

40TH ANNIVERSARY of the
**OECD GUIDELINES
FOR MULTINATIONAL
ENTERPRISES**

HOW WOULD YOU MEASURE NCP PERFORMANCE?

TUAC-OECD WATCH RESPONSE

16 NOVEMBER 2016



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 **OECD Watch TUAC**

I. TUAC-OECD WATCH NCP PERFORMANCE INDEX: DRAFT VERSION 2

2016 marks the 40th anniversary of the OECD Guidelines for Multinational Enterprises, the OECD's flagship instrument on responsible business conduct. Under the Guidelines, adhering governments have a binding obligation to establish National Contact Points (NCPs) to promote the Guidelines and handle cases of violations submitted by NGOs and Trade Unions. While some governments have taken the necessary steps to meet this responsibility, all too many have not.

The Trade Union Advisory Committee to the OECD (TUAC) and OECD Watch are jointly developing an Index to rank NCP performance. The aim is to change the status quo by creating pressure for positive change. **In June 2016, TUAC and OECD Watch invited NCPs to provide comments on Draft Version 1 of the Index. Draft Version 2, together with an analysis of the comments received, is presented below.**

INSTITUTIONAL ARRANGEMENTS

Criterion	Weighting
Taken adequate steps to address conflicts of interest in its structure/composition	3
Employs staff whose primary responsibility is to work on the OECD Guidelines	3
Taken adequate steps to involve a sufficient breadth of expertise in its structure/composition	3
Formally involves external stakeholders in the NCP structure/composition	3
In 2015 held at least 1 meeting of its organisational external stakeholders	3
Maintains an adequate web site with information on the OECD Guidelines, the National Contact Point, and how to file a specific instance	3
Reports publicly on its activities at national level in the national language(s)	1
[Still to determine other proxy indicator for resources]	1
WEIGHTING for INSTITUTIONAL ARRANGEMENTS	20 (20.0%)

PROMOTIONAL ACTIVITIES

Criterion	Weighting
Publishes the OECD Guidelines in key national language(s)	3
Publishes key parts of its web site in both national and international languages	3
Has developed promotional materials on the Guidelines	3
NEW Has developed and published a promotional plan	2
In 2015 organised or co-organised at least 1 promotional event on the Guidelines	2
In 2015 either the NCP or the government conducted activities aimed at promoting the Guidelines abroad	2
WEIGHTING for PROMOTIONAL ACTIVITIES	15 (15.0%)

NCP PROCEDURES

Criterion	Weighting
Limits confidentiality requirements to the NCP conciliation/mediation process and information obtained during the NCP process	3
Sets an appropriately low threshold for accepting specific instances, including where there are parallel proceedings	3
Allows complainants to withhold the identity of the complainants from the company	2
BEST PRACTICE Publishes Initial Assessments of all specific instances on its web site, or has made a policy commitment to do so	3
Provides conciliation or mediation to the parties, or has made a policy commitment to do so	3
BEST PRACTICE Conducts in-country fact finding, or has made a policy commitment to do so	3
Publishes comprehensive Final Statements, including recommendations, on its web site, or has made a policy commitment to do so	2
BEST PRACTICE Makes a finding (determination) on whether the MNE has breached the OECD Guidelines when mediation is refused or fails, or has made a policy commitment to do so	3
Provides for follow-up of recommendations made/agreements reached in Final Statements/Final Reports, or has made a policy commitment to do so	3
BEST PRACTICE Provides parties with a right of appeal on the basis that procedures have not been followed	2
BEST PRACTICE Has introduced consequences for MNEs that refuse to participate in the NCP process	3
WEIGHTING for NCP PROCEDURES	30 (30.0%)

PEER LEARNING

Criterion	Weighting
BEST PRACTICE Has undergone or signed up for NCP peer review since 2012	3
In 2015 attended at least 1 NCP meeting at the OECD	2
BEST PRACTICE Since 2012 has organised at least 1 peer learning event	2
BEST PRACTICE Since 2012 has participated in the development of peer learning tools, including with other NCPs or at the OECD	2
BEST PRACTICE In 2015 participated in at least 1 peer learning event	1
WEIGHTING for PEER LEARNING	10 (10.0%)

OUTCOMES

Criterion for Index	Weighting
Percentage of accepted NGO and Trade Union specific instances where the NCP offered conciliation or mediation	5
Percentage of accepted NGO and Trade Union specific instances, where the parties failed to reach agreement, in which the NCP made public recommendations	5
BEST PRACTICE Percentage of accepted NGO and Trade Union specific instances, where the parties failed to reach agreement, in which the NCP made a determination	5
Percentage of accepted NGO and Trade Union specific instances where the NCP provided for follow-up	5
Percentage of all NGO and Trade Union specific instances either completed within the indicative timescales or extended with the agreement of the parties	5
WEIGHTING for OUTCOMES	25 (25.0%)

