

To: Iceland National Contact Point & OECD Centre for Responsible Business Conduct
From: OECD Watch
Date: 16 November 2023
Re: OECD Watch submission to the 2023 Peer Review of NCP Iceland

OECD Watch welcomes NCP Iceland's willingness to undergo a peer review to improve the NCP's effectiveness in promoting the OECD Guidelines for Multinational Enterprises on Responsible Business Conduct (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 in view of the updated Guidelines. It draws on and should be read in conjunction with OECD Watch's recent submission for the Meeting of the Network of NCPs for Responsible Business Conduct on 9-10 November 2023 (see Annex 1), which includes our recommendations to all NCPs on implementation of the new expectations for NCPs in the Procedures. We also direct NCP Iceland, the Icelandic government, and the peer reviewers to [OECD Watch's most recent evaluation of NCP Iceland](#).¹ Our evaluation shows that many aspects of the NCP's operations do not meet civil society's expectations for NCPs. This submission includes recommendations in relation to these issues.

1. Reforms and stakeholder consultation during NCP Iceland's review and reform period

Given the scale of the updates to the Procedures, NCP Iceland is expected to carry out an internal review of its institutional arrangements, promotional activities, and specific instance-handling procedure to align with the new expectations, recommendations, and suggestions for NCPs. OECD Watch urges the Icelandic government to not just adopt the minimum requirements framed in the updated Procedures, but also to implement the strong recommendations and suggestions, which are based on current NCP good practices and extensive input from stakeholders.

It is crucially important that NCP Iceland consults with stakeholders in its internal review process. Next to informing stakeholders about the updated Guidelines, the NCP should solicit their expert opinions on strengthening its work. OECD Watch is able to support the NCP in this process if needed.

2. OECD Watch guidance on specific reforms

OECD Watch offers the following guidance to help NCP Iceland meet the new requirements and recommendations for its institutional arrangements, specific instance-handling activities, and promotional activities.

NCP Iceland's institutional arrangements

- **Involving senior leadership:** The Procedures now require senior leadership over NCPs to boost the attention and authority they receive from their governments. OECD Watch recommends for NCP Iceland's senior leadership to be drawn from ministry(ies) associated with human rights, environment, labour relations, and social welfare.
- **Having sufficient human and financial resources:** The Icelandic government is required to allocate sufficient resources to their NCP to ensure the fulfilment of its responsibilities, effectiveness and

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

authority. A dedicated budget as well as robust staffing are key elements of adequate resourcing. As part of its internal review process, NCP Iceland should critically consider whether its current staffing (one part-time staff member) is sufficient to meet these new requirements. OECD Watch recommends for all NCPs to comprise of at least two full-time staff to fulfil their dual promotional and specific-instance handling mandates.

- **Having access to expertise:** NCPs are required to have sufficient access to expertise on the issues covered in the Guidelines. Such expertise can be achieved by establishing a multistakeholder advisory body that includes equal representation of all three core stakeholder groups: businesses, trade unions, and NGOs. OECD Watch understands that NCP Iceland is currently in the process of setting up such an advisory body. This body should fully meet the expectations in the updated Procedures. Next to the establishment of its multistakeholder body, OECD Watch also recommends for NCP Iceland to ensure the representation of stakeholders in its governance and decision-making structure, for example by establishing a quadripartite structure.

NCP Iceland's case-handling procedures

- **Supporting commitment by enterprises to implement the Guidelines in the future and address past impacts:** NCPs are required to support complaint parties in seeking mutually agreeable and Guidelines-compatible solutions to the issues raised, and also to actively inform such dialogue with their expertise on the Guidelines. Based on this new recommendation, OECD Watch expects NCP Iceland to update its case-handling procedures to create a process for the NCP to evaluate, based on the facts presented, companies' involvement in alleged harms, explain the Guidelines' expectations for companies with such level of involvement, and create conditions for dialogue on companies' commitments to improving future practices and addressing past harms in accordance with its involvement. Where good offices do not generate corporate commitments in line with (i.e. compatible with) the expectations in the Guidelines, NCP Iceland should state this in the final statement.
- **Addressing power imbalance:** The Procedures require NCPs to operate in a manner that is impartial and equitable, and recommend that NCPs address power imbalances between specific instance parties. Tools that NCP Iceland could use to address power imbalances include promoting transparency of the existence and procedural stages of specific instances; raising (from the outset) the possibility of making determinations of (non-) compliance with the Guidelines where Guidelines-compatible agreements are not reached; recommending consequences for good or bad faith behaviour; committing to investigate claims even if companies refuse to participate; and publicly following-up on company implementation of commitments made and recommendations given in final statements.
- **Ensuring appropriate transparency:** The updated Procedures strengthen emphasis on transparency, including during complaints. Between complaint parties, the Procedures seek full information-sharing except where information revealed would constitute a business secret or risk stakeholder interests such as safety in relation to retaliation. Towards the public, the Procedures also promote transparency, including by encouraging transparency of the existence and procedural stages of the complaint and the initial submission. The Procedures do not prohibit campaigning in relation to complaints. Since it is very important for a company's meaningful engagement in the voluntary process and the visibility of the NCP as a whole, OECD Watch recommends that NCP Iceland aligns its case-handling procedures with the highest recommendations for transparency in the Guidelines.
- **Parallel proceedings:** The updated Procedures clarify that the existence of parallel proceedings "[do] not preclude the NCP from offering good offices to the parties." To evaluate whether the NCP can still contribute to the resolution of a complaint subject to parallel proceedings, NCP

Iceland is encouraged to incorporate into its procedures and consider the practice of other NCPs; consider the possibility of partially accepting the case; temporarily suspend its examination (rather than reject the complaint outright) until the parallel proceedings are concluded; and contact the institution conducting those proceedings for input.

- **Recommendations to improve alignment with the Guidelines:** The updated Procedures clarify and OECD Watch encourages that NCPs should issue recommendations on correct implementation of the Guidelines when no agreement is reached.
- **Determinations of (non-)compliance:** NCPs are now also permitted to make determinations of (non-) compliance with the Guidelines, and OECD Watch encourages the NCP Iceland to incorporate this possibility into its procedures.
- **Consequences for good or bad faith engagement in specific instance processes:** The updated Procedures clarify that NCPs are allowed to inform relevant government agencies of the good or bad faith engagement of the parties in the specific instance process. OECD Watch urges NCP Iceland to implement this into its case-handling procedures.
- **Follow-up of outcomes:** Follow-up is now expected in most specific instances, and OECD Watch urges NCP Iceland to follow-up on all specific instances they handle as a means to promote their own and MNEs' accountability under the Guidelines.

NCP Iceland's promotional activities

- **Equal promotion of the NCP and its mandate to all stakeholders:** NCPs are required to equally inform all three stakeholder groups and other interested parties about their dual mandate. OECD Watch therefore expects NCP Iceland to pro-actively reach out to all stakeholders (including NGOs) to engage with them.

Contact details

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

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