

## PROCEDURAL GUIDANCE FOR ASSESSING THE IMPLEMENTATION OF THE GUIDELINES IN SPECIFIC INSTANCES

### I. DEFINITIONS

1. **Guidelines** – the OECD Guidelines for Multinational Enterprises.
2. **NCP** – the Lithuanian National Contact Point.
3. **NCP members** – the NCP shall consist of independent experts (hereinafter – **Experts**), the Chairman elected by Experts from amongst themselves (hereinafter – the **Chairman**), the Advisory Board (hereinafter – the **Advisory Board**) and the Secretariat (hereinafter – the **Secretariat**). All of them shall be the NCP members; however, the NCP shall be represented by the Chairman who shall act on its behalf, while decisions on behalf of the NCP shall be adopted by Experts by a majority vote. In the event of a tie vote, the Chairman shall have a casting vote.
4. **Company** – a multinational enterprise against actions (or omissions) of which a complaint is made.
5. **Complainant(s)** – a party or parties filing a complaint in a specific instance. According to the Guidelines, any “interested party” may file a complaint with the NCP. A Complainant may be, for example, the local community affected by a company’s activities, employees, a trade union, an NGO, etc. A Complainant must have a legitimate interest in the matter, and the substance of his complaint shall meet the requirements laid down in Section IV of the Procedural Guidance.
6. **Complaint** – a claim drawn up by a Complainant and filed with the NCP for assessing actions (omissions) of a Company in a specific instance relevant to the implementation of the Guidelines.
7. **Parties** – a Complainant and a company with respect to which a Complaint has been received.
8. **Procedural Guidance** – the rules of the procedure for assessing the implementation of the Guidelines in specific instances.

### II. INFORMATION-SHARING

9. The NCP shall use e-mail always when it is possible as the main means of sharing information. The NCP’s e-mail address: [info@oecdncp.lt](mailto:info@oecdncp.lt). However, on discretion of the Parties or for external communication, the NCP shall use written documents usually sent by registered mail.

### III. DEALING WITH A COMPLAINT

10. A Complaint shall be handled in four stages:
  - 10.1. Initial assessment (duration – 3 months);
  - 10.2. Assessment of a specific instance through mediation or examination procedure (duration – 6-12 months);
  - 10.3. Final Statement (duration – 3 months);
  - 10.4. Evaluation and follow-up (duration – 12 months).

### IV. INITIAL ASSESSMENT OF A COMPLAINT (STAGE 1)

11. **Complaint form.** A Complainant shall fill in a complaint form which is available on the NCP's website, sign it and submit to the NCP.

12. Where the Complainant indicates that the information provided alongside the Complaint is confidential, he must explicitly specify the information which he considers to be confidential and why it is confidential. In that case, the Complainant shall additionally submit a separate non-confidential version of the information which can be forwarded to the Company for its comments. If the non-confidential version of the information or the arguments regarding the recognition of such information as confidential are not provided, the information submitted by the Complainant shall be treated as non-confidential. These provisions regarding the submission of confidential information shall also apply in respect of the information provided by the Company.

13. **Confirmation of receipt of a Complaint.** All received complaints shall be registered with the Ministry of Economy and referred to the Secretariat. The Secretariat, no later than within five working days of registration of the Complaint, shall notify the Complainant using the specified contact details, send the Complaint (non-confidential version of the information, if applicable) to the Company and forward the Complaint with attachments to the Chairman.

**14. Appointment of an Expert for initial assessment and actions of the initial assessment:**

14.1. No later than within ten days of receipt of the Complaint from the Secretariat, the Chairman shall assess whether he may be involved in any conflict of interests with respect to the particular Complaint and the circumstances specified therein. Having identified a potential conflict of interests, the Chairman shall notify the Secretariat and other Experts. In that case, the Chairman's functions with respect to the particular Complaint shall be carried out by the oldest Expert. The Expert, who takes over the Chairman's functions with respect to the particular Complaint, must, within five days, assess whether he may be involved in any conflict of interests with respect to the particular Complaint in the above referred manner.

