

National Contact Point, the Netherlands  
Annual Report 2010 (June 2009 - May 2010)

## A. Institutional Arrangements

The Ministry of Economic Affairs hosts the National Contact Point (NCP).

National Contact Point, the Netherlands

Alp. N/442

P.O. Box 20101

2500 EC The Hague

T: +31 70 379 6485

F: +31 70 379 7221

E: [ncp@minez.nl](mailto:ncp@minez.nl)

Web: [www.oesorichtlijnen.nl/](http://www.oesorichtlijnen.nl/) [www.oecdguidelines.nl](http://www.oecdguidelines.nl)

<b>Independent members</b>	<b>Advisory members</b>	<b>NCP Secretariat</b>
Mr F.W.R. Evers (ch) Ms J.F.G. Bunders Mr H. Mulder Mr L. de Waal	Mr R.E. van Hell (EZ) Mr W. Bel (SZW) Ms M. Gerards (VROM) Mr R.J. Scheer (BZ/OS)	Mr T.D. van Hoolwerff Mr J. van Wijngaarden Ms. Y.M. Yu Mr M. van Yperen

The independent members of the NCP all have backgrounds in the various stakeholder groups of the NCP's work. They are independent in the sense that they have a seat in the NCP in their personal capacity and are by no means bound by the policies and goals of the Dutch Government; they are only bound by the OECD Guidelines. They are primarily responsible for promotion of the OECD guidelines and for managing specific instances. In the NCP, the independent members are supplemented by advisory members from the ministries of Economic Affairs (EZ), Foreign Affairs (BZ/OS), Social Affairs and Employment (SZW), and of Housing, Spatial Planning and the Environment (VROM). The ministry of Economic Affairs, being the ministry responsible for the functioning of the NCP, provides the NCP with secretarial support.

Involvement of the stakeholders is secured through semi-annual stakeholder meetings (see below under section B). The NCP is also involved in ongoing discussions about e.g. supply chain management at the Dutch Social Economic Council (SER). As an advisory and consultative body of employers' representatives, union representatives and independent experts, the SER is a typical platform organisation for social dialogue.

During the 2008 Annual NCP meeting in Paris, the Dutch NCP announced it would submit itself to a peer review, which took place in the second half of 2009.

The objectives of the peer review were to: (1) evaluate the structure, practice, effect and results of the Dutch NCP; (2) to create a learning process for all participating NCPs; (3) to assess issues which may serve as useful input into any possible future revision of the OECD Guidelines; and (4) to provide a review report which may be used as input for the Dutch NCP's preparation of its own evaluation report for the Dutch Parliament in June 2010. Apart from these four goals, the project has most of all proved to be a valuable, ad-hoc learning platform for all participating NCPs.

The peer review team carried out the review through a series of meetings with stakeholders, a questionnaire survey, review of documents, and discussions. A final report was issued in March 2010 containing twenty-eight recommendations. The peer review report is available at the website of the NCP.<sup>1</sup>

