

OECD GUIDELINES FOR MULTINATIONAL ENTERPRISES

Guide for National Contact Points on building and maintaining impartiality



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Foreword

All governments adhering to the OECD Guidelines for Multinational Enterprises ('the OECD Guidelines') are required to establish a National Contact Point for Responsible Business Conduct (NCP). Governments have flexibility in organising their NCPs, but require that NCP institutional arrangements enable them to operate in an impartial manner while maintaining an adequate level of accountability to the adhering government. Likewise, the OECD Guidelines require that NCPs handle specific instances in a way that is impartial. The diversity in NCP structures and rules of procedures for handling specific instances has led to different approaches and strategies regarding how to implement the requirement of impartiality, and this aspect has been a concern for stakeholders and users of the NCP mechanism.

This Guide considers current challenges in building and maintaining perceived and effective impartiality amongst NCPs and identifies good practices and tools in this regard. In particular, it addresses the notion of impartiality mean and how is it challenged by perceptions of bias and conflict of interest, and discusses how institutional arrangements can be used to build and maintain impartiality in the NCP system. It also discusses how NCPs can build and maintain impartiality at the individual level, by reference to measures and tools that NCPs are currently using.

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1 Introduction

All governments adhering to the OECD Guidelines for Multinational Enterprises (‘the Guidelines’) are required to establish a National Contact Point (NCP). NCPs are mandated to further the effectiveness of the Guidelines by undertaking promotional activities, handling enquiries and contributing to the resolution of issues that arise relating to the implementation of the Guidelines in specific instances.

The Guidelines do not prescribe a specific NCP structure, instead operating from the principle that governments have flexibility in organising their NCPs. Such flexibility should however be consistent with the objectives of functional equivalence and furthering the effectiveness of the Guidelines. The core criteria for functional equivalence are visibility, accessibility, transparency and accountability.¹ The Guidelines also require that governments organise their NCP in such a way as to enable the NCP to “operate in an impartial manner while maintaining an adequate level of accountability to the adhering government”.² Different possible institutional arrangements are envisioned and include: single agency, interagency, multipartite and expert-based. The Commentary to the Procedural Guidance also notes that governments could establish multi-stakeholder advisory or oversight bodies to assist NCPs in their tasks.³

An important part of the NCP mandate is to handle “specific instances”, i.e. situations of alleged non-observance of the Guidelines brought to NCPs.⁴ Between 2000 and 2021 about 600 specific instances have been submitted to NCPs. Over this period, most NCPs have developed rules of procedure and continue to refine their processes of handling specific instances to address challenges and improve outcomes.

The specific instance procedure is intended to provide a consensual, non-adversarial, forward-looking “forum for discussion” for issues that arise relating to the implementation of the Guidelines.⁵ Moreover, the Procedural Guidance calls on NCPs to “contribute to the resolution of issues that arise relating to the implementation of the Guidelines in specific instances in a manner that is impartial, predictable, equitable and compatible with the principles and standards of the Guidelines” (e.g. the so-called *guiding principles for specific instances*).⁶ The Commentary elaborates on this, noting that “NCPs should ensure impartiality in the resolution of specific instances”.⁷

The diversity in NCP structures and rules of procedures for handling specific instances has led to different approaches and strategies regarding how to implement the requirement of impartiality. Moreover, many NCPs currently do not have measures in place to handle perceptions of a lack of impartiality when they arise.

This paper considers current challenges in building and maintaining perceived and effective impartiality amongst NCPs and identifies good practices and tools in this regard. In particular, this paper answers the following questions:

- What does impartiality mean and how is it challenged by perceptions of bias and conflict of interest?
- How to use institutional arrangements to build and maintain impartiality in the NCP system?
- How to build and maintain impartiality at the individual level? What measures and tools are NCPs currently using?

2 Understanding impartiality and its challenges

The concept of impartiality – i.e. not taking the side of either party – is essential to the legitimacy and the good functioning of the NCP system. When submitters trust that their cases will be reviewed by an impartial party, they will be more likely to bring their grievances forward. This can be particularly important in contexts where there is imbalance in the resources of the parties to a case. Likewise, when companies are confident that the allegations raised against them will be reviewed impartially, they are more likely to engage in the process. By building and maintaining impartiality, NCPs also contribute to ensuring the confidence of social partners and other stakeholders.⁸

Discussions about impartiality within the NCP network and with stakeholders have often stemmed from situations where an NCP's impartiality was questioned and from occasional claims of lack of impartiality. Issues related to impartiality are for example regularly addressed in NCP peer reviews. Moreover, stakeholders from business, trade unions and civil society have all raised the importance of ensuring impartiality in the NCP process.⁹ These discussions may relate both to questions of fact (is the NCP effectively impartial?) or of perception (do stakeholders or the public perceive the NCP as impartial?). Whether a discussion concerning an NCP's impartiality relates to issues of fact or of perception, understanding and addressing the concerns effectively helps ensure confidence in the NCP process as a whole. It is therefore important for NCPs to put in place structures and procedures that enable them to operate with impartiality, but also to effectively communicate with their stakeholders in this regard to ensure that they are perceived as impartial. In the remainder of this Guide, the phrase 'building and maintaining impartiality' will relate both to questions of fact and perception.

Before looking in detail at strategies to build and maintain impartiality, it is helpful to unpack the various grounds which impartiality concerns are typically raised, namely institutional bias, as well as institutional and individual conflict of interest¹⁰:

- **Institutional bias** can be understood as 'a tendency for the procedures and practices of particular institutions to operate in ways which result in certain social groups being advantaged or favoured [...]'.¹¹ This can for example be the natural result of affinity along similar perspectives, due to shared professional backgrounds or expertise.
- **Institutional conflicts of interest** can be understood as competing roles for a public organisation or public official, in which either the public organisation or its officials' may make decisions that favor one part of its mandate over the other.¹² In the case of an institutional conflict of interest, the potential for conflict arises from competing duties to serve the public interest or conflicting loyalties that can emerge from multiple positions of the public official.
- **Individual conflicts of interest** derive from an incompatibility between a private interest of an official and its public duties.¹³ It can be real, potential or perceived.¹⁴

In the definition outlined by the OECD Recommendation on Guidelines for Managing Conflict of Interest in the Public Service, "private interests' are not limited to financial or pecuniary interests, or those interests which generate a direct personal benefit to the public official. A conflict of interest may involve otherwise legitimate private-capacity activity, personal affiliations and associations, and family interests, if those

interests could reasonably be considered likely to influence improperly the official's performance of their duties."¹⁵

Building on good practice, the OECD has set out several standards to support countries in setting up systems to manage and prevent conflict of interest. These are explored in more detail in Box 2.1.

Box 2.1. OECD standards on managing and preventing conflict of interest

The OECD has set several standards to support governments in managing and preventing conflicts of interest. These include:

The 2003 OECD Recommendation of the Council on Guidelines for Managing Conflict of Interest in the Public Service

Through the [OECD Recommendation on Guidelines for Managing Conflict of Interest in the Public Service](#), the OECD helps countries modernise their approach for managing and preventing conflict of interest. The Guidelines for Managing Conflict of Interest:

- Provide a practical framework of reference for reviewing and modernising existing policy solutions in line with good practice
- Promote a public service culture in which conflicts of interest are properly identified and resolved or managed
- Support partnerships between the public, private and non-profit sectors in identifying and managing conflict-of-interest situations

Several tools have been developed to support implementation of the Guidelines for Managing Conflict of Interest, including the [Managing Conflict of Interest in the Public Sector: a Toolkit](#), which highlights specific techniques, resources and strategies public officials can implement to assist in identifying, managing and preventing conflict-of-interest situations.

