

OECD Watch submission to the 2017 Peer Review of the French NCP 27 March 2017

Introduction

OECD Watch welcomes the opportunity provided by the peer review process to comment on the performance of the French National Contact Point (NCP) and to make suggestions as to how their performance and effectiveness may be improved. Our feedback is primarily based on consultations with our members and our own observations of the French NCP's performance and operations in the core criteria for functional equivalence of visibility, accessibility, transparency, and accountability; as well as the guiding principles for effective handling of specific instances: impartiality, predictability, equitability, and compatibility with the Guidelines.

We appreciate the valuable contributions that the French NCP has made to the Investment Committee's Pro-Active Agenda with respect to due diligence and in the activities arising out of the Rana Plaza disaster. This good work should be noted in the review.

However, we believe the salient question that should be addressed by this review is the low number of specific instances that have been referred to this NCP. We note that the largest French multinational enterprises are involved in sectors where business behavior is often controversial: telecommunications, energy, extractives, retail marketing of labour intensive consumer goods, agriculture, and defense. French companies are among those that have been involved in controversies and a number of them have been the subject of campaigns by NGOs. We are advised by various NGOs that one important reason for this low number of specific instances referred to this NCP by NGOs is that the NCP is unlikely to be able to provide an effective means for accessing remedy.

French NCP's performance on core criteria

Visibility and accessibility

The French NCP maintains a website. This website contains general information about the OECD Guidelines, the structure and by-laws of the NCP, the receivability of specific instances, reports on specific instances including NCP statements, promotional activities and

annual reports. There is also information related to the pro-active agenda and the textile-garment sector, especially with respect to Rana Plaza.

Most of the information on this site is in the national language. Only an introductory brochure, the NCP structure and by-laws are provided in another language (English).

Recommendation: There should be additional, more user-friendly, guidance as to how specific instances can be prepared and submitted.

Recommendation: More of the website should be available in English, as well as in other languages that would make the website more accessible for persons in host countries for French multinational enterprises or their business relationships.

Recommendation: In order to improve accessibility, there should be a provision in the rules that would provide support that would enable complainants to participate in specific instance proceedings in situations where they would be otherwise unable to do so. This should include support (for transportation, translation, etc.) from the NCP when and where this is necessary for their participation in a specific instance process. Furthermore, the French NCP should consider holding mediation in the host country when requested by the complainants.

Recommendation: In addition to citing “sensitive business and other information” the rules should specify that “safety and interests of complainants and witnesses shall be protected when requested.” Moreover the rules should incorporate measures to be taken by the NCP to protect the safety of complainants.

Transparency and Accountability

The rules forbid NCP members to make public documents not already made public by their authors, the content of discussions, or any non-public information gathered during examination of specific instances. Further, the rules only provide that the minutes of NCP meetings are distributed to NCP members. There is nothing in the rules to ensure that all parties receive the same information that would be used by the NCP in making decisions about the merits of the specific instance.

Recommendation: A rule providing that all parties to the specific instance would receive, on a confidential basis where justified, information such as expert opinions, the results of NCP fact-finding etc., are available and could be used by the NCP in making decisions with respect to the specific instance.

Recommendation: All parties in a specific instance should be informed of all steps and decisions taken in a timely manner.

Recommendation: The NCP should make every effort to resolve the specific instance within the recommended timeframe of one year. In any case, the NCP should set clear timelines and notify the complainants if unavoidable delays are to be expected. This is especially important where human rights violations are on-going.

The French NCP's information and promotional activities

The website and the annual reports describe promotional activities. In OECD Watch's view, the principal objectives of promotional activities should be: first, to inform business enterprises of the expectations with respect to their behavior contained in the OECD Guidelines and second, to make stakeholders aware of this mechanism and to encourage them to make use of it.

Recommendation: Promotional activities should be focused on the two objectives mentioned above.

Recommendation: In addition to the promotional activities inside France, the NCP should also undertake activities abroad, especially in non-adhering countries where French multinational companies operate.

