

Terms of Reference

of the Austrian National Contact Point for the OECD Guidelines for Multinational Enterprises

(All function terms used are to be understood as gender-neutral and are valid in the masculine and feminine form.)

1. Organisation and Tasks

- 1.1. On the occasion of the approval of the revised OECD Guidelines for Multinational Enterprises (Guidelines) on 25 May 2011, the Council of the OECD renewed the obligation for participating states of the Declaration on International Investment and Multinational Enterprises to set up National Contact Points in order to *“further the effectiveness of 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, taking account of the attached procedural guidance.”*
- 1.2. The Austrian National Contact Point (NCP) has been set up within the Federal Ministry for Digital and Economic Affairs. The competent organisational entity is unit III/6a - *“Austrian National Contact Point (NCP) for the OECD Guidelines for Multinational Enterprises”*.
- 1.3. As a support for the Austrian NCP, a Steering Committee is set up. The composition, area of duties and activity of the Steering Committee are regulated in the latter’s Terms of Reference, which are available at the Austrian National Contact Point.
- 1.4. The unit III/6a acts as an office for the Steering Committee. The Head of the Austrian NCP takes part in the meetings of the Steering Committee in an advisory capacity; he/she has no right to vote. He/she is in charge of keeping the minutes.

2. Disclosure, answering enquiries and website

- 2.1.** The Austrian NCP is obliged to make sure that a broadest possible disclosure of the Guidelines be provided and endeavours to sharpen the awareness for their implementation.
- 2.2.** The Austrian NCP answers inquiries referring to the Guidelines. In doing so, the NCP shall in particular be available for information and inquiries to other National Contact Points, other stakeholders and governments of non-member states.
- 2.3.** The Austrian NCP operates the website www.oecd-leitsaetze.at, which serves, among other things, the disclosure of the Guidelines as well as the general information on the Austrian NCP itself and its activities. In particular, the following shall be published on the *website*:
 - a) German text and commentary section of the Guidelines;
 - b) Contact data and the Terms of Reference of the Austrian NCP;
 - c) Reports and explanations of the Austrian NCP in specific instances pursuant to Item I.C.3. of the Procedural Guidance of the Guidelines;
 - d) The annual reports of the Austrian NCP which shall be forwarded to the OECD Investment Committee;
 - e) Information on the tasks, the composition and work of the Steering Committee.

3. Specific Instances

- 3.1.** In the event of a specific instance being submitted to the Austrian NCP due to purported violations of the Guidelines, it shall be handled in accordance with the Procedural Guidance of the OECD Guidelines for Multinational Enterprises.
- 3.2.** The referral to the Austrian NCP is informal and free of charge. Correspondence shall basically be carried out by e-mail. The e-mail address of the Austrian NCP is: NCP-Austria@bmdw.gv.at.
- 3.3.** Correspondence shall take place in German; in case of convenience, the official OECD languages English or French are also admissible.
- 3.4.** The Austrian NCP shall immediately confirm to the complainant the receipt of his/her notification and also inform the Steering Committee hereof.
- 3.5.** Upon receipt of a notification, the completeness of the latter shall be verified by the Austrian NCP. In doing so, the Austrian NCP can issue an order to amend. The notification is complete if the following information and data are stated in the notification:

- a) Name, address, an e-mail address and telephone number, if necessary, of the notifier;
- b) Name, address, an e-mail address and phone number, if necessary, of the respondent;
- c) Designation of the determination of the Guidelines, the violation of which is alleged;
- d) Statement of, in particular, the facts, through which the provision of the Guidelines referred to has been violated;
- e) In case a responsibility of the respondent is alleged within the scope of the supply chain, also data regarding the respondent's relationship to the company having violated the provisions of the Guidelines designated.

3.6. The Austrian NCP is responsible for specific instances against companies headquartered in Austria. Specific instances of which there is no such competence can still be considered by the Austrian NCP, provided that the notification is complete and bears sufficient relation to Austria. Furthermore, also if there is another relevant interest in the handling of the specific instance or if its handling cannot be otherwise guaranteed.

3.7. 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.

3.8. The Austrian NCP shall forward the notification to the respondent asking him for his statement. In the event of an order for amendment addressed to the complainant by the Austrian NCP, the notification shall be forwarded to the respondent upon receipt of the improved notification. The Austrian NCP informs the contractual parties on the proceedings before the Austrian NCP as well as the further procedure.

