

To: National Contact Point Portugal & OECD Centre for Responsible Business Conduct
From: OECD Watch
Date: 17 April 2023
Re: OECD Watch submission to the 2023 Peer Review of NCP Portugal

OECD Watch welcomes NCP Portugal's willingness to undergo a peer review to improve the NCP's effectiveness in promoting the OECD Guidelines for Multinational Enterprises (Guidelines) and contributing to resolving irresponsible business conduct by multinational enterprises (MNEs) in specific instances. We appreciate the opportunity to provide input into this peer review.

This submission highlights areas for improvement of particular concern to OECD Watch. We direct NCP Portugal, the Portuguese government, and the peer reviewers to [OECD Watch's most recent evaluation of NCP Portugal](#).¹ As our evaluation shows, the NCP's procedures, organisational structure, and communications do not meet civil society's expectations for NCPs. This submission includes recommendations in relation to these issues. Further, this submission is based on NCP Portugal's website as of 17 April 2023.²

NCP Portugal's organisation

Several aspects of NCP Portugal's organisation do not meet civil society's expectations for NCPs. The NCP's current organisation significantly and detrimentally affects civil society's perceptions of the NCP's accountability, accessibility, and visibility. OECD Watch urges NCP Portugal, the Portuguese government, and the peer reviewers to critically consider the issues highlighted in relation to the NCP's organisation, in addition to our online evaluation of NCP Portugal.

Location in bureaucracy: NCP Portugal is located in the Ministries of Economy and Foreign Affairs. This is not in line with civil society's expectations for NCPs, especially in terms of their accessibility and accountability. In order to ensure there is no real or perceived conflict of interest, OECD Watch recommends for NCPs not be housed in government ministries relating to economics, trade, and investment.

NCP structure and expertise: NCP Portugal's current organisational structure (involving only the Ministries of Economy and Foreign Affairs) significantly limits the NCP's expertise in its promotional and specific instance-handling functions. OECD Watch recommends for NCPs to include broad expertise in carrying out their activities. To enhance their accessibility and accountability, OECD Watch recommends that NCPs incorporate diverse and relevant government departments, have a multipartite structure, or have an independent expert structure.

Stakeholder advisory body and stakeholder involvement: NCP Portugal neither has a stakeholder advisory body nor does it include non-governmental external stakeholders in its structure. OECD Watch strongly recommends that NCPs establish multi-stakeholder advisory bodies including all three core stakeholder groups, namely businesses, labour unions, and NGOs; and these advisory bodies must be consulted by the NCP at least twice per year. NCP Portugal should also formally involve representatives of all three stakeholder groups in its governance and decision-making. Doing so would improve the NCP's accessibility, accountability, and visibility.

¹ OECD Watch's NCP evaluations were last updated in 2021.

² Significant changes were made to NCP Portugal's website during the period set by the OECD for OECD Watch to provide feedback. This submission has been revised to reflect these changes as of 17 April 2023.

NCP Portugal's procedures

Several aspects of NCP Portugal's [Guide to Procedures for Handling Specific Instances under the OECD Guidelines for Multinational Enterprises](#) (Guide) should be revised to enhance the effectiveness of the NCP.

Multilingual Rules of Procedure: NCP Portugal's Guide is only available in Portuguese. This significantly limits the accessibility and visibility of the NCP. OECD Watch strongly recommends that the NCP publish an English translation of the Guide.

Respondent MNEs: Paragraph 4, under the heading 'Structure and Mission of the NCP' seems to refer to two types of MNEs against which a specific instance may be filed: (1) MNEs headquartered in Portugal; and (2) MNEs with "majority national capital when established in countries not adhering to the Guidelines".³ The meaning and scope of the latter half of this paragraph are unclear and should be clarified.

Initial assessment criteria: Article 1.3 of the Guide sets out NCP Portugal's initial assessment criteria. In OECD Watch's view, these criteria could be understood to impose an onerous burden on complainants to substantiate specific instances to a degree significantly above the level of 'plausible' or 'credible' recommended in the OECD's Guide for NCPs on the Initial Assessment of Specific Instances. Article 1.3.h of the Guide requires the complainant in its initial filing to provide the following information:

"h. Evidence to support the factual elements alluded to by the claimant within the specific instance presented;"

The degree to which such evidence is required to be substantiated is unclear. OECD Watch recommends that NCP Portugal amend its Guide to provide that specific instances will be considered "material and substantiated" if they are plausible or credible. Otherwise, there is a risk that the NCP may impose a higher standard when considering its criteria for initial assessments than that recommended by the OECD and OECD Watch.

Issuance of recommendations and determinations: NCP Portugal's Guide does not commit the NCP to make determinations (or decisions) of (non-)compliance with the Guidelines, but does permit the NCP to make recommendations to MNEs on how to align their business conduct with the Guidelines. OECD Watch encourages the NCP to issue recommendations in future, final statements on how MNEs can correctly and completely implement the standards in the Guidelines and/or remedy their adverse impacts. The NCP should also consistently issue determinations on MNEs' (non-)compliance with the Guidelines. Determinations are useful as they clarify the often vague standards in the Guidelines and enable MNEs to understand and comply with the Guidelines. Both determinations and recommendations increase MNEs' accountability and can also represent a form of remedy for complainants in terms of public validation of their experiences and concerns.

Consequences for MNEs refusing to engage in good faith in NCP processes: OECD Watch recommends that all NCPs be permitted in their Rules of Procedure to request consequences from their respective governments, where this doesn't already exist, for poor faith of MNEs in specific instances. However,

³ "PCN PT pode receber alegações de inobservância das Diretrizes relativas às empresas multinacionais estabelecidas no território nacional, bem como alegações de inobservância relativas a empresas multinacionais, de capital majoritariamente nacional, quando estabelecidas em países não aderentes às Diretrizes."

neither NCP Portugal's Guide nor its website contains this option, and there is no indication that the Portuguese government has committed to applying any such consequences.

Follow-up monitoring: NCP Portugal's Guide does not contain an explicit commitment for the NCP to engage in the follow-up of recommendations made in its final statements and agreements reached between parties in specific instance processes. OECD Watch strongly recommends for NCP Portugal (and all NCPs) to include an express commitment to do so.

NCP Portugal's communication

As noted above, significant changes were recently made to NCP Portugal's website. As of today's date, the website contains information about how to file a specific instance, the OECD Guidelines, the OECD Due Diligence Guidance, specific instances handled by the NCP, as well as the NCP's promotional plan and promotional materials. To improve the NCP's transparency and visibility, further amendments should be made to the website to align it with the OECD's requirements and OECD Watch's recommendations.

Multilingual website: The majority of NCP Portugal's website is only in Portuguese and not in both English and Portuguese. The website should be multilingual. In particular, the NCP's Guide (Rules of Procedure) should be translated and publicly available in English.

Reporting: Information about the NCP's national-level and OECD reporting is not disclosed, and there is little information about the NCP's activities. OECD Watch recommends that NCP Portugal includes such information on its website.

Budget: Contrary to OECD Watch's recommendations, NCP Portugal does not publish its budget and spending streams.

Contact details

For questions or clarification on this submission, please contact the OECD Watch Secretariat.

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