

Evaluation of the Netherlands National Contact Point (NCP) 2012-2018

Terms of Reference, 13 June 2018

1. Background

In 2020, the Policy and Operations Evaluation Department (IOB) of the Ministry of Foreign Affairs (MFA) will review all policies under the heading of “sustainable trade and investments” – article 1 of the budget for Foreign Trade and Development Cooperation (BHOS). One of the building blocks for this review is an evaluation of the Dutch International Corporate Social Responsibility (ICSR) policy, to be completed in 2019.¹ This policy, coordinated by MFA, aims to promote compliance of Dutch companies with the [OECD Guidelines for Multinational Enterprises](#)² and improve access to remedy, also in line with the [UN Guiding Principles for Business & Human Rights](#)³.

The evaluation of the Dutch ICSR policy reviews various instruments and policies of the Dutch government. It focuses on the development of voluntary agreements (sector covenants), frameworks for private-sector instruments and procurement, guidelines for Netherlands embassies and the role of the Netherlands in international platforms and initiatives, but also reviews other activities such as subsidies to NGOs and other organisations that promote international corporate social responsibility (e.g. CSR Netherlands and the Netherlands Enterprise Agency). The evaluation builds on desk research, interviews and focus groups in the Netherlands, a survey among Dutch embassies (and possibly Dutch companies), interviews with international organisations (such as ILO, WTO, EU, OECD and UN) and four country studies (Bangladesh, Colombia, Ethiopia and India). The evaluation aims to provide insight in the effectiveness, efficiency and relevance of policy instruments as well as the coherence *between* policy instruments.

In this document we present the Terms of Reference (ToR) for the evaluation of the Netherlands National Contact Point (NCP). This evaluation can be seen as a building block for the evaluation of the ICSR policy (2019) and the sustainable trade and investments policy review (2020). The NCP plays an important role in promoting compliance with the OECD Guidelines and improving access to remedy.

2. The Netherlands National Contact Point (NCP)

As stated in the OECD Guidelines for Multinational Enterprises (2011), the role of National Contact Points is to “further the effectiveness of the guidelines” (p. 71). All governments adhering to the OECD Guidelines have to establish an NCP.

The revised government decree on the establishment of the NCP ([NCP Establishment Order](#), 2014) provides insight in how the Dutch government has given substance to this obligation.⁴ This decree defines two tasks, in line with the OECD Guidelines:

1. To promote and interpret the content and meaning of the OECD Guidelines for Multinational Enterprises, so as to encourage enterprises to observe them;
2. To deal with notifications of alleged instances of non-observance of the Guidelines (or parts thereof) and to facilitate a dialogue in order to resolve alleged instances of non-observance of the Guidelines (or parts thereof). *Hereafter referred to as “notifications”.*

¹ See [Terms of Reference](#).

² Often referred to as “the OECD Guidelines”.

³ UNGPs.

⁴ Also see the [letter to parliament](#) (2014). Note that the Netherlands National Contact Point was already founded in 2000.

The revised decree and the accompanying explanatory notes introduce some changes in the mandate and governance of the Netherlands NCP, in response to a comparative study that was carried out in 2013, exploring ways to improve the functioning of the NCP⁵:

- The possibility of a more explicit role for the NCP in interpreting the OECD Guidelines, for instance for the purpose of CSR agreements (covenants), and the option for the government to ask the NCP to conduct sector-wide assessments.⁶
- Room for the NCP to facilitate a dialogue on the OECD Guidelines, even if that dialogue is not prompted by a formal notification of an alleged instance of non-observance of the Guidelines.
- Formalisation of the consultations with stakeholders such as unions and employers' organisations through a platform called NCP+ which convenes every three months.
- The possibility for the NCP to obtain advice on a regular basis from other line ministries, in addition to the current role of the advisory civil-service members from the Ministries of Foreign Affairs, Economic Affairs, Social Affairs & Employment, and Infrastructure & the Environment.