The 2017 OECD Recommendation of the Council on Public Integrity

The [OECD Recommendation on Public Integrity](#) provides policy makers with the blueprint for a public integrity strategy. It shifts the focus from ad hoc integrity policies to a comprehensive, risk-based approach with an emphasis on cultivating a culture of integrity across the whole of society. It is built on 3 pillars: system, culture and accountability. Managing and preventing conflict of interest is a core part of all three pillars, and the public integrity recommendation and associated guidance (e.g. the [OECD Public Integrity Handbook](#) and [Public Integrity Maturity Models](#)) provides insights to governments on setting clear conflict of interest standards, cultivating a culture of integrity where potential conflicts-of-interests can be freely discussed, and ensuring mechanisms are in place to hold public officials accountable for their conflict-of-interest obligations.

3

Building and maintaining impartiality in the NCP system

The following provides an overview of aspects to consider to build and maintain impartiality in the NCP system. Building on existing good practice, it also looks at measures to prevent and address claims of lack of impartiality in NCPs structures and mandates.

3.1. Building and maintaining impartiality through institutional arrangements

As noted above, the Guidelines call on governments to structure their NCPs in such a way that NCPs can operate in an impartial manner while maintaining an adequate level of accountability to the adhering government.¹⁶

It is worth clarifying at the outset that impartiality does not necessarily equate to functional independence. Most NCPs are not independent from the rest of government, nor do the Guidelines require them to be. Yet, whether they are functionally independent or not, NCPs should be capable of fulfilling their mandate to further the effectiveness of the Guidelines without adverse governmental or other influence.

Given the flexibility governments have to establish their NCP, there has been a convergence of NCPs around four main types: single agency, interagency, multipartite, and expert-based, with an additional two hybrid structures (see Figure 3.1).

Figure 3.1. NCP main structures



Note: Countries with an asterisk (*) have an advisory body including other government departments or stakeholder representatives in an advisory capacity.

Source: adapted from OECD (2019), *2019 Annual Report on the OECD Guidelines for Multinational Enterprises*

No model of NCP is *per se* more or less likely to guarantee impartiality. However, across each of these models, various strategies can help build and maintain impartiality and effectively address concerns of institutional bias or conflict of interest.

3.1.1. Managing the relationship between the NCP mandate and other portfolios

For single agency NCPs, managing their relationship to the ministry or agency where they are located in government will be key to building and maintaining impartiality. This is particularly true for the NCPs that are located in a ministry with an economic portfolio or an investment promotion agency, as these NCPs can lead to perceptions of a 'pro-business' bias. NCPs in an investment promotion agency may also in addition be perceived as having an institutional conflict of interest, as the dual mandates may conflict with each other, for example in the context of a specific instance involving a company to which the agency provided support. Interagency NCPs may be able to build impartiality through the representation of several ministries in the NCP and the ensuing balancing of perspectives and backgrounds.¹⁷ However, the same considerations as for single agency NCPs may apply to the location of inter-agency NCPs secretariats in economic ministries. NCPs based in government have also faced impartiality issues and claims of institutional conflict of interest in the context of specific instances in which government policies are an important part of the context of a specific instance,¹⁸ or in cases that involved state-owned enterprises.

To facilitate impartiality, some governments have built a so-called firewall around their NCPs, clearly identifying and defining the structure, roles and responsibilities of the NCP, as well as isolating it from other potentially conflicting portfolios. Governments have also adjusted reporting lines to ensure that NCP staff report to a senior level official who is not responsible for conflicting portfolios, such as investment or trade promotion. Such measures have been implemented in Chile and Germany (see Box 3.1).

Box 3.1. Making the NCP a distinct unit: examples from Chile and Germany

Chile

In Chile, the NCP was previously located in the former General Directorate of International Economic Relations ("DIRECON") in the Ministry for Foreign Affairs. DIRECON's (now the Undersecretariat of International Economic Relations) main responsibilities include trade and investment promotion. Given this portfolio, some stakeholders perceived the Chilean NCP at risk of being partial to business interests. To address this, one of the main recommendations of the Chilean NCP Peer Review was to make the NCP into a distinct unit devoted to NCP activities.

In response to this recommendation, the Responsible Business Conduct (RBC) Department was created as a distinct unit in the Undersecretariat of International Economic Relations, and given the role of fulfilling the objectives under the OECD Guidelines for Multinational Enterprises. In particular, the RBC Department was tasked with the NCP's functions: (i) promoting the Guidelines and related instruments; and (ii) receiving specific instances.

Germany

Several structural changes were introduced by the German government prior to its peer review to improve the visibility and impartiality of the German NCP. These included: a transfer of the NCP within the Federal Ministry for Economic Affairs and Energy to a separate unit in the Directorate-General for External Economic Policy that provides a greater element of autonomy and visibility, a dedicated budget, an increased number of dedicated staff and a strategic promotional plan. This had positive effects on the confidence of stakeholders in the NCP.

Source: adapted from Chile NCP (2019), National Contact Point of Chile Peer Review: Follow-up Report, https://www.subrei.gob.cl/docs/default-source/punto-nacional-de-contacto/evaluaci%C3%B3n-de-pares/chile-ncp-follow-up-report-implementation-of-recommendations-from-peer-review.pdf?sfvrsn=12844054_2; adapted from OECD (2018), OECD Guidelines for Multinational Enterprises National Contact Point Peer Reviews: Germany, <https://mneguidelines.oecd.org/Germany-NCP-Peer-Review-2018.pdf>

Other strategies can also be adopted to help facilitate impartiality in specific situations. For example, when it receives a specific instance, the Swiss NCP, which is housed in the State Secretariat for Economic Affairs (SECO) convenes an *ad hoc* working group with representatives from relevant other ministries (see Box 3.2).

Box 3.2. Establishing ad hoc working groups to consider specific instances – case of the Swiss NCP

The Swiss NCP's Secretariat is housed in the State Secretariat for Economic Affairs, but when handling specific instances, the Swiss NCP operates as an inter-agency body comprised of representatives of all the ministries responsible for the thematic areas covered by the Guidelines. When it receives a new specific instance, the NCP forms an ad hoc working group. This working group consists of experts from the relevant government ministries – if the case concerns human rights, an expert from the Swiss Federal Department of Foreign Affairs joins; if it concerns the environment, then the relevant expert from the Federal Office for the Environment joins. This ad hoc working group is then responsible for reviewing the issues raised, and taking the decision whether to accept the case or not. If the ad hoc working group decides to reject a case, the advisory body of the Swiss NCP has to be consulted prior to the final decision.

Staffing NCPs with full time staff can also help build and maintain impartiality. This need is particularly acute with regard to part-time working arrangements and reporting lines. Impartiality may be called into question where NCP staff work part-time on NCP issues, while the remainder of their tasks focus on promoting investment or international trade, or where NCP staff report to a senior official who is also responsible for conflicting portfolios, such as international trade or investment promotion.¹⁹ Were it not feasible to maintain a full-time staff, options such as reviewing whether the other tasks of the NCP staff could lead to potential bias or conflict of interest and reassigning as appropriate can be applied.

Likewise, NCPs may organise different institutional arrangements for different activities depending on the impartiality needs of each activity. Many NCPs for example systematically engage a professional mediator to conduct mediation. The Swiss NCP, for example, includes in their list of criteria a requirement for the external mediator to be neutral to the case at hand.²⁰ To ensure their own impartiality, some mediation organisations also have their own conflict of interest policy that mediators affiliated to them are required to follow.²¹ Similarly, to ensure impartiality in the handling of specific instances, the Australian NCP, which is situated in the Treasury Department, established a hybrid government/expert-based structure and appointed an external expert mediator (the Independent Examiner). The Independent Examiner is responsible for managing all aspects of specific instances brought to the NCP, including communication and conciliation with parties, decision making and drafting of statements.²²

Communicating how the organisational structure addresses potential institutional bias or conflict of interest can further support measures to build and maintain impartiality, such as constructing a firewall around the NCP, clarifying reporting lines and assigning appropriate resources. Box 3.3 shares the experience of the UK NCP in using communication tools to clarify how their organisational structure ensures impartiality amongst all stakeholders. Ensuring, through the website, brochures and in events, that each key stakeholder groups understands how the NCP's structure ensures impartiality is essential in retaining the confidence of stakeholders, which the Procedural Guidance also requires from NCPs.²³

Box 3.3. Clarifying the NCP structure to convey a perception of impartiality: analysis from the UK NCP Peer Review

The UK NCP Peer Review addressed perceptions of partiality in relation to the NCP's structure. The UK NCP's structure consists of representatives from a single agency and involves stakeholders in the work of the NCP on an advisory basis.

