

STAKEHOLDER CONSULTATION DOCUMENT ON THE UK NATIONAL CONTACT POINT'S PROMOTION AND IMPLEMENTATION OF THE OECD GUIDELINES FOR MULTINATIONAL ENTERPRISES

Introduction

The All-Party Parliamentary Group on the Great Lakes Region (the APPG) reported in February 2005 on the success of the application of the OECD Guidelines for Multinational Enterprises (the Guidelines) to the Democratic Republic of Congo. A copy of the APPG report can be downloaded [here](#). The Guidelines can be downloaded [here](#).

The Government published its response in July 2005. It committed to consulting stakeholders on possible improvements to the UK National Contact Point's (NCP) promotion and implementation of the Guidelines. A full copy of the response can be downloaded [here](#).

Scope

This consultation covers the NCP's promotion and implementation of the Guidelines. It sets out actions that the Government proposes to take and asks questions on issues on which it does not yet have a firm view. It does not address the content of the Guidelines themselves, changes to which could only be agreed with the unanimous agreement of all members of the OECD Investment Committee.

Process

In parallel with undertaking this consultation, the NCP will:

- i) alert the chairman of the OECD Investment Committee and other NCPs to its existence;
- ii) examine current practice by seeking details of other NCPs' procedures and processes;
- iii) be available to discuss the questions raised if stakeholders feel that this would be helpful to their deliberations; and
- iv) make all responses public except where otherwise indicated by respondents.

Timescales

All responses to the issues raised in this consultation document should be received by 6 January 2006 and can either be submitted by email to uk.ncp@dti.gsi.gov.uk or in writing to:

The National Contact Point for the OECD Guidelines

Department of Trade and Industry
Bay 4140
1 Victoria Street
London SW1H 0ET

THE NCP'S PROMOTION AND IMPLEMENTATION OF THE GUIDELINES

The remainder of this document follows the order of the procedural guidance for NCPs that accompanies the Guidelines.

A. Institutional arrangements

1. In accordance with a commitment in its response to the APPG report, the Government undertakes to formalise the current ad-hoc group of Government departments who assist the NCP. Terms of reference will be published.
2. The NCP undertakes to hold two formal meetings a year with stakeholders. This may be increased, and supplemented by informal meetings, if the issues require it.

B. Information and promotion

3. The NCP undertakes to:
 - i) revise and update the UK NCP information booklet published in 2001. The booklet can be downloaded [here](#);
 - ii) revise and update the NCP website. The website can be accessed [here](#);
 - iii) establish an email notification list for website updates; and
 - iv) seek to improve the information provided to prospective investors (inward and outward).

QUESTION 1

How else could the NCP raise awareness of the Guidelines through cooperation with the business community, employee organisations, other non-governmental organisations and the interested public?

C. Implementation in specific instances

The role of the NCP

4. The Government reasserts that the role of the NCP, as set out in the procedural guidance, is to “contribute to the resolution of issues that arise relating to

implementation of the Guidelines in specific instances. The NCP will offer a forum for discussion and assist the business community, employee organisations and other parties concerned to deal with the issues raised in an efficient and timely manner and in accordance with applicable law.” Final resolution rests with the parties themselves. The NCP may, in certain circumstances, be able to elicit information from other sources, but it is not the role of the NCP to act as an adjudicator.

Initial assessments

5. The NCP asserts that it will not, except in exceptional circumstances, decline a complaint made under the Guidelines on the basis of uncertainty of their application. It may refer questions about the interpretation of the Guidelines in particular circumstances to the OECD Investment Committee but will, in the meantime, assess the complaint according to its own interpretation.

6. The NCP is considering formalising its initial assessment of whether the issues raised in a complaint merit further examination.

QUESTION 2

What should be addressed in initial assessments?

QUESTION 3

Should initial assessments be made public or provided only to the parties to a complaint?

Parallel proceedings

7. The NCP asserts that a parallel legal process, whether criminal or civil, will take precedence over a complaint made under the Guidelines. The NCP also asserts that it will forebear from handling a complaint where a parallel administrative proceeding is more likely to address the issues raised. It will assess this on a case-by-case basis.

Timescales

8. While they are not prescribed by the Guidelines, the NCP has already published timescales for aspects of implementation under its control. It is considering doing so for other aspects.

QUESTION 4

Should timescales be set for every aspect of implementation? If so, what should these timescales be?

QUESTION 5

What should happen if a party to a specific instance does not meet such a timescale? In particular, should the party be liable to a summary finding by the NCP? If not, should the NCP issue an interim statement (see below), making clear where the responsibility for delay lies and the consequences of any future delay?

Statements

9. The NCP is considering issuing interim statements as a means of providing public updates on specific instances, particularly in long and/or complex cases or where that has been an unanticipated delay (see above), and/or to close down particular aspects of a specific instance that has not yet been fully resolved.

QUESTION 6

Would you value interim statements? When should they be issued? What should happen if one of the parties to a specific instance objects to the issue of such an interim statement?

10. The NCP asserts that it is the right of any party to a specific instance to request the issue of a statement at any stage. However, the decision to do so rests with the NCP, who may address the circumstances of such a request in any statement so issued.

11. The NCP is considering the content of statements issued at the conclusion of a specific instance. Examples can be downloaded [here](#).

QUESTION 7

Are there issues not addressed in past statements that should be in future?

Recommendations

12. The APPG report recommended that clear recommendations be given by the NCP to companies. The Government takes this to mean recommendations targeted toward the details of the specific instance in question. The NCP is considering how this might be effected.

QUESTION 8

What form of “clear” recommendation would be of most value to parties to a specific instance?

QUESTION 9

Should the NCP assert an opinion on aspects of a complaint that it considers unfounded, frivolous or vexatious?

QUESTION 10

Should the NCP comment on the willingness of the parties to a specific instance to engage constructively?

Confidentiality

13. The NCP asserts that, in the interests of transparency, all documentation received from a party to a specific instance will be made available to other parties except in accordance with the exemptions provided for under the Freedom of Information Act 2000 (e.g. where information is provided in confidence). Information on exemptions is available [here](#).

14. The procedural guidance requires the parties to a specific instance to maintain confidentiality of the proceedings. Interpreted strictly, this does not apply until a complaint has been made under the Guidelines and the NCP has made an initial assessment that the issues raised merit further examination. The NCP is considering extending the confidentiality requirement to all stages of a complaint.

QUESTION 11

Should the confidentiality requirement be so extended?

QUESTION 12

What should be the sanction for any party to a complaint breaching the confidentiality requirement at any stage that it applies?

15. The NCP asserts that it foresees no circumstances in which the best interests of effective implementation of the Guidelines will be served by not making publicly available the outcome of a complaint made under the Guidelines.

Non-adhering countries

16. The NCP asserts that it will follow its procedures where relevant and practicable if issues arise in non-adhering countries. Where information is not otherwise available, it may be able to obtain this through UK overseas posts. Where parties are unable to make their representations in the UK, it may undertake field visits, for which terms of reference will be established in advance.

17. Any information gathered from these sources will be provided to both parties, but it remains the responsibility of the parties to resolve their differences at meetings facilitated by the NCP. If appropriate, information gathered in this way may form part of any final statement.