

OECD Watch submission to the 2016 peer review of the Italian NCP 11 August 2016

Introduction

OECD Watch welcomes the Italian NCP's willingness to undergo a peer review in order to identify ways in which the NCP can further its effectiveness in advancing the OECD Guidelines and serve as a platform for resolving complaints related to corporate misconduct. OECD Watch would like to express appreciation for the opportunity to provide input into this peer review. Our feedback is primarily based on our observations of the Italian NCP's performance and operations in the core criteria of visibility, accessibility, transparency, and accountability.

This submission provides recommendations for improving the Italian NCP's performance, as well as improving outcomes in its handling of specific instances, in order to advance access to remedy for the communities, civil society organisations and workers who file complaints against corporate breaches of the Guidelines. This submission advances recommendations that we have previously put forward to all NCPs in our 2015 report [Remedy Remains Rare](#) and our 2016 [4 x10 Plan for why and how to unlock the potential of the OECD Guidelines](#). Furthermore, as a G7 country, OECD Watch wishes to remind the Italian government of its commitment, expressed in the 2015 Leaders' Declaration, to strengthen and improve the NCP system. In order to do so, [we have recommended that the Italian NCP, as well as all G7 countries](#), advance calls to revise *Procedural Guidance* for NCPs, ensure that sufficient resources are made available for the Italian NCP to advance the Guidelines, adopt mandatory peer reviews at least once every five years, and attach material consequences when NCPs find companies non-compliant with the Guidelines.

Reflection on performance on core criteria for NCPs

Regarding the visibility, accessibility, transparency and accountability of the Italian NCP, OECD Watch makes the following remarks:

- Regarding visibility and accessibility, the Italian NCP has maintained a website in both Italian and English with general information including the OECD Guidelines, how to file a complaint and the basic procedures followed by the NCP in handling specific instances. The website also hosts general information, which includes the Italian NCP's annual report to the Investment Committee, information on its promotional activities, and some information regarding the handling of various specific instance complaints. Regularly updating the information posted on the website would be beneficial.
- In the Italian NCP's document on handling specific instances submitted to the NCP posted on its website, the Italian NCP states that the Committee assessing the complaint can request additional investigation. However, the language of the website is not clear as to whether this implies that the Italian NCP will carry out the investigation or whether the NCP would request additional investigation to be carried out by the complainant. OECD Watch would like to suggest that this point be clarified and that it stipulates the former of the two possibilities. We recommend that the Italian NCP commits to carrying out additional investigation when required, as it would be beneficial in helping the NCP determine potential breaches of the Guidelines, while also allowing the NCP to make recommendations more suitable, while relating to the local context and realities, to both parties.

- Regarding transparency, OECD Watch appreciates that the Italian NCP provides access to its annual reports to the OECD Investment Committee online. Furthermore, we support the Italian NCP's statement in its 2015 report that greater funding, resources, and political will by the Italian government would be beneficial towards addressing some of the challenges facing the NCP. It is our hope that the Italian government will adequately address and resolve these issues.
- While it is positive that the Italian NCP's form for filing specific instance complaints raises issues of confidentiality, especially due to concerns of human rights defenders in filing complaints, OECD Watch encourages all NCPs to operate based on impartiality, ensuring that initial assessments and final statements be based only on information that has been accessible to both parties, unless due to security concerns for the complainant.
- On the website of the Italian NCP, it is stated that when there is an agreement during a specific instance case, the NCP will develop and publish a report of closure of the case. The website also states that "if the parties fail to reach an agreement or if one of the parties is unwilling to participate in the procedures, a statement that describes the issues raised, the reasons for which the NCP considered it worthy of further examination, the steps taken by the NCP to assist the parties and, where appropriate, the recommendations made by the NCP to the parties in the implementation of the Guidelines." We applaud this commitment, but encourage the Italian NCP to further advance issues of accountability-while furthering the effectiveness of the Guidelines- by making determinations on all accepted cases and attaching material consequences on companies that refuse to engage in the NCP process and/or makes breaches to the OECD Guidelines. Furthermore, we encourage the Italian NCP to commit to follow up on the outcomes of final statements and agreements by ensuring that follow-up reports are carried out after cases are closed to determine whether positive outcomes occurred as a result of the case and/or the parties have implemented the recommendations made by the NCP.

