

The Portuguese National Contact Point for Responsible Business Conduct

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The OECD Guidelines for Multinational Enterprises ('the Guidelines') are applicable to all OECD members and establish a set of standards companies operating in and from these countries should adhere to.

They have become particularly relevant since the 2011 review of the Guidelines that included a new human rights chapter consistent with the United Nations Guiding Principles on Business and Human Rights. One of its most significant features is the obligation to establish a National Contact Point ('NCP') to handle so-called 'specific instances' of non-observance of the Guidelines. The NCP's mandate is not only to function as a non-judicial grievance mechanism, but also to further the implementation of the Guidelines in the countries where they are established.

There are currently 48 NCPs in place, including in Portugal. Considering the most recent information publicly available, NCPs cumulatively closed 34 specific instances during the year 2018. From those, only 4 cases reached some form of agreement, which was a substantial decrease from previous years. Even though 2018 had a record number of submissions (52 new ones), meaning that the visibility of NCPs is increasing worldwide, the number of agreements was impressively low.

Looking at the reduced numbers at the international level, it is not surprising that during 2018 the Portuguese NCP, which operates both at DGAE (the Directorate General of Economic Activities) and AICEP (the Agency for Investment and Foreign Trade of Portugal), did not receive nor closed any specific instance.

In 2000, NCPs started receiving specific instances. Four years later, Portugal was the lead NCP in one instance where a trade union alleged that a multinational enterprise had breached the provisions from the Guidelines regarding employment and industrial relations during a factory closure in Portugal. The case was closed with the agreement of the parties and no breach was found. In another case, Portugal was a host country, meaning that the violation had allegedly occurred in its territory, and Denmark was the lead NCP. At stake was a gardener company that hired seasonal employees who would firstly work in Portugal

and then in Denmark. The company had allegedly given very poor housing and working conditions, undercut wages and on certain occasions withheld passports. The Danish NCP decided to continue investigating even after the complainant withdrew the specific instance, because it considered that the terms of agreement reached did not properly address the gross violations that were alleged, like the withholding of passports. However, the case was closed with a statement by the Danish NCP that the violations at stake could not be substantiated. Furthermore, there have been two other cases where Portugal was a supporting NCP, and one is currently in progress in France. This will be the first covid-19-related specific instance, since the breaches allegedly occurred due to restrictions applied during this pandemic by a company in ten different countries where it operates call centers. The complaint includes alleged violations of workers' rights to health and safety at the workplace, freedom of association, collective bargaining and lack of appropriate due diligence.

There are three reasons for the lack of specific instances in Portugal. Firstly, the Guidelines are only applicable to multinational enterprises, which is a very small percentage of Portuguese companies.. Secondly, in Portugal there is a clear prevalence of judicial litigation, which is the traditional way to solve disputes. Since the NCPs work as a non-judicial grievance mechanism based on mediation and conciliation, the litigation-oriented mentality of the stakeholders may explain their reluctance to apply to the NCP. Thirdly, there is still a certain lack of knowledge and information available regarding the NCP and the Guidelines. According to a recent study, Portuguese small and medium enterprises, which are still the dominant types of enterprises in Portugal, reveal a higher lack of awareness of the Guidelines, when compared to larger enterprises. This can be solved by focusing on their promotion by creating promotional plans, organizing conferences, trainings, meetings with stakeholders, sharing news and developments on the NCP's website or launching surveys to measure awareness amongst the business community towards the Guidelines and the NCP, as well as the effectiveness of the activities developed.

I believe that there are positive signs of development of the Portuguese NCP, but there is still much space for improvement. The Portuguese NCP has part-time staff and no specific budget. These factors do not improve the NCP's performance. However, a good sign of the development of the Portuguese NCP is the very recent publication on its website of its rules of procedure for handling specific instances, as well as a form for the initial request. The procedural rules set out in the OECD Guidelines leave space for each NCP to implement them in the way it finds most adequate to its own reality. Thus, having clear rules of procedure ensures a more predictable and trustful process and the existence of a form to complete when submitting an initial request not only facilitates the starting of this procedure for claimants, but also promotes coherence amongst the processes.

It is crucial to learn from other NCPs' experience and how they have overcome difficulties that the Portuguese NCP might be facing, taking advantage of the culture of cooperation existent across the network fostered by the OECD. NCPs benefit from having flexible procedural rules and may work as a real grievance mechanism for the UNGPs and international labor standards. They can play an important role if their potential is fully used.

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