Other Indicators for NCP Report Card (not included in Index)

Percentage of NGO and Trade Union specific instances accepted by the NCP
Percentage of accepted NGO and Trade Union specific instances where the company agreed to participate in mediation
Percentage of accepted NGO and Trade Union specific instances where parties reached agreement
Percentage of accepted NGO and Trade Union specific instances that delivered remedy where remedy was requested
Percentage of accepted specific instances that had positive results, such as changes in policy or practice
Percentage of accepted NGO and Trade Union specific instances in which the complainants stated that they were satisfied with the NCP

II. CONSULTATION ON TUAC-OECD WATCH NCP PERFORMANCE INDEX: VERSION 1

STATE OF PLAY OF THE INDEX – NOVEMBER 2016

As of November 2016, TUAC and OECD Watch are still developing the methodology for the Index, working with affiliates/members. The aim is to develop a **Final Draft** for discussion at the OECD meetings in **March 2017**.

There were a total of 11 responses to the Consultation from governments/NCPs: 1 anonymous, 3 governments, 6 NCPs, and the Chair of the WPRBC. Changes to some indicators have been made on the basis of this feedback. In addition, the functionality of the Index has been further developed so that it is possible to add/subtract different indicators (e.g., Best Practices) or Categories (e.g., Outcomes) from the Index.

KEY ISSUES ARISING FROM THE CONSULTATION

ISSUE: The Guidelines V Best Practices

A key issue raised in the feedback is that the Index should be based on the Guidelines only, and not on 'Best Practices' as determined by TUAC and OECD Watch, which go beyond what is required under the Guidelines.

TUAC-OECD WATCH RESPONSE

We *agree* that the Index should distinguish between what is required under the Guidelines and 'Best Practices'. However, we *do not agree* that 'Best Practices' should be excluded from the Index altogether. The Index will be able to be viewed with 'Best Practices' included and 'Best Practices' excluded. In the explanation of the methodology, we will make it clear that this is TUAC and OECD Watch's own interpretation of what constitutes 'Best Practices', whilst at the same time underlining that they are also existing NCP policies/practices.

ISSUE: Comparing/Assessing NCP Performance on Specific Instances

Another issue raised concerns the **methodological challenges** in comparing/assessing NCP performance in relation to Specific Instances. These arise from NCPs having few or no cases, the filing of non-substantiated cases, and the existence of factors outside the control of the NCP that affect the outcome of a case.

TUAC-OECD WATCH RESPONSE

We *agree* that there are methodological challenges in comparing/measuring performance of NCPs on Specific Instances. However, we also think it is essential that the Index is based on **Outcome** Indicators, not just **Process** Indicators. As suggested in the feedback from NCPs/governments, we plan to publish two separate Indexes: an Index without NCP performance on Specific Instances included; and an Index that includes NCP performance on Specific Instances.

We also *agree* that some of the proposed Indicators cannot be used as a measure of NCP Performance. We intend to exclude these from the Index and include them in a NCP Report Card.

ISSUE: All Criteria need to be referenced in the text of the Guidelines

A third issue raised in the feedback is that the Criteria or Indicators themselves must be referenced in the Guidelines.

TUAC-OECD WATCH RESPONSE

We *do not agree*. The Guidelines set out the responsibilities of governments/NCPs, but do not always provide the measures that NCPs should take in order to meet those responsibilities. For example, all NCPs are supposed to have adequate **human and financial resources** available, but the Guidelines do not give any indication of how 'adequate' might be assessed in the context of different countries that are host/home to different volumes of FDI and have different case-loads under the Guidelines. We think it is legitimate to develop **proxy indicators** to help assess how well NCPs are meeting their responsibilities under the Guidelines.

OUTSTANDING QUESTIONS FOR NCPs/GOVERNMENTS

The feedback from NCPs/governments/Chair of the WPRBC has highlighted that the Index should address the issues listed below. TUAC and OECD Watch would be grateful if NCPs/governments could **suggest additional indicators**:

- **Resources/support provided by governments to NCPs;**
- **Conflicts of interest;**
- **Trust/confidence of stakeholders;**
- **Promotion:** the feedback has indicated that more weight should be given to Promotion, whilst at the same time criticising the proposed criteria for not being referenced in the Guidelines.