In 2017, the Minister for BHOS informed Parliament about the functioning of the Dutch NCP in comparison with other NCPs. This [letter to Parliament](#) summarises the main results of an OECD report about the functioning of NCPs between 2000 and 2015 (OECD, 2016)⁷, using the four "core criteria for functional equivalence in the activities of NCPs" (OECD Guidelines, 2011, p. 79). One important conclusion is that the OECD Guidelines and the NCP mechanism are still "relatively unknown", notably among SMEs. Another finding is that the Dutch NCP – as many other NCPs – often exceeds deadlines set in the procedure for notifications.

The Dutch NCP is an independent body, which – in theory – allows the NCP to function independently from the government. Note that other NCPs have chosen different structures⁸, as the OECD does not prescribe a structure as long as NCPs are able to function properly (see the section on *Evaluation criteria* below). The Dutch NCP consists of four independent members and four advisory members who represent different ministries.⁹ It is located in the same building as the Ministry of Foreign Affairs, which also provides the staff for its secretariat. The annual NCP budget is on average EUR 150.000 to cover the costs of its operations and awareness activities, but excludes staff costs of the secretariat which are born by the Ministry.

3. Purpose of the evaluation

Considering the important role of ICSR policy in the Dutch policy on sustainable trade and investments and the assumed relevance of the NCP in this respect, IOB wants to evaluate the functioning and effectiveness of the Dutch NCP. It has been decided to set up an evaluation for the NCP separate from the broader ICSR evaluation, as the NCP is an independent body whose members are not government officials.

The aim of this evaluation is not so much to question *if* the government should support the NCP (after all, it is an "international obligation" to have an NCP), but rather *how* the government should do that best. The proposed evaluation will have to provide insight in the extent to which the NCP has been successful (effective) in fulfilling its tasks, but also in the (financial, organisational, legal, etc.) conditions that explain its performance. This implies that the evaluation should also present lessons and recommendations for the government and the NCP on how to enhance these conditions if needed.

⁵ *Onderzoek naar mogelijke verbeteringen in het Nederlandse NCP*. Intern document NCP.

⁶ For example, the government has requested the NCP to analyse compliance of Dutch companies with the OECD Guidelines in the [oil and gas sector](#).

⁷ See annex to the letter to parliament.

⁸ *Implementing the OECD Guidelines for Multinational Enterprises: The National Contact Points from 2000 to 2015* (OECD, 2016).

⁹ Social Affairs & Employment, Economic Affairs, Foreign Affairs and Infrastructure & the Environment.

4. Scope of the evaluation

The evaluation will have to review *all activities* of the Dutch NCP between 2012 and 2018. Most activities can be related to the two tasks as defined above. The timeframe for this evaluation (2012-2018) corresponds with the timeframes chosen for the evaluation of the Dutch ICSR policy (2019) and the Sustainable Trade and Investments policy review (2020). The website of the NCP provides an overview of [notifications](#) (open and closed) in this period. Information about the activities of NCP can also be found in the [documents](#) section.

5. Theory of Change of the Dutch ICSR policy

In general, ICSR policy builds on the assumption that government interventions have an effect on the behaviour of companies.¹⁰ One of aims of the ICSR policy evaluation is to reconstruct and test a Theory of Change (ToC) that explains how various instruments and policies of the government (including the NCP) contribute to the integration of ICSR principles (due diligence on the OECD Guidelines or comparable codes of conduct) in business practices. Ultimately, on impact level, these interventions add to reduced risks in global supply chains and protection of human rights and the environment.

