

RULES OF PROCEDURE FOR HANDLING SPECIFIC INSTANCES

I. DEFINITIONS

1. **Specific Instance** – complaint/enquiry that is submitted to the NCP concerning a company’s alleged failure to observe the Guidelines for Multinational Enterprises (hereinafter – the Guidelines) of the Organisation for Economic Co-operation and Development (hereinafter – the OECD); the terms “specific instance” and “complaint” are synonymous.

2. **Enterprise** – a multinational enterprise against whose actions (or omission) a complaint has been submitted according to the procedure prescribed in these rules (hereinafter – the Rules).

3. **Complainant** – The party or parties who submit(s) the complaint in a specific instance. This may be a local community affected by the activities of the multinational company, employees, a trade union, a non-governmental organisation and other stakeholders.

4. **Complaint** – a document submitted by the complainant to the Lithuanian NCP regarding enterprise's actions (or omission) which do not observe the recommendations of the Guidelines, that meets the requirements established in chapter II of these Rules.

5. **Initial assessment of the complaint** – an initial evaluation of the circumstances indicated in the complaint in order to assess whether the complaint is related to the Guidelines and/or is sufficiently substantiated and specific so that a decision could be made on further examination of the circumstances indicated in the complaint.

6. **Parties** – the complainant and the enterprise against which a complaint was received as per the procedure established in these Rules.

7. **Mediation** – a procedure of handling specific instance in which a third party (the NCP Independent Expert) assists the parties in an attempt to reach a settlement agreeable to both parties.

8. **Examination** – a procedure of handling specific instance, which is employed if parties fail to reach an agreement during Lithuanian NCP mediation procedure, in which the Lithuanian NCP Independent Experts assess circumstances indicated in the complaint regarding enterprises non-observance of the Guidelines and adopts its conclusion on the matter.

9. **NCP Secretariat** – a part of Lithuanian NCP, whose functions are exercised by the employee of the Ministry of Economy of the Republic of Lithuania, which is in charge of organisation of specific instance activities, correspondence and dissemination of information .

10. **NCP Independent Experts** – a part of Lithuanian NCP, which consists of individuals operating under voluntary activity agreement with Ministry of Economy of the Republic of Lithuania, who participate in promotional activities of the Guidelines and handles specific instances.

11. **NCP Advisory Body** – a part of Lithuanian NCP, which consists of representatives of governmental institutions, who within their competence assist the independent experts during handling of the specific instance

II. SUBMISSION OF A COMPLAINT

12. A complaint shall be submitted to the Lithuanian NCP by submitting it to the Ministry of Economy of the Republic of Lithuania in person or by e-mail info@oecdncp.lt. The complaint must be written in Lithuanian or English.

13. The complaint should include the following:

- 13.1. Name of organisation (when the complaint is submitted by a legal entity) or first name and last name (when the complaint is submitted by a natural person), address, phone number, e-mail ;
- 13.2. Contact person(s), first name, last name, job title, phone number, e-mail;
- 13.3. Name and registration address of the enterprise against which the complaint is submitted, and if the complaint is also related to other enterprises – names and addresses of these enterprises;
- 13.4. Factual circumstances of the event giving rise to the complaint;
- 13.5. Description of the interest of the person submitting the complaint, i.e. how the event in question had affected the rights and legitimate interests of the complainant;
- 13.6. Reference to the particular chapter of the Guidelines which according to the complaint was not observed;
- 13.7. The complainant's expectation from the enterprise to address the impacts of its non-observance of the Guidelines;
- 13.8. Whether the enterprise had been contacted regarding the circumstances indicated in the complaint before submitting the complaint.
- 13.9. Any other relevant information relating to the complaint, e.g. documents that substantiate the factual circumstances of the complaint, copies of the documents submitted to the enterprise; whether other institutions were contacted regarding the event indicated in the complaint and whether they had taken any action; copies of requests to and answers from such institutions; information on relevant applicable law and procedural provisions known to the complainant, including case law, related to the issues indicated in the complaint.
14. The complaint can be prepared using a complaint form that is attached as the annex to the Rules.
15. If the complainant indicates that the information submitted together with the complaint is confidential, he/she must clearly indicate which information he/she considers confidential and reasons to treat it as confidential. In such a case, the complainant must also submit a separate non-confidential version of the information that shall be submitted to the enterprise for comments. In case the complainant does not provide the non-confidential version of the information or arguments to treat such information as confidential, the information submitted by the complainant shall be considered as non-confidential. Publicly available or openly accessible information and data shall not be considered confidential. These provisions regarding the confidential information shall also be applicable to the information submitted by the enterprise.
16. The Lithuanian NCP Secretariat (hereinafter – the Secretariat) shall register the receipt of the complaint and within 5 business days notify the complainant through the indicated contact details that the complaint has been received

