



OECD Guidelines for Multinational Enterprises  
**National Contact Point Peer Reviews**  
**ARGENTINA**



## ABOUT THE OECD GUIDELINES FOR MULTINATIONAL ENTERPRISES

The OECD Guidelines are recommendations addressed by governments to multinational enterprises operating in or from adhering countries. They provide non-binding principles and standards for responsible business conduct in a global context consistent with applicable laws and internationally recognised standards. The OECD Guidelines are the only multilaterally agreed and comprehensive code of responsible business conduct that governments have committed to promoting.

## ABOUT NCP PEER REVIEWS

Adhering governments to the OECD Guidelines for Multinational Enterprises are required to set up a National Contact Point (NCP) that functions in a visible, accessible, transparent and accountable manner. During the 2011 update of the OECD Guidelines for multinational enterprises, NCPs agreed to reinforce their joint peer learning activities and, in particular, those involving voluntary peer reviews. The peer reviews are conducted by representatives of 2 to 4 other NCPs who assess the NCP under review and provide recommendations. The reviews give NCPs a mapping of their strengths and accomplishments, while also identifying opportunities for improvement. More information can be found online at <https://mneguidelines.oecd.org/ncppeerreviews.htm>.

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*Table of Contents*

<b>1. SUMMARY AND KEY FINDINGS .....</b>	<b>3</b>
<b>2. INTRODUCTION .....</b>	<b>8</b>
<b>3. THE ARGENTINIAN NCP AT A GLANCE .....</b>	<b>10</b>
<b>4. INSTITUTIONAL ARRANGEMENTS.....</b>	<b>11</b>
<b>5. PROMOTION OF THE GUIDELINES.....</b>	<b>18</b>
<b>6. SPECIFIC INSTANCES.....</b>	<b>24</b>
<b>7. PROJECT ON PROMOTING RBC IN LATIN AMERICA .....</b>	<b>36</b>
<b>Annex A. List of organisations submitting responses to the NCP peer review questionnaire .....</b>	<b>37</b>
<b>Annex B. List of organisations that participated in the NCP peer review on-site visit .....</b>	<b>38</b>
<b>Annex C. Promotional events .....</b>	<b>39</b>
<b>Annex D. Overview of specific instances handled by the Argentinian NCP as the leading NCP. 43</b>	
<b>Annex E. Organisational chart of the Ministry of Foreign Affairs and Worship.....</b>	<b>45</b>

## 1. SUMMARY AND KEY FINDINGS

This document is the peer review report of the Argentinian National Contact Point (NCP) for the OECD Guidelines for Multinational Enterprises (the Guidelines). The implementation procedures of the Guidelines require NCPs to operate in accordance with the core criteria of visibility, accessibility, transparency and accountability. In addition, they recommend that NCPs deal with specific instances in a manner that is impartial, predictable, equitable and compatible with the Guidelines.

This report assesses conformity of the NCP with the core criteria and with the Procedural Guidance contained in the implementation procedures. The peer review of the NCP was conducted by a team made up of reviewers from the NCPs of Canada, Colombia and Denmark, along with representatives of the OECD Secretariat. The peer review included an on-site visit that took place in Buenos Aires, Argentina on 5-6 September 2019.

The Argentinian NCP is currently undergoing notable improvements after a period of several years during which the NCP was not viewed by stakeholders as active or visible. Its two members and three support staff have taken steps to strengthen its institutional arrangements through the establishment, in 2019, of an Advisory Council including representatives of government and stakeholders. Once its Terms of Reference are adopted, the Advisory Council should be a strong asset for the NCP in terms of available expertise and stakeholder confidence. The NCP is also increasing its promotional activity in order to ensure greater visibility, even though the size of the country remains a challenge. The NCP has made efforts to bring parties to specific instances around the table, but could be more active in facilitating agreed solutions. A revision of the NCP's rules of procedures, increased access to technical expertise (including regarding mediation) and stronger final statements, could also complement these efforts.

### Key findings and recommendations

#### *Institutional arrangements*

The Argentinian NCP is located in the National Directorate for Multilateral Economic Relations of the Ministry of Foreign Affairs and Worship and was set up by means of a Ministerial Resolution, last revised in 2019. The NCP has two members working part time on NCP matters, and three support staff members (one full time, two part-time). In 2019, an Advisory Council to the NCP was established through a Ministerial Resolution, and is composed of permanent and non-permanent government representatives, and of stakeholder representatives. Prior to this, the NCP had informally created an advisory body which was meeting approximately once a year.

NCP members and staff are viewed by stakeholders as reactive and impartial, but the NCP suffers from a reduced institutional profile and a lack of visibility. The fact that the NCP and its Advisory Council are set up by means of Ministerial Resolutions reduces their prominence and stability within the Government, as this legal instrument is internal to the Ministry of Foreign Affairs and Worship. The NCP's current configuration as part of the National Directorate for Multilateral Economic Relations also reduces its visibility, makes it particularly subject to staff turnover, and prevents it from having a dedicated budget. The NCP and the Advisory Council should thus be established by way of Presidential Decrees rather than Ministerial Resolutions, and the NCP should be set up as a distinct unit of the National Directorate.

The establishment of a permanent Advisory Council with representatives from government and stakeholders in March 2019 is a positive step and was commended by government representatives and stakeholders alike. However, the Ministerial Resolution creating the Advisory Council is written in general terms and the Advisory Council does not yet have Terms of Reference. This creates concerns and varied expectations among stakeholders regarding the exact role of the Advisory Council and of its different categories of members. The NCP should therefore adopt, after discussion with Advisory Council members, Terms of Reference for the Advisory Council covering in particular its composition and the mode of designation of its members, its material competence and its working procedures.

	Findings	Recommendation
1.1	The NCP suffers from a reduced institutional profile and a lack of visibility. The fact that the NCP and its Advisory Council are set up by means of Ministerial Resolutions reduces their prominence and stability within the Government, as this legal instrument is internal to the Ministry of Foreign Affairs and Worship.	The NCP and the Advisory Council should be established by way of Presidential Decrees rather than Ministerial Resolutions.
1.2	The current configuration of the NCP as part of a larger government department reduces its visibility and stability, and prevents it from having a dedicated budget.	The NCP should be set up as a distinct unit within the National Directorate for Multilateral Economic Relations.
1.3	The legal instrument setting up the Advisory Council is drafted in general terms and stakeholders have varied expectations and concerns in relation to the details of its functioning.	The NCP should adopt, after discussion with the Advisory Council members, Terms of Reference for the Advisory Council covering in particular its composition and the mode of designation of its members, its material competence and its working procedures.

### *Promotion*

The NCP has developed a number of promotional materials to promote itself and the Guidelines. Following a recent revision, the NCP is now equipped with a comprehensive and user-friendly website and twitter account. Stakeholders and government officials also noted that the NCP had sharply increased its promotional activities in 2019, after having been little active in previous years.

Despite this increased promotional activity, stakeholders and government representatives consider visibility to be the main challenge for the NCP. Stakeholders generally have little knowledge of the NCP and its role. A particular difficulty in this regard concerns covering the entirety of the country. The NCP should therefore increase its efforts at promoting itself and developing promotional materials so as to inform the public about its role and functions. The NCP should also develop a promotional plan to raise awareness on RBC, focusing on key sectors, issues and actors identified by stakeholders. In order to be able to extend its promotion to the entire territory, the NCP should additionally take advantage of the local presence of government and stakeholders throughout the country.

The NCP also generally lacks visibility within government, although it recently sought more contacts with other government departments, particularly as it was establishing its Advisory Council. There is an interest across government in cooperating with the NCP. The NCP has also provided input in relation to the development of the National Action Plan on Business and Human Rights, currently in development. The NCP should continue to build relations with other government departments with a view to fostering policy coherence for RBC. In particular, the NCP should seek to contribute to the implementation of the NAP in the areas relating to its mandate, such as access to remedy and promotion of RBC and due diligence.

	Findings	Recommendation
2.1	Stakeholders beyond the Advisory Council have little knowledge of the NCP and of its role, which reduces the NCP's visibility and accessibility.	The NCP should therefore increase its efforts and develop information and promotional materials with a view to promoting itself and informing the public about its role and functions, as well as the benefits of engaging with the NCP.
2.2	Promotional activities of the NCP have been limited in recent years, although the NCP has increased promotion since the beginning of 2019. A particular challenge regarding promotion is to cover the entirety of Argentina's very large territory. Currently, most events were organised in the capital and involve stakeholders based there.	The NCP should develop a promotional plan to raise awareness on RBC, taking into account the key sectors, key issues and key actors identified by stakeholders. The plan should also include actions to promote the OECD due diligence guidance instruments. To address the challenge related to the size of the country, the NCP should take advantage of local government and stakeholder offices throughout the country to organise promotional events and reach out to enterprises and stakeholders located outside of the capital, including indigenous communities.
2.3	The NCP is not very visible within government, but has made recent efforts to establish contacts with other government departments, in particular as it was establishing its Advisory Council. Government representatives showed interest in furthering cooperation with the NCP.	The NCP should continue to build relations with other government departments with a view to fostering policy coherence for RBC. In particular, the NCP should seek to facilitate the implementation of any action contained in the NAP in the areas relating to its mandate.

### *Specific instances*

The NCP has received 14 specific instances. 12 are concluded and two are in the good offices stage. Among the 12 concluded cases, two were not accepted, one was withdrawn prior to initial assessment, and nine progressed to the good offices stage. In these nine cases, parties reached agreement in two cases from 2006 and 2007.

The NCP has a detailed set of Rules of Procedure (RoP), last revised in 2018. The RoP are however not closely aligned with the language of the Procedural Guidance in the Guidelines, and the NCP's handling of cases has been characterised by a high degree of informality. This has impacted predictability. Therefore, the NCP should revise its RoP to ensure that they align with the Procedural Guidance, so as to ensure that the process is as clear and predictable as possible.

Parties to various specific instances have commended the efforts that the NCP deployed to bring them around the table during the good offices phase. However, parties have also noted that the NCP did not actively facilitate discussions between parties and did not conduct mediation as such, due to a lack of professional expertise in this area. The NCP should therefore offer mediation to the parties during good offices, and is encouraged to formalise the support being sought from the Ministry of Justice's National Directorate for Mediation in this process. The fact that the National Directorate is a permanent member of the NCP's Advisory Council is an opportunity in this regard.

The NCP consistently publishes a final statement upon concluding a case. The final statements are generally short and do not contain details regarding the issues, or recommendations and provisions for follow up. In the future, the NCP should include in its final statements a description of the issues, an account of the process before the NCP, an analysis of the issues and, when appropriate, recommendations and provisions for follow up.

Finally, a number of cases submitted to the NCP are characterised by their substantive complexity. In the handling of such cases, the NCP should ensure access to technical expertise in other relevant parts of government. The fact that other government representatives are members of the Advisory Council is an opportunity in this regard.

	Findings	Recommendation
3.1	The rules of procedure are not closely aligned with the language of the Procedural Guidance. In practice the NCP's handling of cases has been characterised by a high degree of informality (e.g. regarding confidentiality), which has impacted predictability.	The NCP should revise its rules of procedure with a view to aligning them with the Procedural Guidance and designing a clearer and more predictable procedure.
3.2	During good offices, the NCP has not consistently played an active role in helping the parties find a mutually agreeable solution to the issues and lacks expertise to conduct mediation, which may diminish the confidence of the parties and impede the effective handling of cases.	Where possible, the NCP should offer mediation during good offices, and should explore ways in which the services offered by the National Directorate for Mediation could be used in future NCP cases.
3.3	The NCP's final statements are generally short and do not include details on the issues. The NCP also does not make recommendations or plans for follow up.	The NCP's final statements should, in the future, contain the following elements: a description of the issues, an account of the process before the NCP, an analysis of the issues and, when appropriate, recommendations and provisions for follow up.