The NCP is housed within the Investment Policy Team in the Trade Policy Directorate, which is part of the Department for International Trade (DIT). The DIT has the following objectives:

- Support and encourage UK businesses to drive sustainable international growth
- Ensure the UK remains a leading destination for international investment and maintains its number one position for international investment stock in Europe
- Open markets, building a trade framework with new and existing partners which is free and fair
- Use trade and investment to underpin the government's agenda for a Global Britain and its ambitions for prosperity, stability and security worldwide²⁴

While the Investment Policy Team is headed by the Deputy Director of Investment Policy, the UK NCP operates as an independent team from other policy areas in DIT. Importantly, all decisions are made independently by the UK NCP team.

In terms of impartiality, the Peer Review noted that business stakeholders viewed the operation of the NCP at arm's length from the rest of DIT as sufficient to enable independence from political interference. Stakeholders from trade unions and civil society, however, noted that the UK NCP structure was not always clearly communicated. This lack of clarity was further compounded by the fact that there was no formal legal document establishing the NCP, nor terms of reference clarifying its mandate, structure and functioning.

To address this feedback, the Peer Review recommended that the UK NCP's mandate, structure and functioning should be clarified, described and communicated in a public document, and an annual report on NCP activities should be published and sent to relevant authorities, including Parliament. In the UK Government's response report on the Peer Review, the government noted "that the NCP can provide further information about its role and responsibilities." In January 2020 the NCP launched a new website, which now includes information about its governance structure.

Source: OECD (2019), OECD Guidelines for Multinational Enterprises National Contact Point Peer Reviews: United Kingdom, <https://mneguidelines.oecd.org/UK-NCP-Peer-Review-2019.pdf>; UK Government (2020), UK government response to the OECD peer review of the United Kingdom National Contact Point, <https://www.gov.uk/government/publications/oecd-peer-review-of-the-united-kingdoms-national-contact-point-government-response-october-2020/uk-government-response-to-the-oecd-peer-review-of-the-united-kingdom-national-contact-point>

3.1.2. Engaging broad representation of interests in the NCP

Another key strategy to build and maintain impartiality used by many NCPs is to engage broad representation from stakeholders, as noted in the Commentary to the Procedural Guidance.²⁵

With regards to engaging a broad representation of stakeholders through the NCP structure, multipartite and expert-based NCP structures help facilitate this. The structure of multipartite NCPs, which are composed of representatives from government, business associations, trade unions (tripartite) and civil society organisations (CSOs) (quadripartite) may be positively associated with impartiality because all interests are represented in the NCP and participate on an equal footing in all NCP activities, including the handling of specific instances. Similarly, the structure of the expert-based NCPs also presents opportunities with regard to impartiality, as these bodies are independent of government and represent and/or are nominated by the key stakeholders (business, trade unions and civil society).²⁶ In some NCPs,

the experts are required to act in their own capacity, not the interests of their nominating organisation; whereas in other NCPs, experts represent the organisations that nominated them.

However, both structures also face specific challenges to ensuring perceptions of impartiality. In particular, the involvement of non-government members can be a source of challenges, given the organisations they represent, and/or their professional backgrounds and networks. For example, a multipartite NCP may receive a specific instance that was submitted by the trade union that is a member of the NCP.

Managing these situations is essential to optimising the opportunities that having diverse representation may offer for impartiality. Several measures could be helpful in this regard:

- Ensure balanced representation of the non-governmental members, where each group enjoys equal 'weight' in the decision-making processes. For example, the French NCP, which is comprised of one business association, six trade unions, and four government departments representing a wide array of expertise relevant to the Guidelines (Economy; Foreign Affairs; Labour/Social Affairs; Environment), maintains equal weight by requiring members to reach agreement by consensus, in addition to maintaining strict confidentiality on specific instance work to maintain a degree of impartiality of its members towards their organisations.²⁷ Similarly, the Dutch NCP requires that decisions be made by consensus by its independent experts.
- Establish a clear and representative procedure for how different members are nominated to represent their stakeholder groups can also be useful in promoting perceptions of impartiality. The case of the Danish Mediation and Complaints-Handling Institution for Responsible Business Conduct in Box 3.4 highlights how this could be done in practice.
- Assign alternates to each stakeholder member who are appointed through a clear, transparent and representative procedure and are 'on call' to step in when the sitting NCP member has to recuse themselves. The Norwegian NCP, for example, nominates a temporary Chair in the event that the sitting Chair has a conflict of interest. The Australian NCP applies a similar practice with their advisory board, where proxy members are nominated for each of the non-governmental stakeholder members to replace the main member in case its impartiality may be challenged. While specific to the advisory board function, the concept could be adapted to help multipartite and expert-based NCPs provide an additional level of assurance for stakeholders on how the structure ensures impartiality.

Box 3.4. Facilitating impartiality through balanced representation: the case of the National Contact Point Denmark

The Danish Mediation and Complaints-Handling Institution for Responsible Business Conduct (NCP Denmark) is comprised of a Chairperson, an Expert Member, and three members appointed by the Minister for Industry, Business and Financial Affairs on the basis of recommendations from the Confederation of Danish Industry (business), the Confederation of Trade Unions (trade unions) and the Danish 92 Group (a network of NGOs). The three members act in their own capacity, but also represent the views of the organisations that nominated them.

Beyond representation of different stakeholder groups, the NCP Denmark also ensures impartiality by requiring that all five members have a solid understanding of Corporate Social Responsibility (CSR). The Chairperson and expert member are also both required to have qualifications in the form of a relevant social science or legal background, and knowledge of the key international standards in this area. Similarly, each of the organisation's representatives are required to have knowledge of one or several of the areas that the Guidelines concern.

Stakeholders have expressed confidence in the process, due to its representativeness and their ability to be involved in the nomination process.

Sources: The Mediation and Complaints-Handling Institution for Responsible Business Conduct (2012), Executive Order on a Mediation and Complaints-Handling Institution for Responsible Business Conduct, <https://businessconduct.dk/file/298160/executive-order-on-mediation.pdf>; OECD (2015), Denmark National Contact Point Peer Review Report, <https://mneguidelines.oecd.org/Denmark-NCP-Peer-Review-2015.pdf>

Another way to build and maintain impartiality by ensuring broad representations of interests in the NCP that is also available to single agency and interagency NCPs is to engage stakeholder representatives in an advisory body. This way of engaging stakeholder representation in the NCP is different from that of multi-stakeholder and expert-based NCPs, as stakeholders are not involved in NCP activities on a decision-making basis, and are generally less involved in the handling of specific instances.²⁸ Currently, 21 NCPs have an advisory body, which serve a dual purpose: they provide NCPs with additional expertise and they ensure a stronger connection to relevant actors in government or in society.²⁹ Through this, advisory bodies provide opportunities for the NCP to seek the support and build the confidence of stakeholders internally across government and externally with business, trade unions and civil society.³⁰ Yet for the advisory body to be effective in helping build and maintain impartiality in the NCP, governments should ensure that the membership represents all relevant interests and competences.³¹

Transparency in terms of which organisations stakeholders represent can also help address concerns over impartiality. For example, the Swiss NCP's advisory body is comprised of fourteen persons equally selected among employer associations, trade unions, business associations, NGOs, and academia. All members are appointed by the Federal Council personally in their capacity as experts, and are required to disclose their membership of organisations and this information is published.³² Moreover, where members of an NCP advisory body have an advisory role in the specific instance process, they could also be required to manage and prevent any potential conflicts of interest that may arise. For example, members of the Governance and Advisory Board of the Australian NCP are required to declare any conflict of interest that may arise in relation to a complaint or NCP functions more generally.³³ The declarations are recorded in a Register of Interests, which is tabled at each Board meeting, but is otherwise kept confidential by the NCP.