III. HANDLING SPECIFIC INSTANCES

17. The handling of specific instances shall be carried out in Lithuanian and encompass the following stages:
- 17.1. Initial assessment of the complaint (approximate duration – 3 months);
- 17.2. Mediation or examination of the complaint (approximate duration – 6 months);
- 17.3. Final statement (approximate duration – 3 months).
18. In case an agreement between the parties has been reached during mediation the Lithuanian NCP Independent Experts may evaluate and monitor the implementation of the agreement (duration – 12 months).
19. During the handling of a specific instance, the Secretariat shall provide technical and organisational assistance (arrange office space for meetings, send invitations and reminders, record the meetings).

VII. INITIAL ASSESSMENT OF THE COMPLAINT

20. An initial assessment of the complaint shall be carried out by the NCP independent experts with the support of the NCP Secretariat. Upon the receipt of the complaint Lithuanian NCP will first determine whether any members of the independent experts or the secretariat can be deemed to be disqualified from participating in the further consideration of the case on grounds of conflict of interest.

21. If the complaint is anonymous, the Secretariat shall (if possible) contact the complainant and notify him/her on the requirement to indicate the complainant identification data and on the possibility for the complainant to appoint a representative as established in subparagraph 22.3 of the Rules. If within 10 days from sending such information the complainant does not provide an answer or the data indicated in subparagraphs 13.1–13.2 of the Rules, the complaint shall be rejected and shall not be examined.

22. During the initial assessment of the complaint, the following criteria will be taken into account:

22.1. Lithuanian NCP's competency to examine the specific instance indicated in the complaint. When ascertaining Lithuanian NCP's competency, it shall be assessed whether the complaint is related to the activities or conduct of a Lithuanian multinational enterprise operating abroad or those of a multinational enterprise operating in Lithuania. In the event that the indicated circumstances are related to the enterprises of other adhering countries or their activities, the Lithuanian NCP may contact and consult the National Contact Points of such countries in order to identify and agree which country's National Contact Point should assume a leading role in solving the specific instance;

22.2. Whether the enterprise against which the complaint has been submitted is a multinational enterprise as per the Guidelines;

22.3. Identity of the party that submitted the complaint and its interest in the matter. The complaint may not be completely anonymous. If the complainant thinks that the submission of the complaint and disclosure of the complainant's identity could have negative effects, the complainant must appoint a representative (for example, appropriate non-governmental organisation or professional union) that will represent the complainant during the process of handling specific instances;

22.4. The relation of the issue(s) raised complaint to the Guidelines and its preliminary substantiality (i.e. whether the complaint is clearly unsubstantiated and whether supporting documents relate to the issues raised in the complaint);

22.5. The link between the activities of the indicated enterprise and the circumstances indicated in the complaint;

22.6. Relevant applicable law and procedure provisions, including case law.

23. If, the criteria indicated in paragraph 22 are considered to be sufficiently met, a decision shall be made to accept the complaint for further examination.

24. If during the initial assessment of the complaint it is determined that the complaint is not sufficiently specific or related to the implementation of the Guidelines, the Secretariat can contact the complainant (or his/her representative) with a request to provide more details on the circumstances indicated in the complaint or, upon the initial assessment of the complaint, decide not to accept it.