CONSULTATION FEEDBACK AND TUAC-OECD WATCH RESPONSES

GENERAL COMMENTS ON THE INDEX		
QUESTION	COMMENTS: NCPS/GOVERNMENTS/WPRBC CHAIR ¹	TUAC-OECD WATCH RESPONSE
SUPPORT THE INDEX	<p>We welcome positively the fact that a ranking could boost NCP to do and act better.</p> <p>I love the idea of Index</p>	/
DO NOT SUPPORT THE INDEX	<p>We think that the methodology of ranking is not the right instrument to do so. We even fear that it might work out in a negative way, punishing bad equipped NCP's and stimulating competition, where there is no need for competition, but for learning. From this point of view [this NCP] has strong hesitations about the project of ranking NCP's.</p> <p>In our view, a ranking of the OECD NCPs is not an appropriate instrument to achieve the objective of a level playing field among NCPs. We consider other mechanisms such as NCP peer reviews, peer learning and assistance by the OECD Secretariat to be more effective. Furthermore, a stricter approach is needed with respect to the adherence of new countries to the OECD Guidelines or the accession to the OECD by countries with a NCP, which does not function well. A possible ranking would probably contribute to a race to the top of already well performing NCPs, but not contribute to a better performance of other NCPs. On the contrary, such a ranking could even have a negative effect overall on the NCP community as the public could perceive NCPs in general as a mechanism which is not functioning well.</p> <p>I am not sure that ranking is the best way to measure the performance of NCPs which I also think has been mentioned by other delegates in earlier meetings.</p>	TUAC and OECD Watch note the reservations that have been expressed.
PROPOSED CATEGORIES (Q1-Q5)	<p>Agrees with all Categories with the following weights:</p> <ol style="list-style-type: none"> Institutional Arrangements (20%) and Promotional Activities (20%); Peer Learning (20%); and Complaint Outcomes (20%) NCP Procedures (10%) Best Practices (10%) <p>Agrees with 4 of the categories with the following weights:</p> <ol style="list-style-type: none"> NCP Procedures (40%) Institutional Arrangements (20%) Promotional Activities (20%) Complaint Outcomes (10%) <p>(this response doesn't add up to 100%)</p> <p>Considers Promotion to be the most important:</p> <ol style="list-style-type: none"> Promotional Activities (25%) Institutional Arrangements (20%) NCP Procedures (20%) Peer Learning (10%) Complaint Outcomes (15%) Best Practices (10%) <ol style="list-style-type: none"> Institutional Arrangements, NCP Procedures and Promotional Activities are all equally important Policy Coherence Peer Learning Outcomes (which are separate indicators not performance indicators) 	We are still working on the final weightings. We would need more Indicators to increase the overall weight for Promotion.
	<p>If OECD Watch and TUAC insist on publishing their own questionnaire, we consider that only the Criterion of Institutional Arrangement, the Criterion of Promotional Activities and the Criterion of Policy Coherence are relevant and could create a pressure for a positive change</p>	Policy Coherence has been deleted due to the issues being wider than the Guidelines/ the NCPs. The Indicator on Consequences has been retained.
	Does not agree with the inclusion of Policy Coherence	We have DELETED Policy Coherence.
	Does not agree with the Category Peer Learning	Peer Learning is still included.
	<p>If OECD Watch and TUAC will decide to develop an index to rank NCPs, the rating criteria should:</p> <ul style="list-style-type: none"> be based on the criteria of OECD's NCP Peer Review Core Template; 	This is a valid suggestion.

¹ We have reproduced the comments received and not corrected spelling or other mistakes.