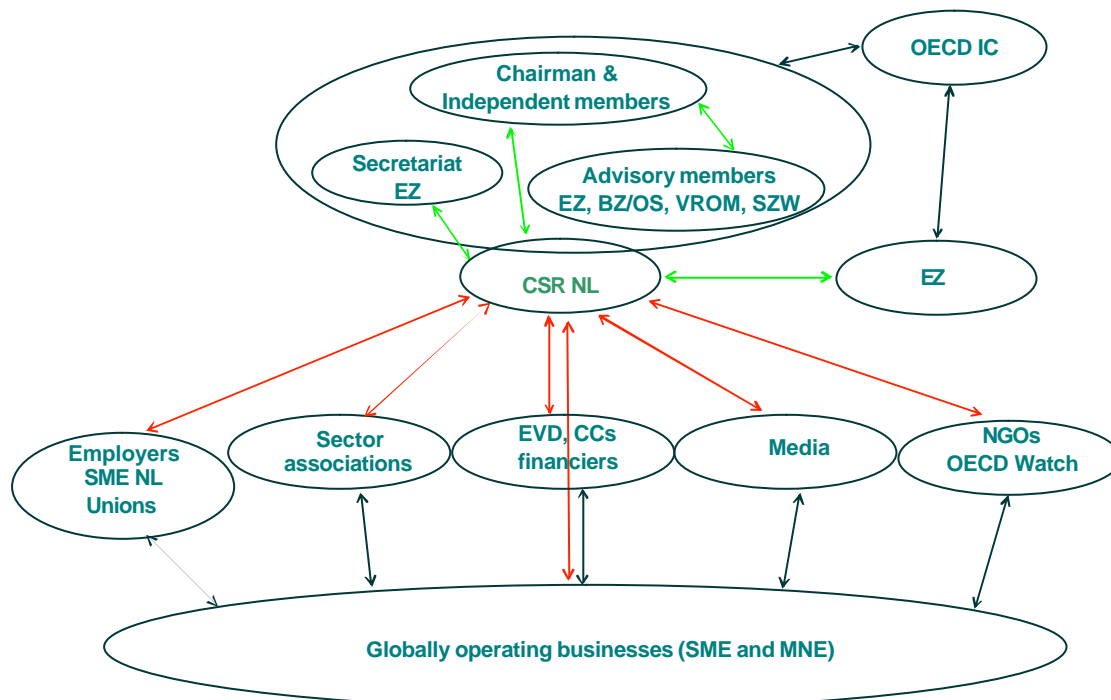
The peer review report will be used by the NCP's own evaluation which is due in June, 2010.

## B. Information and Promotion

Specifically for the NCP's promotional task, the Dutch government established the national CSR knowledge centre 'MVO Nederland' (CSR Netherlands) in 2006. This government agency facilitates the sharing of best practices and promotes the OECD Guidelines. With the creation of the independent NCP in 2007, a communication manager for the NCP was appointed at CSR Netherlands to promote the NCP and its mediation instrument. In cooperation with the NCP members, the communication manager draws up a communication strategy and translates this in annual communication plans. This report looks back on the efforts in the period between mid 2009 and mid 2010.

### *Communication strategy and MNEs*

The initial two-tier communication strategy, which focuses on promotion to SMEs via intermediary business organisations such as Chambers of Commerce, sector associations and the Dutch Agency for International Business and Cooperation (EVD), was extended last year with a more direct communication aimed at Dutch multinational enterprises (see figure).



*Schematic overview of internal organisation and approach strategy*

<sup>1</sup> <http://www.oecdguidelines.nl/get-started/peer-review/>.

Among the promotional activities of the past 12 months are a presentation and workshop for the global purchasing directors group of a Dutch multinational chemical company. Another presentation and discussion were held in 2009 for the presidents of central workers councils<sup>2</sup> of 50 Multinational Enterprises (MNO). In the follow-up thereof, central workers councils organisation organised a CSR seminar in January, 2010, with NCP Chair, Mr. Frans Evers, as key-note speaker and panellist. The NCP will maintain the liaison with this stakeholder group in the coming years.

In November 2009 the Dutch Sustainable Trade Initiative (IDH) organised a high level congress on international CSR, with over 600 participants from companies and civil society. In his opening speech the former Minister of Foreign Trade, Mr. Frank Heemskerk, presented the OECD Guidelines as the basic international normative framework and urged all to comply with this framework. In April, 2010, NCP member Mr. Lodewijk de Waal gave a presentation and participated in a discussion with 25 CSR managers from large companies on international guidelines, stakeholder management and the role of NCP mediation. This event was organised by CSR Netherlands.

#### *SME and sector associations*

Last year, CSR Netherlands and the NCP maintained its outreach focus on SMEs via sector associations. Initial contacts were deepened and new sectors were added. Another development which led to improvement is the internal reorganisation of CSR Netherlands with regard to its account managers system. The relation and cooperation with the NCP communication manager benefited much from this change, which resulted in a more effective and a more frequent exposure for the activities of the NCP.