The proposed evaluation of the Dutch NCP focuses on specific elements and causal relations in the ToC. For example: through its activities the Dutch NCP aims to raise *awareness* and *understanding* of the OECD Guidelines, which should motivate companies to improve their due diligence on the Guidelines and hence, adopt principles of responsible business conduct.¹¹ Furthermore, the activities of the NCP focus on stimulating *dialogue* between companies and actors that have a stake in alleged instances of non-observance of the Guidelines, and to provide *access to remedy* for victims by resolving issues. This [process of handling notifications](#) not only influences the decisions and behaviour of actors involved, but may also have an impact on other companies (e.g. operating in the same sector or region).

The scope of the current evaluation is limited. It provides insight in inputs (staff and budget allocated to NCP) as well as activities and outputs (of NCP). It will also review effectiveness on outcomes such as improved awareness and understanding of the OECD Guidelines, improved integration of ICSR principles and improved access to remedy, though with a clear focus on results that can be attributed (or at least related) to the activities of the NCP. It is beyond the scope of the present evaluation to review the contribution of the Netherlands' NCP to results on impact level such as the reduction of risks in global supply chains and the protection of human rights and the environment. Questions on impact level will be addressed by the ICSR policy evaluation.

6. Evaluation criteria

The main criteria for this evaluation are effectiveness and efficiency.

We define **effectiveness** in this evaluation as the degree to which the Dutch NCP has fulfilled its tasks in line with the OECD Guidelines and in view of its mission to further the effectiveness of the Guidelines. Effectiveness has to be reviewed, considering the position of the NCP vis-à-vis other actors such as the government, NGOs, companies, business organisations, labour unions and the OECD. For example, it is important to take into account that the NCP is just one of the government instruments to promote awareness and understanding of the OECD Guidelines. When it comes to handling notifications, the outcome of the process (the resolution) depends on the willingness to cooperate and compromise of actors involved.

¹⁰ See [Terms of References](#) of the Evaluation of Dutch ICSR Policy.

¹¹ On the NCP [website](#), the first task is described as “Raising awareness of the OECD Guidelines with businesses, trade unions and non-governmental organisations”. Also see the annual work plans.

The OECD Guidelines also refer to **efficiency** and **timeliness** as important criteria for the functioning of NCPs. They state that NCPs should “offer a forum for discussion and assist the business community, worker organisations, other non-governmental organisations, and other interested parties concerned to deal with the issues raised in an efficient and timely manner”. Also efficiency and timeliness have to be reviewed considering the role and position of NCP amidst other actors, understanding that delays in the process may have different causes. The OECD Guidelines provide an indicative timeframe for the three stages of the specific instance procedure (handling notifications) (pp. 86/87). For this evaluation, IOB advises using the OECD DAC definition of efficiency, which measures outputs in relation to inputs. How do results of activities compare to the amount of time and budget allocated?

7. Eight criteria for the functioning of NCPs

The OECD provides a useful framework for evaluating the functioning of NCPs. This framework identifies four “core criteria for functional equivalence in the activities of NCPs”¹²: visibility, accessibility, transparency and accountability. Moreover it identifies four additional criteria (guiding principles) that specifically relate to the role of NCPs in handling notifications of specific instances: impartiality, predictability, equitability and compatibility. While the government decree on the establishment only explicitly refers to the first four criteria, the other four criteria are considered equally important for the functioning of the Dutch NCP.¹³ In the current evaluation, the eight criteria can be seen as conditions for the NCP to fulfil its role and tasks effectively (possibly next to other conditions), but also as expectations (requirements) of the OECD.

On its [website](#), the Dutch NCP defines the four core criteria as follows:¹⁴

- **Visibility** means that the NCP highly values its task of providing information to increase awareness of the OECD Guidelines and to increase their effective implementation.
- **Accessibility** means that the NCP can be contacted easily and is open to discussion with all parties and stakeholders. Efficiency and timeliness relate to this criterion.
- **Transparency** means that the NCP strives to be transparent about its procedures and that it encourages mediation. However, this can mean that the NCP is not transparent about the content of the mediation, as confidentiality may contribute to the success of the procedure.
- **Accountability** means that the NCP actively promotes the OECD Guidelines and openly communicates about its activities to external stakeholders, for instance by publishing annual reports or by sharing experiences with other NCPs.