3.4	Cases submitted to the NCP may be characterised by their substantive complexity, in respect to which the NCP may lack the technical expertise.	The NCP should ensure that it has sufficient access to the necessary expertise for the examination of cases, and should make arrangements to access the technical resources available in other government departments. To that effect, a precise procedure for the involvement of other ministries and government departments (including government representatives on the Advisory Council) in individual cases should be defined in the Rules of Procedure, or in the Advisory Council's Terms of Reference
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Argentina participates in a project on Promoting Responsible Business Conduct in Latin America and the Caribbean, funded by the European Union and implemented jointly by the OECD, the Office of the UN High Commissioner for Human Rights, and the International Labour Organisation.<sup>1</sup> One of the pillars of activities led by the OECD Secretariat concerns 'Strengthening access to remedy: Reinforcing National Contact Points.' Under the project, opportunities for tailored capacity building and peer learning with other LAC NCPs are available. The NCP is encouraged to take advantage of these opportunities in implementing the recommendations of the peer review.

Argentina is invited to report to the Working Party on Responsible Business Conduct on follow up to all the recommendations within one year of the date of presentation of this report.

<sup>1</sup> See <https://mneguidelines.oecd.org/rbclac.htm>

## 2. INTRODUCTION

The implementation procedures of the Guidelines require NCPs to operate in accordance with the core criteria of visibility, accessibility, transparency and accountability. In addition, the guiding principles for specific instances recommend that NCPs deal with specific instances in a manner that is impartial, predictable, equitable and compatible with the Guidelines. This report assesses conformity of the Argentinian NCP with the core criteria and with the Procedural Guidance contained in the implementation procedures.

Argentina adhered to the OECD Declaration on International Investment and Multinational Enterprises (Investment Declaration) in 1997. The OECD Guidelines for Multinational Enterprises (the Guidelines) are part of the Investment Declaration. The Guidelines are recommendations on responsible business conduct (RBC) addressed by governments to multinational enterprises operating in or from adhering countries. The Guidelines have been updated five times since 1976; the most recent revision took place in 2011.

Countries that adhere to the Investment Declaration are required to establish National Contact Points (NCPs). NCPs are set up to further the effectiveness of the Guidelines and adhering countries are required to make human and financial resources available to their NCPs so they can effectively fulfil their responsibilities, taking into account internal budget priorities and practices.<sup>2</sup>

NCPs are “agencies established by adhering governments to promote and implement the Guidelines. The NCPs assist enterprises and their stakeholders to take appropriate measures to further the implementation of the Guidelines. They also provide a mediation and conciliation platform for resolving practical issues that may arise.”<sup>3</sup>

The Procedural Guidance covers the role and functions of NCPs in four parts: institutional arrangements, information and promotion, implementation in specific instances and reporting. In 2011 the Procedural Guidance was strengthened. In particular, a new provision was added to invite the OECD Investment Committee to facilitate voluntary peer evaluations. In the commentary to the Procedural Guidance, NCPs are encouraged to engage in such evaluations.

The objectives of peer reviews as set out in the Core Template for voluntary peer reviews of NCPs<sup>4</sup> are to assess that the NCP is functioning in accordance with the core criteria set out in the implementation procedures; to identify the NCP’s strengths and possibilities for improvement; to make recommendations for improvement and to serve as a learning tool for all NCPs involved.

This report was prepared based on information provided by the NCP and in particular, its responses to the NCP questionnaire set out in the core template<sup>5</sup> as well as responses to requests for additional information.

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<sup>2</sup> Amendment of the Decision of the Council on the OECD Guidelines for Multinational Enterprises, para I(4)

<sup>3</sup> OECD Guidelines for Multinational Enterprises (2011), Foreword

<sup>4</sup> OECD, Core Template For Voluntary Peer Reviews Of National Contact Points (2015), [DAF/INV/RBC\(2014\)12/FINAL](#)

<sup>5</sup> OECD, Core Template For Voluntary Peer Reviews Of National Contact Points (2015), [DAF/INV/RBC\(2014\)12/FINAL](#)

The report also draws on responses to the stakeholder questionnaire which was completed by 40 organisations representing enterprises, civil society, trade unions/representative organisations of the workers' own choosing (worker organisations), international organisations, academic institutions and government agencies (see Annex 1 for a complete list of stakeholders who submitted written feedback) and information provided during the on-site visit.

The peer review of the NCP was conducted by a peer review team made up of reviewers from the NCPs of Canada, Colombia and Denmark, along with representatives of the OECD Secretariat. The on-site visit to Buenos Aires, Argentina took place on 5-6 September 2019 and included interviews with the NCP, other relevant government representatives and stakeholders. A list of organisations that participated in the on-site visit is set out in Annex 2. The peer review team wishes to acknowledge the NCP for the quality of the preparation of the peer review and organisation of the on-site visit.

The basis for this peer review is the 2011 version of the Guidelines. The specific instances considered during the peer review date back to 2004. The methodology for the peer review is that set out in the core template.<sup>6</sup>

## Economic context

The Argentinian economy is dominated by the service sector, representing 40% of GDP, followed by the mining sector (19%), manufacturing (15%) and wholesale, retail trade and restaurants (14%). Regarding foreign direct investment (FDI), the inward stock of FDI, which represents the accumulated value of FDI in the Argentinian economy over time, was USD 73 billion in 2018, equivalent to 15 percent of Argentinian GDP. The outward stock of FDI was USD 42 billion in 2018, representing 9 percent of Argentinian GDP. In 2018, Argentinian exports of goods were USD 62 billion and exports of services were USD 15 billion while imports of goods were USD 63 billion and imports of services were USD 24 billion.

The main investors in Argentina are the United States, Spain, the Netherlands, Brazil and Chile, and the main inward investment sectors are manufacturing, mining and quarrying, wholesale and retail and finance. No data is available for outward bilateral FDI. For trade in goods and services, the most important export partners for Argentina include Brazil, China, the United States, India, Chile, and Canada; the most important import partners for Argentina include Brazil, the United States, China, Germany, France, and Italy.

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<sup>6</sup> OECD, Core Template For Voluntary Peer Reviews Of National Contact Points(2015), [DAF/INV/RBC\(2014\)12/FINAL](#).

### 3. THE ARGENTINIAN NCP AT A GLANCE

Established: 2000

Structure: Individualised decision-making with Advisory

Council Location: Ministry of Foreign Affairs and Worship

Staffing: Two part time members, three support staff officials  
(one full time, two part time).

Website: <https://cancilleria.gob.ar/en/initiatives/ancp>

Specific instances received: 14

## 4. INSTITUTIONAL ARRANGEMENTS

Under the Procedural Guidance of the Guidelines, Section I (A):

"Since governments are accorded flexibility in the way they organise NCPs, NCPs should function in a visible, accessible, transparent, and accountable manner."

### Legal basis

The NCP was initially established in 2000, when the Ministry of Foreign Affairs, International Trade and Worship informed the OECD that the Argentinian NCP would form part of the National Directorate for Negotiations and International Economic Cooperation (DINEI). On 31 July 2006, Ministerial Resolution 1567/2006 formally established the NCP as a 'Coordination Unit on matters related to the OECD' located within the National Directorate for International Economic Negotiations, which itself was part of the Secretariat for Trade and International Economic Relations in the Ministry of Foreign Affairs and Worship.

Following the reorganisation of the Ministry in 2012, this resolution was replaced by Ministerial Resolution 17/2013 of 25 January 2013, which appointed new members of the NCP and located the NCP within the Directorate for Multilateral Economic and G20 Affairs, which was part of the National Directorate for Multilateral Economic Negotiations of the Undersecretariat for Mercosur and International Economic Negotiations. Ministerial Resolution 445/2016 of 5 September 2016 replaced the members of the NCP. The Directorate for Multilateral Economic and G20 Affairs has since been discontinued. Today, the NCP is directly located in the National Directorate for Multilateral Economic Relations.<sup>7</sup>

In March 2018, the NCP began preparations to set up an Advisory Council to the NCP through a Presidential Decree. However, the Legal and Technical Secretariat from the Office of the Cabinet of Ministers advised that there was no justification for a Presidential Decree, and that this should instead be done through a Ministerial Resolution to follow past practice and because there is no obligation for adherent countries to the Guidelines to set up their NCP through a particular kind of legal instrument. On 7 March 2019, Ministerial Resolution 138/2019 created the Advisory Council to the NCP (see below).

Stakeholders have shared that the establishment of the NCP through a Ministerial Resolution reduces its institutional profile and visibility within government and externally. Additionally, the setting up of the Advisory Council through a Ministerial Resolution makes participation in the Council optional for its members. Establishing the NCP and Advisory Council by way of a Presidential Decree would raise the profile of the NCP and the Advisory Council, and would increase the Council's stability by making participation by specified government departments and stakeholders required by law.

<sup>7</sup> The National Directorate for Multilateral Economic *Negotiations* was renamed the National Directorate for Multilateral Economic *Relations*.

## NCP Structure

### *NCP members and NCP support staff*

As indicated above, the NCP is set up as a single ministry unit, located in the National Directorate for Multilateral Economic Relations, Undersecretariat for Mercosur and International Economic Negotiations, of the Ministry of Foreign Affairs and Worship. The organisational chart of the Ministry is available in Annex 5.

### *Composition*

According to Ministerial Resolution 445/2016, the NCP has three ‘members’ who are diplomat officers of the Ministry of Foreign Affairs. One member has since left the NCP, so that the NCP now has two members. The Head of the NCP is the National Director for Multilateral Economic Relations. The other NCP member is the Chief of Staff of the Undersecretariat for Mercosur and International Economic Negotiations. NCP members approve decisions, which are then signed by the Head of the NCP.

Alongside its members appointed as above, the NCP also has three staff members. One individual, in place since 2018 is a foreign service officer of the Ministry and works full time for the NCP (the previous officer worked part-time for the NCP). The Foreign Service official will be replaced shortly after the on-site visit. Two individuals are administrative staff members of the Ministry, respectively in place since 2009 (part-time) and 2018 (full-time).

The NCP members have been relatively stable in recent years, as current members have been in post since 2016. Turnover has been more frequent among staff members, due to regular staff rotations within the Ministry of Foreign Affairs and Worship. According to the NCP, this poses a number of challenges such as knowledge management, institutional memory and continuity, or ensuring that the professional backgrounds of staff members are relevant to the function.

Many NCP materials are stored on its website, whereas records of specific instances, past activities and consultations are kept in the digital files and/or as hard copies at the archives of the National Directorate for Multilateral Economic Relations.

According to the NCP, the location of the NCP in the Ministry of Foreign Affairs and Worship offers advantages in terms of visibility, notably as the NCP is located in the directorate that follows OECD affairs, thereby facilitating exchanges with relevant colleagues on RBC, and engagement with stakeholders active on OECD matters.

The NCP also considers that this location has benefits in terms of impartiality and avoidance of conflicts of interest, since neither the ministry nor the NCP members or secretariat staff are involved in investment promotion. To date, the NCP did not have to deal with issues of conflict of interest among its members or staff.

Stakeholders and the NCP have, however, shared that the current configuration of the NCP as part of a larger government department (the National Directorate for Multilateral Economic Relations) reduces its visibility and stability, for example by subjecting its support staff to the regular turnover of the National Directorate’s officials (see below). Moreover, this configuration prevents the NCP from having a dedicated budget (see below).

The NCP could be set up as a distinct unit within the National Directorate in order to increase its visibility and raise its profile within the Government and externally. This would also enable the NCP to have its own staff and, in the longer term, to seek to obtain a dedicated budget, which would increase its stability. A clearer separation of NCP functions from other portfolios within the Ministry would also increase the NCP's perceived impartiality (Box 6.1), even though stakeholders generally view the NCP's location in the Ministry of Foreign Affairs and Worship as positive from the point of view of impartiality, given that this ministry is not directly involved with trade or investment promotion or facilitation.