Currently, CSR Netherlands and the NCP have liaised with the following 25 sector associations:

<b>Sector</b>	<b>Sector association</b>
Wood	VVNH
Garment	Modint, Mitex
ICT	ICT Office (hard- & software), FIAR (electronics)
Natural stone	ABN
Rubber & plastics	NRK
Chemical products	VNCI
Bakery, sugar, sweets	VBZ
Flowers	VBN
Retail	RND-VGT
Tourism	ANVR, Travel Foundation
Importers, trade agents, matchmakers	VNT, VIVO
Metal	FME/CWM, Metaal Unie
Agro	Greenery, Productschap tuinbouw
Margarine, fats and oils	Product board MVO
Spices	NVS
International contractors/construction	NABU
Groceries, retail food	CBL
Food industry	FNLI
Tourism	ANVR, Travel Foundation
Paper industry	KVNP
Transport	EVO
Oil & Gas	IRO
Mortar & cement	VOBN

<sup>2</sup> Central workers councils are in-company organisations that represent the employees' interests with the executive boards. Establishment of these councils are mandatory for companies employing at least 50 people. They are not legally related to trade unions.

Retail, warehousing	RND-VGT
Private Equity & Venture Capital	NVP

*Sector associations cooperating with the Dutch NCP*

All sectors mentioned here are integrated in the Navigator CSR Guidelines, which was developed by the NCP last year. This tool helps enterprises to navigate the great amount of CSR codes and serves as the starting point for international corporate social responsibility. Entrepreneurs, sector associations and members of the parliament often articulated the need for a ‘roadmap’ for individual firms in specific sectors on how to select and implement the most applicable code. The Navigator is tested by 10 sector associations and uses the OECD guidelines (themes) as starting point for formulating (more detailed) themed programmes under each guideline, such as SA8000 (labour), ISO 14000 (environment) or GRI (disclosure and transparency) and also provides sector specific codes of conduct. The tool is now available as 1.0 version on the Dutch NCP website: <http://www.oesorichtlijnen.nl/navigator>. The navigator yielded much publicity. In the summer of 2010, the Navigator will be updated and improved in a 2.0 version.



*The navigator CSR guidelines helps entrepreneurs to navigate the sea of codes*

Furthermore, the NCP makes use of the public media and the communication channels of sector associations in order to reach their member companies. Used core messages are:

- The OECD guidelines are the normative government framework on CSR and clarify what the government expects from Dutch companies with regard to the way they do business in the Netherlands and abroad;
- These guidelines involve a broad set of principles for responsible business conduct that cover more than just labour rights or the environment, but entail the full extent of CSR related topics;

- Given the wide range of topics covered by the OECD Guidelines, they serve as a solid starting point to look for practical codes that give guidance in implementing (chapters of) the OECD Guidelines.
- Companies can benefit from governmental (export) support when they are compliant to the guidelines;
- The NCP helps companies to implement the guidelines and offers mediation capacity when stakeholder dialogue hampers.

The OECD guidelines are a compulsory framework for policies and initiatives formulated by the Social and Economic Council, the Dutch Trade Board, the Chambers of Commerce and the export credit programs of the Dutch government. Last year all the partner companies of the non governmental organisation CSR Netherlands (app. 1000 partner companies subscribed to the OECD guidelines).

#### *Intermediary organisations*

A new, advanced training program was developed for the EVD, the Dutch agency for the promotion and facilitation of international business for Dutch entrepreneurs, comprising of workshops and role playing on specific themes like child labour and corruption. These training sessions will be continued this year.

#### *NGOs*

Since 2008, the major Dutch NGOs are informed about the OECD Guidelines, the NCP and the notification procedure by means of interpersonal talks and the stakeholder meetings. Furthermore, the OECD Guidelines and the related notification option seem to receive more interest from NGOs in non-OECD countries, which are also known as the ‘southern partners’. A two-days in-depth workshop was delivered for Asian partners of OECD Watch in Bangkok November 2009. Herman Mulder, Dutch NCP member, participated in this workshop and focused on organising a constructive dialogue before having to file a complaint. Additionally, the Dutch NCP and OECD Watch are considering a specific brochure for these southern partners.

