

**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
INVESTMENT COMMITTEE**

**Annual Meeting of the National Contact Points for the OECD Guidelines for
Multinational Enterprises**

**SUMMARY OF THE WORKSHOP WITH LATIN AMERICAN NCPs HELD
ON 13-14 NOVEMBER 2014**

*This document contains the summary of a workshop with Latin American NCPs held on 13-14 November 2014.
It is circulated to Delegates for information.*

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MEDIATION AND THE PROBLEM-SOLVING ROLE OF NATIONAL CONTACT POINTS

A WORKSHOP WITH LATIN AMERICA NCPs

13-14 November 2014

SUMMARY

1. National Contact Points (NCPs) from Argentina, Brazil, Chile, Colombia, Costa Rica and Mexico gathered in Santiago for a 2-day workshop in November about mediation and the problem-solving role of NCPs. Cristina Tébar Less from the OECD Secretariat participated throughout the workshop.
2. The workshop had two objectives: 1) Offer participants greater understanding about mediation and dispute resolution processes in the context of the NCPs and their mandate, and 2) Generate new ideas and strategies for promoting the OECD Guidelines and the NCPs in Latin America.
3. The workshop, led by the Consensus Building Institute under a contract with the OECD, and hosted by the Chilean NCP, combined presentations with group discussions, exercises and role play.

Understanding the roles NCPs play

4. Participants began the workshop with a discussion about the multiple roles of NCPs as: promoters of the Guidelines; conveners of parties around a special instance; facilitators of problem-solving processes; and potentially assessors whether corporate actions are consistent with the guidelines.

⇒ Key insights: Some parties seek NCPs to play the role of judge, and yet NCPs consider their mandate is to facilitate problem-solving, not cast judgment. NCPs feel most comfortable in a problem-solving role. NCPs should seek to communicate well the role they are called to play.

Assisted Negotiation – A working theory to guide problem-solving processes

5. Participants used a negotiation role-play to illustrate core concepts of a Mutual Gains Approach to Assisted Negotiation, a working theory to guide NCPs in their problem-solving role.

⇒ Key insights: Interests versus positions: Areas of agreement open up when parties are able to shift from focusing on demands and positions to their underlying interests and needs. Alternatives: Parties come to the table and stay at the table because they consider it better than their alternatives

away from the table. NCPs can help parties reflect on their alternatives and the value of being at the table. Creating value: In the role play, players could get outcomes that were better for both parties if they continued exploring options and interests. The key message of the exercise was “We need to create opportunities for parties to do this exploration, and seek “wise trade-offs” that leave everyone better off”.

Communicating the value of the NCP process

6. Using a realistic scenario, participants practiced communicating the NCP process to a company that was the subject of a specific instance.

⇒ Key insights: Confusion: The NCP process and role can be confusing to companies, in particular companies that are already dealing with the same issues in different venues (such as the courts). NCPs need to clarify for themselves how they might add value to a situation, and be effective communicators on their role and value added. Voluntary guidelines? The Guidelines are “voluntary” in the sense they are not law, nor is there a legal enforcement mechanism. However, governments have committed to promoting the Guidelines among companies operating in or from their countries, and that commitment is not voluntary. NCPs therefore have a clear mandate and a role to play.

Initial assessment and tools for helping parties reach agreement

7. Over the course of two sessions, participants compared experience in handling the initial assessment phase, and also explored tools for helping parties reach agreement, such as joint fact-finding and contingent agreements.

⇒ Key insights: Initial assessment: NCPs have different procedures, and will likely continue to have different procedures. Some NCPs don’t contact the company prior to determining whether to accept a specific instance. Other NCPs do. A key challenge is understanding how much information is needed to accept a specific instance.

Coordination among NCPs

⇒ Key insights: NCPs need to coordinate more, and have fluid relationships. There was extensive discussion about how NCPs should assign leadership and roles in specific instances that involve multiple countries. In general participants agreed that NCPs should 1) seek to understand the objectives of the party that submitted the specific instance (e.g. if they are looking for corporate policy changes it makes sense to deal with the issue in the home country), 2) consult with the party before transferring leadership of the specific instance to another NCP, 3) work in a coordinated fashion regardless of which NCP has the lead. Participants raised the problem of non-functional NCPs, that exist in name only but have no real capacity or resources to fulfill their mandate, and thus, to effectively co-operate when solicited by other NCPs.

Promoting the Guidelines and NCPs

⇒ Participants discussed and shared ideas, such as seminars, proactive meetings with interest groups, developing clear materials, coverage in the press and on social networks, and coordination with

other initiatives related to responsible business conduct , such as the ILO, GRI, Global Compact etc.

Next Steps

8. Participants agreed to taking proactive steps to maintain a peer network, including:
 - Take advantage of meetings in Paris to have regional and bi-lateral meetings
 - Have periodic contact, e.g., through video-conferences, to share updates and experiences
 - Share documents that have been translated into Spanish, so each NCP doesn't have to translate them
 - Hold a regional event that includes stakeholders, such as unions, companies and NGOs
 - Share updates bi-weekly via email. NCPs would take turns being in charge of keeping the communication going.
 - Work together on the pro-active agenda

How can the OECD Secretariat support NCPs in Latin America?

9. At the request of the OECD Secretariat, participants suggested a variety of ways that the Secretariat can support NCPs in the region.
 - Promote the role of NCPs among ministers and high-level government officials
 - Assist in addressing the challenge of managing the tension between confidentiality and transparency in NCP processes.
 - Establish clearer guidelines for coordination between NCPs.
 - Create forums for NCPs to discuss the tricky issue of what kind of “remedy” is appropriate as an outcome to NCP processes – for instance, is it appropriate for NCPs to be involved in processes where monetary restitution is being requested?
 - Create forums to discuss the implications of different institutional arrangements of NCPs.

WORKSHOP PARTICIPANTS

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Teresa Corrales	Chile
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