### *Function*

Section 2 of Resolution 17/2013 specifies that the functions of the NCP 'are to promote the application of the Guidelines for Multinational Enterprises of the Organization for Economic Co-operation and Development (OECD) in force and to contribute to the resolution of issues related to their implementation.'

According to its website, the role of the NCP 'is to further the effectiveness of the OECD Guidelines for Multinational Enterprises, operating in accordance with core criteria of visibility, accessibility, transparency and accountability. The [NCP] carries out promotional activities, answer queries, and contribute to the resolution of issues that arise relating to implementation of the Guidelines in specific instances in a manner that is impartial, predictable, equitable and compatible with the principles and standards of the OECD Guidelines.'

In practice, the foreign service officer prepares all decisions of the NCP, which are then approved by the NCP members and signed by the Head of the NCP. NCP members and the foreign service officer share promotional work depending on availability.

### *NCP advisory body*

As outlined in para. 30, the NCP is assisted by a multistakeholder Advisory Council, which was set up by Ministerial Resolution 138/2019 of 7 March 2019. The Council's purpose is to 'provide an institutional framework for the participation of governmental, social and institutional actors in activities related to the OECD Guidelines for Multinational Enterprises.'<sup>8</sup>

An advisory body was already in place prior to Resolution 138/2019, meeting once a year. The advisory body was set up informally and was not based on an official document. Stakeholders expressed concerns that it was not visible and active enough. The NCP therefore conducted consultations regarding reforming the Advisory Council. The responses to these consultations were taken into account in the drafting of Resolution 138/2019. The new Advisory Council has held two meetings since its creation, in May and July 2019. The formal establishment of an Advisory Council involving other government departments and stakeholders is a positive step.

### *Composition*

Section 2 of Resolution 138/2019 provides that the Advisory Council comprises three categories of members: permanent members, non-permanent members, and stakeholder representatives (called 'sectoral' representatives in the Resolution).

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<sup>8</sup> See Preamble.

Permanent Members of the Advisory Council are representatives of:<sup>9</sup>

- Ministry of Production and Labour
- Ministry of Justice and Human Rights
- Ministry of Treasury
- Secretariat of Labour and Employment
- Secretariat of Environment and Sustainable Development
- Secretariat of Energy
- Secretariat of Mining
- Secretariat of Science, Technology and Productive Innovation
- Anticorruption Office

Non-permanent members of the Advisory Council are representatives of other government departments, which the NCP may invite to participate on an *ad hoc* basis in meetings of the Advisory Council ‘based on advisory needs that may arise in connection with grievances filed with [the NCP].’<sup>10</sup> The NCP has not yet called upon non-permanent members.

The third category of Advisory Council members are stakeholder representatives. The Resolution does not grant a permanent seat to any stakeholder organisation, but they are selected and invited by the NCP to be members of the Advisory Council for a certain period of time, not determined by the Resolution. Stakeholder representatives are selected and invited by the NCP among representatives of institutions coming from academia, business, trade union and civil society organizations. Civil society organisations ‘will be invited [by the NCP] on the basis of their public prominence in the field of Responsible Business Conduct at a national level.’<sup>11</sup> According to the NCP, a leading criterion in the selection of current members has been membership in BIAC, TUAC and OECD Watch. Table 4.1. Stakeholder representatives on the Advisory Council

Below gives an overview of the stakeholder organisations currently sitting on the Advisory Council.

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<sup>9</sup> See Section 2 a) of Resolution 138/2019.

<sup>10</sup> Section 2 b) of Resolution 138/2019.

<sup>11</sup> Section 2 c) of Resolution 138/2019.

**Table 4.1. Stakeholder representatives on the Advisory Council**

Business	Trade Union	Civil Society	Academia
Unión Industrial Argentina	Confederación General del Trabajo	Asociación Argentina de Ética y Compliance	Centro de Responsabilidad Social Empresarial y Capital Social
Cámara Argentina de Comercio y Servicios	Central de los Trabajadores de la Argentina	Foro Ciudadano de Participación	Programa de Capacitación Ejecutiva en Responsabilidad Social y Sustentabilidad Empresaria
Consejo Empresario Argentino para el Desarrollo Sostenible		Fundación El Otro	
		Fundación Ambiente y Recursos Naturales	
		Fundación SES	
		Fundación Poder Ciudadano	

Permanent government representatives link the NCP to government departments active on matters related to the different Chapters of the Guidelines. Permanent and non-permanent government representatives may also provide the expertise necessary for the handling of specific instances and promotion. Stakeholder Representatives allow for the inclusion of stakeholders in the work of the NCP, making the Advisory Council meetings the preferred channel for stakeholder engagement.

The Head of the NCP chairs the Advisory Council.<sup>12</sup> Each member organisation of the Advisory Council determines for itself the amount of resources that it wants to allocate to its participation in the Council.

### *Function*

The Advisory Council may provide non-binding advice to the NCP on the following:<sup>13</sup>

- a. Promotion and dissemination work related to the Guidelines;
- b. Cases filed by individuals or legal entities against multinational companies operating in Argentina.

It is unclear whether the Advisory Council is also entitled to provide advice in cases regarding issues taking place abroad and involving Argentinian enterprises. To date, the Advisory Council has not yet been called to advise on a case.

The Advisory Council is not an oversight body and does not play a role in the accountability of the NCP. There is no formal reporting process from the NCP to the Advisory Council.

Resolution 138/2019 authorises the NCP to issue rules of procedures for the operation of the Advisory Council, e.g. regarding its involvement in specific instances.<sup>14</sup> To date, these rules have not yet been adopted.

<sup>12</sup> See Section 2 and 4 of Resolution 138/2019.

<sup>13</sup> See Section 3 of Resolution 138/2019.

<sup>14</sup> See Section 5.

As indicated above, the setting up of a permanent Advisory Council including representatives of other government departments and stakeholders is positive. This reflects good practice among the network of NCPs<sup>15</sup> and was unequivocally viewed by government and stakeholders representatives as an important step to increase the expertise of the NCP and the confidence of stakeholders.

However, given that the Ministerial Resolution setting up the Advisory Council is drafted in general terms, and that it creates different categories of permanent and non-permanent members, stakeholders have varied expectations and concerns in relation to the details of the Advisory Council's functioning, which should rapidly be addressed and clarified. Issues in this regard covered particularly the difference between the categories of members of the Advisory Council, and the competence of the Advisory Council with regard to the handling of individual specific instances.

The NCP should therefore adopt, after discussion with the Advisory Council members, Terms of Reference for the Advisory Council covering in particular the following:

- The composition of the Advisory Council, more precisely the mode of designation of the stakeholder representatives and the length of their term;
- The material competence of the Advisory Council, namely the issues on which their advice will be sought and the extent of such advice;
- The working procedures of the Advisory Council, including decision-making, periodicity of meeting, chairing of the meetings, etc.

### *Resources*

The NCP does not have a dedicated budget and draws its financial resources from the regular budget of the Ministry of Foreign Affairs and Worship, meaning that every expense must be authorised by the financial and administrative staff or the ministry.

In terms of financial resources, the NCP reported to the OECD in 2018 that it had been able to access funds to attend meetings at the OECD. It did not request funds for organising promotional events, attending events organised by other NCPs, attending events organised by other stakeholders, professional mediator fees or in-house mediator fees, or fact-finding research into specific instances. Should it request such funds in the future, the NCP expects that they would be made available. The NCP indicated that it would find it useful if a separate budget line were to be made available at the Ministry for costs related to the design and production of promotional materials and the organisation of promotional activities, thereby simplifying the authorisation of these kinds of expenses.

The NCP considers that its current human resources are sufficient, but recognises that staff turnover due to rotation has an impact on its effectiveness.

As indicated above, the setting up of the NCP as a distinct unit within the National Directorate for Multilateral Economic Relations would represent an opportunity to secure more stable staff and financial resources.

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<sup>15</sup> See OECD (2019), *Guide for NCPs on Structures and Activities*, OECD Guidelines on Multinational Enterprises, available at <https://mneguidelines.oecd.org/Guide-for-National-Contact-Points-on-Structures-and-Activities.pdf>, p. 21.

## Reporting

In conformity with the Guidelines, the NCP reports annually to the OECD. All reports since 2009 are available on the NCP's website.

The NCP reports to government through the usual reporting lines to the Undersecretariat for Mercosur and International Economic Negotiations and to the Secretariat of International Economic Relations. Reporting takes place through internal memoranda and the other internal communication tools of the Ministry, but does not involve a periodic activity report. The NCP also informs the Argentinian Embassy in France, which represents Argentina at the OECD, of its activities.

The NCP does not report to Parliament.

Stakeholders indicated that they viewed the publication of the annual reports to the OECD on the NCP website as good practice from the point of view of transparency, but that their availability only in English reduced accessibility of the Argentinian public to these documents.

	Findings	Recommendation
1.1	The NCP suffers from a reduced institutional profile and a lack of visibility. The fact that the NCP and its Advisory Council are set up by means of Ministerial Resolutions reduces their prominence and stability within the Government, as this legal instrument is internal to the Ministry of Foreign Affairs and Worship.	The NCP and the Advisory Council should be established by way of Presidential Decrees rather than Ministerial Resolutions.
1.2	The current configuration of the NCP as part of a larger government department reduces its visibility and stability, and prevents it from having a dedicated budget.	The NCP should be set up as a distinct unit within the National Directorate for Multilateral Economic Relations.
1.3	The legal instrument setting up the Advisory Council is drafted in general terms and stakeholders have varied expectations and concerns in relation to the details of its functioning.	The NCP should adopt, after discussion with the Advisory Council members, Terms of Reference for the Advisory Council covering in particular its composition and the mode of designation of its members, its material competence and its working procedures.

## 5. PROMOTION OF THE GUIDELINES

### Information and promotional materials

The NCP seeks to make itself visible and to inform businesses, stakeholders, government representatives and the public through various channels: the NCP website, responses to enquiries received by phone or email, information and consultation meetings with stakeholders and government representatives, organisation and participation in seminars and events on RBC.

The NCP has developed two types of information and promotional materials: a leaflet and PowerPoint presentations.

The leaflet briefly explains the Guidelines and their purpose; summarises the Guidelines' chapters; explains the role of the NCP and the core criteria for functional equivalence (visibility, accessibility, transparency and accountability); summarises the case-handling procedure; and contains the contact details of the NCP.

The NCP uses PowerPoint presentations in support of its participation in promotional events. The presentations generally contain information on the role of the NCP, and a particular focus on the specific instances process and how to file a case. The presentations also present the relevant sectoral due diligence guidance documents depending on the theme of the event and the type of audience.

The NCP focuses its outreach on representative federations of the three stakeholder groups, who will then disseminate the information to their members. This is particularly the case for business and trade union stakeholders. For civil society stakeholders, the NCP also relies on ministry contacts for its outreach.

Stakeholders and government officials beyond the Advisory Council have shared that they had little knowledge of the NCP and of its role, reflecting limited visibility and accessibility of the NCP. In this regard, the NCP notes three challenges regarding the understanding of its nature and role among stakeholders. First, stakeholders tend to focus on the case-handling function of the NCP, rather than on its promotion function. Second, the NCP considers that more work is necessary for businesses and stakeholders to perceive the benefits of operating in accordance with the Guidelines. Third, stakeholders tend to consider the voluntary and dialogue-based nature of the specific instance process as a weakness compared to the binding nature of other judicial grievance mechanisms.

The NCP should therefore increase its efforts and develop promotional materials with a view to promoting itself and informing the public about its role and functions, as well as the benefits of engaging with the NCP.