#### *Website*

Since its launch in July 2008, the number of visitors of the NCP website is monitored by two statistical programs: AWStats/Wordpress Webstat and Google Analytics (see box).

<b>Parameter</b>	<b>Result over 15 months</b>	<b>Benchmark over 15 months (average governmental site)</b>
Total unique visitors	17.962 (1.200/mnt, 300/wk)	1.500
Total visits	28.614	4.000
Average pages/visit	3,2	2,2
Average time on site	3,12 minutes	0,45 minutes
Refusal (% visitors that leaves the site after watching 1 page)	48%	50%
New visits	79,11%	65%

In the summer of 2009, the NCP website was partly mirrored in English and was given the corresponding web address: [www.oecdguidelines.nl](http://www.oecdguidelines.nl). On this site a special section for the peer review was added. For the next year the English website will contain much more translated features from the Dutch site, including practical tools, such as the Navigator, self test, presentations etc. In 2010, up to 50 new best practices will be published (in Dutch).

#### *Information package and printed matter*

In cooperation with NL EVD International and CSR Netherlands, the NCP provides entrepreneurs with information on the OECD Guidelines and guidance on challenges that may occur when trying to apply the Guidelines in emerging markets. In previous years country-specific CSR toolkits, best practices and factsheets were developed. In 2010, the NCP will publish a brochure for trade missions of the Ministry of Economic Affairs, Chambers of Commerce and the Netherlands Council for Trade Promotion (NCH).

Lastly, CSR Netherlands, relevant Ministries and the NCP developed a special brochure on the OECD Guidelines, Human Rights and supply chain management for Dutch embassies. This brochure (in English, French and Spanish) has been sent to all embassies of the Netherlands.

#### *Stakeholder meetings*

To enhance its effectiveness, the NCP seeks to organise two stakeholder meetings per year, of which the fourth was held in November 2009 and the fifth in May 2010. These meetings were attended by individual companies, business organisations, both general and sector specific, trade unions, OECD Watch and other NGOs, government agencies, presidents of central works councils and consultants. In this meeting, stakeholders were updated and given the opportunity to comment on the ongoing specific instance procedures (SIs) and communication activities.

During the fourth meeting in November 2009, two members of other NCPs (Canada and France) attended the meeting in light of the peer review.

#### *Publicity*

In 2009-2010, the NCP gained from publicity in newsletters, trade magazines, corporate magazines and sector media on the guidelines and the NCP (see box). Most publicity was generated after publication of the final statement of the Shell Pandacan case in the Philippines and by the Navigator. The NCP makes use of press releases, sent out to the media via the press (mediafeed) network of CSR Netherlands and/or the press network of the Ministry of Economic Affairs.

Newsletters	DHV, MoEA, CSR Netherlands, TQC, NCH, EVD, iNS, SenterNovem, Duurzaam Ondernemen, Somo, Friends of the Earth, OECD Watch, Ravage.
CSR media	P+, COS, S&B, Aidenvironment, Vroege Vogels, Milieudefensie Magazine
Internet media	Z24, MD weekly, Online studeren, Positive news media, De thuisjournalist, Milieugent
National media	Telegraaf, Trouw, Financieel Dagblad, NRC, Volkskrant, Reformatorisch Dagblad, Vrij Nederland, BNR Newsradio
International media (Philippines)	Inquirer, Philstar, Manila Times, Manila Bulletin, GMA News TV, Nation, Tribune, Worldnews network, Business mirror, OECD observer

*Publicity 2009-2010*

## Peer review

The peer review provided much information about the effectiveness, working method and the progress of the new Netherlands NCP. Also specific recommendations were made on the promotional task. The peer review report contained several conclusions and recommendations with regard to the promotional activities of the Dutch NCP, of which some were immediately implemented. An example in this regard is the suggestion to the NCP to consult with stakeholders on how to further enhance the relevance of the stakeholder meetings, and to align the annual communication plans with the schedule of annual reporting to the OECD. Furthermore, the NCP was suggested to team up with other NCPs and/or the OECD to share experiences with promotion and to enhance (multilingual) access to information on the Guidelines and their implementation through best practices.