25. The statement of the decision by the NCP independent experts to accept, or not to accept the complaint for further examination upon the initial assessment shall include:

25.1. Where the complaint is accepted for further examination: the identity of the parties and their identification data indicated in paragraph 10 of the Rules. Where the complaint is not accepted for further examination: the parties shall not be identified – instead, the initials of the natural persons and the business areas of the enterprise against whose actions (or inaction) the complaint was submitted shall be used.

25.2. The date the issues were raised;

25.3. A summary of the circumstances indicated in the complaint, including references to relevant provisions of the Guidelines;

25.4. Reasons for accepting or refusing to accept the complaint for further examination;

25.5. Where relevant a statement emphasising that the acceptance of the complaint for further examination does not mean that the complaint is well-founded or that the conduct of the enterprise against which the complained has been submitted did not observe the requirements of the Guidelines;

25.6. Further stages and actions of the specific instance's examination.

26. Within 5 business days from the date of refusing to accept the complaint for further examination, the Secretariat shall send the text of such a decision to the complainant, publish it on the Lithuanian NCP's website and send its summary to the OECD so that this information would be included into the database of specific instances, administered by the OECD.

VII. HANDLING SPECIFIC INSTANCES BY MEDIATION OR EXAMINATION PROCEDURE

27. Within 10 business days from the date of the decision to accept the complaint for further consideration, the Secretariat shall:

27.1. Send to the complainant and enterprise a copy of the text of the decision to accept the complaint for further consideration (the enterprise must also receive a copy of the complaint), a copy of the Rules of Procedure and offer assistance to the parties to resolve the issues indicated in the complaint, including through mediation;

27.2. Ask the parties to provide information on when is the most suitable time for the party to meet with Lithuanian NCP's independent experts;

28. If the parties decide to meet with the Lithuanian NCP's Independent Experts as indicated in subparagraph 27.2 of the Rules, the first meeting shall be held with each party separately. The Secretariat will arrange a time suitable for each party and the Lithuanian NCP's Independent Experts. During the first meeting, the Lithuanian NCP's Independent Experts shall:

28.1. Find out the essence of the complaint and, if needed, ask the complainant to provide missing or additional documents and evidence, and ask the enterprise to express its stance towards the complaint;

28.2. Explain to the parties the status of the Lithuanian NCP as a neutral party and the Lithuanian NCP's competency.

28.3. Explain the nature of the mediation procedure and examination procedure under the Lithuanian NCP. It should also be explained to the parties that, if at least one of the parties refuse to use the Lithuanian NCP's mediation procedure, the examination procedure will be carried out.

29. Each party, within 10 days from the date of the meeting with the Lithuanian NCP, must notify the Secretariat in writing on whether it agrees to participate in mediation under the Lithuanian NCP.

30. If the parties choose to participate in mediation they may jointly selected one or several of the Lithuanian NCP's Independent Experts as to act as the mediator (subject to availability). If parties cannot agree on a mediator, a mediator will be appointed by the Chair of the Lithuanian NCP from the Lithuanian NCP's Independent Experts based on availability.

31. The mediation process usually takes place as follows:

31.1. When the parties choose the mediation procedure, the mediator shall arrange a preparatory meeting for mediation during which the parties must agree on specific conditions of the mediation procedure. During the preparatory meeting, the Mediator shall:

31.1.1. Assess whether the persons representing the parties have the authority and/or right to make decisions in the mediation process and assume obligations on behalf of the party;

31.1.2. Remind the parties about the voluntary nature of mediation and the goal of the mediation procedure – to resolve the issues indicated in the complaint by an agreement between the parties, and answer the questions of the parties about the mediation procedure;

31.1.3. Help the parties to enter into a written agreement on certain conditions for resolving the specific instance by the mediation procedure, by which the parties must:

31.1.3.1. Agree on the time of the meetings for the mediation procedure;

31.1.3.2. Undertake to act honestly during the mediation procedure and to truly seek to examine the complaint by mediation and not to use the mediation procedure as a way of getting additional information or a way of avoiding or delaying the resolution of the issues indicated in the complaint or avoiding responsibility for their actions;

31.1.3.3. Define the issues which the mediation process will consider.

31.1.3.4. Define the conditions regarding the confidentiality of information disclosed or made available during the mediation procedure, and undertake not to disclose such information, except to the extent necessary for internal purposes of the enterprise or organisation in order to get professional advice or further instructions.