### Website

The NCP has a website<sup>16</sup> which is a sub-site of the website of the Ministry of Foreign Affairs and Worship. The website is available in Spanish and in English and was renovated in April 2019 at the same time as the website of the Ministry. There is a direct link to the NCP at the bottom of the homepage of the Ministry in the 'Initiatives' section.

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<sup>16</sup> <https://cancilleria.gob.ar/es/iniciativas/pnca>

The front page of the NCP website opens with a short description of the NCP, linking to the relevant legal documents governing the NCP (see above), and contains nine large icons redirecting to subpages on the following themes:

- The OECD Guidelines for Multinational Enterprises
- Due diligence (sectoral guidance)
- Case-handling procedure (Rules of Procedure and ‘Initial Survey’, see below)
- Annual Reports (NCP annual reports to the OECD and Annual reports on the Guidelines)
- Statements and reports of the Specific Instances handled by the NCP
- Past and future conferences and events
- Relevant developments and news
- Relevant publications (academic, Secretariat and stakeholder papers about NCPs)
- Related links

Overall, the NCP website contains the following material:

- The OECD Declaration on International Investment and Multinational Enterprises
- The text of the Guidelines.
- The OECD due diligence guidance documents:
  - OECD Due Diligence Guidance for Responsible Business Conduct
  - OECD Due Diligence Guidance for Meaningful Stakeholder Engagement in the Extractive Sector
  - OECD Due Diligence Guidance for Responsible Mineral Supply Chains
  - OECD-FAO Guidance for Responsible Agricultural Supply Chains
  - OECD Due Diligence Guidance for Responsible Supply Chains in the Garment and Footwear Sector
  - Responsible Business Conduct for Institutional Investors
- Annual Reports on the OECD Guidelines for Multinational Enterprises
- NCP Annual Reports to the OECD since 2009
- Links to BIAC, TUAC and OECD watch webpages
- Link to NCP peer reviews on the OECD website
- Link to the OECD specific instances database
- Link to Argentina’s National Action Plan on Human Rights
- Link to contact details of other NCPs.

The NCP indicated that its website is the main means of communication with stakeholders, and the main way through which it seeks to achieve visibility and transparency, by publishing extensive information about the NCP and its activities. The website also plays a role in the accessibility of the NCP, as it features a direct email address and telephone number, which interested persons can use to contact the NCP. The NCP therefore considers its website to be instrumental in developing relations with social partners, and in building and retaining the confidence of businesses and stakeholders.

The NCP has also recently created a Twitter account and intends to communicate about its activities via this channel as well.

Stakeholders reacted positively to the renovation of the website and insisted that it was a key instrument in the NCP's visibility and accessibility. They generally found it comprehensive and user-friendly though they also noted that some information was only available in English (such as annual reports to the OECD). To ensure better accessibility, they insisted that it was important that all information be available in Spanish as well. Publishing a Spanish translation of the annual report could also enhance the NCP's accountability.

## Promotional plan

The NCP currently does not have a promotional plan but indicated that it would develop one in the future and publish it on its website.

Stakeholders and government officials have noted an increase in the promotional activity of the NCP since the beginning of the year, as indicated by the larger number of promotional events (see below). In order to keep this momentum going and thereby increase visibility, the NCP should develop a promotional plan, taking into account key sectors (such as mining), key issues (such as environmental protection and indigenous peoples' rights), and key actors (such as SMEs) identified by stakeholders. Stakeholders additionally expressed interest in increased promotion of the different due diligence guidance instruments.

## Promotional events

The NCP regularly organises or participates in individual or group meetings, seminars, workshops and roundtables to promote the Guidelines and the role of the NCP.

First, the NCP organises promotional events and meetings with individual companies, business associations, trade union and civil society organisations, government agencies, and the Advisory Council. Events organised by the NCP in 2019 are included in Annex 3.

The NCP is also invited and participates in events organised by other actors. Participation in such events is the most important part of the NCP's promotion, outreach and networking efforts. Events to which the NCP was invited to participate in 2019 are included in Annex 3.

As indicated above, the NCP seeks to participate in large events to maximise exposure, outreach and networking opportunities. For example, in June 2019, the NCP made presentations in two panels at the First Regional Forum on National Action Plans and Public Policies in Business and Human Rights, organised by the Secretariat of Human Rights of Argentina, gathering almost 500 participants.

The NCP indicated that it sought to coordinate with other relevant government departments in relation to promotional events.

Between 2016 and 2018, the NCP reported in its annual reports to have had low promotional activity. An overview of promotional events is available in Annex 3. This reflects the fact that, in recent years, the NCP's promotional activity has been reduced, thereby also reducing its visibility and accessibility. There was however a strong increase in promotion in 2019. Stakeholders view this as a sign that the NCP is becoming more active, but continue to name visibility as the NCP's main challenge. It is therefore important that the NCP continue increasing its promotional activities according to a promotional plan (see above).

A particular challenge regarding promotion which was shared by the NCP and stakeholders was the difficulty of covering the entirety of Argentina's very large territory. Stakeholders pointed out that, currently, most events were organised in the capital and involved stakeholders based there. Government representatives and stakeholders pointed out in this regard that many of them had representations and networks spanning the entire country, which could be relied upon for outreach and promotion.

The NCP should take advantage of this local presence, and in particular of regional ministerial offices, provincial and local government offices, local universities, trade unions and business associations' local offices, etc., in order to organise promotional events and reach out to enterprises and stakeholders located outside of the capital, including indigenous communities.

### Promotion of policy coherence

The NCP's Advisory Council includes members of key ministries and allows the NCP to be well connected to other parts of government. The NCP indicated working mainly with the Ombudsman Office/National Human Rights Institution (Defensor del Pueblo de la Nación), the Secretary of Human Rights and Cultural Diversity (Ministry of Justice and Human Rights), the Secretary of Promotion, Protection and Technological Change (Ministry of Production and Labour), and the Secretary of Mining (Ministry of Production and Labour).

In 2017, Argentina adopted a National Action Plan on Human Rights 2017-2020. This plan contains references to the Guidelines (though not specifically to the NCP) and a commitment to develop a National Action Plan on Business and Human Rights (NAP). The NAP is currently in development under the leadership of the Secretary of Human Rights and Cultural Diversity and the NCP has provided input.

The NCP also informed the Argentine Investment Promotion Agency about its roles and activities, so that the Agency has included this information in the presentations it gives in Argentina and overseas.

A particular theme in relation to which the NCP is seeking to promote RBC is gender, following several requests by civil society in this regard.

Government representatives have indicated that, while the NCP has not been very visible within government in recent years, it had made recent efforts to establish contacts with other government departments, in particular as it was establishing its Advisory Council. Government representatives showed interest in furthering cooperation with the NCP, and therefore the NCP should continue to build these relationships with a view to fostering policy coherence for RBC. As indicated above, long-term structural engagement with key government departments through the Advisory Council would be facilitated if the Advisory Council were established through a Presidential Decree.

The NCP responded positively to requests for input into the NAP during its development phase. The NAP is expected to be released shortly by the government. Given the opportunities that a NAP represents in terms of policy coherence for RBC, the NCP should seek to facilitate the implementation of any action contained in the NAP in the areas relating to its mandate, such as access to remedy and promotion of RBC and due diligence.

### **Proactive agenda**

The NCP has not participated actively in the development of OECD Due Diligence Guidance instruments, but it seeks to promote and raise awareness about them, through its website (where they are available), and during presentations made at promotional events, with a particular focus on the extractive sector. In 2019, the NCP for example promoted the relevant Guidance by contributing to a presentation of the Secretary of Mining at ArMinera (International Trade Fair for the Mining Industry in Buenos Aires – May 2019), and at a Roundtable on the EITI, the Voluntary Principles on Security and Human Rights and the OECD Guidelines organised by the Embassy of Canada in Argentina.

As indicated above, there is currently a strong demand from stakeholders for promotion of the due diligence guidance instruments, particularly in key sectors such as mining.

### **Requests for information**

The NCP responds to requests for information, which it mainly receives through the email address mentioned on its website. The NCP is also contacted sometimes by stakeholders that attended NCP events for follow up questions. The NCP indicated responding promptly to such requests, but no time frame is specified.

The NCP has also provided input under the process of ‘access to public information’ according to national law 27.275, regarding a general request about the role and activities of the Ministry of Foreign Affairs and Worship.

Stakeholders indicated that the NCP was indeed responsive to requests, although some pointed out that responses were short and of a general nature.

	Findings	Recommendation
2.1	Stakeholders beyond the Advisory Council have little knowledge of the NCP and of its role, which reduces the NCP's visibility and accessibility.	The NCP should therefore increase its efforts and develop information and promotional materials with a view to promoting itself and informing the public about its role and functions, as well as the benefits of engaging with the NCP.
2.2	Promotional activities of the NCP have been limited in recent years, although the NCP has increased promotion since the beginning of 2019. A particular challenge regarding promotion is to cover the entirety of Argentina's very large territory. Currently, most events were organised in the capital and involve stakeholders based there.	The NCP should develop a promotional plan to raise awareness on RBC, taking into account the key sectors, key issues and key actors identified by stakeholders. The plan should also include actions to promote the OECD due diligence guidance instruments. To address the challenge related to the size of the country, the NCP should take advantage of local government and stakeholder offices throughout the country to organise promotional events and reach out to enterprises and stakeholders located outside of the capital, including indigenous communities.
2.3	The NCP is not very visible within government, but has made recent efforts to establish contacts with other government departments, in particular as it was establishing its Advisory Council. Government representatives showed interest in furthering cooperation with the NCP.	The NCP should continue to build relations with other government departments with a view to fostering policy coherence for RBC. In particular, the NCP should seek to facilitate the implementation of any action contained in the NAP in the areas relating to its mandate.

## 6. SPECIFIC INSTANCES

### Overview

To date, 12 specific instances have been concluded by the NCP and two are ongoing. Among the 12 concluded cases, nine were accepted, one was withdrawn before initial assessment, and two were not accepted. The two ongoing cases were accepted and good offices are being conducted. Parties reached agreement in two cases handled by the NCP. To date, the NCP has not hired external mediators. An overview of all cases handled by the NCP is available in Annex 5.

### Rules of procedure

The NCP's current set of Rules of Procedure (RoP) were adopted in January 2017 and were updated on 10 August 2018. They are available in Spanish and English on the NCP's website.<sup>17</sup>

Title I of the RoP gives general information about the NCP and the specific instance process. Art. 1 specifies that the Guidelines prevail over the RoP in case of discrepancy.

Art. 2 and 3 of the Guidelines provide that the NCP may seek advice from government entities or external organisations in connection with the issues arising out of a specific instance.

Title II of the RoP contain the description of the procedure followed by the NCP to handle cases. The procedure is divided into three parts:

- 'Submissions of complaints of non-observance' (Arts. 5-9)
- 'Admissibility and rejection of a complaint' (Arts. 10-11)
- 'Specific instance process' (Arts. 12-25)

### *Submission*

Art. 6 states that natural or legal persons who consider that a multinational enterprise may have breached the Guidelines may submit a case (called 'complaint') under the following conditions:

- a. The submission must be made in writing, in Spanish or English, and include identification details of the submitter. For legal persons, powers of representation must be certified by a civil notary.
- b. The submission must contain a description of the alleged breach. Supporting documents may be included as annexes.
- c. The submission must specify how the submitter is affected by the breach.

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<sup>17</sup> See [https://cancilleria.gob.ar/userfiles/ut/rules\\_of\\_procedure.pdf](https://cancilleria.gob.ar/userfiles/ut/rules_of_procedure.pdf), art. 1.