The OECD Guidelines define four guiding principles for specific instances. They ask NCPs to deal with specific instances in a manner that is:

- **Impartial.** NCPs should ensure impartiality in the resolution of specific instances.
- **Predictable.** NCPs should ensure predictability by providing clear and publicly available information on their role in the resolution of specific instances, including the provision of good offices, the stages of the specific instance process including indicative timeframes, and the potential role they can play in monitoring the implementation of agreements reached between the parties.
- **Equitable.** NCPs should ensure that the parties can engage in the process on fair and equitable terms, for example by providing reasonable access to sources of information relevant to the procedure.

¹² The OECD uses the term “functional equivalence” to ensure that all NCPs operate in a similar manner.

¹³ Also see “The Functioning of the Dutch National Contact Point during the Specific Instance Procedure: An evaluation of the functioning of the Dutch NCP based on shared experiences, the OECD Guidelines and the Government Decree” (Van ‘t Foort and Palm, 2015) and “A comparative analysis of the Dutch specific instance procedure” (Van ‘t Foort and Wilde-Ramsing, 2015).

¹⁴ Also see the OECD Guidelines (2011), p. 79.

- **Compatible with the OECD Guidelines.** NCPs should operate in accordance with the principles and standards contained in the Guidelines.

8. Evaluation questions

The main research questions for this evaluation can be formulated as follows:

How effective and efficient has the Dutch NCP been in fulfilling its tasks as defined in the government decree on its establishment (2014)?

To what extent has it been able to act in line with the four core criteria for NCPs and four guiding principles for handling notifications of specific instances as defined by the OECD Guidelines (2011)?

More specifically, the evaluation should provide answers to the following sub-questions:

Effectiveness

1. What activities have been undertaken by the Dutch NCP to promote and interpret the content and meaning of the OECD Guidelines? How has this developed through the years? Have these activities been effective?
2. How many notifications have been handled by NCP? What notifications? How has the NCP facilitated dialogue? What were the results? Have issues been solved adequately?
3. What *other* activities have been undertaken by the NCP in view of its redefined mandate (2014), and what have been the results of these activities? What has been the role of the NCP in the development of CSR agreements/covenants? What sector-wide assessments have been conducted? How often has the NCP facilitated dialogue without a formal notification? What has been the role of the Netherlands NCP in promoting the development of a worldwide complaints system (OECD's proactive agenda)? To what extent and how has the Netherlands NCP cooperated with other NCPs, e.g. by advising other NCPs on specific instances?

Efficiency and timeliness

4. To what extent has the NCP dealt with issues raised (through formal notifications or otherwise) in an efficient and timely manner?
5. How do the results (outputs and outcomes) of various activities compare to the amount of staff capacity, time and budget allocated?

OECD criteria

6. How does the Dutch NCP perform in terms of visibility, accessibility, transparency and accountability? What has been done to improve performance on these criteria?
7. To what extent has the Dutch NCP respected the guiding principles for specific instances: impartiality, predictability, equity and compatibility with the OECD Guidelines?

Forward-looking questions

8. Does the current governance, staff capacity and funding structure facilitate the Dutch NCP to fulfil its tasks effectively, efficiently, timely and in line with the OECD criteria?
9. On what aspects could the functioning of the Dutch NCP be improved and how?

9. Methodology

The evaluation requires a combination of desk research (literature, reports, data analysis) and interviews. Also a (small) survey may be useful. It makes sense to build on the results of previous evaluations, notably the review by OECD (2016). Also the article of Van 't Foort and Palm (2015) provides useful input. Relevant informants are NCP secretariat staff, (current and retired) members of NCP, unions, employers' organisations and NGOs. For the assessment of how the

Dutch NCP dealt with specific instances, important sources are the initial assessments, final statements and (official) responses by actors involved, including businesses. It is desirable to gain insight in how actors involved in specific instances (see annex) have experienced the mediation by NCP. In addition, the evaluators need to gain some insight in the visibility and accessibility of NCP, for example by interviewing NGOs *not* involved in any specific instances.