31.1.3.5. Confirm that he/she understands that publishing of information disclosed or made available during the mediation procedure is a violation of such an agreement that could result in the termination of the mediation procedure due to the fault of the party that has published such information.

31.2. The mediation procedure may take place in separate meetings with each party or in joint meetings with both parties. During such meetings, the mediator shall:

31.2.1. Seek to identify and define together with each party its goals and interests;

31.2.2. Look for and offer to the parties possible solutions and methods;

31.2.3. Help to determine the conditions on which the parties would consider the mediation procedure successful;

31.2.4. Arrange acceptable solutions with the parties in order to reach an agreement.

31.3. If the parties manage to resolve only some of the issues raised in the unresolved issues may be considered by the Lithuanian NCP's Independent Experts through the examination procedure indicated in paragraph 32 of the Rules.

32. During the examination procedure, the issues raised in the complaint are assessed and a determination is made, indicating whether the enterprise observed the Guidelines, and proposals may be given regarding the implementation of the requirements indicated in the Guidelines. The specific instance examination procedure shall be as follows:

32.1. The examination procedure shall be started when at least one of the following circumstances is true:

32.1.1. At least one of the parties has not provided a written consent with the mediation procedure in specified timeframe;

32.1.2. The mediation procedure has been started but:

32.1.2.1. The parties failed to reach an agreement on all the issues indicated in the complaint;

32.1.2.2. The mediation procedure is or was terminated by an agreement of the parties or a decision of the mediator;

32.2. The examination procedure shall be conducted by the Lithuanian NCP's Independent Experts.

32.3. The examination procedure, depending on the particularities of the case, may be carried out by:

32.3.1. The information-collection method. The complainant and the enterprise are asked to submit additional explanations and evidence or documents that may be necessary to assess the circumstances indicated in the complaint. During such an examination, additional meetings between the parties and the Lithuanian NCP's Independent Experts may be held. These meetings shall be held according to a pre-arranged agenda and shall be recorded.

32.3.2. The good-practice method. Relevant state authorities, foreign embassies or consular offices, business or workers' organisations, non-governmental organisations or other organisations are contacted with a request to indicate the good practice in similar cases. The Lithuanian NCP's Independent Experts who conduct the examination procedure may also consult other NCPs.

32.3.3. The fact-finding method. The examination is conducted on-site, identifying actual circumstances with the help of interview, by communicating with relevant state authorities, professional unions and other workers' organisations, local communities or groups.

32.4. During the examination procedure, the Lithuanian NCP's Independent Experts notify the parties on a chosen method or methods of examination and that in case of failure to submit required information or refusal to participate in the examination procedure, the examination conclusions will be made based on the submitted documents and those available to the Lithuanian NCP. Upon the end of the examination, the Lithuanian NCP's Independent Experts shall assess all the collected information and make a conclusion on whether the enterprise's actions observed the Guidelines. If the Lithuanian NCP finds that the enterprise has not observed the recommendations of the Guidelines, the Lithuanian NCP may provide recommendations to the enterprise regarding the observance of the recommendations of the Guidelines.

32.5. The conclusion and recommendations of the Lithuanian NCP's Independent Experts shall be published in the final statement.

VI. FINAL STATEMENT

33. A final statement will be published once a specific instance proceeding is completed.

34. If the parties have reached a mediation agreement or partial mediation agreement, the final statement should include:

34.1. The parties of the specific instance and date of the complaint's receipt;

34.2. Summary of complaint summary and the issues raised;

34.3. Summary of the specific instance process and on whether some form of agreement was reached during the mediation procedure;

34.4. Outcomes of the agreement to the extent agreed to by the parties. The parties may agree that a part or all of the mediation agreement is not public and may not be published.