- d. The submission must specify, as far as possible, which provisions of the Guidelines may have been breached.
- e. The submission must specify the kind of remedy sought from the process, taking into account the nature of the specific instance process.
- f. The submission must describe which preliminary steps have been taken to reach agreement with the company and their outcomes.
- g. The submission must be addressed to the NCP, via hand delivery, regular or electronic mail.

In order to facilitate the initial contact of submitters with the NCP and help them formalise their submission, the NCP makes available a questionnaire (called a ‘survey’) covering the questions above, as well as the question of whether parallel proceedings are underway.<sup>18</sup>

### *Initial assessment*

Art. 8 provides that the NCP will conduct an initial assessment upon receipt of a case. The initial assessment is called ‘formal admissibility’ in the RoP. The NCP will not declare the submission to be ‘formally admissible’ in three cases, namely if

- a. It fails to meet the formal requirements listed in Art. 6;
- b. If it fails to clearly specify the link between the issues and the Guidelines;
- c. If it refers to a case already handled by the NCP on the same issues and between the same parties (Art. 7).

In performing the initial assessment, the NCP may require further clarifications or information from the submitter, and organise meetings with one or both of the parties (Art. 8). Likewise, it may liaise with other NCPs to seek advice, involve other NCPs concerned by the issues, or transfer the case if another NCP is better placed to handle it and agrees to the transfer (Art. 9).

The NCP indicated that, in practice, it holds meetings during the initial assessment phase with each party to explain the Guidelines and the process, and clarify expectations in this regard.

Within 90 days of the receipt of the submission, the NCP may either reject the submission or accept it ‘if the [submission] provide[s] evidence of an alleged non-observance or a possible breach of the OECD Guidelines’ (Art. 10 b)). In the former case, it will notify the submitter and, at its discretion, the company, giving reasons for the decision not to accept the case. In the latter case, the NCP will offer its good offices and notify the parties within 30 days of deciding to accept the case. It may also notify relevant government bodies of its decision, with a brief summary of the substantive aspects of the case, in line with the RoP’s confidentiality provisions (Art. 11).

The RoP do not provide that the NCP must publish its initial assessments, and the NCP does not do so in practice.

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<sup>18</sup> See [https://cancilleria.gob.ar/userfiles/ut/initial\\_survey\\_for\\_specific\\_instances.pdf](https://cancilleria.gob.ar/userfiles/ut/initial_survey_for_specific_instances.pdf).

The RoP provisions regarding the initial assessment phase, though they do not deviate formally from the Procedural Guidance, would however benefit from being more closely aligned with the language of the Procedural Guidance, so as to enhance predictability. In particular, the terminology ‘initial assessment’ is currently not used in the RoP, which might be confusing to parties. Second, while the RoP contain criteria for undertaking the initial assessment, these criteria do not refer to the elements listed in para. 25 of the Commentary to the Procedural Guidance. It is unclear whether the NCP applies these elements in practice, given that initial assessment statements are not published. Finally, it could be useful to specify more explicitly the procedure for informing the parties and meeting with them during the initial assessment procedure. In particular, RoP should state that companies will be notified that a specific instance has been filed against them before the conclusion of the initial assessment phase, even if the NCP decides not to accept the case.

### *Good offices*

The RoP specify that, as soon as the NCP has accepted the case, it becomes responsible for the following:

- a. Guaranteeing its own independence and neutrality;
- b. Giving parties access to the information related to the case;
- c. Protecting sensitive information disclosed by the parties in the context of the case;
- d. Ensuring, if possible, that parties communicate in good terms;
- e. Complying with, and enforcing deadlines;
- f. Complying and enforcing confidentiality until the conclusion of the case;
- g. Providing guidance to the parties to help them reach a solution to the issues (Art. 13).

Once a decision to accept a case has been made, the RoP provide that the NCP will hold a meeting with the company to inform it of the initiation of the case, of its decision to accept it, to explain the issues and to offer its good offices (Art. 14). The company may then submit its response to the submission. The RoP provide that the response must be submitted within 60 days but it is unclear what the point of departure of this time frame is (Art. 15). Parties or the NCP may request additional meetings to obtain additional information (Art. 16).

The RoP (Art. 17) provide that the company’s response will be shared with the submitter, who may then respond. Parties may then exchange further responses to their respective written submissions ‘provided that it does not unreasonably delay the substantiation of the specific instance.’ Likewise, if new facts emerge after a case was accepted, the NCP will consult the parties to determine together with them the appropriate course of action. The RoP indicate that the NCP should ‘take all appropriate steps for the enterprise to accept its good offices and agree to engage in a dialogue with the complainant, with or without the participation of the [NCP]’ (Art. 20).

As indicated above, the NCP so far has not yet used the services of external mediators. However, as part of its new institutional arrangements, the NCP invited the National Directorate of Mediation and Participative Methods for the Resolution of Conflicts of the Ministry of Justice and Human Rights to participate in the Advisory Council.

Art. 18 indicates that the NCP will seek to conclude the case within 12 months of the initial submission, unless circumstances that are unforeseeable or beyond its control warrant an extension.

The NCP will conclude a case if:

- a. The parties fail to reach an agreement at the end of the 12 months deadline specified in Art. 18 and do not jointly request an extension of such deadline (Art. 19);<sup>19</sup>
- b. Despite the NCP's best efforts to convince the company to accept its good offices, the company fails to do so within 60 days of the decision to accept the case (Art. 20).

The RoP provide that parties must ensure that they respect deadlines, failing which the NCP may move the process forward and make decisions as appropriate (Art. 21). Parties must notify the NCP of any 'definitive' agreement reached (Art. 22). Parties are responsible to enforce such agreements, but the RoP provide that the NCP 'will be entitled to follow up on their progress' (Art. 23).

Within 60 days of concluding the case and taking into account the need to protect sensitive information, the NCP will issue and publish on its website (Arts. 24 and 25):

- a. A statement if the parties do not reach an agreement or if one of the parties refuses the NCP's good offices. The statement may contain recommendations and the reasons why no agreement was reached. The RoP do not provide that the NCP may issue determinations, and the NCP has not done so to date. The RoP do not provide that the NCP will follow up on recommendations.
- b. A report if the parties reach an agreement. Parties may determine in the agreement the extent to which its content should be disclosed in the report. Parties may also request that the NCP follow up on the implementation of the agreement. This differs from the follow up provision for agreements which are reached outside the specific instance process, and for which no request from the parties appears necessary (see above).

In practice, the NCP's conduct of the good offices phase has been characterised by a high degree of informality and occasional deviations from the RoP in order to progress cases and convince parties to engage or to stay engaged. This has impacted predictability and the effective handling of cases, particularly with respect to the indicative timelines (see below). Likewise, the RoP do not specify clearly the confidentiality measures to be taken during the good offices phase, which may also reduce the confidence of parties in the specific instance process (see below).

The NCP should revise its RoP with a view to aligning them as much as possible with the Procedural Guidance and designing a clearer and more predictable procedure.

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<sup>19</sup> Art. 19 mistakenly refers to the 'expiration of the period set forth in Article 17' instead of Article 18.

**Box 6.1. Lafarge Holcim v. Ricardo Molina**

In March 2016, the NCP received a submission from Ricardo José Manuel Molina against Lafarge Holcim Ltd. The submitter was an electromechanical engineer, former employee of the company and inventor of a machine used by the company. Mr Molina had worked for 19 years for the company and his employment was terminated in 2014 because of a restructuration. The machine was patented by the company during Mr. Molina's employment, naming him as the inventor. The submission alleged that the compensation offered to Mr. Molina for his invention was insufficient, and breached the Guidelines Chapters on Concepts and principles, Environment, and Science and technology.

In May 2016, the NCP accepted the case for further examination and offered its good offices.

The company first requested that the specific instance be terminated because parallel proceedings were underway, based on a former RoP provision preventing parties to seek a court ruling on the same facts that are the object of a case open before the NCP. The NCP rejected this request because the parallel proceedings existed prior to the filing of the case, and referred to para. 26 of the Commentary to the Procedural Guidance, which states that the existence of parallel proceedings may not be the sole ground for not accepting a case.

On 31 October 2016, the company refused again to take part in mediation, as it feared that facts, evidence and arguments shared before the NCP could be used in court.

The NCP subsequently proposed that the parties engage in mediation with the sole purpose of discussing the amount of compensation requested by Mr. Molina, without resubmitting proposals that had previously failed in previous parallel proceedings. The parties accepted the NCP's proposal, but failed to reach agreement.

On 15 December 2016, the NCP issued a final statement concluding the specific instance, and encouraging the parties to consider finding a way to generate the conditions required to engage in dialogue and constructively work for the resolution of the issues in which they are involved.

Parties appreciated the NCP's responsiveness and efforts to bring the parties to the table, though there was disagreement about the exact length of the procedure. The informality surrounding the NCP's handling of confidentiality was also discussed, as well as the perception of impartiality of the NCP in this particular case, given that the government was a shareholder of the company at the time.

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<sup>20</sup> Flavia Di Cino and Tenaris S.A. (2017).

<sup>21</sup> Non accepted cases are Asociación Civil por la Igualdad y la Justicia (ACIJ) and BNP PARIBAS (2011) and Sindicato de los Trabajadores de las Tecnologías de la Información y la Comunicación (CEPETEL) and TELECOM (2012).

## Reporting on specific instances

### *Initial assessments*

As indicated above, out of 12 concluded cases handled by the NCP, nine were accepted, one was withdrawn before initial assessment,<sup>20</sup> and two were not accepted.<sup>21</sup> The reasons for not accepting these cases are similar: they were received over the period 2011-2012, during which the NCP was undergoing a reorganisation and became less active. As a result, the initial assessment was not conducted in a timely manner. It is only in 2016, after the reorganisation of the NCP was completed, that the NCP asked the parties whether they would like to update their submission with a view to the initial assessment. Submitters declined in both cases, leading the NCP to close the case before the initial assessment.

Out of the nine concluded cases that were accepted, the NCP issued (but did not publish) initial assessments in 7 cases,<sup>22</sup> starting in 2007.

The RoP do not formally require that the NCP contact the company during the initial assessment phase or that it submit its initial assessment decision to the parties for comments. Likewise, when the NCP does not accept a case, it has discretion as to whether it notifies the company of its decision (Art. 10 a)). As indicated above, the NCP should consider revising its RoP in this regard. Additionally, publishing Initial Assessment statements would contribute to increasing the NCP's transparency.

### *Final statements*

Among the nine concluded cases accepted by the NCP, two early cases led to agreements. One case led to an agreement among the parties themselves without involvement from the NCP,<sup>23</sup> the other led to an agreement facilitated by the NCP.<sup>24</sup>

When it offers good offices, the NCP devotes significant efforts to convincing the parties to come to the table and to create opportunities for dialogue, with some results.<sup>25</sup> However, it appears that, when such dialogue is happening, the NCP does not consistently play an active role in helping the parties find a mutually agreeable resolution to the issues. In particular, the NCP has so far not conducted proper 'mediation' in a case. In this regard, stakeholders have shared that the lack of professional expertise in the NCP regarding the practice of mediation diminished their confidence that the NCP could effectively facilitate agreements.

<sup>22</sup> Diputado Nacional Héctor P. Recalde y Dr. Hugo Wortman Jofré and Accor (2007); Centro de Investigación y Prevención de la Criminalidad Económica (CIPCE) and SKANSKA (2007); Asociación Civil por la Igualdad y la Justicia (ACIJ) and Ferrostaal Argentina S.A. (2011); Centro de Derechos Humanos y Ambiente (CEDHA) and GLENCORE (2011); Foro Ciudadano de Participación por la Justicia y los Derechos Humanos (FOCO) and BARRICK GOLD CORPORATION (2011); Ricardo Molina and Lafarge Holcim Ltd (2016); Maxiconsumo S. A. and Molinos Río de la Plata S.A. (2018).

