

**To: NCP Ireland**  
**From: OECD Watch**  
**Re: Comments on NCP Ireland's draft procedures (Q1 2025)**  
**Date: 13 February 2025**

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OECD Watch welcomes the opportunity to provide comments on the Ireland NCP's draft rules of procedure. On the whole, we are pleased to see many improvements, including in line with recommendations from our NCP Indicators project. We hope the following specific suggestions will be useful to you. Please do not hesitate to contact us if we can provide further assistance.

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1.7: Good that you've clarified that the office is a standalone unit to ensure impartiality and equitability.

1.8: This is concerning, as it introduces a lot of unpredictability into the process. We would recommend removing this altogether. If you choose to keep it, can you or qualify and narrow it a bit, for example as follows:

This document outlines how the Ireland NCP handles complaints it receives connected to the Guidelines. ~~It acts as a guide to help parties understand the different stages in the process. However, it acts as a guide only, not a strict procedure. E~~ **Because** each complaint is different ~~and, therefore, may be handled differently to best suit the needs and circumstances of it. T~~ **on rare occasions** the Ireland NCP ~~reserves the right to~~ **may** depart from these procedures, **through consultation and consent of both parties, whenever it considers it necessary and appropriate when necessary to support promotion of the Guidelines and resolution of the specific instance.**

1.10: We would recommend including here "mutually agreeable and Guidelines-compatible" solution, and also that you reflect expectations around commitment by the company to cooperate in remediation where applicable and expected under the Guidelines.

2.2.2 and 4: Nice language on keeping parties informed.

2.3: Nice section!

2.3.2: Good to include this. We recommend clearly stating that the NCP has "zero tolerance" for reprisals. You could also incorporate language here around encouraging the company, where appropriate and desired by the complainant, to support in addressing reprisal risks. On a related but separate note, we urge you to include a separate provision prohibiting reprisals or retaliation against the NCP itself for its handling of complaints.

2.3.3: It could be helpful to add "translation **and interpretation services upon request**" and also to make clear which languages parties can file complaints in (we would urge any language, or at least widely spoken languages).

2.4.3: We would suggest setting a time limit on "A failure to respond will be considered a choice not to participate" – for example, "A **sustained** failure to respond" or, more precisely, "A failure to respond **after four weeks of outreach** will be considered...". Otherwise it could seem to lead to rash conclusions of complaints where, perhaps for legitimate reasons, a party is a bit late in responding.

2.5.2: This text, while appropriate, does not belong here regarding which companies are covered; it belongs (and may already be adequately covered) in the section on grounds for acceptance of complaints.

2.6: Great framing putting transparency first and emphasizing sharing of information between the parties! We would encourage you to add that the NCP will endeavour to minimise redaction of information.

2.6.2: Is it possible to succinctly summarize the basic goals/tenor of the GDPR for readers who may not be familiar with it (especially from outside the EU)? Obviously it's a big regulation, but could you add just a sentence or so explaining its purpose on protection of personal information.

3.1.1: We suggest some typographical changes to make the sense clearer:

The purpose of the initial assessment is for the Ireland NCP to determine whether a complaint merits further consideration and ~~should moves~~ to the next stage, ~~will be~~ transferred to another NCP or not accepted.

3.1.2: Can you clarify this last bit: "...request a meeting to explain the Ireland NCP complaint handling process and then request a preliminary response within a specified timeframe." Does this mean you first request and hold a meeting, and then after the meeting request a preliminary response? Or that you first email to request a meeting, and then follow-up to request a preliminary response (whether or not the meeting has first occurred)? We would recommend that you simultaneously request a preliminary response and offer a meeting soon to help the company understand the process and benefits of engaging in the process.

Also, can you clarify here, or elsewhere, whether or not you will make it public on your website that a complaint has been received (prior to commencing the initial assessment)? We recommend the receipt of the complaint be made public, ideally with disclosure of the complaint text itself, or at minimum with reflection in a complaints database that a complaint has been received concerning X and Y parties (unless the notifier's identity should be kept confidential for security reasons) regarding the ZZZ basic claims/issues raised.

3.1.5: It would be important to extend the conflict of interest rule to mediators as well, and any other experts that might be involved or consulted in relation to the complaint.