Reflection on NCP's institutional arrangements

- The Italian NCP has a monopartite structure, which also cooperates with a multi-stakeholder advisory committee composed of a variety of representatives. While the advisory committee's diversity serves as a strength, OECD Watch recommends that the Italian NCP move away from a monopartite structure. While we recognize the structure of the NCP in itself is not determinative of the NCP's success, OECD Watch has found that this type of structure can be vulnerable to problems with lack of independence and perceptions of bias.
- OECD Watch would also like to recommend that the Italian NCP develop an independent board, which is charged with oversight and decision-making authority. This board should be composed of prominent independent individuals, with representatives from civil society organisations, amongst other stakeholder groups.

Reflection on NCP's information and promotional efforts

- The website of the Italian NCP contains useful information on the OECD Guidelines for Multinational Enterprises in general. However, the website could use more regular updating to ensure that the information presented reflects the current state of affairs on the Guidelines.
- In order to enhance the transparency of the Italian NCP, all complaints that it receives, as well as its initial assessments, should be listed on its website. We note that the list is not currently complete and would like to encourage the Italian NCP to make its website more complete, as well as the database maintained by the OECD.

- The NCP has a promotion and advising function for both companies and civil society. While it is positively noted that the Italian NCP states that it is working with the Italian Chambers of Commerce, as well as with other stakeholders, OECD Watch would like to encourage the Italian NCP to do more to publicise its services widely and organise stakeholder events, especially amongst companies and in the countries where Italian companies operate. This will allow for greater promotion of the Guidelines, while also leading to improved awareness and adherence to the Guidelines in the operations of Italian companies.

Reflections on the implementation of specific instances

OECD Watch recalls that the Procedural Guidance instructs NCPs to handle specific instances in a manner that is “impartial, predictable, equitable, and compatible with the principles and standards of the Guidelines”. Along these lines, OECD Watch makes the following recommendations to the Italian NCP based on observations of NGO cases known to OECD Watch:

- OECD Watch encourages the Italian NCP to heed the indicative timelines provided in the Procedural Guidance and as stated on its website. It is noted that prior to the 2011 Guidelines, a 2008 letter had been submitted to the Italian NCP by OECD Watch raising concern over the poor handling of the specific instance submitted by Campagna per la riforma della Banca mondiale (CRBM) against Italian oil company, ENI, in which the Italian NCP did not communicate with the complainants regarding the status of the case, along with the results of the initial assessment, for more than three years after filing the compliant (Reference: Letter by OECD Watch to Mr. Manfred Schekulin, 14 January 2008).
- OECD Watch is concerned that the Italian NCP’s handling of timelines may continue to be problematic, as it is noted that despite the Italian NCP’s website stating that an initial assessment will be made within 30 days of receiving a compliant (with a possible 30 day extension), no initial assessment appears to have been made for the Survival International vs. Salini Impregilo case, which was filed in March 2016. No reasons for the delay have been posted on the Italian NCP’s website.
- The Italian NCP has had a low number of complaints filed over the years. While the exact reason for this is unclear, this may be a reflection of a general lack of confidence that many victims of corporate misconduct have on the NCP system’s past record in providing access to remedy, rather than the global performance of companies. Based on OECD Watch’s *Remedy Remains Rare* evaluation of over 250 cases filed by communities, individuals and NCPs since 2001, only 14% of the cases were found to have resulted in a positive outcome that provided some measure of remedy. Further strengthening the NCP system to improve access to remedy is likely to result in greater confidence amongst civil society, and others, to undergo the process of filing specific instance complaints.

Contact details

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

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