14.2. Once the issue of the Chairman's conflict of interests is settled, the Chairman shall forward to all members of the NCP the Complaint and the form of the declaration of private interests; the NCP members shall complete the form and return it within five working days and specifying the possibility to carrying out the initial assessment. Any member of the NCP who indicates a potential conflict of interests shall be excluded by the Chairman from further handling of the Complaint. The Chairman shall notify the members of the NCP of the results of evaluation of the conflict of interests in the case of each Complaint.

14.2. Once the issues of potential conflict of interests of Experts are settled, the Chairman, taking account of the Experts' competence and workload, shall appoint the Expert for making an initial assessment of the Complaint and for presenting to Experts for approval a statement on the initial evaluation of the Complaint. If a Complaint is voluminous and raises complex issues, or if there are any other significant reasons, the Chairman may appoint several Experts to make the initial assessment of the Complaint.

14.3. The initial assessment shall be a preliminary assessment aimed at determining whether a Complaint is relevant to the implementation of the Guidelines, is material and substantiated enough to assess whether it merits further consideration. The initial assessment of a Complaint shall not cover the confirmation of circumstances stated therein or the determination of compliance of the Company's conduct with the requirements of the Guidelines. During the initial assessment, it shall be determined:

14.3.1. Whether the NCP is the right body to make the assessment of the Complaint, i.e. whether the Complaint falls within the sphere of competence of the NCP. In this regard, the Expert shall consider whether the Complaint concerns activities or conduct of a Lithuanian multinational enterprise operating abroad or of a multinational enterprise operating in Lithuania. Where the circumstances stated in the Complaint concern other countries acceding to the Guidelines, the Expert shall contact and consult the NCPs of such countries to agree on which one should lead the work in dealing with the specific instance.

14.3.2. Whether the Company subject to the complaint is a multinational enterprise within the meaning of the Guidelines.

14.4.3. The identity of the Party concerned and its interest in the matter. A Complaint may not be anonymous. If the Complainant fears serious consequences if his identity is revealed, he should appoint a representative (such as a competent NGO or a trade union) to represent the Complainant in a dialogue with the Company and the NCP.

14.4.4. Whether the Complaint is linked with the Guidelines and preliminarily substantiated. The Complaint shall be supported by evidence enabling the NCP to make initial assessment of the circumstances stated in the Complaint and to determine whether it merits further consideration. The Complainant must substantiate the facts specified in the Complaint as far as possible. It shall be recommended to provide the copies of original documents/first-hand accounts rather than a description of such documentation. The subject matter of the Complaint must concern the Guidelines and the Complainant should at least indicate the requirement of the Guidelines regarding the non-implementation or improper implementation of which the Complaint has been filed.

14.4.5. Whether there is a causal link between the activities of the Company subject to the Complaint and the circumstances indicated in the Complaint.

14.4.6. The relevance of applicable provisions of legal acts and procedures, including the case law on the issues covered by the Complaint.

14.4.7. How similar issues have been or are being handled in other domestic or international proceedings.

14.5. Where, considering the circumstances specified in subparagraph 14.3, the Complaint regarding the non-implementation or improper implementation of the Guidelines is material enough for determining its relevance to the implementation of the Guidelines, the Expert shall decide on accepting the Complaint for further consideration, and where, in the opinion of the Expert, the Complaint is not material enough or irrelevant to the implementation of the Guidelines – shall decide on rejecting the Complaint after the initial assessment.

14.6. During the initial assessment of the Complaint, the Expert may seek an advice of the Advisory Board on the issues of implementation of the Guidelines.

**15. A decision to accept the Complaint for further consideration or to reject it shall be adopted and published in the following stages:**

15.1. After making the initial assessment, the Expert shall issue a conclusion of the initial assessment which, as a rule, shall specify:

15.1.1. The Parties and their identification details. In the case of a negative conclusion of the initial assessment, the Parties shall not be identified, and the initials of natural persons or business areas of the company shall be indicated instead.

15.1.2. The substance of the complaint, including reference to the relevant provisions of the Guidelines.

15.1.3. A statement emphasizing that acceptance of a Complaint for further consideration does not mean that the Complaint is well-founded or that the Company subject to the Complaint has not complied with the requirements of the Guidelines.

