



On the basis of OECD Guidelines for Multinational Enterprises, Slovenia's National Contact Point (hereinafter: the NCP Slovenia) hereby adopts the Rules for handling specific instances.

The Rules for handling specific instances – Slovenia's National Contact Point

Summary – handling specific instances

The NCP Slovenia contributes to **the resolution of issues that arise relating to the implementation of the OECD Guidelines for Multinational Enterprises** (hereinafter: the Guidelines) **in specific instances** in a manner that is **impartial, predictable, equitable and compatible** with the principles and standards of the Guidelines. The NCP Slovenia offers a forum for discussion and assists the business community, worker organisations, other non-governmental organisations, and other interested parties concerned to deal with the issues raised in an efficient and timely manner and in accordance with the applicable legislation. In providing such assistance, the NCP Slovenia will:

- make an **initial assessment** of whether the issues raised merit further examination and respond to the parties involved;
- where **the issues raised merit further examination**, offer **good offices** to help the parties involved to resolve the issues. For this purpose, the NCP Slovenia will consult with these parties and where relevant:
 - 1) seek advice from relevant authorities, and/or representatives of the business community, worker organisations, other non-governmental organisations, and relevant experts;
 - 2) consult the NCP in the other country or countries concerned;
 - 3) seek the guidance of the OECD Investment Committee if it has doubt about the interpretation of the Guidelines in particular circumstances;
 - 4) offer, and with the agreement of the parties involved, facilitate access to consensual and non-adversarial means, such as conciliation or mediation, to assist the parties in dealing with the issues.
- At the **conclusion of the procedures** and after consultation with the parties involved, **make the results of the procedure publicly available**, taking into

account the need to protect sensitive business and other stakeholder information, by issuing:

- 1) **a statement** when the NCP Slovenia decides that **the issues raised do not merit further consideration**;
- 2) **a report** when **the parties have reached agreement** on the issues raised;
- 3) **a statement when no agreement is reached or when a party is unwilling to participate in the procedures.**

| Stages in handling specific instances submitted to the NCP Slovenia | | |
|--|---|--|
| Stage 1 – Initial assessment | Stage 2 – Mediation | Stage 3 – Statement at the conclusion of the procedure |
| A decision on whether to consider or reject a complaint: within three months of receipt of the complaint | Conditional on the agreement of the parties involved: limited to the period of six months | the NCP Slovenia should publish a statement within three months of the conclusion of the procedure |

the NCP Slovenia strives to effectively deal with specific instances of alleged violations of the main principles of the Guidelines. The objective is to conclude the entire procedure, from receipt of the matter to the issue of a statement at the conclusion of the procedure, within 12 months. The parties are invited to comply with the timeframes set by the NCP Slovenia. The NCP Slovenia will continue the procedure even if the parties do not comply with the set timeframes. The NCP Slovenia may allow non-compliance with the timeframes set in cases where extending the timeframes is justified by the complexity of the matter (for example: if the conduct to which the procedure relates took place in a country that has not adhered to the Guidelines). In such cases, the NCP Slovenia will inform the parties involved of such delays, state the reasons on the basis of which it adopted a decision to extend the timeframes, and inform the parties of the new timeframes.

The right to decide in specific instances

The members of the NCP Slovenia inter-ministerial working group represent ministries and other government bodies, while external associates represent trade unions, business associations, non-governmental organisations and universities. In specific instances (alleged violations of the Guidelines), only members of the NCP Slovenia inter-ministerial working group have a voting right, while external associates only provide advice, recommendations and examples of good practice to the members of the NCP Slovenia. In specific instances, members of the NCP Slovenia inter-ministerial working group decide by a majority of full members present.

Handling specific instances – key principles

In accordance with principles and standards contained in the Guidelines, the NCP Slovenia will handle specific instances in a manner that is:

- **Impartial.** The NCP Slovenia will ensure impartiality in the resolution of specific instances.
- **Predictable.** The NCP Slovenia will ensure predictability by providing clear and publicly available information on its role in the resolution of specific instances, including the provision of good offices, the stages of the specific instance process including indicative timeframes, and the potential role the NCP Slovenia can play in monitoring the implementation of agreements reached between the parties.
- **Equitable.** The NCP Slovenia will ensure that the parties can engage in the process on fair and equitable terms, for example by providing reasonable access to sources of information relevant to the procedure.
- **Compatible with the Guidelines.** The NCP Slovenia will operate in accordance with the principles and standards contained in the Guidelines.

Who has the right to file a complaint?

In accordance with the OECD Guidelines, any "**interested party**" (anyone who considers that an enterprise does not operate in accordance with the OECD Guidelines) may file a complaint with the NCP Slovenia. The NCP Slovenia may consider complaints relating to companies operating in or from Slovenia. A **complaint** should be filed in writing and should contain the following information:

- 1) name, surname and contact information of the person filing the complaint;
- 2) grounds for the complaint, including the description of the matter, the role of the enterprise involved, and the explicit indication of the part or parts of the Guidelines which, according to the person filing the complaint, have not been complied with;
- 3) as specific and detailed documentation as possible.

