

**OECD Watch comments on the  
Core Template for Voluntary Peer Reviews of NCPs  
[DAF/INV/RBC(2014)12/REV1]  
2 March 2015**

OECD commends the Working Party on Responsible Business Conduct and other key stakeholders for their efforts in developing a new draft Core Template for Voluntary Peer Reviews. We recognise and appreciate that the draft has incorporated several of our recommendations on accessibility and translation services, consultations with parties to specific instances, and reporting back on the implementation of peer review recommendations. These modifications are encouraging, but additional improvements are needed to ensure an independent and effective peer review process that functions in a practical, cost-effective manner. We recommend the following changes to the draft template:

- ◉ The peer review template presents an opportunity to clarify policy on the appointment of peer reviewers and ensure that it is an independent process that facilitates learning and cooperation among all NCPs. Currently, NCPs under review are able to select their review team and the review team's leadership. This undermines the credibility of the process and may prevent the diversity and cross-pollination of ideas that are essential to a beneficial experience for all NCPs. To ensure an independent and objective review, the template should contain specific provisions on the review team selection process. For example, NCPs could participate in review teams on a rotating basis, or interested NCPs could indicate their ability and willingness to participate to the Secretariat, which could then randomly appoint the team from that pool.
- ◉ In order to reinforce the independence of the review process, we recommend that the template clarify the selection process for the review team's leadership. The first point of paragraph nine of the template should state that the review team, Secretariat, or an independent third party (e.g. a facilitator) will determine the team's leadership, recognizing that the lead reviewer should have a "good level of experience in performing all aspects of an NCP mandate and functions."
- ◉ Rather than limit the review team to two or three NCPs, the first point under paragraph nine of the new template should encourage larger review teams in order to facilitate capacity building and bring forward diverse views during the review process. We note that the past three reviews have involved no fewer than five NCP review team members. Although there are additional costs associated with larger teams, there is inherent value in bringing NCPs with different experiences together, which may result in significant advances in the performance of all NCPs.
- ◉ As highlighted in Shift's "NCP Peer Review Methodology: Lessons Learned from NCP Norway Peer Review" report, the peer review team should be involved early in the peer review process.<sup>1</sup> In the preliminary stages of the review, the team can be particularly helpful in terms of shaping the process and identifying how it can be most effective given the specific experiences of and challenges faced by the NCP under review. The first point under paragraph 11 of the new template should incorporate the recommendations of the Shift report, which include, *inter alia*, an "early, up-front, in-person meeting of the delegation" to identify the chair of the review team,

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<sup>1</sup> Shift, "NCP Peer Review Methodology: Lessons Learned from NCP Norway Peer Review" (2014), pp. 13-14, available at <http://www.responsiblebusiness.no/files/2014/06/NCP-Peer-Review-Methodology-Observation.pdf>.

shape the terms of reference and process, identify relevant background information, and determine an approach to consultations with stakeholders (and parties to specific instances).<sup>2</sup>

- ◉ We appreciate that the language in the new template reflects the importance of engaging with parties to specific instances. In particular, it is significant that the template now specifies that the list of stakeholders prepared by the NCP under review should include parties involved in past specific instances. However, this statement may still leave some discretion in deciding which parties to include on this list. Peer reviews will be more credible if it is clear that the list of stakeholders to be contacted for input during the peer review should include *all* parties involved in both past *and current* specific instances.
- ◉ Similarly, improvements can be made under point four of paragraph 15 regarding the on-site visit. As currently written, the peer review team will meet with parties to specific instances “where feasible.” Although we recognize the need for flexibility, we believe that the language should do more to emphasize the importance of speaking with these parties wherever possible. Given that these individuals have a unique perspective on the functioning of the NCP under review, we request that the language state that the on-site visit should prioritize meetings with parties to specific instances (including through video conference or similar means if it is not feasible for them to join in person) and that such meetings should be considered integral to a thorough and robust review process. Further, the template should state that the review team shall remark in its report whether adequate efforts were made to arrange meetings with these parties.
- ◉ We also note that the revised template questionnaire includes a brief set of questions aimed at parties to specific instances. We commend the addition of these questions; however, they may not be sufficient to extract all the information these parties have to offer, particularly with regard to the parties’ suggestions on improvements to the NCP process, the clarity and utility of the process, and their level of satisfaction with the outcome, etc. We continue to propose the development of a full, separate questionnaire tailored toward those parties in order to capture the experience and concerns that they may have. The responses to these questions can be informative to both the NCP under review and the review team in terms of exploring best practices and improving the peer review process. Furthermore, if it is impossible to conduct meetings with parties to specific instances during the on-site visit, responses to a comprehensive questionnaire can provide insightful information about the performance of the NCP under review.
- ◉ The last point of paragraph 11 in the new template states that “[t]he NCP under review will report back to the WPRBC within a given timeframe.” As stated in our December 2014 submission on the peer review template, the process of following up and reporting back on the implementation of peer review recommendations by the NCP is important for all peer reviews. The NCPs under review should be required to report back in their annual report to the OECD, or in some other clearly identified, public manner and timeframe, on how they have implemented the recommendations.
- ◉ The new template provides welcomed clarifications regarding the need for language translation and interpretation into an official OECD language. The template should further require that the NCP under review provide translation and interpreter services to parties to specific instances. This includes translating communications and questionnaires into their local language(s) as well as translating their responses into French and/or English.

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<sup>2</sup> *Id.*

- Regarding expenses related to the OECD Secretariat's involvement in peer reviews under paragraphs 20 and 21, the template should either explain when exactly the NCP under review will have to cover the costs of the OECD Secretariat peer review team member, or it should outline the creation of a peer review funding pool to ensure the participation of the Secretariat in the review process. The Secretariat's presence as a neutral party is highly valuable to the overall peer review process, and it is therefore important that sufficient funding is available in a predictable fashion. Furthermore, the funding arrangement should avoid any actual or perceived undue influence by the NCP under review on the Secretariat staff or on the review process as a whole.
- Under Annex 1 of the new draft template, the NCP under review will produce all Initial Assessments and Final Statements, as well as summaries of on-going specific instances, for the review team. This is an important improvement over the last draft template, but does not go far enough to ensure that the review team has access to the information needed to produce an accurate and useful review. To enhance the transparency, credibility, and effectiveness of the peer review process, the NCP under review should produce all documentation about specific instances except when it contains sensitive business information, information parties have requested be kept confidential, or substantive details of a mediation process. At minimum, in addition to producing all Initial Assessments and Final Statements, NCPs under review should produce all complaints and responses from parties (redacted as necessary to remove confidential information). This is necessary because it can be difficult, if not impossible, to truly assess how an NCP is handling its specific instances if disclosure is limited to documentation prepared by the NCP itself.
- Finally, though we realize that the NCP peer review is a voluntary process and recognize that the draft Core Template does encourage all NCPs to volunteer for a peer review, we would recommend that the Core provide slightly more guidance and instruction to NCPs as to when it may be appropriate for them to volunteer for a peer review. For example, the final sentence in paragraph two could be modified as such: "As such, the Working Party on Responsible Business Conduct (WPRBC) strongly encourages all NCPs to volunteer for a peer review *at least once every 10 years. NCPs that have not yet undergone a peer review are encouraged to volunteer as soon as possible.*"

We thank the Working Party for considering our comments and are happy to answer any questions.

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