15.1.4. Further the stages and actions of assessment of the implementation of the Guidelines in specific instances.

15.1.5. The reasons for accepting the Complaint for further consideration or for rejecting it.

15.2. The Secretariat shall forward to the Parties the draft conclusion of the initial assessment issued by the Expert and the Parties shall have a right to present their comments and observations within ten working days. The Secretariat shall notify the Expert who made the initial assessment of the received comments and observations, and the Expert, no later than within ten working days, shall decide whether or not to incorporate the received comments or observations of the Parties as far as the initial assessment of the Complaint is concerned.

15.3. The Expert who made the initial assessment shall present his conclusion during the meeting of the NCP. Having listened to the Expert's presentation and proposal, the Experts shall

decide by voting on the approval of the Expert's conclusion, and such decision of the Experts shall be considered to be the decision of the NCP on the initial assessment of the Complaint. After approval of the Expert's conclusion regarding the initial assessment of the Complaint, the text of the conclusion issued by the Expert shall be approved by decision of the NCP.

15.4. Where the NCP does not approve the conclusion issued by the Expert regarding the initial assessment of the Complaint, the NCP must provide such decision in writing in a substantiated manner. The decision, no later than within three working days, shall be drawn up by the Experts who voted against the Expert's conclusion and shall be furnished to the Secretariat.

15.5. The NCP's decision to approve the positive conclusion of the Expert and to accept the Complaint for further consideration or not to approve the negative conclusion of the Expert and to reject the Complaint after the initial assessment shall serve the grounds for initiating the second stage of assessment of the implementation of the Guidelines on the basis of the filed Complaint.

15.6. The Secretariat, no later than within five days of the day of adoption of the NCP's decision, shall forward the decision of the NCP on the initial assessment of the Complaint to the Parties and publish it on the website of the NCP.

15.7. The Secretariat shall communicate the published documents to the Secretariat of the OECD for entry in the database on specific instances of assessment of the implementation of the Guidelines administrated by the OECD.

## **V. ASSESSMENT OF A SPECIFIC INSTANCE THROUGH THE MEDIATION OR EXAMINATION PROCEDURE (STAGE 2)**

### **16. Meetings with the Parties:**

16.1. In addition to the NCP's decision, the Secretariat shall communicate to the Parties the information on the possibility offered by the NCP to address the issues covered by the Complaint through mediation, a copy of the Procedural Guidance and shall ask the Parties to inform, within ten days of the day of receipt of such a notification, of the time suitable to them (which should be not later than 20 days of the day of submission of the Party's response) for meeting with a respective Expert to discuss further actions of assessment of the Complaint and the possibility to use the NCP's mediation process. Also, the Parties shall be informed that both the process of examination and mediation shall be conducted by the Expert who issued the conclusion of the initial assessment of the Complaint. If the Party fails to notify by the specified deadline of the time suitable for it for meeting with the Expert, the Secretariat shall notify the Expert who makes the assessment and shall send a repeated proposal to inform, within ten days of the day of receipt of such a notification, of the time suitable to the Party (which should be not later than 10 days of the day of submission of the Party's response) for meeting with the respective Expert to discuss further actions of assessment of the Complaint or its agreement to use the NCP's mediation process.

16.2. Where the Parties decide to meet with the Expert as specified in subparagraph 16.1 of the Procedural Guidance, their first meeting shall be held with each Party separately. When the Secretariat coordinates the time appropriate for each Party and the Expert, the latter, during the first meeting, shall:

16.2.1. clarify the precise nature of the filed Complaint and, if necessary, request the Complainant to furnish missing or additional documents and ask the Company to respond to the Complaint;

16.2.2. explain to the Parties the status of the NCP as of a neutral party and the competence of the NCP;

16.2.3. Explain how mediation will work if the Parties choose the NCP's mediation procedure, as well as the procedure of examination of the Complaint by the NCP and answer the questions of the Party regarding mediation and examination procedures. Also, the Party shall be informed that if at least one of the Parties disagrees to use the NCP's mediation procedure, the Complaint will be assessed according to the examination procedure.