3.1.8: We encourage you to change "is likely to" to "may". We also urge you to considering adding the following elements: that the NCP will, only if full acceptance is not possible, consider partially accepting a complaint or temporarily suspending examination while the other proceedings are ongoing; and that the NCP will evaluate parallel proceedings in consultant with both parties and (if necessary) the parallel mechanism at issue.

3.3.1: We suggest removing "At the discretion of the Ireland NCP" and just allowing parties to make one response to comments made by the other party. Limiting to one should ensure replies and counter-replies are not overused, while avoiding the unpredictability of "at the discretion of the Ireland NCP".

3.4: We would recommend moving this section to follow section 2.5, as it seems to relate more to what happens before initial assessment than what happens during initial assessment.

We would also urge, in 3.4, that you clarify already that the NCP will evaluate claims according to the six admissibility criteria set out in the Guidelines Procedures (further elaborated in section 3.5.1), and that the following types of information help the NCP make that evaluation.

3.4.3: Nice additions in here to clarify the low threshold – you could add some explanation (for the benefit of companies) that the reasons for the low threshold are because complainants may, at this stage, lack access to more specific information on otherwise legitimate matters, and because a low threshold helps facilitate dialogue towards advancement of responsible business conduct. We also suggest moving this section to come after section 3.5.1, the section in which you introduce the terms material and substantiated.

3.5.1: Is there a reason you are not following the updated admissibility criteria (Guidelines Procedures Commentary para. 33) here? We recommend hewing more closely to those.

3.5.2: We recommend moving this provision to come after 3.1.9, as it relates to process, and not to the grounds on which the NCP accepts or rejects complaints.

3.7.1: Just a small typographical point: note the number is going off starting around here.

3.7: This section is not correctly paralleled with section 3.6 above which really explains what acceptance means. We recommend this section genuinely explain what non-acceptance means – that the NCP does not believe there are grounds to continue, namely because admissibility criteria have not been met. We then recommend that 3.8.1 be moved earlier, after 3.1.9, and that 3.8.2 and 3.8.3 also be relocated, perhaps to a new subsection under section 2?

3.8.2: This provision concerns us a bit, as it uses terms that are not defined and not quite clear in this context (“unfair”). “Unfair” seems to suggest a desire to protect companies where a complaint has been found unfounded, whereas the mention of “reprisals” seems to convey desire to protect complainants names for security reasons. We think this section should be deleted: for one, you have already mentioned anonymity in cases of reprisals in section 2.3.2, for another, if the complaint is being rejected, that rejection is enough to clear the name of a company that might otherwise find it unfair to have a groundless complaint filed against it. There is no additional reason to hide the name of the company.

3.8.3: Note that this provision essentially duplicates provision 2.4.3. We prefer this one because it mentions “which will be noted in the Ireland NCP statement” ← although better to clarify “noted in the next applicable Ireland NCP statement” as otherwise it’s not clear which statement is meant. And we recall again our comment, above, that the failure to respond framing is too vague in terms of timing.

3.8: It also seems this section belongs more under section 2 on the process for complaint handling, after sections on who can apply and what information should be included in the complaint.

4.1.1: It’s critical to include in here that the agreement must be compatible with the Guidelines (drawing from the framing in Procedures themselves, Procedures commentary para. 25). In practice, this means it shouldn’t allow the company to fulfil less than is expected of it under the standards of the Guidelines.

4.1.4: Nice additions in here.

4.1.6: Nice addition regarding personal safety of notifier. Yet we think the confidentiality provisions might be better located in the confidentiality section; see comment further down.

4.2.1: This is redundant with 4.1.3. We like the text of this one better, but the placement location of the former.

4.2.4: We suggest this belongs in a new section, after the role of the NCP section we propose below, entitled “If mediation results in agreement”.

4.2.5: We think this provision needs to be fleshed out a good bit. Of note, we urge you to consider adopting language from Procedures commentary para. 25 (“actively inform the dialogue with their expertise on the Guidelines”) and para. 37 (“the role of the NCP includes creating conditions for dialogue and agreement between the parties around a commitment by the enterprise to further the implementation of the Guidelines in the future and, where relevant, address, in accordance with the Guidelines, adverse impacts that may have occurred. While facilitating dialogue, the NCP should explain the provisions of the Guidelines relevant to the issues raised as a way to support parties in reaching an agreement compatible with the Guidelines.”) Because there is a lot to say on the role of the NCP, we actually think this section should be separated out into a new heading 4.3 on the Role of the NCP During Mediation. Right now, the framing “will make itself available” sounds rather passive, there only if requested by the parties. But the Guidelines envision an “active informing” role. It would be good to make clear that the NCP will attend all mediation sessions, unless both parties request its absence at any point, in order to play that active role.