Beyond supporting impartiality through broad representation of interests and competences, advisory bodies can also support NCPs in building and maintaining impartiality by providing input on the conflict-of-interest strategy (see below). In particular, advisory bodies can help NCPs identify the various risks that

could arise in this regard, and the appropriate measures that the NCP could take to prevent or manage them.

3.2. Building and maintaining impartiality at the individual level

In addition to ensuring impartiality at the institutional level through careful management of their structure, governments should also ensure that NCP officials are put in a position to carry out their functions impartially, and are perceived as impartial in their individual capacity. This is particularly relevant as officials deal with specific instances, which the Guidelines explicitly note should be done impartially. Given the nature of the specific interest process and the number of different interests that are represented, there are understandably many situations in which NCP officials' private interests could intersect with their public duty. While these situations may not lead to an actual conflict of interest, each could be perceived as potentially influencing the NCP official's impartiality and therefore need to be managed and put to rest. Such examples could include, but are not limited to:

- The NCP official is a former employee of a company mentioned in a specific instance.
- A family member of the NCP official sits on the board of, or is employed by, the company mentioned in a specific instance
- The NCP official is part of the trade union that submitted the case
- The company mentioned in the specific instance is a member of the business association represented in the NCP
- The senior civil servant chairing the NCP has spoken in the press in support of a project that provides the context for a case before the NCP

It is worth noting that individual conflicts of interest are not 'bad' *per se*. No matter their function in government, individuals carrying out a public duty will always have conflicts of interest, given the impartiality requirements of public service and their own private interests. Moreover, conflict of interest, including perceptions, cannot be fully eliminated. However, with the right proactive policies and tools in place, it is possible to prevent many situations of conflict of interest from occurring, and if they do occur, to manage them. Implementing tools and process to prevent and manage (perceptions of) conflict of interest helps maintain confidence in the impartiality of the NCP process.

A core ingredient to building and maintaining impartiality at the individual level is to have a clear strategy in place on how to manage and prevent claims that an NCP official is subject to claims of an individual conflict of interest. Many governments already have such standards to support public officials and those working in a public capacity to ensure impartiality in their duties. For those NCP officials who are public officials, it is clear that they are covered by the public service values and regulations in place in the country. In many countries where NCPs are established, the standards for example set out obligations for public officials to declare their interests, and measures to be taken in case of a conflict. To support NCPs in adapting the broader government standards to their operations, the relevant integrity unit or officer in their administration is a useful resource. Integrity units or officers vary depending on the country, as do their exact roles, but can provide advice and guidance to public officials on managing and preventing situations or perceptions of bias or conflict of interest and can also provide advice on developing tailored rules on conflict of interest that account for the specific situations NCPs encounter.³⁴

Where NCP officials are not public officials, they are still responsible for preventing and managing conflicts of interest because they are carrying out a public duty. Some NCPs have clarified this responsibility by clearly specifying in their Rules of Procedure that members who are not civil servants are also covered by existing standards. For example, the Rules of Procedure for the Danish Mediation and Complaints-Handling Institution for Responsible Business Conduct clarify that "the members of the Institution are subject to the rules of the Danish Public Administration Act concerning legal disqualification."³⁵ Similarly,

the Rules of Procedure for the Norwegian NCP note that members are subject to the relevant section covering conflict of interest in the Norwegian Public Administration Act.³⁶

Some NCPs also clarify how standards on conflict of interest apply to members of their advisory body. For example, the UK NCP notes that all members of the UK NCP Steering Board (which include non-government officials) are required to abide by the Nolan Principles of Public Life and declare any potential private interests that may affect their impartiality.³⁷

Illustrative of the above, a specific impartiality challenge that NCPs have faced relates to current or former employment or professional connections of their members, e.g. when a case is filed by or against an organisation for which an expert NCP member has worked in the past. Whether warranted or not, the perception that that member has a conflict of interest, or will otherwise be partial to the interests of this organisation can lead to situations whereby the other party claims a loss of confidence in the process, and is unwilling to further engage in the process. While former employment is not as a rule a disqualifying factor, it is important to consider the potential impartiality concerns that may arise and deal with these in a transparent way. Box 3.5 presents a case study on policies that NCPs may consider to handle such situations. The example focuses on the case of a member of an expert-based NCP, but the discussion applies *mutatis mutandis* to other structures.

Box 3.5. Case study: handling impartiality concerns related to former employment of a member

The situation

An expert-based NCP receives a case from an NGO. One of the members of the NCP was formerly employed by the NGO, which handles issues related to human rights, the environment and anti-corruption. His area of expertise was environment, but he has not worked for the NGO for five years. The case concerns corruption and human rights issues, and the submitters of the case are individuals the NCP member did not work with previously.

The NCP accepts the case for further examination and informs the company of the case. The company responds with a letter, indicating that they have concerns over the NCP's impartiality, given the NCP member's former employment with the NGO.

Practices that may address the party's impartiality concerns:

An internal meeting to discuss the concerns and agree that there is no conflict of interest, even if the assessment is correct, may not be sufficient to dismiss the concern of the company, and NCPs may want to go more in-depth considering any credible impartiality challenge, e.g. by asking for the expert opinion of the ministry's integrity officer.

The integrity officer could provide a neutral and authoritative confirmation that there is no real or potential conflict of interest or other impartiality issue. In this case, the NCP could organise a meeting with the company and the integrity officer, to explain the reasons for this conclusion, based on the following facts:

- the NCP members employment ended five years before;
- the individuals who filed the case were not employed by the NGO when the NCP member was there; and
- the content of the case concerns issues that did not fall under the remit of the NCP member when he was an employee.

In this scenario, the company is less likely to lose confidence in the process, because the NCP addressed the potential impartiality concerns and engaged in a dialogue with the company, along with the integrity officer, to explain the decision.

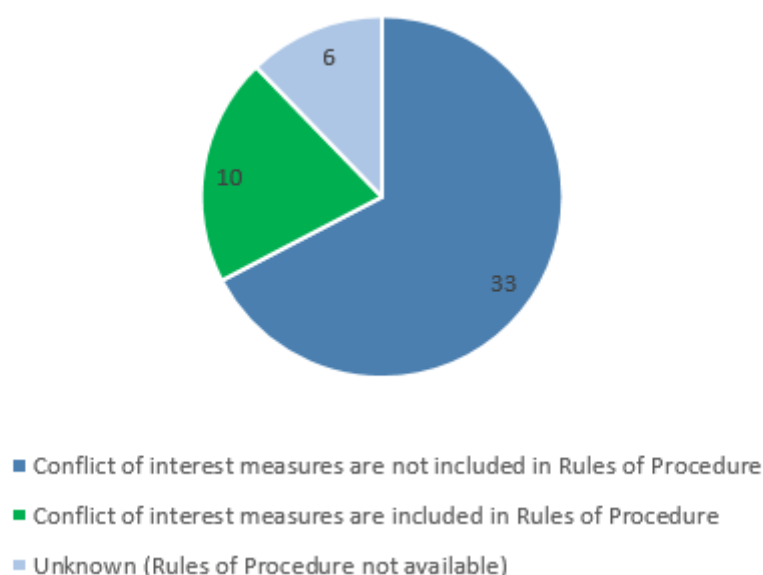
Going forward:

This case study explores an example where the NCP member's former employment did not put him in a conflict of interest situation. It is important to note that each specific instance will be different and will raise different impartiality concerns, with potentially different conclusions. For example, if the NCP member had left the NGO a year prior to receiving the case as an NCP member, there could be a higher risk of conflict of interest. Likewise, if the specific instance concerned issues related to files that the NCP member was formerly responsible for, there could be a higher risk of a conflict of interest. Therefore, having clear and transparent processes in place, as well as different mitigation measures that appropriately address the concerns related to the case at hand, can help mitigate impartiality challenges.

