



OECD **GUIDELINES**
FOR MULTINATIONAL ENTERPRISES

HUNGARIAN
NATIONAL CONTACT POINT

Specific Instance Procedure of the Hungarian National Contact Point (HNCP)

<https://oecdmnkp.hu/en/specific-instance-procedure>

Specific Instance Procedure of the Hungarian National Contact Point (HNCP)

The specific instance procedure shall be initiated by filing a complaint. The procedure is composed of three phases in accordance with the Procedural Guidance of the OECD Guidelines for Multinational Enterprises (the Guidelines):

1. Initial assessment,
2. Assistance to the parties to resolve the issues raised,
3. Conclusion of the procedure.

Submitting a complaint

The HNCP specific instance procedure can be initiated at the Hungarian National Contact Point **relating to the activity of a multinational enterprise in Hungary or a Hungarian multinational enterprise abroad because of alleged breaching** of one or more provisions of **the Guidelines**.

Complainant can be anyone with a specific interest in the case, *e.g.* communities, trade unions, civil organisations or natural persons affected by the issue under criticism. It is not required that the complainant is directly endangered however he/she/it must have a specified interest in the case, and must be able to supply detailed information and present the facts about it.

The specific instance case is to be filed in the country where the alleged breaching of the Guidelines emerged. It is also possible to file the case with the NCP of the country from where the company is originated, especially when the alleged breaching of the Guidelines occurs in a non-adhering country. If the complaint concerns several adhering countries or the complaint is submitted to several NCPs, the NCPs should co-operate and agree on the lead NCP.

The complaint shall be filed with the HNCP in writing and the following information is required:

- name, address and e-mail address of the complainant;
- name and address of the multinational enterprise alleged to have breached the Guidelines;
- place, time and date, description of the alleged breaching of the Guidelines and presentation of prior attempts to bring breaching of the Guidelines to an end;
- specification of Guidelines provisions justifying the specific instance case by the complainant;
- description of complainant's expectations concerning changes or goals to be achieved.

Initial assessment

The HNCP will register the filed complaint and confirm its receipt. At the same time it will send its information brochure about the specific instance procedure to the complainant. The procedure is evidence based and is to be used only for the purposes of the Guidelines. The HNCP will refuse investigation of noncompliant, frivolous or harassing complaints. The HNCP will call the attention of the complainant that information and opinion learned from the other party during the procedure shall be kept confidential.

Following official filing of the complaint with the HNCP it will assess whether the issues raised merit further examination. In this respect it is determined whether the complaint is bona fide and relevant to the implementation of the Guidelines. The HNCP will take into account:

- the identity of the complainant and its interest in the matter,
- whether the issue is material and substantiated,
- whether the complaint is bona fide,
- whether there seems to be a link between the enterprise's activities and the issue raised in the specific instance.
- the relevance of applicable law and procedures, including any court rulings.
- how similar issues have been, or are being, treated in other domestic or international proceedings.
- whether the consideration of the specific issue would contribute to the purposes and effectiveness of the Guidelines.

If the case constituting the basis of the complaint happened more than 5 years before submitting it to the HNCP it will only be accepted if it had a priority in contributing to the implementation of the Guidelines.

At the start of the initial assessment, the HNCP will inform the enterprise concerned about the content of the complaint received as well as about the Guidelines, the specific instance procedure and its purpose. Furthermore, it will provide opportunity for the company to make its comments. As a general rule, the HNCP sends the whole received complaint to the enterprise, except the parts requested and adequately justified by the complainant to be confidential. The HNCP will inform the company that it provides good offices and for its success it is expected that the parties keep information provided by the other party or the HNCP during the procedure confidential.

The HNCP will seek to obtain all information considered necessary for its preliminary decision on whether the complaint merits further consideration. The HNCP will inform public bodies and authorities concerned, the NCPs of relevant countries, seek for their opinions, involve them in the initial assessment and make use of independent expert assistance, where appropriate. It may request further information from the parties (by setting a deadline of no longer than 15 days), and may hold consultations with them. The HNCP will call attention of the parties that it will share information received from one party with all other interested ones in order to ensure transparency unless the source of information initiated confidentiality adequately justified in

writing.

The HNCP will assess the information received and send the assessment in writing to the parties for their comments. The HNCP will decide afterwards whether the complaint merits further consideration.

When the parties reach agreement and the complainant withdraws its complaint during the initial assessment phase, the HNCP will conclude the case without publicly identifying the parties unless they have agreed differently. The HNCP will report on the specific instance procedure accordingly.

The HNCP will seek to conclude the initial assessment within 3 months from filing the case.

Assistance to the parties to resolve the issues raised

When the HNCP decides that the complaint merits further consideration or there is an opportunity for its good offices, it will discuss the possible details with the parties concerned. The HNCP will publish brief information about starting the specific instance procedure on its website where identity of the parties and the substantial content of the complaint are not necessarily made public. The HNCP will inform the OECD Investment Committee about starting the procedure.