GENERAL COMMENTS ON THE INDEX

QUESTION	COMMENTS: NCPS/GOVERNMENTS/WPRBC CHAIR ¹	TUAC-OECD WATCH RESPONSE
INCLUSION OF BEST PRACTICE INDICATORS (Q6)	We would rather see the ranking focusing only on criteria from the OECD Guidelines for Multinational Enterprises.	There will be an Index based only on the requirements of the Guidelines (excluding Best Practices). We will make clear in the explanation of the methodology, that this is TUAC and OECD Watch's own interpretation of 'Best Practices', whilst at the same time underlining that they are also existing NCP policies and practices.
	Questionnaire should be limited to the OECD Procedural Guidance	
	If OECD Watch and TUAC will decide to develop an index to rank NCPs, the rating criteria should	
	- be based on what is required under the OECD Guidelines and the Procedural Guidance;	
	If OECD Watch and TUAC will decide to develop an index to rank NCPs, the rating criteria should:	
	- not include the section "Best Practices" because criteria in this section go far beyond what is required under the Procedural Guidance. - Additionally, the suggested title "Best Practices" is misleading because the criteria under this title do not reflect a generally agreed approach but the judgement of two stakeholder groups (i.e. OECD Watch and TUAC). Other stakeholders might have a different opinion of what constitutes a "best practice".	
Also, I think "OECD Watch/TUAC Recommendation" would be a more accurate title, because "best practice" in this case is a subjective term yet suggests the OECD or another body agrees with these as best practices, despite there not being consensus. In seeing this rather disappointing attempt to distinguish the criterion and talking with NCPs, I'm just left rather unconvinced of the utility of this exercise.		
Agrees to include Best Practices but with the lowest weight (10%)	There will be an Index that includes Best Practices.	
Agrees to include Best Practices but with the lowest weight (10%)		
DISTINCTION BETWEEN REQUIREMENTS OF THE GUIDELINES AND BEST PRACTICES (Q7)	I still find it very hard to distinguish what is a "criterion" as defined by the OECD Guidelines versus what is a "best practice" that OECD Watch would like to see—the way it's currently presented online they all seem to flow together.	These will be clearly differentiated.
INCLUSION OF OUTCOME INDICATORS (Q8)	...we suggest to have two separate rankings in order to identify and assess NCP in general and another ranking assessing NCP managing specific instances (second ranking including Outcomes) also taking into account the fact that some NCP are managing a lot of specific instances and others only a few (showing the number of SI taken into account per NCP for the purpose of the second ranking).	This is done.
	... the abovementioned questionnaire does not take into account that many of NCPs have not received yet any specific instances (there are two categories regarding specific instances, NCP procedures and Outcomes, with 50% weighting).	This is challenging but being addressed through separate rankings as suggested above.
	Outcome indicators are conceptually and methodologically not appropriate.	We have separated general indicators from NCP performance indicators.
	Agrees to include outcome as well as process indicators	/
	Agrees to include outcome as well as process indicators	/
DISTINCTION BETWEEN DIRECT AND INDIRECT MEASURES OF NCP PERFORMANCE (Q14)	Yes – the Index should distinguish between outcome indicators that are a direct measure of NCP Performance and those which may be affected by other factors	This is addressed.
	By not having Outcome indicators as indicators of NCP performance but separate as indicators.	This is addressed.
	No because it is always difficult to tell	/
PRESENTATION OF RESULTS: COUNTRY SCORE OR COUNTRY RATINGS (Q15)	The results should be presented by Country Ratings with NCPs grouped into Categories	We are still working on how best to present the results.
	The results should be presented by Country Ratings with NCPs grouped into Categories	
	Could do both as long as the methodology is solid.	
WHAT CATEGORIES ARE APPROPRIATE (Q16)	Two Categories: 1. NGOs and Trade Unions can file a complaint with confidence 2. Non-functioning NCP: NGOs and Trade Unions should not file a complaint	For some NCPs, we advise not to file a complaint.
	These categories are too prescriptive. It can never be an advice not to file a complaint. It could be a assessment of no, low, moderate, high stakeholder confidence in the NCP.	

GENERAL COMMENTS ON THE INDEX

QUESTION	COMMENTS: NCPS/GOVERNMENTS/WPRBC CHAIR ¹	TUAC-OECD WATCH RESPONSE
OTHER COMMENTS	<p>Please use this exercise in a constructive way. It is recommended that this exercise are not going to be a question of naming and shaming, but a constructive input to decision-makers.</p> <p>No punishment for “bad” NCP’s: The ranking should work out as a carrot for NCP’s and the national governments, not as a stick, punishing bad functioning NCP’s in the world. Publicity can easily turn to negative publicity for the NCP system (good news is no news, for journalists). OECD Watch and TUAC should pay attention to this.</p> <p>The ...NCP stresses that it is very important to bear in mind that the overall goal for all of us, including all stakeholders, should be that NCP’s are able to function in a good manner, in all countries that have or should have an NCP. That should also be the starting point when doing research on NCP’s.</p> <p>No need for competition between NCP’s: We, as an NCP, do not feel the need or wish to compete in one way or another with other NCP’s by the results of a ranking. Where the results of the ranking can help NCP’s to know on which items they can learn from another NCP, we support that.</p> <p>We recall that the OECD publishes every year an informational and analytical report regarding NCP performance and we do consider that any other attempt of measuring NCP performance is not quite necessary at this moment. Nevertheless, we do recognize the freedom of OECD Watch and TUAC to develop and publish their own questionnaire of measuring NCP performance.</p> <p>However, any potential questionnaire has to methodologically be in line with the mandate of OECD Guidelines. The ... NCP believes that the OECD Watch / TUAC Index to rank NCP performance, presented in June 2016, goes beyond the mandate of the OECD Guidelines and may promote competition between NCPs and not cooperation.</p> <p>I think there is too little focus on outcome and the intention to be solution-minded in the index, which I think should be the first priority for a NCP. We all work in different contexts and have different resources which also means ...being pragmatic and finding a solution is the highest priority. So far, we have not found ourselves in a position where we have been forced to make a firm statement against a company.</p>	Noted.