10. Team

The evaluation will have to be carried out by a team that holds substantial knowledge of the OECD Guidelines and the functioning of NCPs. The team will be selected via the “Framework Agreement for the provision of services related to effect evaluations” between the Ministry of Foreign Affairs and various potential contractors.

On behalf of IOB, Alexander Otgaar, Otto Genee and Martine de Groot are available to assist the team and steer the evaluation. Josine Polak and Wendy van der Neut (both IOB) have been appointed as internal co-readers.

For this evaluation, a reference group will be created, with the following members:

- Otto Genee (IOB, chair of the Reference Group)
- Alexander Otgaar (IOB)
- Sylvia Tuin (Secretariat of the Netherlands NCP)
- Maartje van Putten (Chair and independent member of the Netherlands NCP)
- Hannah Tijmes (Ministry of Foreign Affairs, Advisory Member of the Netherlands NCP)
- Dorine Wytema (Ministry of Infrastructure & the Environment, Advisory Member of the Netherlands NCP)
- Liesbeth Enneking, Special Chair on the Legal Aspects of International Corporate Social Responsibility, Erasmus School of Law
- John Morrison (Institute for Human Rights & Business)

11. Literature

OECD (2016). *Implementing the OECD Guidelines for Multinational Enterprises: The National Contact Points from 2000 to 2015*. Paris: OECD.

Available at: <https://mneguidelines.oecd.org/oecd-report-15-years-national-contact-points.pdf>.

OECD Guidelines (2011). *OECD Guidelines for Multinational Enterprises*. Paris: OECD.

Available at: <https://www.oecd.org/investment/mne/48004323.pdf>.

Van 't Foort, S., and Palm, H., (2015). “The Functioning of the Dutch National Contact Point during the Specific Instance Procedure: An evaluation of the functioning of the Dutch NCP based on shared experiences, the OECD Guidelines and the Government Decree”. In: *ARACÊ – Direitos Humanos em Revista*. Year 2, No. 3, September 13, pp. 8-28.

Available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2794835.

Van 't Foort, S., and Wilde-Ramsing, J., (2015). “A comparative analysis of the Dutch specific instance procedure”. In: *Nederlands-Vlaams tijdschrift voor mediation en conflictmanagement*. Afl. 4, November 1, 8 pp.

Available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2836606.

Annex List of specific instances Netherlands NCP 2012-2018

- Nidera - Argentinean NGOs/SOMO/Oxfam Novib (2011-2012)
- Shell - Stroitel/SEW (2012) *
- Shell - Dobos (2012) *
- Shell - Friends of the Earth/Amnesty International (I) (2011-2012)
- ABG/APG - Lok Shakti Abhiyan, KNTC Watch, Fair Green and Global Alliance, Forum for Environment and Development (2012-2013)
- NUON - FNV (2012-2014)
- Shell - Friends of the Earth (II) (2011-2015)
- Heineken - Former Employees of Bralima, DRC (2016-2017)
- Atradius - Both Ends, Fórum Suape (2015-2016)
- Mylan - Stapert (2015-2016)
- Rabobank - Friends of the Earth Netherlands/Milieudefensie
- Philips Lighting - Former employees of Philips Lighting (2017) *
- ING - Oxfam-Novib, Greenpeace, Banktrack & Friends of the Earth Netherlands (2017) **
- VEON - UNI Global Union (2018) **
- Bresser - FIVAS, Initiative to Keep Hasankeyf Alive, Hasankeyf Matters (2018) **

*) Request not taken into further consideration.

**) Open procedures, currently in progress (13-06-2018).