16.3. Each Party shall notify the Secretariat in writing of its decision or agreement to address the Complaint through the NCP's mediation process, no later than within ten days of the day of the meeting with the Expert. The Secretariat shall forward such information to the Expert. Where during the specified time limit both Parties notify of their agreement to use the NCP's mediation process, the mediation process shall be conducted in a manner set out under paragraph 17 of the Procedural Guidance. Otherwise the Complaint shall be dealt with through the examination procedure, as specified in paragraph 18 of the Procedural Guidance.

### **17. Mediation procedure:**

17.1. Where the Parties opt for mediation procedure, the Expert, as a rule, arrange a pre-mediation meeting during which the Parties agree on the particular conditions of the mediation procedure. The organisational matters (providing premises for meetings, sending the invitations, arranging for the time, taking notes of the meeting) of such meeting shall be handled by the Secretariat. During the pre-mediation meeting the Expert shall:

17.1.1. Ascertain whether the Parties' representatives have the powers and/or right to actively participate in the mediation process and to assume obligations in the name of the Parties.

17.1.2. Remind the Parties of the voluntary nature of mediation, identify the objective of the mediation procedure – to settle the issues covered by the Complaint by agreement reached by the Parties, and answer the Parties' questions about the mediation procedure.

17.1.3. Assist the Parties in concluding a written agreement regarding the particular terms of dealing with the Complaint through mediation procedure in which the Parties shall:

- agree on the time of the mediation meetings;
- acknowledge their genuine commitment to mediation and agreement not view the mediation process as a means of gathering further information or as an opportunity to avoid addressing issues or being held accountable for their conduct;
- commit to adhere to the agenda and not raise new issues not specified in the Complaint or not notified otherwise to the NCP or the other Party;
- define conditions regarding confidentiality of the information disclosed or learnt during mediation procedure, except to the extent that it is necessary to seek professional advice or guidance from within the Company. In that case, it must be guaranteed that those consulted shall observe the confidentiality of the information disclosed or learnt during mediation procedure;
- acknowledge their awareness that any public announcement of the information disclosed or learnt during mediation procedure constitutes a breach of such agreement and can lead to the termination of mediation procedure through the fault of the Party that has disclosed such information.

17.2. During mediation procedure, the Expert shall encourage the dialogue between the Parties to seek agreement on the issues covered by the Complaint. The Expert shall run the mediation process, provide proposals to the Parties regarding its essential rules (unless the Parties have not agreed on them before), draw up, with the assistance of the Secretariat, and submit to the Parties the copies of respective documents and seek to ensure the compliance with the confidentiality obligation. The mediation procedure can take the form of meetings of the Expert and each Party separately or with both Parties together. During such a meeting, the Expert shall:

17.2.1. seek to identify and define together with each Party the objectives and interests of the Parties;

17.2.2. set forth possible courses of action and suggest to the Parties the possible solutions and alternatives;

17.2.3. help to identify what is necessary for each Party to see the mediation as successful;

17.2.4. coordinate with the Parties the solutions acceptable to them in order to reach agreement during the mediation procedure.

17.3. A successful mediation procedure shall conclude in Expert drafting a mediated agreement to be signed by Parties, preferably by top managers of the Party involved in the process

of mediation (where the Party is a legal person). The agreement between Parties shall be enclosed with the final statement on the process prepared by the Expert (see stage 3). The Parties to the mediated agreement can decide that a part of such agreement or the entire agreement is not public and shall not be subject to disclosure.