The final report of the peer review team will be published and disseminated during the annual NCP meeting of 2010. Thereafter, the report will be available by the NCP on request for all stakeholders.

## C. Implementation in Specific Instances

Since October 2008, the Dutch NCP has not received new notifications of specific instances in which the guidelines were allegedly violated. The NCP did however close two cases with a final statement after mediation appeared to be impossible. Furthermore, the NCP is involved as a home country NCP in the closure of two cases dealt with by respectively the Argentinean and the Irish NCP.

### 1. *Fenceline Community & Friends of the Earth International and Royal Dutch Shell's Philippine subsidiary PSPC*

<i>Date of notification</i>	July 2006
<i>Complainant</i>	Fenceline Community (a Philippine local community organisation); Friends of the Earth (an international environmental NGO); OECD Watch (procedural support)
<i>Enterprise concerned (sector)</i>	Pilipinas Shell Petroleum Corporation (PSPC), a subsidiary of Netherlands based Royal Dutch Shell (oil and gas industry)
<i>Location of SI</i>	Manila, Philippines (non-adhering)
<i>Status</i>	Closed in August 2009
<i>Chapters cited</i>	II (General Policies), V (Environment)
<i>Agreement</i>	No
<i>Final statement</i>	Yes, available online at <a href="http://www.oecdguidelines.nl">www.oecdguidelines.nl</a>

The specific instance related to an oil depot of a Philippine Joint Venture between Royal Dutch Shell's local subsidiary PSPC and two other oil companies. Of the other two companies, one operates from an adhering country, whereas the other company is a local company.

The alleged infringements with the Guidelines relate to improper influencing of local decision making processes and violations of environmental and safety requirements. Due to local legal proceedings, the handling of this specific instance was put on hold until the end of February 2008. An NCP-led process towards a dialogue between the enterprise and the notifying parties of the SI was resumed, part of which was a fact-finding mission of the NCP to Manila. During this mission the storage facility was investigated by the Rotterdam based Environmental Protection Agency (DCMR) on health, safety and environmental aspects.



In 2008, Shell PSPC and its partners of the oil depot joint venture were initially forced to relocate the oil depot by the Philippine Supreme Court, which ruled that the Manila City Council ordinance stating that the enterprises should remove the depot had to be executed. This provided room for an NCP-led dialogue between the enterprise and the notifying parties on HSE aspects and the communication thereof with local communities. However, a new ordinance of the Manila City Council, repealing the former, allowed the three enterprises to maintain the oil depot at the current location. For this reason, Shell PSPC no longer wished to discuss relocation with the notifying parties. This was the reason for the notifying parties to withdraw from the NCP mediatory attempt, after which the NCP issued a final statement in August 2009, which was published on the NCP website and received nation wide media attention.

**2. *Shehri – Citizens for a Better Environment and SHV Holdings NV’s former Pakistani operations***

<i>Date of notification</i>	October 2008
<i>Complainant</i>	Shehri – Citizens for a Better Environment (Shehri-CBE), a Pakistani environmental NGO
<i>Enterprise concerned (sector)</i>	SHV Holdings NV (general: investments; here: retail)
<i>Location of SI</i>	Karachi, Pakistan (non-adhering)
<i>Status</i>	Closed in February 2010
<i>Chapters cited</i>	II (General Policies), V (Environment)
<i>Agreement</i>	Not applicable
<i>Final statement</i>	Yes, available online at <a href="http://www.oecdguidelines.nl">www.oecdguidelines.nl</a>

This notification by Pakistani NGO Shehri - Citizens for a Better Environment (Shehri-CBE) related to a point of sale in Karachi of a joint venture of SHV Holdings, an investment company active in *inter alia* the business to consumer retail sector. The complaint related to alleged violations of Chapters II General Policies, and V Environment.

