

## LATVIAN NCP PROCESS FOR CONSIDERING SPECIFIC INSTANCES

The *Guidelines* aim to ensure that the activities of multinational enterprises are consistent with government policy, to strengthen the trust between enterprises and the societies in which they are active, to improve the investment climate for foreign enterprises, and to increase the contribution multinational enterprises make to sustainable development.

All OECD countries, as well as 13 non-OECD countries adhering to the *Guidelines*, are committed to promoting businesses' implementation of the *Guidelines*. To this end, National Contact Points (NCPs) have been established in all countries adhering to the *Guidelines*. NCPs assist in resolving any issues that may arise relating to the implementation of the *Guidelines*. Stakeholders may report such issues to an NCP. The NCP will then endeavor to establish a dialogue between the reporting party and the business in question on the effective implementation of the *Guidelines*, in an effort to resolve the issue at hand and prevent future problems.

### Latvia's National Contact Point

The Latvian NCP includes representatives of Ministry of Foreign Affairs, Ministry of Economics, Ministry of Finance, Ministry of Justice, Ministry of Education and Science, Cross-Sectoral Co-ordination Centre, the Free Trade Union Confederation of Latvia, the Employers' Confederation of Latvia, Latvian Chamber of commerce and industry, the independent expert. The NCP Secretariat is staffed by the Ministry of Foreign Affairs, Department of Economic Relations and Development Cooperation Policy.

The *Guidelines* define several core criteria and guiding principles for the functioning of the NCPs. These are visibility, accessibility, transparency, impartiality, predictability and equitability. The NCP expects all involved stakeholders to act in good faith.

**Visibility** means that the NCP highly values its task of providing information to increase awareness of the *Guidelines* and to increase their effective implementation.

**Accessibility** means that the NCP can be contacted easily and is open to discussion with all parties and stakeholders.

**Transparency** means that the NCP strives to be transparent about its procedures and that it encourages mediation. However, this can mean that the NCP is not transparent about the content of the mediation, as confidentiality may contribute to the success of the procedure. Section B. of this document further elaborates on confidentiality and transparency.

**Impartiality** means that at all times the NCP will be neutral and will avoid any appearance of partiality in its contacts with stakeholders, the consideration of specific instances and its promotional activities. If one of the independent members of the NCP has a stake in one of the parties involved with a specific instance, the member NCP will notify the NCP of this and he/she will not be involved in this specific instance.

**Predictability** means that the NCP will act in accordance with the Procedural Guidelines section of the *Guidelines*, will provide clear information on the NCP procedures and will act accordingly in handling specific instances. It also means that the NCP will provide substantiated arguments on decisions made whether to take a specific instance into further consideration and on reaching a final statement.

**Equitability** means that parties will be treated on fair and equitable terms and have access to the

same procedures. It also means that the NCP will use the concept of proportionality in the handling of specific instances.

## **PROCEDURES**

### **Initiating a request**

NCPs assist in resolving any issues that may arise relating to the implementation of the *Guidelines*. Stakeholders may report such issues to an NCP. The NCP will then endeavor to establish a dialogue between the reporting party and the business in question on the effective implementation of the *Guidelines*, in an effort to resolve the issue at hand and prevent future problems.

Submitter(s) must have a specified interest in the case, be in a position to supply information about it and have a clear view of the outcome they wish to achieve.

The items that should be addressed in a notification include:

- Information about the Submitter(s)
- Information about the organization, which is responsible for the alleged breach of the Guidelines in the notification.
- Content of the Specific Instance: what is the alleged breach of the OECD Guidelines, which chapters or paragraphs in the Guidelines they consider to be breached by the company.
- When relevant: information on parallel proceedings, such as current court proceedings on (part of) the specific instance.

Submitters are encouraged to substantiate their claims with facts. If the Specific Instance is deemed to be material and substantiated, the NCP will offer the parties to the dispute its mediation and conciliation services.