INSTITUTIONAL ARRANGEMENTS

CRITERION	COMMENTS: NCPS/GOVERNMENTS/WPRBC CHAIR	TUAC-OECD WATCH RESPONSE
<p>Taken adequate steps to address conflicts of interest in its structure/composition (includes creation of an oversight committee, independent NCP, tripartite or quadripartite NCP)</p>	<p>Is in the Guidelines;</p> <p>Adequate resources are a separate requirement under the Council Decision;</p> <p>The weight suggested is relatively low, as resources is the key to success.</p> <p>The questionnaire should be useful in 1) addressing the inner conflicts and organisational form’s influence on the ability of NCP to act and act in time</p> <p>We agree on the objective to take steps to address conflicts of interest. According to the Procedural Guidance, each NCP has to be set up in the best possible way in order respect the core criteria of visibility, accessibility, transparency and accountability. However, those measures have to be adapted to the national context and may vary from country to country.</p> <p>There are other options to address a potential conflict of interest than the ones listed under these criteria.</p>	<p>Indicator is UNCHANGED</p> <p>We request that NCPs suggest other options for addressing potential conflicts of interest.</p>
<p>Employs staff whose primary responsibility is to work on the OECD Guidelines</p>	<p>Is in the Guidelines;</p> <p>Adequate resources are a separate requirement under the Council Decision;</p> <p>The weight suggested is relatively low, as resources is the key to success.</p>	<p>Indicator is UNCHANGED</p> <p>This is a proxy indicator for resources.</p>
<p>Taken adequate steps to involve a sufficient breadth of expertise in its structure/ composition</p>	<p>Important but not directly in Guidelines, only implied in impartiality.</p>	<p>Indicator is UNCHANGED</p> <p>This is covered in paragraph A.1 of the Procedural Guidance: “<i>Will be composed and organised such that they provide an effective basis for dealing with the broad range of issues covered by the Guidelines and enable the NCP to operate in an impartial manner while maintaining an adequate level of accountability to the adhering government.</i>”</p>

INSTITUTIONAL ARRANGEMENTS

CRITERION	COMMENTS: NCPS/GOVERNMENTS/WPRBC CHAIR	TUAC-OECD WATCH RESPONSE
Formally involves external stakeholders in the NCP structure/composition	A key element of the Procedural Guidance is that it says that in Procedural Guidance Commentary Paragraph 10 on institutional arrangements: NCP leadership should be such that it retains the confidence of social partners and other stakeholders . building relations with NGOs and TUs... is a key matter. What I have learnt is that the more there is engagement of NCP in establishing and sustaining the relations with stakeholders (which in fact can be the only form of promotion), the more cases appear. The relations build mutual trust. Without trust there are no cases at all. So the question if there has been at least one meeting with stakeholders a year is a top of an iceberg . I would ask at least if the relations with stakeholders are held on regular basis and if they are properly addressed in the promotion plan.	Indicator is UNCHANGED We request that NCPs suggest other indicators for assessing the building of trust with stakeholders.
In 2015 held at least 1 meeting of its organisational external stakeholders		Indicator is UNCHANGED We request that NCPs suggest other indicators for assessing the building of trust with stakeholders.
Maintains an adequate web site with information on the OECD Guidelines, the National Contact Point, and how to file a specific instance	Received the suggestion to include the following indicator: Does the NCP have clear criteria for the complaint-handling process	Indicator is UNCHANGED We think this suggestion is covered in the existing indicator. It is explained in the note to the Indicator.
Reports publicly on its activities at national level in the national language(s)	I would stick to the Guidelines.	Indicator is UNCHANGED
Reports publicly on its annual expenditure	Many NCPs do not have distinguishable annual expenditure. Dispersed over departments, mainly costs for staff. This criterion should be deleted because it is not foreseen in the Procedural Guidance. Furthermore, the annual expenditure does not provide a clear indication of the functioning of a NCP (e.g. its efficiency and effectiveness). There are also some questions that might not be relevant for certain NCPs:... such as the publication of expenditures.	Indicator is DELETED This was a proxy indicator for providing adequate resources. We understand that most NCPs cannot do this. We request that NCPs suggest other proxy indicators for resources