After the NCP declared that the SI *prima facie* merited further consideration, a meeting was held with representatives of the company in which they shared their views on the alleged violations with the NCP. The company happened to have agreed in February 2008 with its joint venture partner to sell its share to the latter in two portions. The majority of its stake was sold in April 2008, the latter in late December 2008, just at the time the SI was declared admissible. SHV Holdings reported its withdrawal from Pakistan in its 2008 Annual report.

Once Shehri-CBE was informed of the withdrawal, it questioned the extent of the withdrawal, as the Makro-name still appeared on all the points of sale formerly co-owned by SHV Holdings. A study by the NCP of the contract of sale between SHV Holdings and its former joint venture partner learnt that SHV Holdings also sold the entitlement to use the ‘Makro’ and additional product brand names to the buyer and hence does not enjoy any continuing benefits or royalties from this entitlement of the buyer. The relevant passages of the contract were shared with Shehri-CBE and displayed in the final statement.

Due to the full withdrawal of the involved company, the NCP closed the procedure, because the circumstances in Pakistan had been beyond the control of SHV Holdings since December 2008. Furthermore, part of the allegations had already been addressed by the joint venture, whereas the other



part, which was a legal questions, had been dealt with by the Supreme Court in favor of Shehri-CBE. A request by the notifying party to judge the circumstances of 2007 in light of the OECD Guidelines was denied on the basis that NCPs, aside from the question here whether SHV Holdings in fact acted in accordance with the Guidelines in 2007 or not, do not act as adjudicators of past circumstances when there is no possibility to discuss these in light of a future oriented solution.

The NCP's decision on further considering the notification and its final statement are available online at the NCP's website.

### ***3. FOCO Argentina & Friends of the Earth Argentina and Royal Dutch Shell's Argentinean subsidiary CAPSA***

<i>Date of notification</i>	May 2008
<i>Complainant</i>	Foro para la Participación Ciudadana (FOCO, human rights NGO); Friends of the EarthArgentina (environmental NGO);
<i>Enterprise concerned (sector)</i>	Shell CAPSA, a subsidiary of Netherlands based Royal Dutch Shell (oil and gas industry)
<i>Location of SI</i>	Buenos Aires, Argentina (adhering)
<i>Status</i>	Pending
<i>Chapters cited</i>	II (General Policies), III (Disclosure), and V (Environment)
<i>Agreement</i>	No
<i>Final statement</i>	Not yet available

The request to consider the specific instance was received on May 28<sup>th</sup>, 2008. The specific instance was raised by The Institute for Participation and Development of Argentina and Foundation Friends of the Earth of Argentina. The chapters of the Guidelines cited in the specific instance are: II General Policies, III Disclosure and Environment. The specific instance does not involve business activities in a non-adhering country. The complaint was presented to the Argentinean and the Dutch National Contact Points by FOCO/INPADE and Friends of the Earth.

On September 9<sup>th</sup> 2008, formal admissibility of the complaint was declared. The ANCP held separate meetings with both parties. From the beginning, the enterprise did not accept the Argentinean National Contact Point's good offices, arguing that doing so could affect its position in the Argentinean Federal Courts, due to the existence of parallel proceedings of judicial nature on the same matters.

The enterprise requested the ANCP to put on hold the proceedings until the resolution of the ongoing judicial causes. Considering the situation, the Dutch National Contact Point suggested that the parties could try to hold a dialogue on the issues that were not covered by the judicial causes, tackling some issues of 'supra legal' nature. Regarding this initiative, shared by the ANCP, the parties did not reach an agreement on the scope and content of a possible dialogue. The complainants insisted on giving priority to the discussion of the matters included in the complaint as well as any other topic that could possibly arise over the course of this dialogue, even though they were not included in its formal presentation. The enterprise, in turn, expressed again the reason of the existence of parallel proceedings not to accept informal conversations, informing that the company had already been carrying out social development activities in the neighborhood close to the refinery, to help its residents.