The French NCP's institutional arrangements

The French NCP is tripartite. It consists of representatives of the national employers' organization, the six largest national trade union organizations and four government ministries. There is no public information as to how the members have been appointed to the NCP. The NCP is chaired by a senior official appointed by the Directorate-General of the Treasury, which serves the Ministry of the Economy, Finance and Industry and the Ministry of Foreign Affairs. The Ministry of the Economy, Finance and Industry provides the secretariat for the NCP. Decisions are to be taken by consensus. However, when there is no consensus, the Chair is empowered to make the decision provided that this is noted in the record. There is no oversight advisory body.

Recommendation: The composition of the NCP should be expanded to include representatives of civil society organizations in order to increase stakeholder confidence in the structure. The selection of civil society members should be made through a rule-based process, in which civil society nominates its own candidates.

Recommendation: The rules are vague with respect to important governance issues. For instance, the rules should clarify how the NCP will proceed in the event that organizations represented in the NCP are parties in specific instances.

Recommendation: The review should address the divergent views that may exist concerning impartiality (for an example see the [statement issued in September 2013](#) with respect to the handling of the specific instance involving Michelin). In particular this review should consider how this concern could be addressed through changes in the NCP's rules or structure. This could include proposals made in 2008 by the CNCDH; how arrangements by other NCPs address this issue; or by introducing a steering board charged with oversight, that includes an appeals mechanism.

Recommendation: As the NCP plays can play an important role in resolving business and human rights issues, it should be endowed with sufficient resources to work simultaneously on several specific issues.

Recommendation: There should be a specific provision in the rules that would permit fact-finding missions.

Recommendation: We recommend the French government should strengthen the NCP's capacity to promote the adherence of the OECD Guidelines by taking steps that allow them to impose material consequences on a multinational enterprise that is found to have breached the OECD Guidelines.

Reflections on the implementation and handling of specific instances

We believe that there are two specific instances that merit close attention in this review and raise issues that should be considered. They have at least two elements in common – one is that these cases concern the responsibility of a France-based multinational for the adverse impacts involving business relationships in the host country. Another is that, in both cases, the leverage by the home country enterprise did not result in sufficient change for the complainants to be satisfied with the outcomes.

A [specific instance against Michelin](#) concerning the construction of a tire plant in Tamil Nadu, was filed in July 2012 by two Indian NGOs, two French NGOs and a French trade union organization. On 24 September 2013, a few days before the French NCP issued a final statement on the case the complainants announced that they were withdrawing their complaint and the [three French complainants issued a ten page statement](#) that was highly

critical of the way in which the French NCP had handled this case. The French NCP responded to this statement in October 2013 and, in addition to its final statement released on 27 September 2013, released two follow-up statements on May 2014 and on February 2016.

We note that there was very little to no remediation for the adverse impacts that led to the complaint. We also find that, although new by-laws were adopted in 2014, these rules did not address all of the shortcomings in the NCP's handling of this specific instance identified by the three French complainants. The experiences reported in the statement by the complainants raise important questions about transparency and impartiality and should receive careful consideration in this review. Furthermore, as this case overlapped with the SOCAPALM complaint, detailed below, it is our understanding that the French NCP had communicated to the complainants that it did not have the resources to work on both complaints simultaneously, which resulted in delays and concerns over how the complaints were handled.

Another specific instance that should be examined by this review was referred to three NCPs in December 2010 by [four NGOs against three companies- one French, one Belgian, and one Luxembourgian](#). The complaint concerned the failure of these companies to take actions against the activities the Societe Camerounaise de Palmeraies (SOCAPALM), a Cameroonian producer of palm oil which was negatively affecting local communities and plantation workers. An agreement between the France-based enterprise and one of the complainants establishing a monitoring system that was never implemented. The review should consider whether the responsibilities of the home country enterprise where leverage does not work were adequately addressed by the NCP.

Conclusion

This submission advances recommendations that we have previously put forward to the French NCP, as well as 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](#). As a G7 country, our recommendations also advance previous recommendations made in regards to the [2015 G7 Leader's Commitment](#) to continue strengthening its NCP to serve as an access point for remedy for victims of corporate misconduct, as well as to lead by example. Lastly, we hope that the recommendations made from this review, as well as steps made by the NCP to follow-up on the recommendations, will be incorporated into the upcoming French National Action Plan on the UN Guiding Principles on Business and Human Rights.

Contact details

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