4.3.1 and 2: Glad to see the NCP will do this examination, that’s important.

4.3.3: This phrasing “assess its substantiation” is not clear. Can you clarify what you mean by this? We would think the objective of the examination is to apply the NCP’s expertise on the Guidelines to the claims and evidence raised to formulate determinations and recommendations for the final statement.

4.3.6: Good that you reference determinations (decisions on breach or not) here. We recommend the following tweak:

The Ireland NCP will then review all the information it has gathered, provide a draft version to the parties for factual correction and publish a Final Statement. The final statement ~~which could~~ will, wherever applicable, include a decision(s) as to whether the Guidelines have or have not been breached by the enterprise.

If you are unwilling to commit outright to issuing decisions wherever applicable, we would at least urge you to clarify when determinations can be expected (for example, determinations will be made on claims for which parties did not independently reach an agreement; or... determinations will be made when requested by the notifier, or... determinations will be made to address each allegation of breach raised by the notifier that has been accepted for consideration at the initial assessment.)

We also urge you to include, in this or another provision inserted after it, commitment to request consequences for companies that do not engage in good faith. Consider how the Canadian NCP frames it:

“If Canadian companies do not participate in the NCP process, or if the NCP determines that they do not engage in good faith or constructively in the course of or follow-up to the review

process, the NCP can recommend the withdrawal of all Trade Commissioner Service support, and that Export Development Canada and the Canadian Commercial Corporation also withdraw future support.”

5.1.1: We find the mention of “each scenario” unclear. Can you be specific about which scenarios you mean? A final statement will be published when X or X or X occurs.

Also, as noted above with respect to determinations, we urge that you may the determination possibility here an expectation (“will”) rather than a possibility (“may”). And we urge you to clarify that you will make recommendations wherever applicable – the idea being to emphasize the intent to use both recommendations and determinations, because they are the key tools NCPs have to guide companies on correct implementation of the Guidelines.

5.2.1: This first sentence here seems self-evident and unnecessary to include. The last sentence should be amended as follows (we think..): “The Ireland NCP may, at ~~their~~ its discretion, incorporate any factual changes requested and agreed by the parties before publishing the Final Statement.

6.1.2: Good that you include the bit on outlining the level to which the agreement and/or recommendations have been implemented.

7.4: Good inclusion.

7: We think this section sets a nice focus on Transparency. In line with that, we suggest you change the heading to “Transparency and confidentiality”.

7.9: We suggest moving the first sentence to the bottom of 7.8. We also suggest tempering the remaining text around public statements or acts. In our view (including as informed by conversations with many companies), such campaigning can often *help* bring companies to the table by incentivising them to engage to protect their reputation. With this in mind, would you consider reframing as follows: “Seeking publicity with respect to a complaint while a dialogue is taking place can, depending on the context and manner in which it is done, have a positive or negative impact on the dialogue process and on efforts to arrive at an agreed resolution.”

8.1: We would urge you to add: “...and genuinely engaging in the proceedings with a view to finding a Guidelines-compatible solution to the issues raised, including giving serious consideration to any offer of good offices made by the Ireland NCP, and committing to further the implementation of the Guidelines in the future and, where relevant, address, in accordance with the Guidelines, adverse impacts that may have occurred.” The text is taken verbatim from the Procedures, and is relevant to good faith, albeit not included in the Procedures’ section on good faith.

8.3: Seems you should merge this with 3.1.5.

Flow chart: The chart needs to depict what happens if a complaint is not accepted (namely, the NCP issues a final statement explaining why it was rejected). The section on Follow-up should reference following up to examine the extent to which recommendations and/or agreements have been implemented.

Additional point: Have you considered enabling a process for procedural review, for either party to request a review (perhaps handled by the Advisory Group?) if they feel NCP Ireland has not followed its procedures correctly? The UK NCP has such a process.