The NCP therefore decided that waiting for the decision of the court is now the best option.

#### 4. *Póbal Chill Chómaín et al and Shell Exploration and Production Ireland Ltd (SEPIL)*

<i>Date of notification</i>	August 2008
<i>Complainant</i>	Póbal Chill Chómaín (local community group of Mayo County, Ireland) Action from Ireland (AFRI, Irish NGO) Sherpa (international human rights advocates group)
<i>Enterprise concerned (sector)</i>	Shell Ireland (SEPIL, operator), a subsidiary of Netherlands based Royal Dutch Shell, and co-investors Statoil of Norway and Vermilion Energy Trust of Canada (oil and gas industry)
<i>Location of SI</i>	Mayo County, north-west Ireland (OECD member state)
<i>Status</i>	Pending
<i>Chapters cited</i>	II (General Policies), and V (Environment)
<i>Agreement</i>	No
<i>Final statement</i>	Not yet available

In August 2008, an organization of local citizens supported by an Irish and a French NGO brought an SI to the Dutch NCP regarding the location of a facility that was being built by a joint venture in which Royal Dutch Shell was the main investor. Other investors were Marathon Oil Corporation of the US and Statoil of Norway. In June 2009, Marathon Oil Corporation sold its share in the joint venture to Canada based Vermilion Energy Trust.

The complaint related to alleged violations of Chapters II (General Policies) and V (Environment). In conformity with the Procedural Guidance and the Commentaries of the Guidelines, the Dutch NCP requested petitioners to also notify the SI with the Irish NCP, as this is the country in which the underlying circumstances take place. In February 2009 the Dutch NCP paid a visit to Dublin where both NCPs met to discuss the SI, after which was found that the issues raised merited further consideration. In late April 2009, both NCPs met with each of the parties to discuss the SI and the situation. As the parties seemed to have irreconcilable points of view on the main request – i.e. relocation of the project – the NCPs wrote a letter to the parties in September 2009, in which the NCPs shared their intent to close the procedure with a final statement due to the irreconcilable points of view, unless the notifying parties would still see added value in an NCP-led mediatory attempt. A copy of this letter was sent to Shell Ireland. In January 2010, the notifying parties requested the NCPs to close the procedure with a final statement. In late April, the two NCPs met in Dublin to finalize the statement. At the moment this annual report was drafted, the final statement had not been published yet.

#### **D. Other**

##### *Peer Review*

In part A of this annual report reference was already made to the peer review of the Dutch NCP. With regard to the core criteria for NCPs, this project has mostly added to the accountability of the Dutch NCP and to the visibility of all participating NCPs, given the subject and the review methods which involved all the NCP's major stakeholders in the Netherlands.

##### *Visibility of the Guidelines and the NCP in Dutch politics*

The OECD Guidelines, being recommendations of all adhering countries to their business society, form the basis of Dutch policy on responsible business conduct (RBC) or corporate social responsibility. The importance of the Guidelines and the role of the NCP have been stressed many a times by the government in several discussions in Parliament on CSR related subjects. In that sense,

the OECD Guidelines and Dutch NCP are manifest in the Dutch political discussions on CSR. Two issues are worth mentioning here;

- On the request of the former minister of Foreign Trade, research was carried out on the applicability of Dutch penal law and civil liability law to parent companies over the activities of their overseas subsidiaries. This report, of which an English summary is available online, was sent to Dutch Parliament in December 2009.

A similar research on the legal framework for European companies with regard to international human rights and the environment is currently being carried out by the European Commission. These developments relate and refer to the work of the UN Special Representative for Business and Human Rights, professor John Ruggie, more in particular the 3<sup>rd</sup> pillar of his framework, access to remedies to infringements of human rights by enterprises.

In the Dutch research, which was carried out by a team of professors of Leiden University's Law School, the role of the OECD Guidelines and other voluntary codes for responsible business conduct was touched upon. When a Dutch court has to value the culpability or responsibility for human rights infringements by an enterprise, it may look into the customs of the relevant sector the enterprise operates in or to which voluntary RBC standards or codes an enterprise claims to adhere.

