

To: Finland National Contact Point & OECD Centre for Responsible Business Conduct  
From: OECD Watch  
Date: 17 April 2024  
Re: OECD Watch submission to the 2024 Peer Review of NCP Finland

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OECD Watch welcomes NCP Finland's willingness to undergo a peer review to improve the NCP's effectiveness in promoting the OECD Guidelines for Multinational Enterprises on Responsible Business Conduct (Guidelines) and contributing to resolving irresponsible business conduct by multinational enterprises (MNEs) in specific instances. We appreciate the opportunity to provide input into this peer review.

This submission focuses on NCP Finland's [Procedure for submitting and processing complaints regarding the OECD Guidelines](#) (Complaint Procedure), which was updated in March 2024. When compared to the NCP's [August 2019 Complaint Procedure](#), significant updates have been made to the revised Complaint Procedure. This submission highlights strengths as well as areas for the Complaint Procedure's improvement of particular concern to OECD Watch. Recommendations are also included in relation to these issues.

We also direct the NCP, the Finnish government, and the peer reviewers to [OECD Watch's most recent evaluation of NCP Finland](#).<sup>1</sup> Our evaluation also highlights aspects of the NCP's communications and organisational structure that do and do not meet civil society's expectations for NCPs.

### **NCP Finland's Complaint Procedure**

Much of the Complaint Procedure aligns with the minimum requirements in the updated Procedures for NCPs, including in relation to complaint-handling timelines and the stages of the complaint process. The requirement for members of the Committee on Corporate Social Responsibility (CSR Committee) to assess whether they have a conflict of interest in complaints and recuse themselves if they do is a positive addition to the revised Complaint Procedure (Section 8). Ensuring that there are no actual or perceived conflicts of interest when handling complaints is important to ensure complainants trust the NCP and its process, and that the process is accountable, impartial, and equitable.

Critically, the Complaint Procedure also emphasises the importance of transparency and the requirement for the NCP "make the parties to the complaint aware of all relevant facts and arguments brought to the NCP by other parties" (Section 3). Transparency is also emphasised by the statement that while parties may request confidentiality in limited circumstances, "whole documents cannot remain confidential because the general rule is that both parties are informed of all material provided to the NCP", and the parties may publicly communicate about the stage of the complaint process and publish their own initial submission (Section 7). Transparency is a core criterion for NCPs and critical to ensuring a predictable, impartial, and equitable complaint process. Complainants must have access to all information relevant to the complaint to avoid power imbalances. In OECD Watch's view, all NCPs should ensure that documents shared by a company during the proceedings are shared with the complainants, allowing redaction only for the personal identities of parties for security/privacy reasons or legitimately sensitive business information. It is particularly important that any decisions or statements made by the NCP are based on information that all parties have access to.

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<sup>1</sup> OECD Watch's NCP evaluations were last updated in 2021 and do not reflect recent updates to the Finnish NCP's website or Complaint Procedure. OECD Watch is currently in the process of updating our indicators and evaluations to reflect the new standards for NCPs in the 2023 version of the Guidelines.

Section 3 of the Complaint Procedure also includes an obligation for the Finnish NCP to address the risk of reprisals against parties to a complaint, which is set out in the Procedures for NCPs. While it is positive that this is included in the revised Complaint Procedure, OECD Watch urges the Finnish NCP, as well as all NCPs, to develop their own reprisals policy. In OECD Watch's view, NCPs should proactively proclaim zero tolerance for reprisals against complainants and assess and implement measures to prevent and respond to, (risks of) reprisals, and/or have a policy commitment (including in their case-handling procedures or a separate document) to do so. Intimidation and reprisals against complainants can often prevent complainants from filing a complaint or from being able to participate fully in the process. Ensuring that the NCP has a robust policy and practice to address the risk of reprisals against complainants is particularly important given that attacks against human and environmental rights defenders continue to rise. Publishing and implementing a robust policy also helps ensure accessibility of the NCP mechanism by discouraging retaliation, encouraging complainants to report reprisals, and allowing preventative and responsive action by the NCP.

Some aspects of the Complaint Procedure diverge from the requirements in the Procedures for NCPs. OECD Watch urges the Finnish NCP to reconsider these issues and align the Complaint Procedure with the text in the Procedures.

- Section 5.2 outlines the conditions in which complaint parties may supplement their statements throughout the good offices stage. The NCP's requirement that "Supplements to the complaint should, however, be kept within the scope of the original complaint" extends beyond the Procedures for NCPs, which includes no such requirement. In OECD Watch's view, this element of the Complaint Procedure is too restrictive and contrary to the core criterion of accessibility.
- Section 6 of the Complaint Procedure states: "In the event that it is apparent that the complaint will not proceed to further examination, the [Committee on Corporate Social Responsibility] may process the complaint directly without the appointment of a subcommittee. This may be appropriate, for example, when the complaint does not have linkage to the OECD Guidelines or when the Finnish NCP is not the appropriate body to process the complaint." In OECD Watch's view, it is inappropriate and not in conformity with the Procedures for NCPs for complaints to be processed in this way. The examples provided for the Committee to summarily dismiss complaints are in fact criteria that the Finnish NCP must consider as part of its initial assessment – not as part of an additional preliminary assessment of the admissibility of the complaint. OECD Watch strongly recommends that this text be removed from the Complaint Procedure and that all complaints be handled in the manner set out in the Procedures for NCPs (that is, with the admissibility of all cases being considered at the initial assessment stage). This is essential to ensure that stakeholder confidence in the NCP – and that the NCP is compatible with the Guidelines and predictably handles complaints.
- Section 7 refers to confidentiality during the proceedings: "In particular, the NCP will inform parties, particularly at the outset of the process, that they may not disclose at any time facts and arguments shared during the proceedings by the other party or by the NCP itself (including where relevant an external mediator or conciliator) that is not already in the public domain without the consent of the other party or the NCP respectively." Such confidentiality should only be required after the complaint has been accepted by the NCP in its initial assessment and the parties have accepted the NCP's offer of good offices. OECD Watch recommends that this section be amended to reflect this.

Finally, OECD Watch understands that the update to the Complaint Procedure was undertaken in consultation with the Committee on Corporate Social Responsibility, but not as part of a wider public consultation. In OECD Watch's view, it is crucially important that NCPs consult with a broad range of stakeholders when updating their case-handling procedures. In addition to informing stakeholders about the updated Guidelines, the NCP should solicit their expert opinions on strengthening its work and drafting its procedures. In future, OECD Watch urges NCP Finland to consult both the Committee on Corporate Social Responsibility and the broader public as part of its review and update of the Complaint Procedure.

### Contact details

For questions or clarification on this submission, please contact the OECD Watch Secretariat.

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