<sup>23</sup> Union Obrera Molinera Argentina (UOMA) and CARGILL S.A. (2006). The final statement however states that: "The parties acknowledged having acted within the framework of the good offices of the NCP with whom they maintained a close and cordial relationship that led to the friendly resolution of the disputes raised."

<sup>24</sup> Diputado Nacional Héctor P. Recalde y Dr. Hugo Wortman Jofre and ACCOR (2007).

<sup>25</sup> See e.g. Foro Ciudadano de Participación por la Justicia y los Derechos Humanos (FOCO) and BARRICK GOLD CORPORATION (2011); Ricardo Molina and Lafarge Holcim Ltd (2016).

Bearing in mind the particular challenges posed by the fact that many cases submitted to the NCP are also the object of judicial proceedings (see below), where possible the NCP should offer mediation during good offices. The NCP has indicated that it was seeking the assistance of the Ministry of Justice's National Directorate for Mediation. The NCP should explore ways in which the services offered by the National Directorate could be used when offering mediation in future NCP cases. The membership of the National Directorate for Mediation in the Advisory Council is an opportunity in this regard. Proper provisions regarding confidentiality of mediation proceedings should also be included in the RoP, as the current practice in this regard has remained informal, which may diminish the confidence of the parties in the process.

#### **Box 6.2. Barrick Gold Corporation and FOCO in Argentina**

In June 2011, the NGO Foro Ciudadano de Participación para la Justicia y los Derechos Humanos (FOCO) submitted a case to the NCP, alleging that the Argentine subsidiary of the multinational mining corporation Barrick Gold Corporation had breached the Concepts and principles, General policies, Disclosure, Human rights, and Environment chapters of the Guidelines. The submitter supplemented its submission in December 2011. The submission alleged that mining activities were polluting air, soil and water in the adjacent towns of the mining operations, affecting glaciers and biodiversity. It also alleged that the company was not informing the inhabitants properly about the impact of their operations and that to add that it had hired as security staff a former member of the military accused of crimes against humanity.

In May 2013, the NCP accepted the case after initial assessment, and asked advice from various other government departments: the Directorate General of Human Rights of the Ministry of Foreign Affairs and Worship (same ministry as the NCP), the Secretariat of Human Rights, and various legal departments, in respect of the allegations of human rights violations.

Between December 2013 and 2015, the parties exchanged several written submissions. The position of the company was that most issues had already been resolved, while the NGO maintained that they were still actual. In December 2015, noting the difficulties in getting the parties to agree to a joint meeting, the NCP proposed to close the case, but the submitter disagreed.

In 2016, the membership of the NCP had changed and the new NCP members agreed to keep the case open and held several meetings with the parties separately, seeking to trigger bilateral conversations. In March 2018, the parties held a joint meeting for the first time in the presence of the NCP, which did not allow to reach an agreement.

In April 2018, the submitter informed the NCP of its intention to withdraw the case, to which the company did not object. The NCP then closed the case in September 2018.

The parties appreciated the efforts deployed by the NCP in trying to bring them to an agreement, and to ensure that they were able to hold a meeting to discuss the issues. However, the duration of the proceedings was seen as too long, and the passive participation of the NCP during the meeting of the parties was also discussed.

In the seven cases in which agreement could not be reached, the NCP concluded the case but did not formulate particular recommendations despite the fact that its RoP provides for this possibility (Art. 24 a)). Often, the NCP will conclude its final statement with a standard sentence encouraging the parties to create the conditions for the resolution of the issues through dialogue.

The RoP do not formally include the possibility for the parties to comment on draft statements or reports. However, in practice, the NCP gives parties the opportunity to review drafts in accordance with para. 36 of the Commentary of the Procedural Guidance. The NCP then retains discretion on whether to incorporate parties' comments into the document.

The NCP's final statements are generally short and do not include details on the issues. The NCP also does not make determinations or recommendations. Recommendations have been identified by NCPs as a good practice in furthering the effectiveness of the Guidelines.<sup>26</sup> The NCP's final statements should, in the future, contain the following elements: a description of the issues, an account of the process before the NCP, an analysis of the issues and, when appropriate, recommendations and provisions for follow up (see below).

The NCP and stakeholders have shared that a number of cases were characterised by their substantive complexity. In examining such cases, the NCP should ensure that it has sufficient access to the necessary expertise, and should make arrangements to access the technical resources available in other ministries and government departments. The inclusion of representatives of other government departments as permanent and *ad hoc* members of the Advisory Council is an opportunity in this regard. However, a precise procedure for the involvement of other ministries and government departments (including government representatives on the Advisory Council) in individual cases should be defined in the RoP or in the Advisory Council's Terms of Reference (see above).

### ***Follow-up***

Art. 23 of the RoP state that the NCP is entitled to follow up on the implementation of agreements reached by the parties. Art. 25 b) of the RoP is more nuanced as it provides that 'the parties may also agree to seek the assistance of the NCP to follow up on the implementation of the agreement, and the NCP may do so under the terms agreed between the parties involved and the NCP.' The RoP do not provide for the possibility for the NCP to follow up on recommendations it makes in final statements.

In practice, the NCP has not planned for follow up in a final statement or report, nor has it performed follow up in practice. As indicated above, the NCP should consider following up on agreements or recommendations where appropriate.

### **Feedback**

The NCP has not indicated that it regularly requests feedback from the parties after the conclusion of a specific instance.

However, the NCP has indicated that challenges faced by the parties in relation to the specific instance process had to do with determining its value as a voluntary mechanism and the fact that the existence of parallel procedures discourages companies from participating.

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<sup>26</sup> See OECD (2019), *Guide for OECD National Contact Points on issuing Recommendations and Determinations*, OECD Guidelines for Multinational Enterprises, available at <https://mneguidelines.oecd.org/Guide-for-National-Contact-Points-on-Recommendations-and-Determinations.pdf>, p. 26.

## Timeliness

The RoP state that the NCP will issue its initial assessment within 90 days of receipt of a submission (Art. 10, para. 1), and that it will generally seek to conclude a case within 12 months of submission unless an extension is warranted (Art. 18), in line with the indicative timeframes specified in the Guidelines.<sup>27</sup> The RoP provide in this regard that the NCP will conclude the case after 12 months if the parties have not reached agreement, or if they fail to request an extension.

The RoP contain a number of internal deadlines aimed at ensuring timeliness in the process:

- The NCP will notify the parties within 30 days of deciding to accept a submission (Art. 10 b));
- The company must accept the NCP's offer of good offices within 60 days (Art. 15 and 20);
- The final statement or report will be signed by the NCP members and issued within 60 days of the conclusion of the proceedings (Art. 25, para. 1).

Likewise, Art. 21 of the RoP state that the NCP must ensure a speedy process and encourages the parties to submit all information in a timely manner, failing which the NCP may proceed with the relevant decisions.

While the RoP put much emphasis on timeliness, the NCP should be mindful that a number of cases have exceeded the abovementioned deadlines:

- Three cases were concluded within 12 months of submission;<sup>28</sup>
- Four cases were concluded between one and three years after submission;<sup>29</sup>
- One case was concluded between three and five years after submission;<sup>30</sup>
- Four cases were concluded in over five years;<sup>31</sup>
- One case has been pending since 2008 (11 years).<sup>32</sup>

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<sup>27</sup> Commentary, para. 40.

<sup>28</sup> Union Obrera Molinera Argentina (UOMA) and CARGILL S.A., (2006); Ricardo Molina and Lafarge Holcim Ltd (2016); Maxiconsumo S. A. and Molinos Río de la Plata S.A. (2018).

<sup>29</sup> Asociación Bancaria Argentina and Banca Nazional del Lavoro (2004) ; Centro de Investigación y Prevención de la Criminalidad Económica (CIPCE) and SKANSKA (2007); Diputado Nacional Héctor P. Recalde y Dr. Hugo Wortman Jofre and ACCOR (2007); Flavia Di Cino and Tenaris S.A. (2017).

<sup>30</sup> Centro de Derechos Humanos y Ambiente (CEDHA) and GLENCORE (2011).

<sup>31</sup> Asociación Civil por la Igualdad y la Justicia (ACIJ) and Ferrostaal Argentina S.A. (2011) ; Asociación Civil por la Igualdad y la Justicia (ACIJ) and BNP PARIBAS (2011) ; Sindicato de los Trabajadores de las Tecnologías de la Información y la Comunicación (CEPETEL) and TELECOM (2012) ; Foro Ciudadano de Participación por la Justicia y los Derechos Humanos (FOCO) and BARRICK GOLD CORPORATION (2011).

Regarding initial assessments:

- The initial assessment was completed within three months of submission in six cases;<sup>33</sup>
- The initial assessment was completed between three months and two years after submission in one case;<sup>34</sup>
- The initial assessment was completed between five and seven years after submission in two cases;<sup>35</sup>
- In one pending case the initial assessment was completed four months after submission,<sup>36</sup> and in the second pending case, the initial assessment was completed less than one month after submission.<sup>37</sup>

## Confidentiality and transparency

The RoP contain provisions regarding confidentiality. Art. 26 states that, when offering its good offices, the NCP may take steps to protect the identity of the parties involved if there is good reason to believe that the disclosure of this information would be detrimental to one or more of the parties. This could include circumstances where there may be a need to withhold the identity of a party or parties from the enterprise involved. Save in these situations, the principle is that the NCP will guarantee access of each party to the submissions of the other party (Art. 13 b).

Art. 27 adds that the NCP will preserve, at all times, the confidentiality of the information, as well as of the parties involved and the opinions offered by them during the proceedings, unless both parties consent to disclosure. This is without prejudice to ‘the powers of the [NCP] when submitting its report to the OECD Investment Committee.’ In practice, one case was concluded by the NCP as a result of a violation of confidentiality by one party, causing the other to withdraw.<sup>38</sup> As indicated above, the NCP should revise its RoP to ensure a more solid process for protecting confidentiality during good offices proceedings.

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<sup>32</sup> Institute for Participation and Development of Argentina (INPADE) and Friends of the Earth Argentina and SHELL C.A.P.S.A (2008).

<sup>33</sup> Diputado Nacional Héctor P. Recalde y Dr. Hugo Wortman Jofré and ACCOR (2007); Centro de Investigación y Prevención de la Criminalidad Económica (CIPCE) and SKANSKA (2007); Asociación Civil por la Igualdad y la Justicia (ACIJ) and Ferrostaal Argentina S.A. (2011); Centro de Derechos Humanos y Ambiente (CEDHA) and GLENCORE (2011); Ricardo Molina and Lafarge Holcim Ltd (2016); Maxiconsumo S. A. and Molinos Río de la Plata S.A. (2018).

<sup>34</sup> Foro Ciudadano de Participación por la Justicia y los Derechos Humanos (FOCO) and BARRICK GOLD CORPORATION (2011).

<sup>35</sup> Asociación Civil por la Igualdad y la Justicia (ACIJ) and BNP PARIBAS (2011); Sindicato de los Trabajadores de las Tecnologías de la Información y la Comunicación (CEPETEL) and TELECOM (2012).

<sup>36</sup> Institute for Participation and Development of Argentina (INPADE) and Friends of the Earth Argentina and SHELL C.A.P.S.A (2008).

<sup>37</sup> Liliana Zabala and Enrique Fernández Sáenz and Telefónica de Argentina S.A. and Telecom Argentina S.A. (2018).

The NCP publishes its final statements and reports (Art. 25, para. 3), but not its initial assessment statements when the case is accepted. As indicated above, publishing initial assessment statements would contribute to increasing the NCP's transparency.

## Campaigning

The RoP do not contain language regarding campaigning specifically, though the NCP is tasked with 'enforcing' the principle of the confidentiality of information shared by the parties during the process (Art. 13 f)), which may require parties to refrain from using information obtained during the process during campaigns. The NCP indicated in this regard that submitters had refrained from submitting a case because they were not willing to abandon public campaigning on facts raised in the dispute.