- A second discussion presently going on in Dutch Parliament worth mentioning here relates to the consequences of final statements of the NCP when a company is found to have violated the guidelines. This issue has also been brought up by OECD Watch during the consultations held by the OECD Investment Committee Working Party in December 2009. Support for a more binding character of NCP final statements has been significant amongst Members of Parliament. Although this issue may not be included in the Terms of Reference for an Update of the OECD Guidelines, it might be useful to touch upon it in the 2010 annual NCP meeting.

#### *Research on communication results*

At the moment that this report was drafted, the Dutch ministry of Economic Affairs hired an external consultancy firm to conduct research on the effects and results of the NCP's efforts with regard to communication. The outcome will be used for the NCP's own evaluation to of its independent structure, practice and results.

### **E. Looking Back at the Past Ten Years**

- *With regard to institutional arrangements*

The past ten year the Netherlands has taken innovative steps to come to the most effective structure for an NCP operating in Dutch society. What started as an interdepartmental NCP staffed at senior policy level has grown to an independent board of individuals with solid backgrounds in the different interest groups of business activity for dealing with specific instances, while the promotion of the OECD Guidelines has been spread out through different levels and branches of government. When looking back, especially at the last three years, what has turned out to be the cement of the whole structure of the Dutch NCP is the number of specific instances the NCP has to deal with. Dealing with specific instances is very stimulating for constructive discussions, both among NCP members and with its stakeholders, that lead to a growing body of knowledge and experience on CSR.

- *With regard to specific instances*

The Dutch NCP shared a number of lessons learnt or issues to address in the annual meeting in its report of last year. Amongst these issues were the meaning of parallel procedures for a specific instance procedure, third party rights, confidentiality, and the paradox between the mediating and adjudicating roles of NCPs. The past year, an issue that came up was the significance of the ambiguity or subjectivity of some of the recommendations in the OECD Guidelines, which may give rise to conflicting interpretations or lack of clarity on the correct implementation of the guidelines.

An example of a term that may easily lead to different interpretations is the recommendation in chapter V to conduct ‘meaningful stakeholder consultations’. A stakeholder whose concerns are not addressed in the way he or she may have envisaged may claim that a stakeholder consultation has not been meaningful, because he or she did not see his or her demands being fully met. Even if different kinds of stakeholder consultations have been held, through e.g. writing, oral hearings or bilateral discussions, and the majority of stakeholders has been satisfied with the action taken by the enterprise on the basis of the interests and concerns of the stakeholders, this one stakeholder could still claim the consultation was not meaningful. It could be questioned if a meaningful dialogue means that all requests and demands of all the enterprise’s stakeholders should fully be complied with by the enterprise.

Another notion that came up the past year is the position NCPs have in the whole range of methods to address or make public concerns over corporate practices. In an expert meeting held in Boston in November 2009 at the initiative of the Dutch NCP, it was concluded that the NCP procedure, with its option to offer mediation, is situated in between legal procedures on the one hand, and public campaigning on the other. As long as all parties involved in an NCP procedure act cooperatively and actively seek for an agreement in which as many interests as possible meet, an NCP-led mediatory attempt can lead to much better and sustainable deals than court decisions or public campaigning. The Dutch NCP has found that in the past, notifiers and companies have pursued a serious uptake of the Guidelines and the NCP procedure.

- *With regard to opportunities for information exchange and peer learning*

The peer review of the Dutch NCP has shown that additional opportunities to discuss NCP practices would be more than welcome. This could be done through more voluntary reviews, but also through other initiatives around specific topics within the two tasks given to NCPs. Side events for NCPs along the regular meetings of the Investment Committee could for instance be used for those NCPs seeking to discuss issues. More capacity with the Investment Committee Secretariat could also form a useful tool in this respect and with respect to fostering functional equivalence amongst NCPs.