allow to guide its business conduct in the sense recommended in the *Guidelines*;
  - f. Indication of the deadlines for implementing the recommendations made.
3. The proposal of the final declaration of the PT NCP must be sent to the parties so that, within a period of 15 days, they can send their comments.
4. In the event that the parties submit comments within the period stipulated in the previous paragraph, the PT NCP analyzes the comments submitted by the parties and proceeds to incorporate them whenever they are relevant to the final declaration.
5. The final consolidated statement must be sent to the parties involved and to the ministerial tutelages in which the PT NCP is organically inserted.

## Article 6. Final Declaration without agreement between the interested parties

1. Whenever the parties involved do not reach an agreement within the established period, the mediation process is considered concluded, and the PT NCP must prepare a final declaration.
2. The Final Declaration must include the following elements:
  - a. Description of the claim submitted and identification of the chapters/paragraphs of the *Guidelines* that were not observed;
  - b. Identification of the parties involved (claimant and company subject to the claim) whenever there is no request for confidentiality;
  - c. Description of the process in the treatment of the specific instance containing, namely, the identification of the causes that made an agreement impossible;
  - d. Whenever justified, inclusion of recommendations to the company subject to a specific instance that will guide its business conduct in the sense recommended in the *Guidelines*.

## Article 7. Publication of cases analyzed by the PT NCP

1. Within 3 months of issuing the declaration, a summary description of the specific instance and the main points of the agreement reached must be published on the PT NCP website.
2. The publication foreseen in the previous number shall not identify the parties involved in the process, nor contain any other identifying elements, such as information on the tax address, electronic mail, telephone contacts, etc.

## General Provisions

### Deadlines applicable in the analysis of specific instances

1. The set of procedures inherent to the treatment of each specific instance must not exceed the maximum period of **1 year** from the date of receipt of the specific instance until the date of the preparation of the final declaration.
2. The first step should have a maximum duration of **4 months**, counting from the date of receipt of the allegation of non-compliance until the date of the preparation of the initial assessment report.
3. The second step should have a maximum duration of **6 months**, covering the entire mediation process with a view to the agreement between the interested parties.
4. The third step should have a maximum duration of **2 months** and covers the preparation of the final declaration.
5. When, for reasons not attributable to the PT NCP, the established deadlines are not met, it will be up to the PT NCP to notify the parties involved in the specific instance of the respective delay and communicate the new deadline.
6. The parties involved in the process must send the information requested by PT NCP within a maximum period of 15 days.

### PT NCP Internal Liaison

1. After receiving the specific instance through the formal channels available for that purpose, DGAE, within a maximum period of 10 days, meets AICEP with a view to analyzing the request submitted on the specific instance.
2. At the meeting, the parties will appoint a focal point among the human resources assigned to the activity of the PT NCP.
3. The appointed focal point should ensure the entire administrative and technical management process for the specific instance, namely the activities involved in the PT NCP, as listed in steps 1, 2 and 3.

## Institutional collaboration between PT NCP and other entities and Contact Points

1. PT NCP may consult other entities, whose scope of activity falls within the subject matter of the alleged non-compliance, in order to obtain the necessary clarifications for the instruction of the specific instance.
2. PT NCP may also collaborate with NCP from other countries that are related to the specific instance presented, namely when one of the parties to the alleged non-compliance is a multinational that also carries out its economic activity in another country adherent to the *Guidelines*.
3. When doubts arise about which NCP should be responsible for the instruction of the specific instance, the respective NCP should meet to jointly determine the NCP that they consider competent to lead the process.