## Parallel proceedings

The RoP does not contain specific provisions relating to parallel proceedings, but the NCP asks parties to disclose in their 'initial survey' (see above) whether parallel proceedings exist.

The NCP indicated that many of the cases it handled were also the object of parallel court proceedings. This is one of the main challenges encountered by the NCP in handling specific instances, for several reasons. First of all, court proceedings often comprise a pre-trial conciliatory process which parties may confuse with the dialogue-based approach to case-handling offered by the NCP. Second, companies are often reluctant to accept good offices for fear that the information shared would be used against them in court.<sup>39</sup> It is therefore important that the NCP clearly informs the public about its exact role and mandate, as well as the benefits of engaging with the NCP as compared to a judicial process. When necessary, the NCP should also clarify with parties to a case that the NCP may not conclude a case 'solely because parallel proceedings have been conducted, are under way or are available to the parties concerned.'<sup>40</sup>

## Cooperation with other NCPs

As indicated in Art. 9 of its RoP, the NCP may consult with other NCPs during the initial assessment stage for the following purposes:

- a. Seeking advice from the other NCP(s) regarding the complaint
- b. Involving the other NCP(s) in the complaint process
- c. Transferring the complaint to the other NCP if this is considered appropriate and agreed by the NCP's involved in the matter.

The NCP coordinated with other NCPs on issues of leadership in four cases.<sup>41</sup>

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<sup>38</sup> See Centro de Investigación y Prevención de la Criminalidad Económica (CIPCE) and SKANSKA, 2007.

<sup>39</sup> See Ricardo Molina and Lafarge Holcim Ltd (2016); Maxiconsumo S. A. and Molinos Río de la Plata S.A. (2018).

<sup>40</sup> Commentary, para. 26.

	Findings	Recommendation
3.1	The rules of procedure are not closely aligned with the language of the Procedural Guidance. In practice the NCP's handling of cases has been characterised by a high degree of informality (e.g. regarding confidentiality), which has impacted predictability.	The NCP should revise its rules of procedure with a view to aligning them with the Procedural Guidance and designing a clearer and more predictable procedure.
3.2	During good offices, the NCP does not consistently play an active role in helping the parties find a mutually agreeable solution to the issues and lacks expertise to conduct mediation, which may diminish the confidence of the parties and impede the effective handling of cases.	Where possible, the NCP should offer mediation during good offices, and explore ways in which the services offered by the Ministry of Justice's National Directorate for Mediation could be used in future cases.
3.3	The NCP's final statements are generally short and do not include details on the issues. The NCP also does not make recommendations or plans for follow up.	The NCP's final statements should, in the future, contain the following elements: a description of the issues, an account of the process before the NCP, an analysis of the issues and, when appropriate, recommendations and provisions for follow up.
3.4	Cases submitted to the NCP may be characterised by their substantive complexity, in respect to which the NCP may lack the technical expertise.	The NCP should ensure that it has sufficient access to the necessary expertise for the examination of cases, and should make arrangements to access the technical resources available in other government departments. To that effect, a precise procedure for the involvement of other ministries and government departments (including government representatives on the Advisory Council) in individual cases should be defined in the rules or procedure, or in the Advisory Council's Terms of Reference

<sup>41</sup> Institute for Participation and Development of Argentina (INPADE) and Friends of the Earth Argentina and SHELL C.A.P.S.A (2008, with Dutch NCP); Centro de Derechos Humanos y Ambiente (CEDHA) and GLENCORE (2011 with Australian NCP); Ricardo Molina and Lafarge Holcim Ltd (2016, with Swiss NCP); Flavia Di Cino and Tenaris S.A. (2017, with the NCPs of Brazil, Canada, Italy, Luxembourg, Japan, Mexico, the UK and the US).

## 7. PROJECT ON PROMOTING RBC IN LATIN AMERICA

Argentina participates in a project on Promoting Responsible Business Conduct in Latin America and the Caribbean, funded by the European Union and implemented jointly by the OECD, the Office of the UN High Commissioner for Human Rights, and the International Labour Organisation.<sup>42</sup> One of the pillars of activities led by the OECD Secretariat concerns ‘Strengthening access to remedy: Reinforcing National Contact Points.’ Under the project, opportunities for tailored capacity building and peer learning with other LAC NCPs are available.

Tailored capacity-building will consist of the development and implementation of an individual ‘roadmap’ of capacity-building activities under the project for the period 2020-2022. The roadmaps will be agreed upon between the OECD Secretariat, the NCP and the Argentinian government. The NCP is encouraged to primarily include in its roadmap activities aimed at implementing the recommendations of the peer review.

Peer learning opportunities will mainly occur through the regional network of NCPs from Latin America, which was set up and will be supported by the Secretariat as part of the project. Joint peer learning activities and meetings will be organised by the network in order to explore issues of joint interest to NCPs in the region from a practical perspective. To the extent appropriate, the NCP is encouraged to share and discuss within the network the issues that emerge from the peer review findings and from the implementation of the peer review recommendations.

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<sup>42</sup> See <https://mneguidelines.oecd.org/rbclac.htm>

## Annex A. List of organisations submitting responses to the NCP peer review questionnaire

**Table A.1. List of organisations submitting responses to the NCP peer review questionnaire**

Name of organisation	Category of organisation
Argentine Agency of Investment and International Trade (AAICI)	Government
Argentine National Anti-Trust Commission	Government
Coordination of Public Policies on Business and Human Rights - Secretary of Human Rights and Cultural Pluralism - Ministry of Justice and Human Rights	Government
Directorate for Human Rights and Gender Issues – Ministry of Foreign Affairs and Worship	Government
Directorate of Institutional Violence - Ministry of Security of the Argentine Republic	Government
Directorate of International Agri-Food Negotiations (Ministry of Agro Industry)	Government
National Directorate of Infrastructure and Value Chains – Secretary of Mining Policy – Ministry of Production and Labour	Government
International cooperation secretariat	Government
National Directorate of Mediation and Participative Methods for Conflict Resolution - Ministry of Justice and Human Rights	Government
National Directorate of International Cooperation – Secretary of Government of Environment and Sustainable Development	Government
Ombudsman Office (Defensoría del Pueblo de la Nación)	Government
OECD Management Unit from the Ministry of Treasury	Government
Secretary of Civil Protection – Ministry of Security	Government
Secretary of Labor and Employment (Sec. of Promotion, Protection and Technological Change)	Government
Secretary of Mining Policy	Government
Trade Commissioner – Embassy of Canada	Government
Cámara Argentina de Comercio y Servicios	Business
Centro Nacional de Responsabilidad Social Empresarial y Capital Social	Business
Consejo Empresario Argentino para el Desarrollo Sostenible	Business
Estudio Bruchou	Business
Foro Argentino de Biotecnología	Business
Maxiconsumo S.A.	Business
Red Argentina del Pacto Global	Business
SHELL Argentina	Business
Syngenta	Business
Telefónica de Argentina	Business
Unión Industrial Argentina	Business
Central de Trabajadores Argentinos – Autónoma	Trade Union
Confederación General del Trabajo	Trade Union
CTA de los Trabajadores	Trade Union
Asociación Mutual Israelita Argentina	Civil Society
ComunicaRSE	Civil Society
Foro Ciudadano de Participación por la Justicia y los Derechos Humanos	Civil Society
Fundación CONVIVIR	Civil Society
Fundación Promoción Humana	Civil Society
Latin American Justice and Gender Team	Civil Society
ORIGINARIOS	Civil Society
Facultad de Ciencias Jurídicas y Sociales, Universidad Nacional del Litoral	Academia
Universidad Católica de Córdoba	Academia
Ricardo Molina	Individual

## Annex B. List of organisations that participated in the NCP peer review on-site visit

**Table B.1. List of organisations that participated in the NCP peer review on-site visit**

Name of organisation	Category of organisation
Argentine Agency for Investment and Trade (AAICl)	Government
Defensoría del Pueblo de la Nación	Government
Ministry of Justice - National Directorate for Mediation	Government
Secretariat of Human Rights of the Argentine Republic	Government
Secretariat of Human Rights of the Argentine Republic	Government
Secretariat of Labor and Employment of the Argentine Republic	Government
Secretariat of Mining of the Argentine Republic	Government
AmCham Argentina	Business
Argentine Business Council for Sustainable Development (CEADS)	Business
Argentine Industrial Union (UIA)	Business
Argentinean Chamber of Commerce and Services (CAC)	Business
Barrick Gold	Business
Chamber of Commerce between Argentina and Canada (CCAC)	Business
Lafarge Holcim Ltd.	Business
Maxiconsumo S.A.	Business
National Center for Corporate Social Responsibility and Social Capital (CENARSECS)	Business
Argentine Workers' Central Union (CTA)	Trade Union
Central de Trabajadores de la Argentina – Autónoma	Trade Union
General Confederation of Labor (CGT)	Trade Union
Union of Construction Workers (UOCRA-CGT)	Trade Union
Citizen Forum on Participation for Justice and Human Rights	Civil Society
Citizen Forum on Participation for Justice and Human Rights (FOCO)	Civil Society
Fundación Ambiente y Recursos Naturales	Civil Society
Fundación Poder Ciudadano	Civil Society
Latin American Justice and Gender Team (ELA)	Civil Society
National University of the Litoral (UNL) Social and Legal Sciences School	Academia
Ricardo Molina	Individual

## Annex C. Promotional events

### 2016 (Source: NCP Annual Report to the OECD)

No events reported

### 2017 (Source: NCP Annual Report to the OECD)

**Table C.1. NCP-organised and co-organised events to promote the Guidelines and/or the NCP**

Title	Date	Location	Type of event	Size of audience	Organised or co-organised?	Targeted audience	Theme
Governmental Advisory Body	Jul 2017	Ministerio de Relaciones Exteriores y Culto	Meeting	10-50	Organised	Government representatives	NCP advisory body
Civil Society Advisory Body	Aug 2017	Ministerio de Relaciones Exteriores y Culto	Meeting	10-50	Organised	Business representatives, NGOs, Trade Unions	NCP advisory body

No presentations by the NCP to promote the Guidelines and/or the NCP in events organised by others reported

2018 (Source: NCP Annual Report to the OECD)

**Table C.2. NCP-organised and co-organised events to promote the Guidelines and/or the NCP**

Title	Date	Location	Type of event	Size of audience	Organised or co-organised?	Targeted audience	Theme
Promotion of OECD Mining Sectoral Guidance	Feb 2018	Ministerio de Relaciones Exteriores y Culto	Meeting	10-50	Organised	Chambers that group energy companies from the oil, gas and mining sectors and among relevant officials of the Ministry of Energy and Mining	Promotion of the OECD Sectoral Due Diligence Guidance on Extractives and minerals

**Table C.3. Presentations by the NCP to promote the Guidelines and/or the NCP in events organised by others**

Title	Date	Location	Type of event	Size of audience	Targeted audience	Organiser	Type of intervention	Theme of the intervention
Special Roundtable "REMEDIAR" - Empresa y Derechos Humanos"	May 2018	Ciudad Autónoma de Buenos Aires - Argentina	Meeting	10-50	Business representatives	Argentine Business Council for Sustainable Development	Presentation with PowerPoint	Functions of the ANCP, information about the OECD Guidelines, specific sectoral guidances and specific instances

**2019 (Source: NCP peer review questionnaire)**

**NCP-organised and co-organised events to promote the Guidelines and/or the NCP**

- Information meeting with Maria Jose Alzari -Senior Consultant in Companies and Human Rights-. Argentine Entrepreneurial Council for Sustainable Development – CEADS.
- Information meeting with officers of the Secretariat of Mining (Community Development and Environment Office).
- Information meeting with officer of the Ministry of Security, in charge of the “National System for the Integral Management of Risk and Civil Protection”.
- Information meeting with officer of the Ombudsman office.
- Information meeting with officer of the Under-secretariat of Strategic Affairs in Human Rights, Secretariat of Human Rights and Cultural Pluralism.
- Information meeting with officers of the Secretary of Promotion, Protection and Technological Change, Ministry of Production and Labor.
- Information session with Civil Society Organizations about the OECD Guidelines and the roles of the ANCP.
- Information meeting with Trade Union Associations (CGT and CTA) and Business Association (Industrial Union of Argentina – UIA)
- Information meeting with officers of the Secretary of Agribusiness.
- Information and coordination meeting with the Argentine Agency for Investment and Trade.
- Information meeting with Representative of ARGENCON (Business association of the knowledge economy).
- Information and coordination meeting with officers of the Secretariat of Environment and Sustainable Development.

