

- 43 countries adhere to the OECD Guidelines and are hence required to establish a National Contact Point (NCP)
- Countries with an NCP: Argentina, Australia, Austria, Belgium, Brazil, Canada, Chile, Colombia, the Czech Republic, Denmark, Egypt, Estonia, Finland, France,
- Observing Countries: China, India, and Russia

### What is the OECD?

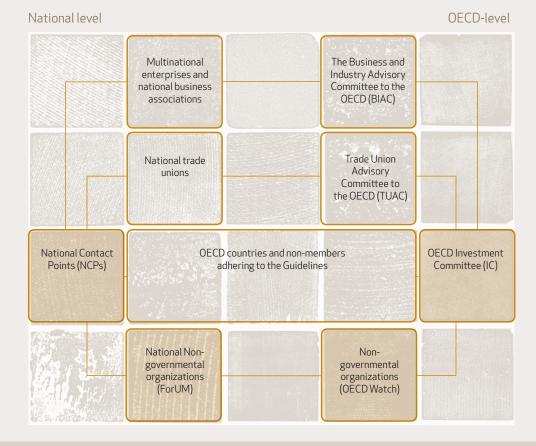
The Organisation for Economic Cooperation and Development (OECD), founded in 1961, comprises 34 countries in five continents. With its memberstates committed to the principles of democracy and the market economy, the OECD functions as a forum in which countries can work collectively to seek solutions to wider, common problems, share information on effective practices, and coordinate both domestic and international policy.

### What are the OECD Guidelines?

The OECD Guidelines for Multinational Enterprises (MNEs) are recommendations by governments to multinational enterprises. They provide principles and standards of good practice consistent with applicable laws and internationally recognised standards. The Guidelines cover disclosure; human rights; employment and industrial relations; environment; bribery, solicitation and extortion; consumer interests; science and technology; competition and taxation.

Countries adhering to the OECD are required to establish a National Contact Point (NCP) to promote the Guidelines, handle enquiries, and contribute to the resolution of complaints related to enterprises' implementation of the Guidelines.

# How are the OECD Guidelines implemented?



### **OECD Guidelines in brief**

The OECD Guidelines were launched in 1976, and last updated in May 2011. They reflect core international standards, including the 2011 UN Guiding Principles for Business and Human Rights.

**General Policies.** Enterprises should operate in accordance with domestic laws and regulations. They should assess, prevent and mitigate adverse impacts on human rights, workers rights, the environment, and fight corruption. This applies to companies' own activities and to the supply chain.

**Disclosure.** Enterprises are expected to regularly disclose information on operations and results, and demonstrate that they are taking responsibility for the themes in the OECD Guidelines in line with the most advanced standards for transparency and reporting.

**Human Rights.** States have the duty to protect and realize human rights. Enterprises should respect human rights and seek ways to prevent or mitigate human rights adverse impacts through due diligence and remediation processes.

**Workers' rights.** Enterprises should respect the rights of workers, cooperate with employee representatives, fight discrimination and contribute to the abolition of child labour and forced labour.

**Environment.** Enterprises should prevent, mitigate and reduce adverse environmental impacts for instance through environmental management systems. This is a duty, but also a business opportunity.

**Combating corruption.** Enterprises play an important role in combating corruption and bribery through internal controls, ethics and compliance programs.

**Consumer interests.** Enterprises should act in accordance with fair marketing and advertising ractices and ensure the quality and reliability of the goods and services that they provide.

**Science and Technology.** Through the transfer of new technologies between countries, enterprises contribute to economic and social progress. Enterprises play an important role in developing national innovative capacities.

**Competition.** Enterprises should operate in a manner consistent with all applicable competition laws and regulations, and refrain

from anti-competitive activities. This contributes to functioning markets that promote welfare and economic growth.

**Taxation.** Enterprises should contribute to the public finances of host countries by making timely payment of taxes and avoid inappropriate shifting of profits or losses to reduce the tax burden.



### Future In Our Hands (FIOH) vs. INTEX

Concluded by Final Statement

NCP Norway's Final Statement which was made public 30 November 2011 concluded that the Norwegian-owned Mindoro Nickel Project in the Philippines should consult a broader group of indigenous peoples and be more transparent about adverse environmental impacts.

## The Complaint from a Norwegian NGO, Future in Our Hands, dated Jan 26, 2009 claimed:

- flawed consultation with indigenous populations
- bribery and corruption
- potential for serious environmental damage

The Norwegian NCP concluded that the OECD Guidelines are applicable to enterprises that are still at a planning or exploratory stage of their operations. Abiding by national law in itself is not sufficient for compliance with the Guidelines.

### Human rights

The NCP concluded that the company was in breach of the human rights provisions of the Guidelines because it had not consulted broadly enough with the indigenous peoples affected by the project and associated infrastructure.

By not being able to provide a clear, proactive stakeholder strategy, the company also rendered itself vulnerable to criticism from groups that are affected, but do not see themselves as able to benefit from the project.

### **Bribery**

The NCP did not find evidence that the company had been involved in bribery or corruption, but recommended that the company establish a solid managerial system to manage such risks, particularly since the operations were in a country figuring at the lower part of international corruption indexes. Nor did the NCP find that Intex had violated the Guidelines by supporting a community development project. However, Intex did not have a transparent, publicly disclosed system for allocating development funds. Commencing community projects prior to gaining social acceptability may raise doubts as to whether the company is undertaking such projects in order to secure endorsements.