17.4. If the Parties succeed to address through the mediated agreement only a part of the issues of improper implementation and breach of the Guidelines specified in the Complaint, such agreement shall be considered to be a partially mediated agreement. In that case, the rest of the issues covered by the Complaint that remain outstanding and are not addressed by the agreement shall be addressed by the Expert through the examination procedure referred to in paragraph 18 of the Procedural Guidance, unless the Complainant separately notifies the NCP in writing of the withdrawal of the remaining part of the Complaint. Prior to satisfying the Complainant's request to withdraw the remaining part of the Complaint, the Expert shall explain to the Complainant that in that part of the Complaint the process of assessment of the specific instance will be terminated and the Complainant will not be able to file a Complaint regarding the same circumstances specified in the withdrawn Complaint. Upon granting the Complainant's request for the partial withdraw of the Complaint, the process of assessment of compliance of the specific instance with the Guidelines shall be discontinued. Such request of the Complainant shall be approved by Experts of the NCP by a majority vote.

17.5. The Secretariat shall provide the Expert with the technical and organizational assistance (providing premises for the meetings, sending invitations, making notes during the meetings).

17.6. Where during the mediation procedure the Expert has any questions regarding certain regulatory requirements of the Republic of Lithuania or provisions related to the implementation of the Guidelines, the Expert may ask for an advice from the Advisory Board. The Advisory Board shall also provide the analogous assistance to the Expert when assessing the specific instance covered by the Complaint through the examination procedure.

## **18. Examination procedure**

18.1. During the examination procedure, the specific instance covered by the Complaint shall be dealt with and a final decision shall be adopted indicating whether the Company's actions comply with the Guidelines and providing proposals how to improve the activities.

18.2. The examination procedure may be initiated in the following cases:

1. where at least one of the Parties does not provide a written agreement with the mediation procedure within the time limits specified above in the Procedural Guidance; or
2. The mediation procedure was started, but:
  - a. the Parties fail to reach agreement on all issues covered by the Complaint; or
  - b. the mediation procedure is terminated; or
  - c. during the mediation procedure the mediated agreement is not reached within the time limit set by the Parties and the Parties specify that all efforts to reach such consensus have been exhausted.

18.3. If the mediation procedure was started, but was not successfully completed in respect of all issues raised in the Complaint, the Expert who conducted the mediation procedure, and in other cases – the Secretariat, shall, no later than within five days, notify the Chairman of the existing grounds for initiating the specific instance examination procedure and shall forward to him all material related to the specific case.

18.4. The Chairman, taking account of the Experts' competence and amount of the submitted material as well as the complexity of the issues covered by the Complaint and the conduct of the Parties during the assessment of the specific instance (participation in the assessment of the Complaint), shall appoint one or more Experts to deal with the Complaint through the examination procedure. As a rule, the Expert who handled the mediation procedure shall be appointed to handle the examination procedure (as a single Expert or as one of the Experts), unless both Parties notify the NCP in writing that they disagree with conducting of the examination procedure by the Expert.

18.5. Several methods may be used when assessing the Complaint through the examination procedure:

18.5.1. Information gathering method. The examination may involve the collecting of further information or statements from the Complainant or Company which might be necessary in order to assess the circumstances specified in the Complaint. The examination may also involve further meetings between the Parties and the Expert according to the pre-agreed agenda and their minutes shall be taken.

18.5.2. Good practice method. The examination may involve identifying good practice in the particular case, therefore, the relevant government agencies, foreign embassies or consular missions, business associations, employee organisations, NGOs or other bodies may be approached and asked to identify good practice in analogous cases. The Expert conducting the examination procedure may apply to the OECD Secretariat through the Secretariat asking for references to the publicly available information on the practices of other NCPs of the OECD in analogous cases.

18.5.3. Fact finding method. This examination may involve on-site visits and identification of facts, interviews with relevant government agencies, trade unions and other employee organisations, local communities and indigenous groups.

18.6. During the examination procedure, the Expert shall keep the Parties informed of the used method(s) and of the fact that in the event of the failure to provide the requested information or refusal to participate in the examination procedure, the conclusions of the examination will be drawn on the basis of the submitted documents and the documents available to the Expert. After completion of the examination actions, the Expert shall assess all collected information and issue a conclusion regarding the Company's compliance with the Guidelines. If the Expert finds that the Company does not comply with the Guidelines, the Expert shall submit proposals how the Company should improve its conduct in order to comply with the Guidelines.