**Presentations by the NCP to promote the Guidelines and/or the NCP in events organised by others**

- Information meeting organized by the General Directorate for Human Rights (Ministry of Foreign Affairs and Worship) within the framework of Argentina’s participation in the UN “Voluntary Principles on Security & Human Rights” initiative.
- Information meeting organized by the Ministry of Security for presentation of policies on Compliance, Human Rights and Security in areas of productive developments.

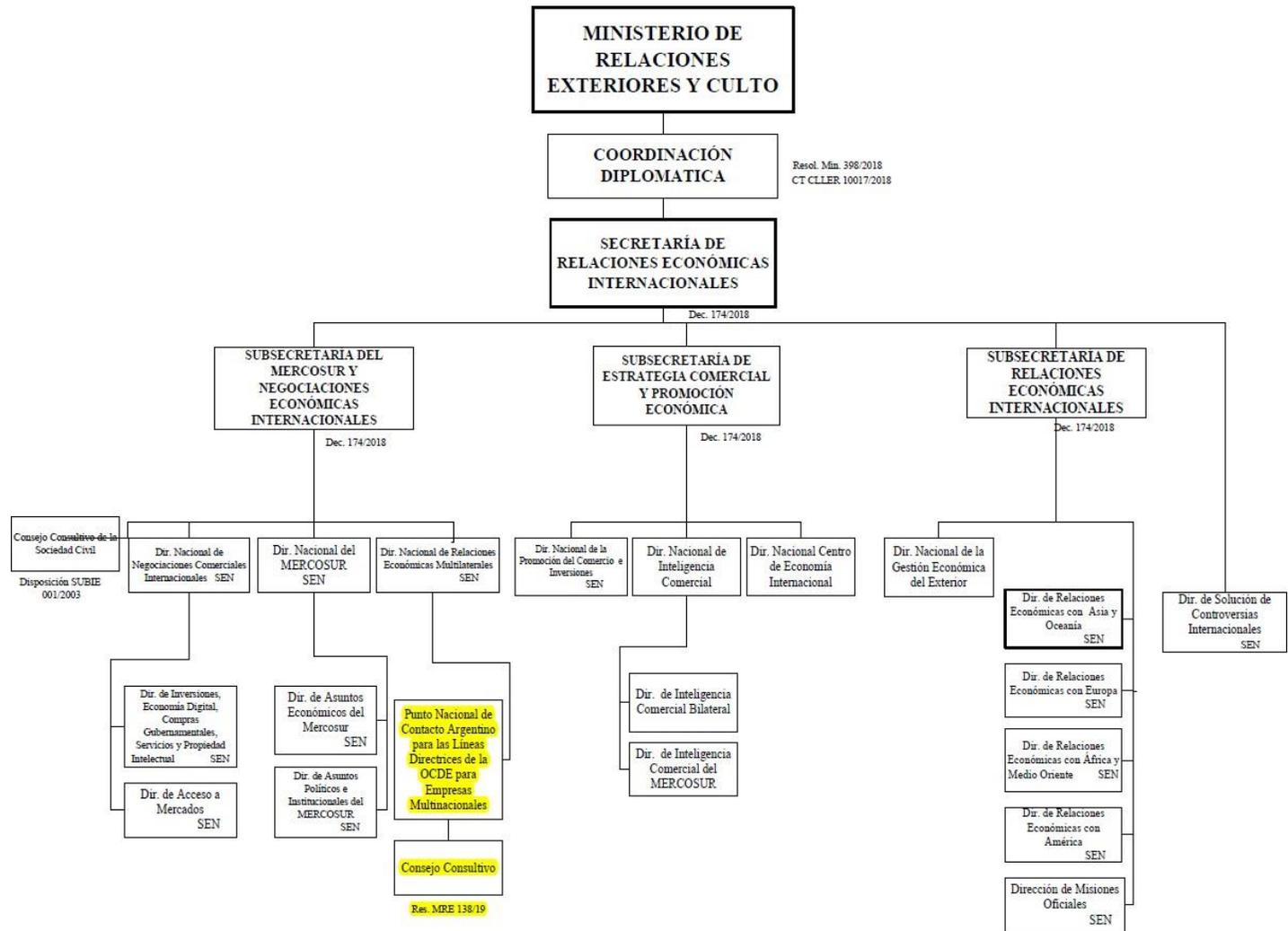
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- Workshop organized by the Argentine Business Council for Sustainable Development (CEADS) regarding business and human rights as well as the OECD Guidelines and the roles of the NCP.
  - Presentation by the Secretary of Human Rights and the Secretary of Mining in “ArMinera”, an International Trade Fair for the Mining Industry held every two years in Buenos Aires, being the only trade fair in its sector, gathering decision-makers of the mining industry, both local and foreign.
  - Workshop on Environmental impact assessment and mine closure, organized by the Secretary of Mining with the participation of the Canadian International Resources and Development Institute (CIRDI).
  - Two panels at the “Regional Forum on National Action Plans and National Policies in Business and Human Rights”, hosted by the Secretary of Human Rights and Cultural Pluralism.
  - Information and coordination meeting at the Ministry of Justice (National Directorate of Mediation) for the organization of a workshop on Mechanism for Conflict Resolutions under the Pillar III of the UN Guiding Principles on Business and Human Rights.
  - Roundtable on the initiatives: EITI, Voluntary Principles on Security and Human Rights, OECD Guidelines for Multinational Enterprises/NCP, hosted by the Embassy of Canada in Argentina.

## Annex D. Overview of specific instances handled by the Argentinian NCP as the leading NCP

	Enterprise	Submitter	Host country	Chapter of the Guidelines	Date of submission	Date of Initial Assessment (IA)	Date of conclusion	Outcome	Description
1	Banca Nazional del Lavoro	Asociación Bancaria Argentina	Argentina	Employment and industrial relations General policies	1 Dec 2004	No IA	22 May 2007	No agreement No recommendations	The NCP held a meeting with the parties and concluded the case in 2007 after noting that there had not been communication with the parties since 2006.
2	CARGILL S.A.	Union Obrera Molinera Argentina (UOMA)	Argentina	General principles Disclosure Employment and industrial relations	29 Nov 2006	No IA	31 Jul 2007	Agreement	The NCP facilitated meetings between the parties, who reached an agreement amongst themselves.
3	SKANSKA	Centro de Investigación y Prevención de la Criminalidad Económica (CIPCE)	Argentina	Combating bribery, bribe solicitation and extortion Taxation	19 Sep 2007	22 Nov 2007	20 Nov 2009	No agreement No recommendation	The NCP facilitated meetings between the parties. The company subsequently withdrew because of a violation of the principle of confidentiality. The NCP then concluded the specific instance.
4	ACCOR	Diputado Nacional Héctor P. Recalde y Dr. Hugo Wortman Jofre	Argentina	General policies Employment and industrial relations Combating bribery, bribe solicitation and extortion	28 Nov 2007	Dec 2007	5 Mar 2009	Agreement	The NCP facilitated an agreement between the parties.
5	Ferrostaal Argentina S.A.	Asociación Civil por la Igualdad y la Justicia (ACIJ)	Argentina	General policies Combating bribery, bribe solicitation and extortion	17 Mar 2011	May 2011	11 Nov 2016	No agreement No recommendation	The NCP offered its good offices to the parties, but the company refused. The NCP concluded the case.
6	BNP PARIBAS	Asociación Civil por la Igualdad y la Justicia (ACIJ)	Argentina	General policies Disclosure Combating Bribery, bribe solicitation and extortion Taxation	4 Jul 2011	15 Dec 2016	N/A	Not accepted	This case was delayed due to restructuration of the NCP. In 2016 the NCP asked the submitter to update its request to examine the case but without success. The NCP then closed the case.
7	GLENCORE	Centro de Derechos Humanos y Ambiente (CEDHA)	Argentina	General policies Disclosure Environment	16 Sep 2011	28 Oct 2011	3 Nov 2014	Concluded No agreement No recommendations	The NCP organised bilateral meetings with the submitter and the company (no meetings with all parties) but the conditions were not present to reach an agreement.

Enterprise	Submitter	Host country	Chapter of the Guidelines	Date of submission	Date of Initial Assessment (IA)	Date of conclusion	Outcome	Description	
8	TELECOM	Sindicato de los Trabajadores de las Tecnologías de la Información y la Comunicación (CEPETEL)	Argentina	Concepts and principles General policies Human rights Employment and industrial relations	23 Apr 2012	19 Oct 2018	N/A	Not accepted	This case was delayed due to the restructuring of the NCP. In 2016 the NCP asked the submitter to update its request or submit a new one to examine the case but without success. The NCP then closed the case.
9	BARRICK GOLD CORPORATION	Foro Ciudadano de Participación por la Justicia y los Derechos Humanos (FOCO)	Argentina	Concepts and principles General policies Disclosure Human rights Environment	8 Jun 2011 (updated 7 Dec 2011)	9 May 2013	27 Sep 2018	Concluded No agreement No recommendation	The parties exchanged written submissions and held bilateral meetings with the NCP before holding a meeting together in the presence of the NCP in March 2018, following which the submitter withdrew from the process and the NCP concluded the case.
10	SHELL C.A.P.S.A	Institute for Participation and Development of Argentina (INPADE) and Friends of the Earth Argentina	Argentina	General policies Disclosure Environment	28 May 2008	Sep 2008		Pending	
11	Lafarge Holcim Ltd	Ricardo Molina	Argentina	Concepts and principles Environment Science and technology	1 Mar 2016	May 2016	12 Dec 2016	Concluded No agreement No recommendation	The NCP facilitated meetings between parties (despite early refusal by the company due to parallel judicial proceedings) but no agreement was reached. The NCP then concluded the case.
12	Tenaris S.A.	Flavia Di Cino	Argentina	Human rights Employment and industrial relations Combating bribery, bribe solicitation and extortion	25 Sep 2017	No IA	May 2019	Concluded No agreement No recommendation	The submitter withdrew the case before IA.
13	Molinos Río de la Plata S.A.	Maxiconsumo S. A.	Argentina	General policies Competition	1 Jun 2018	3 Aug 2018	23 Jan 2019	Concluded No agreement No recommendation	The NCP sought to facilitate meetings between the parties, but the company declined because it preferred to resolve the case judicially (given that other conciliation attempts had failed before)
14	Telefónica de Argentina S.A. and Telecom Argentina S.A.	Liliana Zabala and Enrique Fernández Sáenz	Argentina	General policies Employment and industrial relations	11 Oct 2018	8 Nov 2018		Pending	

## Annex E. Organisational chart of the Ministry of Foreign Affairs and Worship



# National Contact Point Peer Reviews: Argentina

Adhering governments to the OECD Guidelines for Multinational Enterprises are required to set up a National Contact Point (NCP) that functions in a visible, accessible, transparent and accountable manner.

This report contains a peer review of the Argentinian NCP, mapping its strengths and accomplishments and also identifying opportunities for improvement.

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