Beyond practices aimed at managing impartiality challenges such as those presented in Box 3.5, good practice collected by the OECD in the field of public integrity suggests that public agencies should adopt tailored rules to clarify in advance how this will be done. Such rules can include provisions as to what conflict of interest is, who is responsible for identifying and declaring a conflict of interest, when and how often, and what measures can be taken to prevent or manage claims that a conflict of interest exists.³⁸

This also applies to the very specific mandate of NCPs, and currently, ten NCPs have included measures on managing and preventing conflict of interest into their Rules of Procedure (see Figure 3.2 and Conflict of interest articles in NCP Rules of Procedure).

Figure 3.2. Measures included on managing and preventing conflict of interest in NCP Rules of Procedure

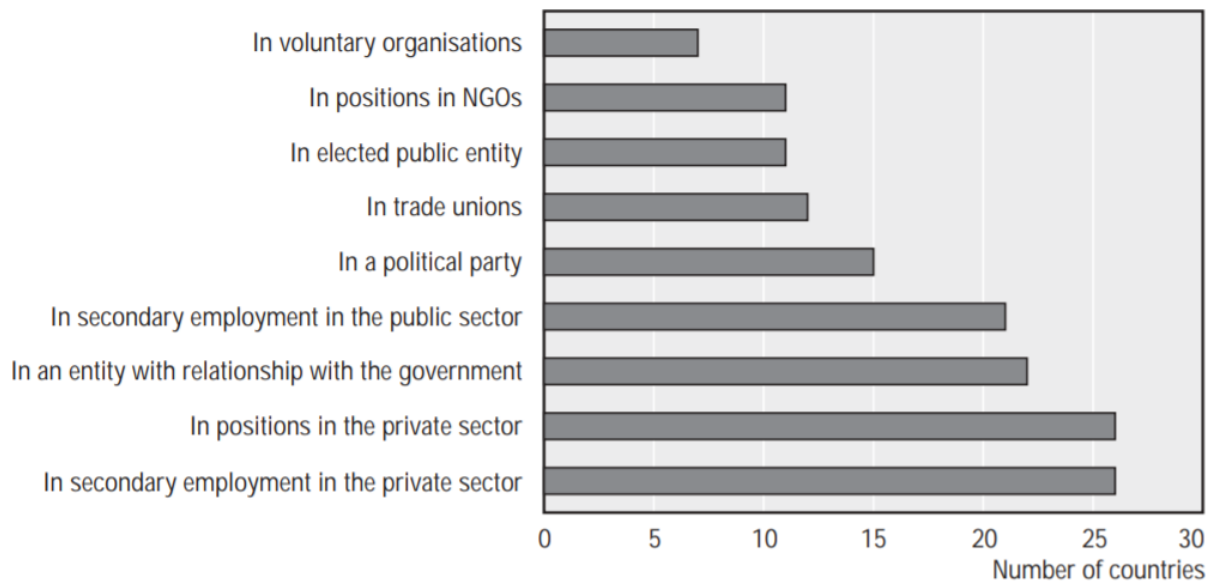


Note: The ten NCPs that have included provisions on managing and preventing conflict of interest in their Rules of Procedure are Australia, Denmark, Finland, France, Greece, Italy, Lithuania, Netherlands, Norway and Spain.

3.2.1. Defining conflict of interest situations

In terms of clarifying what conflict of interest is, there are two types of approaches: a descriptive approach (defining a conflict of interest in general terms) or a prescriptive one (defining a range of situations considered as being in conflict with public duties).³⁹ For example, in line with a prescriptive approach, Figure 3.3. identifies various types of external activities and positions that could be identified as leading to a potential conflict of interest if exercised by an NCP official.

Figure 3.3. Which external activities and positions are identified as holding potential for conflicts of interest for NCP officials?



Source: OECD (2003) *Managing Conflict of Interest in the Public Service: OECD Guidelines and Overview*, <https://www.oecd.org/gov/ethics/48994419.pdf>

In terms of concrete practice, the Spanish NCP's Rules of Procedure clarify the various situations that would lead to a conflict of interest with an NCP official. These include:

- Having a personal interest in the matter in question or in another matter whose resolution could be influenced by that of the NCP; being a director of the company or entity concerned, or having a litigation matter pending with any interested party.
- Being related by blood within the fourth degree or by affinity within the second degree to any of the interested parties, to the administrators of the entities or companies involved and also to the advisers, legal representatives or agents involved in the procedure, as well as sharing a professional office or being associated with them for the purpose of advice, representation or mandate.
- Having a close friendship or a manifest enmity with any of the persons mentioned in the previous section.
- Having intervened as an expert or witness in the proceedings in question.
- Having a service relationship with a natural or legal person directly interested in the matter, or having provided them with professional services of any kind and in any circumstance or place in the last two years.⁴⁰

3.2.2. Assigning responsibility for declaring (potential) conflict situations

All NCP Rules of Procedure clarify *who* is responsible for identifying a (potential) conflict of interest. For example, the rules of the Australian NCP explicitly note that the “Examiner and the Board are required to declare any conflict of interest that may arise...”⁴¹ Similarly, the NCP of Denmark obliges members to “inform the Mediation and Complaints-Handling Institution of any circumstances that may entail legal disqualification of the member concerned”.⁴²

Some NCPs also place responsibility on other members of the NCP to disclose any potential conflict of interest that may emerge regarding one of their colleagues – for example, both the French NCP and the Greek NCP note that “A member concerned or any other NCP member shall report...any perceived conflict of interest or actual conflict of interest”.⁴³ Similarly, in the case of the NCP of Denmark, the rules provide that “any of the other members of the Institution who are aware of such circumstances are obliged to inform the Institution thereof”.⁴⁴

Another feature is guidance on *when* NCP members should declare a conflict of interest: France, Greece, the Netherlands, Norway, Lithuania, Finland and Denmark clarify that declarations are made once a case is received (see Conflict of interest articles in NCP Rules of Procedure). The Australian NCP requires consideration on a case-by-case basis, but also requires the Examiner and Board to “declare any conflict of interest that may arise in relation to...AusNCP functions more generally”.⁴⁵

3.2.3. Identifying measures to manage claims of conflict

Several NCPs also clarify what measures will be taken to manage or prevent claims as to the existence of a conflict of interest. Good practice suggests applying measures to manage or resolve a conflict of interest that are proportionate to the functions occupied, and could include one or more of the following:

- Recusal of the public official from involvement in an affected decision-making process
- Restriction of access by the affected public official to particular information
- Transfer of the public official to duty in a non-conflicting function
- Re-arrangement of the public official's duties and responsibilities
- Assignment of the conflicting interest in a genuinely 'blind trust' arrangement.⁴⁶

Both the Danish and Dutch NCPs note that if a member has an actual case of conflict of interest, they will not be involved in handling the case – in other words, they will recuse themselves.⁴⁷ The Australian NCP's Rules of Procedure note that if there is a conflict of interest with a member of the Board, the Board member will be excluded.⁴⁸ For the Examiner, the Rules note that for example note “If the Examiner's conflict of interest cannot be managed, alternative arrangements will be made by the Secretariat in consultation with the Board to enable the complaint to be handled effectively”.⁴⁹

Importantly, to ensure a broad perception of impartiality and thereby facilitate confidence amongst the broader public, NCPs should consider communicating the above measures broadly amongst stakeholders (business, trade unions, CSOs) and to parties to the complaint.