The NCP Slovenia will confirm the receipt of the complaint and forward it to the enterprise referred to in the complaint. The enterprise will also receive information on the NCP Slovenia and will be informed that the procedure in question is the specific instances procedure. This is usually done within 10 working days of receipt of the complaint. If the complaint does not contain all the mandatory elements, the person filing the complaint will be invited to complete it with the missing information. The enterprise in question is invited to submit its comments on the procedural aspects of complying with the set timeframe to the NCP Slovenia.

Complaints may be sent by e-mail or by post to the following address:

Ministry of Economic Development and Technology

Kotnikova ulica 5

1000 Ljubljana

T: +386 1 400 33 11

E: [gp.mgrt\(at\)gov.si](mailto:gp.mgrt(at)gov.si)

Stage 1 – Initial assessment

After receiving a complaint, the NCP Slovenia will assess it in accordance with the criteria set out in the Guidelines. Before commencing the procedure for assessing the complaint, the NCP Slovenia will establish whether the complaint is relating to activities of a Slovenian enterprise or to allegedly contentious conduct that takes place in Slovenia. If the complaint falls within the competence of NCPs of other countries, the NCPs involved will consult with one another and agree on which NCP will conduct the procedure to assist the parties to the dispute¹.

In making an initial assessment of whether the issue raised merits further examination, the NCP Slovenia will determine whether the issue is *bona fide* and relevant to the implementation of the Guidelines. In this context, the NCP will take into account the following **criteria**:

- 1) the identity of the party concerned and its interest in the matter;
- 2) whether the issue is material and substantiated;
- 3) whether a link exists between the enterprise's activities and the issue raised in the specific instance.
- 4) the relevance of applicable laws and procedures, including court rulings;
- 5) how similar issues have been, or are being, treated in other domestic or international proceedings;
- 6) whether the consideration of the specific issue would contribute to the purposes and effectiveness of the Guidelines.

¹Coordination between NCPs in Specific Instances (the Guidelines, commentary No. 24, pp. 82, 83): If the issue arises from an enterprise's activity that takes place in several adhering countries or from the activity of a group of enterprises organised as a 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. The lead NCP should consult with the other NCPs to agree on which NCP will provide appropriate assistance when requested by the lead NCP. If the parties fail to reach agreement, the lead NCP should make a final decision in consultation with the other NCPs.

At this point, it should be stressed that the decision of the NCP Slovenia to further consider the matter does not prejudice that the enterprise has failed to comply with the Guidelines. However, despite this, the NCP Slovenia will make the decision stated in the initial assessment publicly available. Members of the inter-ministerial working group decide whether the issue merits further consideration by a majority of members present. If the head of the NCP Slovenia, on the basis of the Guidelines and consultation with the OECD Secretariat, decides that the issue raised does not merit further consideration, they may stop the issue from being accepted for further consideration despite the fact that the majority of the members present have voted differently. If the parties reach an agreement or the complaint is withdrawn before the NCP Slovenia makes an initial assessment, the NCP Slovenia will conclude the procedure by issuing a statement.

On the basis of the aforementioned criteria, the NCP Slovenia will make an **initial assessment** that will consist of at least the following **elements**:

- 1) names of the members of the NCP Slovenia who participated in making the initial assessment;
- 2) names of the parties;
- 3) short description of the procedure;
- 4) content of the complaint;
- 5) reasons for the decision on whether the complaint should be considered or rejected (the matter may be accepted for consideration only "in part"), in which case the following is indicated:
 - the parts of the complaint that fall within the scope of the Guidelines and the parts that do not fall within the scope of the Guidelines;
 - the decision of the NCP Slovenia to further consider the matter does mean that the enterprise has failed to comply with the Guidelines;
 - a short description of the following stages of the procedure for consideration of the complaint by the NCP Slovenia.

The NCP Slovenia will send the initial assessment to the parties and invite them to submit their comments within 10 working days. The NCP Slovenia will decide, at its own discretion, whether any of the comments received will be included in the assessment. The initial assessment will then be sent to the parties and published on the website of the Ministry of Economic Development and Technology.

Stage 2 – Mediation

Where the issue raised merits further consideration, the NCP Slovenia will discuss the issue further with parties involved and offer good offices in an effort to contribute informally to the resolution of the issue. This may include seeking the advice of relevant authorities, as well as representatives of the business community, labour organisations, other non-governmental organisations, and experts.

As part of making available good offices, and where relevant to the issues at hand, the NCP Slovenia will offer, or facilitate access to, consensual and non-adversarial procedures, such as mediation, to assist in dealing with the issues at hand. In common with accepted practices on mediation procedures, these procedures would be used only upon agreement of the parties concerned and their commitment to participate in good faith during the procedure.