### **Stages in handling specific instances**

#### ***Stage 1 – Confirmation of receipt***

Upon receiving a Specific Instance within 14 working days, the NCP confirms receipt to the party raising the issue (complainant) and notifies multinational enterprise (MNE) involved that this Specific Instance has been received.

The letters to the complainant and the MNE contain a description of the further procedure. The NCP explains the role of NCP and its procedures. The NCP may ask the complainant for further information or clarification if it considers it necessary to take the complaint forward.

The NCP writes to the MNE named in the complaint to share the information received about the complaint and invite the company to make a response. The NCP will give the enterprise 10 days to provide a response.

The NCP offers separate meetings to the complainant and the MNE to explain the NCP process and answer any questions.

### ***Stage 2 - Initial Assessment***

NCP will engage with the MNE during the initial assessment phase.

Making an Initial Assessment of whether the issue raised merits further examination, the NCP will determine whether the issue is bona fide and relevant to the implementation of the Guidelines. The NCP will take into account:

- whether the Latvian NCP is the appropriate entity;
- the identity of the party concerned and its interest in the matter;
- whether the issue is material and substantiated;
- whether there seems to be a link between the enterprise's activities and the issue raised in the Specific Instance;
- the relevance of applicable law and procedures, including court rulings;
- how similar issues have been, or are being, treated in other domestic or international proceedings;
- whether the consideration of the specific issue would contribute to the purposes and effectiveness of the Guidelines.

The NCP will hear both sides of an issue. As part of the Initial Assessment of the Specific Instance, the NCP will have separate, confidential meetings with both the party raising the issue and the MNE involved concerning the Specific Instance and related considerations, unless the NCP has already concluded – on the basis of the criteria in the Procedural Guidance – not to take the issue into further consideration.

If the NCP decides that the issue does not merit further consideration, it will inform the parties of the reasons for its decision. The NCP will issue a statement. The statement describes the issues raised and the reasons for the NCP's decision.

The NCP makes a draft Initial Assessment based on the information received in the complaint and any response, and will issue this to the parties for comment before finalising it for publication. The parties are given two weeks to respond to a provisional version of the Initial Assessment, which will then be finalized and published on the Latvian NCP website.

### **Options for resolving the matter independently**

When Initial Assessment is approved for further consideration, the NCP encourages the parties to resolve the matter themselves. This serves to create the basis for a dialogue between the parties. If the parties succeed in resolving the matter on their own, the NCP has no further involvement. The parties must simply notify the NCP within three months from submission of the complaint to

indicate whether they have found a solution. Matters resolved between the parties are not subject to any form of publication by the NCP.

If the parties fail to resolve the matter themselves, the NCP investigates the matter further.

### **Stage 3 – Mediation or facilitation**

Mediation can be viewed as an ‘assisted negotiation’ between the parties with the aim of reaching a settlement agreeable to both; the NCP will facilitate discussions and may make suggestions. The NCP will not pressurise the parties into mediation or any particular outcome.

If the NCP determines that the Specific Instance is material and substantiated and meets other OECD Guidelines criteria, it will contact the parties involved, offer mediation or otherwise facilitate a consensual resolution of the issues raised. If the parties accept the offer for mediation, the NCP helps create a constructive and meaningful dialogue between the parties. Consultations between the parties can be organized in a number of different ways, for example as a dialogue or using mediation techniques. Mediation or facilitation can take any form the parties and the NCP agree would be beneficial to reaching a consensual resolution. The NCP mediator will at all times be neutral.

Conciliation/Mediation is voluntary. The published Final Statement will note where the parties refused to undertake mediation and will provide a summary of the reasons why mediation was not undertaken.