18.7. The Expert's conclusion and proposals shall be published in the final statement (stage 3).

## **VI. FINAL STATEMENT (STAGE 3)**

19.1. After completing the assessment of the specific instance, a final statement shall be drawn up even where the mediation procedure which ended in the mediated agreement was conducted. The final statement, as a rule, shall contain the following:

19.1.1. the Parties to the specific instance and the date of filing the Complaint with the NCP data;

19.1.2. a summary of the Complaint and provisions of the Guidelines claimed to have been breached;

19.1.3. a summary of the assessment process of the specific instance, the extent to which Parties have been cooperative and participated in good faith, and the outcome of any mediation in the form of an agreement (at least partial) between Parties.

19.1.4. the NCP's offer to the Parties to arrange a follow-up meeting for discussing the actions of implementation of the final statement.

19.2. In cases where mediation was rejected or was unsuccessful and the specific instance was assessed through the examination procedure, the final statement shall also include:

19.2.1. the reasons why no mediated agreement was reached between Parties;

19.2.2. the assessment of the Company's compliance with the Guidelines, providing the rationale behind each conclusion;

19.2.3. the aspects of the complaint which, in the Expert's opinion, are ill-founded and were not dealt with during the initial assessment;

19.2.4. where relevant, recommendations to the Company on how to improve its conduct in order to comply with the Guidelines and the deadline for submitting an update on follow-up of the recommendations;

19.2.5. Where relevant, examples of good practice consistent with the Guidelines.

19.3. The Secretariat shall forward to the Parties the draft final statement prepared by the Expert. The Parties may submit their comments and observations within ten days. The Secretariat shall notify of the received comments and observations the Expert who made the initial assessment, and the latter shall decide at his discretion, no later than within ten working days, whether to incorporate or reject the received comments or observations of the Parties.

19.4. The Expert shall present the drafted final statement at the meeting of the NCP. Having listened to the presentation of the final statement of the Expert, the Experts shall vote on the decision to approve the conclusion and proposals (if any) of the final statement. Such decision of Experts shall be considered to be the decision of the NCP on the assessment of the specific Complaint. By approving conclusion and proposal (if any) of the final statement, the text of the final statement drafted by the Expert shall be approved by decision of the NCP. Experts may decide by a majority vote to return the final statement for additional proposals or decide to reject the conclusion specified in the final statement. The decision of the majority of Experts not to approve the conclusion or proposals of the final statement drafted by the Expert shall be set out in writing and substantiated. The decision shall be drawn up, no later than within three working days, by Experts who voted against the Expert's conclusion and shall be submitted to the Secretariat. Also, the Experts who voted against such conclusion of the final statement drafted by the Expert, having regard to the material collected by the Expert who conducted the examination procedure, shall draw up a new final statement no later than within the working days of the day of preparation of the arguments for the NCP's decision to reject the final statement drafted by the Expert, which shall be submitted for approval to the NCP's Experts.

19.5. The Secretariat, no later than within five days of the day of adoption of the NCP's decision to approve the final statement, shall forward to the Parties the NCP's decision, publish it on the website of the NCP and, in order to foster public policy coherence, shall communicate it to respective government agencies and make it public otherwise.

19.6. The Secretariat shall forward the published documents to the OECD's Secretariat for entry in the database on specific instances of assessment of the implementation of the Guidelines administered by the OECD.

## **VII. EVALUATION AND FOLLOW-UP (STAGE 4)**

20.1 In order to contribute to improving the NCP's handling of specific instances, the Secretariat, no later than within three months of publishing the final statement, shall ask the Parties to evaluate the NCP's handling of the particular instance.

20.2 If the mediation was successful, the Expert who conducted the mediation process, and where there is no such possibility – the Chairman or another Expert appointed thereby, shall, no later than within a year, invite the Parties to the follow-up meeting to discuss the benefits of the reached agreement and the measures taken by the respective Party to ensure the enforcement of the decision. The Secretariat shall provide organizational and technical assistance (sending the invitations, providing with premises, making notes of the meeting, etc.) for the follow-up meeting arranged by the Expert. After the meeting, the Secretariat shall publish the information about the meeting on the website of the NCP.