3.9. The Austrian NCP shall decide, as far as possible, within three months following receipt of the notification whether the question raised justifies a closer revision (initial assessment). The issuance of an order for amendment addressed to the complainant by the Austrian NCP shall interrupt this time limit pending submission of the improved notification. The result of the initial assessment shall be forwarded to the parties and published on the website of the Austrian NCP.

3.10. The Austrian NCP shall not be entitled to reject the handling of a specific instance solely because parallel proceedings have been conducted, are under way or are available to the parties concerned. Furthermore, it has no right to interrupt an already pending case for this sole reason, unless this is the mutual desire of all parties involved.

3.11. The costs of the proceedings shall be basically borne by the contracting parties.

- 3.12.** The Austrian NCP shall try its best to encourage the respondent to participate in good faith during the procedure. The Austrian NCP shall consider the contribution to a mutual proceeding carried out by the parties in specific instances to be its central task. The Austrian NCP shall be entitled to carry out the mediation activities itself or appoint an external intermediary or mediator. The Austrian NCP is no quasi-judicial body. Furthermore, the NCP does not have any administrative power of command or power of enforcement.
- 3.13.** The authentication of their statements resides with the parties. The Austrian NCP, however, endeavours, according to its resources, to contribute to the clarification of the facts. For this purpose, it can, if necessary, make use of the Austrian representation authorities abroad. The referral shall be effected via the Federal Ministry for Europe, Integration and Foreign Affairs.
- 3.14.** The Austrian NCP strives for closing the proceedings with a joint statement by the contracting parties. In the event that it cannot be reached despite all endeavours, the Austrian NCP reserves the right to issue a unilateral statement. Such a declaration can contain estimations and recommendations.
- 3.15.** Upon conclusion of the proceedings, the Austrian NCP shall collect feedback from the parties on the sequence of the proceedings.
- 3.16.** In consultation with the parties, specific follow-up activities (Follow-up) between the parties can be carried out upon conclusion of the proceedings, which will be accompanied by the Austrian NCP.

4. Referral to the Steering Committee

- 4.1.** The Austrian NCP shall immediately inform the Steering Committee on the essential steps in the course of the handling of the notifications received. These steps are, in particular, the following:
- a) The receipt of a specific instance;
 - b) The order for amendment of the notification in specific instances by the Austrian NCP;
 - c) The rejection of a specific instance due to the incompetence of the Austrian NCP;
 - d) The result of the initial assessment and the commencement of the closer revision;
 - e) The interruption or resumption of the proceedings;
 - f) The assignment of a mediator;

- g) The contacting of other National Contact Points within the scope of a pending proceeding;
- h) The referral to the OECD Investment Committee within the scope of a pending proceeding;
- i) The result with regard to the outcome of a proceeding.

4.2. The Austrian NCP is entitled to ask the Steering Committee for advice in all matters regarding the implementation and disclosure of the Guidelines.

5. Cooperation with other National Contact Points

5.1. The Austrian NCP strives for an intense cooperation with other National Contact Points. Cooperation is particularly recommended:

- a) For carrying out joint projects and events;
- b) For responding to inquiries of foreign National Contact Points;
- c) For the voluntary participation in *Peer Reviews*;
- d) For carrying out a general exchange of experience ("*Peer Learning*");
- e) In case of a possible clarification of the competence for handling a submitted notification in specific instances;
- f) Within the framework of handling specific instances, provided that foreign National Contact Points are also affected.

6. Confidentiality

6.1. As provided in the Procedural Guidance, confidentiality shall be observed during the entire duration of the proceeding. The Austrian NCP takes the necessary measures for the protection of sensitive data and information. Sensitive data and information as well as trade and business secrets shall also be maintained upon termination of the proceeding.

6.2. For reasons of procedural transparency, data and information forwarded by one party to the Austrian NCP shall be forwarded by the Austrian NCP to the other involved parties, unless there is a compelling reason (such as, the protection of life and limb, the preservation of trade and business secrets) against forwarding them.

7. Reporting

7.1. Within the scope of its activities, the Austrian NCP has the following explicit obligations to report:

- a) Annual reports to the OECD Investment Committee;
- b) Within the scope of the OECD annual meetings of the National Contact Points;
- c) Towards the OECD Secretariat with regard to pending cases, in particular on their commencement of proceedings and on the type and point of time of the conclusion of proceedings;
- d) Towards the OECD Secretariat with regard to possible organisational modifications of the Austrian NCP.