PROMOTIONAL ACTIVITIES

CRITERION	COMMENTS: NCPS/GOVERNMENTS/WPRBC CHAIR	TUAC-OECD WATCH RESPONSE
Publishes the OECD Guidelines in key national language(s)	Is in the Guidelines in section B1 of the Procedural Guidance and paragraph 14 of the commentary.	Indicator is UNCHANGED
Publishes key parts of its web site in both national and international languages	NO COMMENT RECEIVED	Indicator is UNCHANGED
Has developed and published a promotional plan (NEW Indicator, June 2016)	Not in the Guidelines. We agree on the importance to promote the OECD Guidelines including the NCP. However, a promotional plan is not required by the Procedural Guidance. Moreover, even if it might be useful to have a promotional plan, such a plan could serve as an internal strategical document without necessarily being published on the website .	Indicator is UNCHANGED
Has developed promotional materials on the Guidelines	Not in the Guidelines.	Indicator is UNCHANGED NCPs are required to promote the Guidelines. We think this requires the development of promotional materials.
In 2015 organised or co-organised at least 1 promotional events on the Guidelines	Under the core criteria of visibility it reads: <i>"Governments are expected to publish information about their NCPs and to take an active role in promoting the Guidelines, which could include hosting seminars and meetings on the instrument. These events could be arranged in cooperation with business, labour, NGOs, and other interested parties, though not necessarily with all groups on each occasion."</i> As discussed in the meeting of the WPRBC in March 2016, the criterion should mainly focus on whether the NCP has participated in an event and promoted the Guidelines and not whether it has (co-organized an event). The advantage of promoting the Guidelines at an event of e.g. an NGO or a business association might be that the NCP could reach a different audience with an increased impact than if it invites its own stakeholders. Furthermore, promoting the Guidelines at different events organized by others rather than organizing an event might be more efficient.	Indicator is UNCHANGED We recognise that participating in events of other stakeholders is effective, but still consider that NCPs should be proactive in (co-) organising events.

PROMOTIONAL ACTIVITIES

CRITERION	COMMENTS: NCPS/GOVERNMENTS/WPRBC CHAIR	TUAC-OECD WATCH RESPONSE
In 2015 either the NCP or the government conducted activities aimed at promoting the Guidelines abroad	Is not in the Guidelines; would delete this one.	Indicator is UNCHANGED We consider it important that NCPs promote the Guidelines abroad, as well as at home. A number of NCPs already do this.

NCP PROCEDURES

CRITERION	COMMENTS: NCPS/GOVERNMENTS/WPRBC CHAIR	TUAC-OECD WATCH RESPONSE
Does not require complainants to stop campaigning against the company	Controversial and not in the Guidelines; Depends really on the specific terms of reference in the mediation; Can under specific circumstances be a reasonable request and leverage for mediation.	The Indicator and Revised Indicator on campaigning have been DELETED This issue is now covered in the indicator on confidentiality. We agree fully that there should be mutual trust under the Guidelines.
Does not interfere with the claimant's right to criticise publicly the company, apart from confidentiality restrictions concerning the specific instance process (Revised Indicator, June 2016)	This criterion has to be deleted, as it is not covered by the Procedural Guidance. For a successful mediation, mutual trust among the parties is key. If the submitting party continues to criticise publicly the company, it might be difficult for the NCP to build such trust.	
Limits confidentiality requirements to the NCP mediation process and information obtained during the NCP process	NO COMMENTS RECEIVED	Indicator is UNCHANGED
Sets an appropriately low threshold for accepting specific instances, including where there are parallel proceedings	NO COMMENT RECEIVED	Indicator is UNCHANGED
Allows complainants to withhold the identity of the complainants from the company	NO COMMENT RECEIVED	Indicator is UNCHANGED
Publishes Initial Assessments of all specific instances on its web site, or has made a commitment to do so	Not explicit in the Guidelines, they are interpretations/good practices.	Indicator is UNCHANGED It is now denoted as a BEST PRACTICE INDICATOR in the category NCP Procedures.
Provides mediation at no cost to the parties, or has made a commitment to do so	Is not in the Guidelines and is it reasonable to have the NCP pay for everything?	Indicator is REVISED. We have changed the wording to remove at 'no cost' and have provided further explanation in the note to the Indicator.
Conducts in-country fact finding, or has made a commitment to do so	Not explicit in the Guidelines, they are interpretations/good practices.	Indicator is UNCHANGED. It is now denoted as a BEST PRACTICE Indicator in the category NCP Procedures.
Publishes Final Statements with recommendations and Final Reports on its web site, or has made a commitment to do so	NO COMMENT RECEIVED	
Makes a finding (determination) on whether the MNE has breached the OECD Guidelines when mediation is refused or fails, or has made a commitment to do so	Not explicit in the Guidelines, they are interpretations/good practices.	Indicator is UNCHANGED. It is now denoted as a BEST PRACTICE Indicator in NCP Procedures.
Provides for follow-up of recommendations made in Final Statements/Final Reports, or has made a commitment to do so	NO COMMENT RECEIVED	
Provides parties with a right of appeal on the basis that procedures have not been followed	All institutional stakeholders already have a right to make a substantiated submission to the Investment Committee/ Working Party RBC that an NCP was not fulfilling its procedural responsibilities in the implementation of the Guidelines in Specific Instances	Indicator is UNCHANGED. It is now denoted as a BEST PRACTICE Indicator in the category NCP Procedures. This Indicator assesses whether NCPs provide parties to cases with the right of appeal with regard to the NCP following its own procedures. Some NCPs already do this.
Has introduced consequences for MNEs that refuse to participate in the NCP process (NEW Indicator, June 2016)	Is not in the Guidelines	Indicator is NEW It is denoted as a BEST PRACTICE Indicator in NCP Procedures