The NCP consults with the parties and where relevant:

- Seeks advice from relevant authorities, non-governmental organisations, and relevant experts;
- Consults the NCP in the other country or countries concerned;
- Seeks the guidance of the OECD Investment Committee if it has doubt about the interpretation of the OECD Guidelines in particular circumstances;
- Offers, and with the agreement of the parties involved, facilitates access to consensual and non-adversarial means, such as conciliation or mediation, to assist the parties in dealing with the issues.

NCP and the parties mutually establish and each party is required to sign the Terms of Reference (Mediation Agreement), which includes provisions for confidentiality and other requirements.

The persons taking part in mediation as representatives of the parties should have the authority to implement a proposed agreement. If these persons are subject to higher authority within that party, this must be made clear from the outset.

The NCP will compile its own concise meeting reports on the outcome of meetings in the context of a Specific Instance and will share these with the parties which were part of that meeting.

The phase of Mediation or Facilitation concludes when an agreement has been reached that is supported by all parties or when the NCP has concluded that the issue is not likely to be resolved within a reasonable timeframe. In both cases, the NCP then prepares to issue its Final Statement or report.

#### ***Stage 4 – Completion of the procedure, drafting and publication of the Final Statement***

After consultations with the parties involved, the NCP should complete the procedure by issuing a public statement on the results of the procedure, taking into account the need to protect sensitive business and other stakeholder information.

If the parties have reached an agreement, the NCP should refer to this agreement in its Final Statement. The text of the agreement itself will be appended to the final statement unless one of the parties objects to this.

If the parties fail to reach an agreement, the NCP should qualify the proceedings in its Final Statement and make recommendations concerning the implementation of the OECD *Guidelines*.

Parties are given two weeks to respond to a provisional version of the Final Statement, which will then be finalized.

The final version of the NCP Final Statement is then published on the Latvian NCP website.

#### ***Stage 5 - Providing follow-up services***

Following the completion of a procedure for a Specific Instance, the NCP requests all parties to provide it with information on any progress regarding implementation of the agreements and/or recommendations. As a standard practice, the NCP will publish a brief evaluation of the implementation of the agreements and/or recommendations on the Latvian NCP website one year after the publication of the Final Statement.

#### **Timetable**

The NCP has committed to complete each Specific Instance within a year of receiving the Specific Instance request. It will aim to complete Stage 1 - within 14 working days of receipt by the NCP, Stage 2 - within further 3 months, wherever possible, Stage 3 within further 6 months, Stage 4 within further 3 months and Stage 5 within a year after completion of Stage 4.

Some degree of flexibility may be needed to the timetable; for example, because of circumstances outside the NCP's control. In these circumstances the NCP will notify the parties, and set out a revised timetable.

As set out above, the NCP is committed to the prompt resolution of each Specific Instance. Parties are urged to provide information promptly in order to adhere to the timetable. Failure to do so could result in the NCP making its decision in the absence of that information.

## **Code of Conduct - Confidentiality and disclosure of this information**

Mediation law of Latvia regulates the handling of mediation process, including disclosure of information, information access, data protection and confidentiality.

The NCP takes appropriate steps to protect sensitive business information.

### Communication to the general public

Once a Specific Instance is submitted, the parties to that Specific Instance are expected to strictly respect the confidentiality of all communications with other parties and with the NCP.

In principle, neither the NCP nor the parties involved may make information from the specific instance or the subsequent proceedings publicly available. Exceptions to this principle of confidentiality are:

- The statement (Initial Assessment) issued by the NCP as to whether the Specific Instance merits further consideration;
- When the party that has provided information has granted permission for making that information publicly available;
- The final statement from the NCP.

### **Coordination between NCPs**

The NCP will consult with the NCP(s) of the other country or countries concerned with the specific instance. The Secretariat of the NCP contacts the other NCP(s) concerned and then reports on the answers received to its members. The Secretariat of the NCP informs the other NCP(s) of the progress of a specific instance and the decisions of the NCP, and submits the draft statements and final statements to them for comment. Co-operation may involve the exchange of information regarding a specific instance.