4 Impartiality in practice: scenarios

Across the NCP system, there are different situations that may lead to challenges to the impartiality of the NCP or a member of the NCP. Preventing, and/or managing these challenges when they arise, requires understanding what potential bias or conflicts-of-interest look like, the tools that can be applied to address them, and how to use the different tools effectively.

Table 4.1 outlines different scenarios to help guide NCPs through the different tools. Some of the scenarios are fictitious but plausible, whereas others are adapted examples from real situations NCPs have encountered.

Each of these scenarios intentionally pause at the moment the specific instance is received to demonstrate that the NCPs should consider whether the specific instance presents any risk of real, potential or perceived bias or conflict of interest concerning itself or its members before it begins the initial assessment of the case.

Table 4.1. Scenarios

Scenario	What is the potential bias or conflict of interest?	What tools can the government or NCP apply to address the issue?
An interagency NCP receives a specific instance concerning a company where the sister-in-law of one of the NCP members is on the Board of Directors.	This scenario is an example of a real conflict of interest . If the NCP official concerned participates in handling the specific instance, there is a risk that he could act in a way or be seen as acting in a way that favours his sister-in-law's company. Any decision the NCP makes as a whole could be perceived as partial, given the familiar ties of the NCP member to the company in question.	To prevent the conflict of interest, the NCP official could: 1) have on record that he already raised the potential for this conflict of interest when he took up his duties and/or when his sister-in-law took up her position on the Board (if this occurred after). By already informing of the potential for a conflict-of-interest, contingency measures could be in place, such as recusal of the concerned NCP member and the appointment of an alternate. 2) if the NCP official had not already flagged this as a potential conflict of interest, they should notify the other members of the NCP and/or the Chair (as per the procedures outlined by the NCP) and/or their integrity officer when the specific instance is received. The NCP official could then recuse himself from the case, and an appropriate alternate be appointed to handle it.

<p>An NCP located in an investment promotion agency, receives a specific instance concerning a company that was recently provided support to open a new plant in the country.</p> <p>The official involved in providing this support is also in charge of reviewing the specific instance at the NCP.</p>	<p>This scenario is an example of an institutional conflict of interest, as the NCP member has dual and conflicting portfolios.</p> <p>Given the dual and conflicting portfolios, the NCP member will be faced with an impossible choice: carrying out an impartial review of a company that it recently agreed should be granted support to invest in their country. Given the financial interests at stake, there is a strong likelihood that stakeholders will view the NCP official as partial to the interests of the company.</p>	<p>1) The immediate conflict of interest would need to be managed: a non-conflicted person should be appointed by the NCP (if possible upon advice of the integrity officer) to handle the specific instance. This person would be someone who has not been involved in granting investment support to the company.</p> <p>2) To prevent a conflict of interest like this from occurring in the future, the NCP could be restructured. In particular, a firewall could be established around the NCP unit, with for example clear reporting lines, designated staff and resources, separate from any investment or trade promotion portfolio, and with access to an advisory body that represents all stakeholders.</p>
<p>A multipartite NCP receives a specific instance concerning environmental impacts of a company.</p> <p>The submitter of the case is a civil society organisation that is also a member of the NCP.</p>	<p>This scenario is an example of real conflict of interest: the CSO representative has a direct stake in the outcome of the case, and would therefore likely be partial to their interests/views as opposed to those of the company.</p>	<p>1) The immediate conflict of interest would need to be managed: the NCP should ask the representative of the CSO to recuse themselves from handling the specific instance and replace it with an alternate CSO to continue ensuring civil society representation on the NCP.</p> <p>2) To prevent a conflict of interest like this from occurring in the future: the NCP should include an appropriate process for declaring and handling real conflicts of interest affecting its member organisations or representatives.</p>
<p>The NCP Chair of a single-agency NCP was quoted in the press as praising the RBC efforts of a company.</p> <p>Later that year, the NCP receives a specific instance concerning the company's alleged misconduct under various chapters of the Guidelines.</p>	<p>This scenario is an example of a potential bias.</p> <p>There is the potential that stakeholders may perceive a bias towards the company, given that the NCP Chair publically praised the company.</p>	<p>The Chair should declare its past comments and explain the circumstances in which the comments were made to the NCP and the parties. If appropriate, the Chair may choose to recuse themselves and be replaced by an alternate or give assurances as to their impartiality (e.g. positive comments were made with regard to a specific action by the company and not in respect of their overall RBC performance).</p> <p>If the chair does not propose to recuse themselves and the parties still decide challenge the impartiality of the Chair, the NCP may seek the advice of the integrity officer.</p> <p>To prevent such situations from occurring in the future, the RoP of the NCP might request members to exercise restraint when speaking publicly about RBC issues or about individual companies or organisations.</p>

Notes

¹ Procedural Guidance, I and Commentary to the Procedural Guidance, paragraph 9

² Procedural Guidance, A.1.

³ Commentary to the Procedural Guidance, paragraph 11

⁴ OECD (2016) Implementing the OECD Guidelines for Multinational Enterprises: The National Contact Points from 2000 to 2015, <http://mneguidelines.oecd.org/OECD-report-15-years-National-Contact-Points.pdf>

⁵ OECD Guidelines for Multinational Enterprises (2011), Procedural Guidance, Section I, paragraph C.

⁶ Procedural Guidance, C

⁷ Commentary to the Procedural Guidance, paragraph 22

⁸ Procedural Guidance Commentary, I.10

⁹ See for example the statement from [Business at OECD \(BIAC\) comments on the Secretariat paper on the 20th anniversary of the NCP system](#); TUAC's [National Contact Point Best Practices](#); and OECD Watch's [A "4x10" plan for why and how to unlock the potential of the OECD Guidelines through effective National Contact Points](#).

¹⁰ Numerous international standards, including the [United Nations Convention against Corruption \(UNCAC\)](#), the [OECD Recommendation on Guidelines for Managing Conflict of Interest in the Public Service](#), the [OECD Recommendation on Public Integrity](#), set out guidelines for governments on implementing measures to prevent and manage conflict of interest in the public sector. See also G20 (2018) [G20 High-Level Principles for Preventing and Managing Conflicts of Interest in the Public Sector](#) and World Bank, OECD and UNODC (2020), [Preventing and Managing Conflicts of Interest in the Public Sector: Good Practices Guide](#)

¹¹ Chandler, D. and Munday, R. (2011), *A Dictionary of Media and Communication*, Oxford: Oxford University Press, p. 213.

¹² OECD (2003), Managing Conflict of Interest in the Public Service: OECD Guidelines and Overview, <https://doi.org/10.1787/9789264104938-en>

¹³ OECD (2003), Recommendation of the Council on OECD Guidelines for Managing Conflict of Interest in the Public Service, <https://legalinstruments.oecd.org/en/instruments/OECD-LEGAL-0316#dates>

¹⁴ A real conflict of interest exists when there is a conflict between the public duty and private interests of individual, in which their private-capacity interests could improperly influence the performance of their official duties and responsibilities. A potential conflict of interest exists when an individual has private interests that could lead to a conflict if they were to become involved in relevant (e.g. conflicting) responsibilities in the future. A potential conflict of interest rests on the idea of foreseeability – e.g. there is the possibility that the official's private interest could lead to a conflict should their public duty and private interest collide in the future. A perceived conflict of interest exists when it appears that an individual's

private interests could improperly influence the performance of their public duties but this is not in fact the case.