34.5. A proposal of the Lithuanian NCP for the parties to meet to discuss the implementation of the agreement.

35. Where an examination procedure is the final statement shall include (apart from the circumstances indicated in subparagraphs 34.1–34.3 of the Rules):

35.1. Reasons for not reaching a mediation agreement between the parties;

35.2. Evaluation of whether the enterprise observed the recommendations of the Guidelines, justifying each conclusion;

35.3. Issues indicated in the complaint that are, in the Lithuanian NCP's opinion, unfounded and that have not been accepted for further examination during the initial assessment (if any);

35.4. Recommendation to the enterprise on how to improve its activities so that it would comply with the Guidelines (if any);

35.5. Examples of good practice of compliance with the Guidelines (if applicable).

36. The final statement shall be drafted and approved in the meeting by the Lithuanian NCP's Independent Experts.

37. The NCP Secretariat shall send the final statement to the parties and ask them provide comments on facts stated herein within 10 days. Comments on the determinations or recommendations indicated in the final statement shall not be accepted and shall not be taken into account.

38. Within 10 days from the end of the period indicated in paragraph 37 of the Rules the Secretariat shall publish the final statement on the Lithuanian NCP's website and send it to members of Lithuanian NCP Advisory Committee.

39. The Secretariat shall send the published documents to the OECD so that it could enter the information into its administered database of specific instances.

VII. EVALUATION AND MONITORING OF THE IMPLEMENTATION OF THE AGREEMENT

40. In order to help the Lithuanian NCP improve its handling of specific instances, within 3 months from publishing the final statement the secretariat must ask the parties to evaluate the Lithuanian NCP's actions related to the specific instance.

40.1. If the mediation process ends with an agreement, within 12 months the Mediator (or if unavailable – the Chair of the Lithuanian NCP or other Independent Expert appointed by him/her) invite the parties to a meeting to discuss how the agreement was implemented. After the meeting, the Secretariat shall publish the information about the meeting on the Lithuanian NCP's website and make it publicly available otherwise.

COMPLAINT FORM

If the complaint includes confidential information, it must be clearly indicated which information is confidential and why it is considered confidential. In such a case, a separate version of non-confidential information must be provided that could be given to the enterprise. In case of failure to provide the non-confidential version of the information or reasons for accepting such information as confidential, such information shall not be considered confidential.

I. INFORMATION ON THE COMPLAINANT OR HIS/HER REPRESENTATIVE

Name/first name, last name¹	
Address	
Phone	
E-mail	
other	
Contact person(s)	
First name	
Last name	
Job title	
Phone	
E-mail	
<i>Are you filling the complaint on behalf of another person?</i>	
What are your expectations about submitting the complaint?	

II. INFORMATION ON THE ENTERPRISE AGAINST WHICH THE COMPLAINT IS BEING SUBMITTED

Name and headquarter address	
<i>If the complaint is also related to other enterprises: name and address of the enterprise</i>	

III. INFORMATION ON THE COMPLAINT

¹ If the complainant fears negative consequences that could arise if his/her identity is disclosed, the complainant may appoint a representative (for example, a non-governmental organisation or professional union) that would represent the complainant by maintaining contact with the enterprise and Lithuanian NCP.

Please indicate what are the actual circumstances of the event that serve as a basis of your complaint	
Please indicate your interests regarding the complaint (<i>please indicate how the event affected your rights or legitimate interests</i>)	
Please indicate the provisions of the OECD Guidelines for Multinational Enterprises that were not observed by the enterprise (<i>The text of the Guidelines can be found at: https://ukmin.lrv.lt/uploads/ukmin/documents/files/Investicijos/Rekomendacijos%20daugiasalems%20i%20monems_LT.docx</i>)	
What, in your opinion, the enterprise should do to rectify the violation?	
Please provide other information which, in your opinion, is important for the complaint	

IV. OTHER

Did you contact the enterprise regarding the circumstances indicated in the complaint before submitting the complaint?	
Did you contact other institutions regarding the event indicated in the complaint and have they taken any action? If you did, please provide copies of such notifications and copies of answers from such institutions	
Please provide information on related applicable law and procedure provisions you are aware of, including case law, that govern the issues indicated in the complaint (<i>please indicate only if you are aware of them and want to indicate that. Indicating such provisions is not necessary – their purpose is to help to make an initial assessment of your complaint</i>)	