In the specific instance procedure, it is desirable that the parties involved reach agreement on the issues raised. The NCP Slovenia will help create conditions enabling the parties to participate in the procedure. As the first step, the NCP Slovenia will usually offer to meet each party separately to discuss the complaint. If the parties decide to continue the procedure through mediation, the NCP Slovenia will convene a joint "**initial meeting**" to set the timeframe for the mediation procedure. From the **central register of mediators**², the NCP Slovenia will select several candidates for the mediator role and invite them to participate in the initial meeting.

The parties have the right to select a mediator of their choice. At such meetings, the NCP Slovenia (in cooperation with external mediators) will verify whether the parties are authorised to continue the procedure after the completion of the first stage and enter into legally binding obligations. At the same time, the NCP Slovenia and external mediators will define in detail the nature of the complaint and, where necessary, request the person who filed the complaint to submit documentation and the enterprise in question to respond to the complaint.

For every complaint lodged with the NCP Slovenia, the **mediation procedure** (basic rules, assistance from external legal experts, the procedure before the commencement of mediation, the duration of mediation, the agreement on mediation) is agreed on the basis of the **ad hoc principle** and the consent from all the parties involved. However, the mediation procedure must be in accordance with the applicable legislation and customs

² The Ministry of Justice keeps the central register of mediators who operate in judicial programmes for alternative dispute resolution. Source: http://www.mp.gov.si/si/obrazci_evidence_mnenja_storitve/alternativno_resevanje_sporov/centralna_evidenca_mediatorjev_v_programih_sodisc/

of Slovenia. The mediation procedure for dealing with specific instances is impartial, predictable, equitable and compatible with the Guidelines.

Stage 3 – Statement at the conclusion of the procedure

At the conclusion of the procedure for handling specific instances submitted with the NCP Slovenia, a final statement is issued by the NCP Slovenia. The NCP Slovenia is obliged to issue a statement regardless of whether an agreement is reached in the mediation procedure. The **final statement** should contain at least the following **elements**:

- 1) names of the members of the NCP Slovenia who prepared the final statement;
- 2) names of the parties;
- 3) date when the complaint was filed with the NCP Slovenia;
- 4) details of the complaint and the chapters or parts of the Guidelines which, as stated in the complaint, have allegedly not been complied with;
- 5) a short description of the procedure conducted by the NCP Slovenia, the extent to which the parties cooperated and participated in good faith during the procedure and the outcome of the mediation in the form of an agreement between the parties;
- 6) reasons why the parties failed to reach an agreement (in cases where the proposal for mediation was rejected or the mediation was not successful);
- 7) recommendations to the enterprise on how to improve its business conduct in accordance with the Guidelines ('where appropriate').

The members of the inter-ministerial working group determine the content of the final statement by a majority of members present. The head of the NCP Slovenia may, on the basis of the Guidelines and consultation with the OECD Secretariat and the parties involved, decide that the content of the final statement will be different from that determined by the members the inter-ministerial working group by a majority of members present. In such a case, the NCP Slovenia will issue a final statement the content of which has been determined by the head of the NCP Slovenia. When the NCP Slovenia has prepared its final statement, the parties to the dispute will have 15 working days to submit their comments regarding the final statement. The NCP Slovenia will decide whether any changes will be made to the text of the statement before sending the statement to the parties and publishing it on the website of the Ministry of Economic Development and Technology.

In accordance with the Guidelines, after the issue of the final statement, the NCP Slovenia may **continue to monitor the parties' conduct (the informal monitoring stage)** to establish whether it is in accordance with the recommendations of the NCP Slovenia in that specific instance (the monitoring stage is optional). With a view to improving its

handling of specific instances, the NCP Slovenia may request the parties to assess the handling of the matter by the NCP Slovenia within three months of the publication of the final statement.

If the **mediation is successful and the parties reach an agreement**, the parties will usually agree on measures to be taken after a final statement is issued. In such cases, it is recommended that, with the assistance from the selected mediator, parties are as specific as possible in defining the measures to be taken, namely what needs to be done, who will do it and when will it be done. This will help ensure predictability as to what outcome the parties may expect. The NCP Slovenia will take the initiative and invite the parties to a meeting convened by it within one year of the issue of the final statement, at which the parties will be asked to report on the usefulness of the agreement reached and their work in implementing the agreed measures. After the meeting, the NCP Slovenia will publish the information that the meeting took place.

In cases where **no agreement has been reached at the conclusion of the mediation procedure**, and the NCP Slovenia has issued a final statement containing recommendations to the enterprise concerned, the final statement may specify a time limit by which the parties are obliged to inform the NCP Slovenia of the progress made regarding certain points set out in the recommendation to the enterprise. For example: an enterprise may be required or encouraged to inform the NCP Slovenia of any measures that are being implemented by the enterprise with a view to complying with the requirements contained in the recommendation.

Any further measures during the monitoring stage should be completed within one year of the publication of the final statement.

Gregor Umek, mag.
Head of the NCP Slovenia