¹⁵ OECD (2003), *Managing Conflict of Interest in the Public Service: OECD Guidelines and Overview*, <https://doi.org/10.1787/9789264104938-en>

¹⁶ Procedural Guidance, I.A.1

¹⁷ OECD (2018), *Structures and Procedures of National Contact Points for the OECD Guidelines for Multinational Enterprises*

¹⁸ See for example Newton, Alex (2017) *Independent Review: Australian National Contact Point under the OECD Guidelines for Multinational Enterprise*, https://media.business-humanrights.org/media/documents/files/documents/NCP_Review_Final_Report.pdf, pp. 25-27. In this regard, the Investment Committee clarified that the responsibility of NCPs in specific instances was limited to reviewing company conduct, and did not include reviewing government policy. See OECD (2018), *Response by the Investment Committee to the Substantiated Submission by OECD Watch Regarding the Australian National Contact Point* [DAF/INV(2018)34/FINAL]

¹⁹ OECD (2020), *National Contact Points for RBC: Providing Access to Remedy – 20 Years and the Road Ahead*, <http://mneguidelines.oecd.org/NCPs-for-RBC-providing-access-to-remedy-20-years-and-the-road-ahead.pdf>

²⁰ Swiss NCP for the OECD Guidelines for Multinational Enterprises (2016), *Criteria for the selection of external mediators*

²¹ For example, the Centre for Effective Dispute Resolution (CEDR) has laid out a conflict of interest policy that requires their mediators to actively disclose any matter that may be considered an actual, perceived or potential conflict of interest, and to refrain from taking a case where there could be a conflict. The policy is located on their website at <https://www.cedr.com/wp-content/uploads/2019/10/Conflicts-of-Interest-Policy-2019-1.pdf>

²² Commonwealth of Australia website (2020), *Independent Examiner*, <https://ausncp.gov.au/about/independent-examiner>

²³ Commentary on the Procedural Guidance, I.10

²⁴ GOV.UK. (2019), *Department for International Trade single departmental plan*, <https://www.gov.uk/government/publications/department-for-international-trade-single-departmental-plan/department-for-international-trade-single-departmental-plan--2>

²⁵ Procedural Guidance, Paragraph 11

²⁶ OECD (2019), *Guide for National Contact Points on Structures and Activities*, OECD Guidelines for Multinational Enterprises

²⁷ France National Contact Point (2019), *French NCP Bylaws*, <https://www.tresor.economie.gouv.fr/Institutionnel/Niveau3/Pages/c9f2b997-c9ba-4850-b776-4d366b593c38/files/fe8042cc-1c87-441f-b144-0893d56fe477>

²⁸ OECD (2019), *Guide for National Contact Points on Structures and Activities*, OECD Guidelines for Multinational Enterprises

²⁹ OECD (2019), *ibid*

³⁰ OECD (2019), *ibid*

³¹ OECD (2019), *ibid*

³² Based on input from the Swiss NCP

³³ Australia NCP (2019), Australian National Contact Point Complaint Procedures, https://ausncp.gov.au/sites/default/files/2020-10/AusNCP-Procedures_10-2020.pdf

³⁴ For more on the role of integrity bodies or units, see Chapter 2: Responsibilities in OECD (2020) Public Integrity Handbook, <https://www.oecd.org/corruption-integrity/reports/oecd-public-integrity-handbook-ac8ed8e8-en.html>

³⁵ See Article 6, Legal Disqualification in NCP Denmark (2012), Rules of Procedure: The Mediation and Complaints-Handling Institution for Responsible Business Conduct, <https://businessconduct.dk/file/351979/rules-of-procedure-the-mediation-and-complaints-handling-institution-for-responsible-business-conduct.pdf>

³⁶ See section on Key Principles in Norwegian National Contact Point (2013), Procedural Guidelines for Handling Complaints, <https://www.responsiblebusiness.no/files/2013/12/NCP-Norway-Procedural-Guidelines.pdf>

³⁷ See Article 5, Conflicts of Interest, in UK NCP (2020), UK National Contact Point (UK NCP) Steering Board: Terms of Appointment, <https://www.gov.uk/government/publications/uk-national-contact-point-steering-board-terms-of-reference-and-role/uk-national-contact-point-ncp-steering-board-terms-of-appointment>

³⁸ See for example OECD (2005), Managing Conflict of Interest in the Public Sector: A Toolkit, OECD Publishing, Paris, <https://doi.org/10.1787/9789264018242-en> and OECD (2020), OECD Public Integrity Handbook, OECD Publishing, Paris, <https://doi.org/10.1787/ac8ed8e8-en>.

³⁹ OECD (2020), OECD Public Integrity Handbook, OECD Publishing, Paris, <https://doi.org/10.1787/ac8ed8e8-en>.

⁴⁰ See Article 11.2 in Spain NCP (2015), Rules of Procedure for Resolving Specific Instances, https://www.mites.gob.es/ficheros/rse/documentos/pnc/c_GuiaProcedimientoPNC.pdf

⁴¹ See Article 10.6 in AusNCP (2019), Rules of Procedure, https://ausncp.gov.au/sites/default/files/2020-10/AusNCP-Procedures_10-2020.pdf

⁴² See Article 6, Legal Disqualification in NCP Denmark (2012), Rules of Procedure: The Mediation and Complaints-Handling Institution for Responsible Business Conduct, <https://businessconduct.dk/file/351979/rules-of-procedure-the-mediation-and-complaints-handling-institution-for-responsible-business-conduct.pdf>

⁴³ See Article 41 in NCP France (2019), French NCP Bylaws, <https://www.tresor.economie.gouv.fr/Articles/70f2093a-e29e-471e-a31e-78fd9b5aafef/files/c7da8779-9a54-4b67-b12e-6282f7282324> and Section II.1 in Greek NCP (2020), Rules of Procedure

⁴⁴ See Article 6, Legal Disqualification in NCP Denmark (2012), Rules of Procedure: The Mediation and Complaints-Handling Institution for Responsible Business Conduct, <https://businessconduct.dk/file/351979/rules-of-procedure-the-mediation-and-complaints-handling-institution-for-responsible-business-conduct.pdf>

⁴⁵ See Article 10.6 in AusNCP (2019), Rules of Procedure, https://ausncp.gov.au/sites/default/files/2020-10/AusNCP-Produres_10-2020.pdf

⁴⁶ Adapted from OECD (2003), Recommendation of the Council on OECD Guidelines for Managing Conflict of Interest in the Public Service, <https://legalinstruments.oecd.org/en/instruments/OECD-LEGAL-0316#dates>

⁴⁷ See Article 6, Legal Disqualification in NCP Denmark (2012), Rules of Procedure: The Mediation and Complaints-Handling Institution for Responsible Business Conduct, <https://businessconduct.dk/file/351979/rules-of-procedure-the-mediation-and-complaints-handling-institution-for-responsible-business-conduct.pdf> and definition of impartiality in Dutch NCP (2018), Specific instance procedure - Dutch National Contact Point OECD Guidelines for MNE's, <https://www.oecdguidelines.nl/notifications/documents/publication/2018/12/05/dutch-specific-instance-procedure>.

⁴⁸ See Article 10.6 in AusNCP (2019), Rules of Procedure, https://ausncp.gov.au/sites/default/files/2020-10/AusNCP-Produres_10-2020.pdf

⁴⁹ See Article 10.6 in AusNCP (2019), Rules of Procedure, https://ausncp.gov.au/sites/default/files/2020-10/AusNCP-Produres_10-2020.pdf