The HNCP specific instance procedure aims at finding/facilitating an agreed solution between the parties in accordance with the Guidelines. For this purpose, the HNCP will offer good offices (mediation), and make use of assistance of external experts as appropriate. Good offices can only be successful if the parties commit themselves to participate in the procedure in good faith, follow the previously mutually agreed agenda, do not come up unexpectedly with new issues, assign to the mediation representatives who are able afterwards to practically implement the agreement reached. Terms of reference about the envisaged course of mediation are to be agreed with the consent of the parties prior to actual commencement.

When the HNCP decides on offering good offices, it will strive to handle the case in a timely manner. As the progress depends upon the parties involved, the HNCP will, after consultation, recommend a reasonable timeframe for the discussion of the issues. If no agreement is reached within the envisaged timeframe, the HNCP will consult with the parties on the potential added value of further assistance. If the HNCP comes to the conclusion, that the continuation of the procedure is not likely to be successful, it will conclude the process.

The HNCP can make proposals to the parties, but it is not entitled to put pressure on them in order to participate in the mediation or to reach any agreement. Participation in mediation is on a voluntary basis, but if any party is unwilling to participate, the final statement of the HNCP on the specific instance procedure will refer to that. Furthermore, the final statement will summarize the reasons why mediation failed. At the same time, the content of mediation should be treated confidentially and not documented in writing. Only partial agreements may be and agreements reached should be recorded.

If there was no mediation or it failed or only resulted in partial agreement in the specific instance procedure, the HNCP will assess the accepted case or its parts not included in the agreement. The purpose of the assessment is to unfold whether the complaint is justifiable and to facilitate access to further mediation. In the assessment phase the HNCP may request further information from the parties, organise consultations or carry out on-site visits. As appropriate, the HNCP will:

- a) seek advice from relevant authorities, representatives of the business sector, workers organisations, other non-governmental organisations and relevant experts;
- b) consult the NCPs of other countries concerned;
- c) seek the guidance of the OECD Investment Committee if it has doubt about the interpretation of the Guidelines.

Unless valid reason for the opposite exists, the HNCP will let the other party or parties know about the received and relevant information, calling their attention to the requirements of confidentiality. The HNCP expects that the parties mutually cooperate and behave in good faith during the procedure. It requires that the parties respond in a timely fashion, maintain confidentiality about the specific instance and the information obtained, and refrain from discrediting or threatening the other party. Any conduct to the contrary can be considered as lack of good faith that can result in the conclusion of the procedure. The final statement of the procedure can provide information on failure in good faith behaviour or on uncooperative attitude of a party.

The HNCP and experts participating in assessment or mediation will handle sensitive business information coming to their knowledge confidential and respect personal data protection. Participants of the HNCP procedure will sign a confidentiality clause. The HNCP will keep documents of the procedure as part of the specific instance procedure documentation for 5 years and ensure protection of confidential information.

The HNCP should seek to conclude the procedure within 12 months from receipt of the specific instance. However if circumstances warrant it, an extension of this timeframe is possible such as when the issues arise in a non-adhering country or the HNCP further considers it realistic that the parties reach agreed resolution of the issues.

Conclusion of the procedure

At the conclusion of the procedure the HNCP:

- a) Issues a *statement* when it decides in the initial assessment phase that the issues raised does not merit further consideration. The statement should at a minimum describe the complaint and the reasons for the HNCP's decision;

- b) Prepares a *report* when the parties have reached agreement on the issues raised. The report should at a minimum describe the complaint, the procedure the HNCP initiated in assisting the parties and when agreement was reached. The HNCP will make the report with the results of the proceedings publicly available in consultation with the parties. If the parties agree, the HNCP includes in the report the content of the agreement or a part of it. Furthermore, the parties can agree to seek the assistance of the HNCP in following-up on the implementation of the agreement and also on its terms and conditions. That agreement can be included in the report as well.
- c) Issues a *statement* when the parties did not reach agreement or when a party is unwilling to participate in the HNCP procedure. The statement does not necessarily identify the parties concerned. It should at a minimum describe the complaint, the reasons why the HNCP decided that the issues raised merit further examination and the summary of the procedures initiated in assisting the parties. Where relevant, the HNCP will make in its statement recommendations on the implementation of the Guidelines. As appropriate, the statement could also include the reasons why no agreement could be reached.

The HNCP will provide an opportunity for the parties to comment on a draft statement. Nevertheless, the statement is that of the HNCP and it is within its discretion to decide whether to change the draft statement in response to comments from the parties. The statement issued by the HNCP has no legal effect therefore cannot be appealed or challenged in court.

The HNCP will make the result of its specific instance procedure publicly available on its website. Personal data can only be disclosed with written consent of the persons concerned. If the HNCP makes recommendations to the parties and deems it necessary to follow-up on them, the timeframe for doing so will be addressed in the HNCP statement.

The HNCP will inform the Investment Committee of the OECD about the results of its specific instance procedure. A short summary of the case will be published on the website of the OECD Guidelines for Multinational Enterprises. The HNCP will also report on the specific instance cases in its Annual Report.

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