POLICY COHERENCE

CRITERION	COMMENTS: NCPS/GOVERNMENTS/WPRBC CHAIR	TUAC-OECD WATCH RESPONSE
GENERAL COMMENT	/	We have DELETED the Section on Policy Coherence in recognition of the fact that some issues were not specific to, or not within the control of, NCPS.
The government conditions access to economic and diplomatic support related to international trade and investment on compliance with the OECD Guidelines		Indicator is DELETED
The government has made a formal policy commitment to withdraw economic and diplomatic support related to international trade and investment from MNEs that refuse to participate in the NCP process	Is not in the Guidelines	Indicator is REVISED and RE-CATEGORISED It is now denoted as a BEST PRACTICE Indicator in NCP Procedures. New Indicator Has introduced consequences for MNEs that refuse to participate in the NCP process.
The Export Credit Agency has formal procedures for taking into account NCP Reports/ Statements in their decisions on awarding companies export credit insurance		Indicator is DELETED
The development agency has formal procedures for taking into account NCP Reports/ Statements in their decisions on awarding companies Official Development Assistance		Indicator is DELETED

PEER LEARNING

CRITERION	COMMENTS: NCPS/GOVERNMENTS/WPRBC CHAIR	TUAC-OECD WATCH RESPONSE
Undergone or signed up for NCP peer review		Indicator has been REVISED It is now denoted as a BEST PRACTICE Indicator in the category Peer Learning
In 2015 attended 2 NCP meetings at the OECD		Indicator has been REVISED
Since 2012 has organised at least 1 peer learning event	Peer learning is very important. However, the Procedural Guidance only states "such peer learning can be carried out through meetings at the OECD or through direct co-operation between NCPS." Peer learning events should primarily be held at the OECD as part of the NCP meetings. This is more efficient and helps to reduce e.g. travel costs. Additional peer learning meetings outside the OECD are welcome, but such events should not be required or expected.	Indicator has been REVISED It is now denoted as a BEST PRACTICE Indicator in the category Peer Learning.
Since 2012 has developed peer learning tools	It is more efficient if such tools (e.g. mediation manual) are developed jointly at OECD level than at national level. Joint tools also contribute to develop coherent approaches and thereby create a level playing field among NCPS.	Indicator has been REVISED It is now denoted as a BEST PRACTICE Indicator in the category Peer Learning.
In 2015 participated in at least 1 peer learning event		Indicator is UNCHANGED It is now denoted as a BEST PRACTICE Indicator in the category Peer Learning.

OUTCOMES: Criterion (Direct)

CRITERION	COMMENTS: NCPS/GOVERNMENTS/WPRBC CHAIR	TUAC-OECD WATCH RESPONSE
GENERAL COMMENT	<p>There are too many criteria in this section "Specific Instances: Outcomes".</p> <p>These outcome indicators are not performance indicators. They could just as well be seen as measures of failing NGOs or trade unions. These outcome indicators could be key indicators, but not as key performance indicators/ measures. If there are no cases the results can be zero. Not all are appropriate for a performance index.</p>	This is addressed. We have separated the indicators into General and NCP Performance Indicators. The General Indicators will not be included in the Index.
Percentage of <i>accepted</i> NGO and Trade Union specific instances where the NCP offered mediation at no cost to the parties	<p>Can also be punishment for lots of frivolous cases or not substantiated claims.</p> <p>Conflate this indicator with the cost aspect, which is not in Guidelines</p>	<p>Indicator is REVISED</p> <p>The question excludes frivolous or non-substantiated cases as it is limited to accepted cases, not all cases.</p>
Percentage of <i>accepted</i> NGO and Trade Union specific instances, where the parties failed to reach agreement, in which the NCP made public recommendations	<p>Is in the Guidelines.</p> <p>Only if NCP had no cases, then 0. Thus not appropriate for performance measure.</p>	<p>Indicator is UNCHANGED</p> <p>We understand that it will be only possible to calculate this indicator for NCPs with cases.</p>
Percentage of <i>accepted</i> NGO and Trade Union specific instances, where the parties failed to reach agreement, in which the NCP made a determination	<p>Neither indicator is in the Guidelines</p> <p>Good practice</p> <p>This criterion should be deleted as the Procedural Guidance does not expect NCP to make a determination on whether the MNE has breached the OECD Guidelines. Furthermore, this criterion does duplicate the criterion mentioned in the section "Best Practices" which enquires whether a NCP "makes a finding (determination) on whether the MNE has breached the OECD Guidelines when mediation is refused or fails, or has made a commitment to do so".</p>	<p>Indicator is UNCHANGED</p> <p>Indicator is now denoted as a BEST PRACTICE Indicator.</p> <p>The point on duplication is a valid one that we will address in the future development of the Index.</p>
Percentage of <i>accepted</i> NGO and Trade Union specific instances where the NCP provided for follow-up	<p>Neither indicator is in the Guidelines</p> <p>Good practice</p>	<p>Indicator is UNCHANGED</p> <p>This is covered in the Guidelines. Follow-up is provided for in Paragraph 36 of the Commentary on the Procedural Guidance.</p>
Percentage of <i>all</i> NGO and Trade Union specific instances either completed within the indicative timescales or extended with the agreement of the parties	<p>In the Guidelines.</p> <p>Key is extension with agreement of parties.</p> <p>Flexibility often requested by complainants.</p>	<p>Indicator is UNCHANGED</p> <p>The wording of the question recognises that timescales may be extended at the request</p>
Percentage of <i>accepted</i> NGO and Trade Union specific instances in which the complainants stated that they were satisfied with the NCP	<p>Can be difficult as expectations are sometimes unreasonably high (compensation for value chain issues where there was no cause/ contribution).</p>	<p>Indicator has been RE-CATEGORISED</p> <p>It is now a General Indicator and not a Performance Indicator. It will not be included in the Index.</p>