Annex A. Conflict of interest articles in NCP Rules of Procedure

NCP	Relevant article in Rules of Procedure
Australia ¹	Article 10.6 The Examiner and Board are required to declare any conflict of interest that may arise in relation to a complaint or AusNCP functions more generally. Where a Board member has a conflict of interest, the Board will agree suitable measures to manage the conflict which may include excluding the member from discussions or correspondence about the complaint or issue in question. If the Examiner's conflict of interest cannot be managed, alternative arrangements will be made by the Secretariat in consultation with the Board to enable the complaint to be handled effectively
Denmark ²	<p>Article 6. Legal Disqualification</p> <p>On conducting their activities on behalf of the Mediation and Complaints-Handling Institution, the members of the Institution are subject to the rules of the Danish Public Administration Act concerning legal disqualification.</p> <p>A member is obliged to inform the Mediation and Complaints-Handling Institution of any circumstances that may entail legal disqualification of the member concerned, just as any of the other members of the Institution who are aware of such circumstances are obliged to inform the Institution thereof.</p> <p>A member may not take part in the consideration of an actual case if there are concrete circumstances that may be of a nature than can give rise to doubt concerning the impartiality of the person concerned.</p> <p>The Mediation and Complaints-Handling Institution takes decisions concerning a member's legal disqualification, and thereby on whether the member in question may take part in the consideration of cases, on the basis of the concrete case. The member concerned may not take part in the consideration of and decision on the issue of legal disqualification of that member.</p>
Finland ³	When the Committee handles complaints, its members are subject to personal liability for acts in office. The members form their views independently, without consulting their own organisation, and members handle the information concerning complaints on a confidential basis. Members also evaluate whether they have a conflict of interest. If a member has a conflict of interest, they need to remove themselves and cannot participate in the complaint process.
France ⁴	Article 41: [...] A member concerned or any other NCP member shall report, on a case-by-case basis, any perceived conflict of interest or actual conflict of interest which may lead to a lack of impartiality that could have an effect on the handling of the specific instance. The member concerned shall assess whether his/her presence is likely to be detrimental to the impartial handling of the specific instance or whether he/she should stand down. Should he/she see fit, the NCP Chair may arrange for a discussion of cases of perceived conflicts of interest

Greece ⁵	All efforts will be made to ensure that the staff can devote sufficient time to NCP activities, that conflicts of interest between its various duties are avoided and that impartiality is guaranteed. Impartiality being one of the criteria for handling specific instances, the NCP member concerned, or any NCP member shall report, on a case-by-case basis, any perceived or actual conflict of interest which may lead to a lack of impartiality that could have an effect on the handling of the specific instance. The member concerned shall assess whether his/her presence is likely to be detrimental to the impartial handling of the specific instance or whether he/she should stand down. Should he/she see fit, the NCP Chair may arrange for a discussion of cases of perceived conflicts of interest.
Italy ⁶	Each member of the Committee is required to communicate possible situations of conflict of interest pursuant to national legislation
Lithuania ⁷	Article 20. An initial assessment of the complaint shall be carried out by the NCP independent experts with the support of the NCP Secretariat. Upon the receipt of the complaint Lithuanian NCP will first determine whether any members of the independent experts or the secretariat can be deemed to be disqualified from participating in the further consideration of the case on grounds of conflict of interest.
Netherlands ⁸	Impartiality means that at all times the NCP will be neutral and will avoid any appearance of partiality in its contacts with stakeholders, the consideration of specific instances and its promotional activities. If one of the independent members of the NCP has a stake in one of the parties involved with a specific instance, the member NCP will notify the NCP of this and he/she will not be involved in this specific instance.
Norway ⁹	The NCP will first determine whether any members of the expert panel or the secretariat can be deemed to be disqualified from participating in the further consideration of the case on grounds of conflict of interest. Note: the Rules of Procedure also note that the NCP is subject to the impartiality provisions under Chapter II, section 6 of the Norwegian Public Administration Act. This section lays out the interests that may lead to disqualification, the scope of disqualification, and measures to be taken if a member is disqualified. This section also specifies that it applies to any person who performs services or work for an administrative agency. ¹⁰

Spain¹¹

11.1. Members of the NCP who meet any of the conditions set out in the following point shall refrain from participating in the procedure and shall inform the NCP Chairperson and, in his/her absence, the Vice-Chairperson, who shall take the appropriate action.

11.2. The following are grounds for abstention for NCP members:

- Having a personal interest in the matter in question or in another matter whose resolution could be influenced by that of the NCP; being a director of the company or entity concerned, or having a litigation matter pending with any interested party.
- Being related by blood within the fourth degree or by affinity within the second degree to any of the interested parties, to the administrators of the entities or companies involved and also to the advisers, legal representatives or agents involved in the procedure, as well as sharing a professional office or being associated with them for the purpose of advice, representation or mandate.
- Having a close friendship or manifest enmity with any of the persons mentioned in the previous section.
- Having intervened as an expert or witness in the proceedings in question.
- Having a service relationship with a natural or legal person directly interested in the matter, or having provided them with professional services of any kind and in any circumstance or place in the last two years.

11.3. The actions of authorities and personnel in the service of the Public Administrations in which there are grounds for abstention shall not necessarily imply the invalidity of the acts in which they have intervened.

11.4. The NCP chairperson may ask persons in any of the above circumstances to refrain from any involvement in the case file.

11.5. Failure to abstain in appropriate cases will result in liability.

11.6. Challenge of NCP members

- In the cases foreseen in point 11.2, an objection may be raised by the interested parties at any time during the procedure.
- The objection shall be made in writing, stating the reason(s) for the objection.
- Within the next day, the challenged person shall inform the Chairman of the NCP whether or not the ground(s) of challenge is/are present. In the first case, the Chairperson may immediately request his or her replacement from the authority which appointed him or her.
- If the reason for disqualification is denied, the appointing authority shall take a decision within three days, after such reports and verifications as it deems appropriate.
- No appeal shall lie against decisions taken in this matter, without prejudice to the possibility of invoking the objection when lodging the appropriate appeal against the act terminating the procedure.

11.7. In the case of members of the Advisory Board, if they are involved in any of the cases provided for in point 11.2, they should notify the President of the NCP, who shall decide on their abstention from the procedure, and may request the institution that appointed them to appoint another person.

Notes

¹ Australia NCP (2019), Australian National Contact Point Complaint Procedures, https://ausncp.gov.au/sites/default/files/2020-10/AusNCP-Procedures_10-2020.pdf

² NCP Denmark (2012), Rules of Procedure: The Mediation and Complaints-Handling Institution for Responsible Business Conduct, <https://businessconduct.dk/file/351979/rules-of-procedure-the-mediation-and-complaints-handling-institution-for-responsible-business-conduct.pdf>

³ Ministry of Economic Affairs and Employment in Finland (2019), Procedure for Submitting and Processing Complaints Regarding the OECD Guidelines, <https://tem.fi/documents/1410877/3104828/OECD+complaint+procedure.pdf/ac4a1aa9-1bbf-16d3-5db0-57d8a6cd1475/OECD+complaint+procedure.pdf>

⁴ France NCP (2019), French NCP Bylaws, <https://www.tresor.economie.gouv.fr/Articles/70f2093a-e29e-471e-a31e-78fd9b5aafef/files/c7da8779-9a54-4b67-b12e-6282f7282324>

⁵ NCP Greece (2020), Rules of Procedure, link not available

⁶ Italian NCP (2019), Handbook for the management of the specific instances submitted to the Italian National Contact Point, https://pcnitalia.mise.gov.it/attachments/article/2035924/Handbook%20procedures%20instances%20EN_2019.pdf

⁷ Lithuania NCP (2017), Rules of Procedure for Handling Specific Instances, <https://nkc.lrv.lt/uploads/nkc/documents/files/English/Rules%20of%20procedure%20Lithuania%20NCP.pdf>

⁸ Dutch NCP (2018), Specific instance procedure - Dutch National Contact Point OECD Guidelines for MNE's, <https://www.oecdguidelines.nl/notifications/documents/publication/2018/12/05/dutch-specific-instance-procedure>

⁹ Norwegian National Contact Point (2013), Procedural Guidelines for Handling Complaints, <https://www.responsiblebusiness.no/files/2013/12/NCP-Norway-Procedural-Guidelines.pdf>

¹⁰ See Chapter II, section 6 of the Norwegian Public Administration Act (1967), <https://app.uio.no/ub/ujur/oversatte-lover/data/lov-19670210-000-eng.pdf>

¹¹ Spain NCP (2015), Rules of Procedure for Resolving Specific Instances, https://www.mites.gob.es/ficheros/rse/documentos/pnc/c_GuiaProcedimientoPNC.pdf

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