Criterion (Indirect)

CRITERION	COMMENTS: NCPS/GOVERNMENTS/WPRBC CHAIR	TUAC-OECD WATCH RESPONSE
GENERAL COMMENTS	<p>Comparison of NCP's on several indicators is meaningless: You propose to compare NCP's for example on the number of specific instances filed. We are of the opinion that comparing NCP's of small countries (Luxemburg f.e) with NCP's in very large countries (US f.e) on an indicator as the number of cases is meaningless</p>	<p>These indicators have been RE-CATEGORISED</p> <p>They are General Indicators, not NCP Performance Indicators. They won't be included in the Index.</p>
Percentage of NGO and Trade Union specific instances <i>accepted</i> by the NCP	<p>May be a key indicator but not a key performance indicator. Is zero if there have been no cases. This can also be an indicator of lack of promotion by NGOs or Trade Unions/not substantiated cases/forum shopping cases, etc.</p> <p>For ranking not appropriate.</p> <p>An objective criterion would be to count how many submissions have been received and how many have been accepted or rejected</p>	<p>Indicator has been RE-CATEGORISED</p> <p>It is a General Indicator, not a NCP Performance Indicator. It will not be included in the Index.</p> <p>This point is addressed by this Indicator. Due to the possibility of frivolous/non-substantiated cases, it is assigned as a General Indicator, not a NCP Performance Indicator.</p>

Criterion (Indirect)		
CRITERION	COMMENTS: NCPS/GOVERNMENTS/WPRBC CHAIR	TUAC-OECD WATCH RESPONSE
Percentage of <i>accepted</i> NGO and Trade Union specific instances where the company agreed to participate in mediation	This is not a performance indicator for NCPs. Is zero if no cases. Could be an indicator of incentives for companies to participate. If NCP doesn't give recommendations or has incentives otherwise. Could be an indicator for 'bad company behaviour' not necessarily for a 'bad NCP'. Could also be an indicator for 'bad faith complainants'; For ranking not appropriate.	Indicator has been REVISED and RE-CATEGORISED It is a General Indicator, not a NCP Performance Indicator. It will not be included in the Index.
Percentage of <i>accepted</i> NGO and Trade Union specific instances where parties reached agreement	Not a performance indicator, is zero if no cases; For ranking not appropriate.	Indicator has been RE-CATEGORISED It is a General Indicator, not a NCP Performance Indicator. It will not be included in the Index.
Percentage of <i>accepted</i> specific instances that had positive results (company policy or practices)	Indicator could be: % accepted cases with positive results (remedy, policy change, restored dialogue, GFA, compensation, etc). However, this is also not a NCP performance indicator and for ranking not appropriate.	Indicator is NEW It has been introduced following suggestion made in the consultation. It is not a NCP Performance Indicator. It will not be included in the Index.
Percentage of <i>accepted</i> NGO and Trade Union specific instances that delivered remedy where remedy was requested	Not a performance indicator. No binding system, requested remedy could have been unreasonable etc. Could as well be an indicator for bad management of expectations. Remedy is not the only benchmark for success of the NCP; For ranking not appropriate.	Indicator has been RE-CATEGORISED It is a General Indicator, not a NCP Performance Indicator. It will not be included in the Index.

The criteria and weightings can be accessed on-line at:
www.tuacoecdmneguidelines.org/questions.asp; and www.oecdwatch.org/ncp-ranking
The TUAC OECD-Watch Index will be launched in 2017