### **Environment**

Local populations were worried that mining could exacerbate flood problems, pollute rice fields, and impact biodiversity, water quality, agriculture, and tourism potential. The NCP found that Intex had conducted a detailed Environmental Impact Assessment (EIA), but did not sufficiently distinguish between significant and less significant risks. The EIA had not been disseminated as required by Philippine regulations nor did it provide adequate information about a number of important aspects of the project and insufficient baseline studies.



Photo: Plan Norway

The extraction of minerals and metals requires careful assessment and disclosure of potential direct and indirect environmental impacts. Sharing information and engaging in consultations about environmental and health and safety consequences with the local community and indigenous peoples is of particular importance for projects with large and potentially lasting impacts for the environment and people.

### The Norwegian NCP recommended that the company:

- Conduct due diligence in relation to the entire project impact area
- Engage in consultations with all impacted indigenous peoples in an understandable language and form
- Establish a transparent system for deciding community spending and disclose systematic information on criteria for planned and implemented projects
- Develop disclosure and reporting plans and systems in accordance with the IFC Performance Standards and the Global Reporting Initiative (GRI)
- Prepare a revised Environmental and Social Impact Assessment (ESIA or EIA) that provides a comprehensive and detailed analysis of all the environmental and social implications of all components of the project, including details on waste emissions, potential for marine pollution, implications of related infrastructure, and transport routes
- Finalise the environmental and social impact assessment in dialogue with all relevant groups directly affected by the company's operations and ensure a review by an independent third party
- Establish a grievance management system to cover the range of possible grievances including environmental health and safety, labour rights, and community grievances by impacted groups and indigenous peoples

# Friends of the Earth Norway, Forum for Environment and Development (ForUM) and Cermaq ASA

Concluded by Dialogue/Mediation

Friends of the Earth Norway and ForUM filed a complaint against Cermaq in 2009, claiming the company had acted in violation with the OECD's guidelines. Cermaq rejected these claims. In august 2011 the parties agreed on a joint statement.

# The Complaint from Friends of the Earth Norway and ForUM dated 19 May claimed:

- Inadequate consideration of indigenous peoples rights
- Discriminating trade union practices, discriminating bonus systems and inadequate safety routines for employees and contracted workers
- Flawed environmental due diligence (and flawed communication with communities directly affected by the company's environmental policies)

The Norwegian NCP offered to mediate. By engaging in mediation, the parties regained influence over the outcome, rather than leaving it to the NCP to determine on its own whether or not the Guidelines had in fact been breached. The parties' willingness to engage one another has also been demonstrative to the public that they were able to achieve concrete results on the implementation of CSR practices through constructive dialogue.

### Joint Statement

The agreement describes how Cermaq will operate according to the precautionary principle, indigenous peoples rights, human rights, labour rights and reporting on sustainability. The Joint Statement also acknowledges that Cermaq, after major outbreaks of the virus infectious salmon anemia (ISA) in Chile, has contributed to knowledge development to make the industry more sustainable.

- We acknowledge that aquaculture in Chile, including Cermaq's farming activities, was not sustainable in the manner it was done prior to the fish health crisis in 2007. We have learned from the Chilean collapse, and followed through on a number of concrete improvements, says Bård Mikkelsen, Chair of the Cermaq Board.
- We are very pleased that this process concluded with constructive dialogue which both parties are set to continue, he underscores.
  Friends of the Earth Norway and ForUM acknowledge that Cermaq has learned from the crisis in Chile.
- We see that Cermaq has undertaken positive changes in their routines to prevent fish disease both in Chile and in Cermaq's global business, says Lars Haltbrekken, Chair of Friends of the Earth Norway's board.

Chair of ForUM's board, Andrew P. Kroglund, emphasizes the significance of the agreement.





– We are also very pleased that Cermaq through the Joint Statement commits to respecting the rights of indigenous people in all areas where they operate, he says.

The parties agree there are accusations in the complaint that have been refuted. The parties also agree that contact shall be based on mutual trust and clarification of facts.

NCP Norway will facilitate a follow-up meeting in 2012.

### THE NORWEGIAN NCP

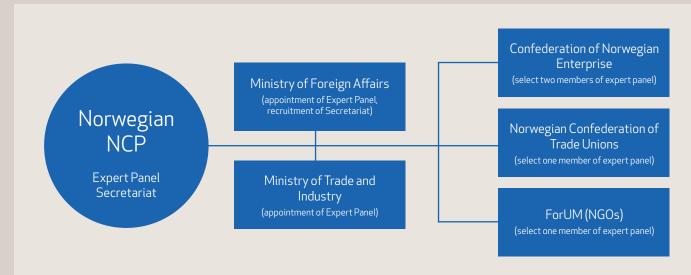
The Norwegian NCP was reformed in 2011 and has four expert members and a secretariat. The expert members assess complaints based on material prepared by the secretariat. The secretariat also conducts promotional activities regarding the Guidelines. The Ministry of Foreign Affairs has the administrative responsibility for the NCP, but it operates independently of the government. The NCP has revised its procedures for handling complaints in line with the revision of the Guidelines by the OECD Ministerial Council in 2011.

# In adhering to the OECD Guidelines for Multinational Enterprises, all NCPs shall seek to:

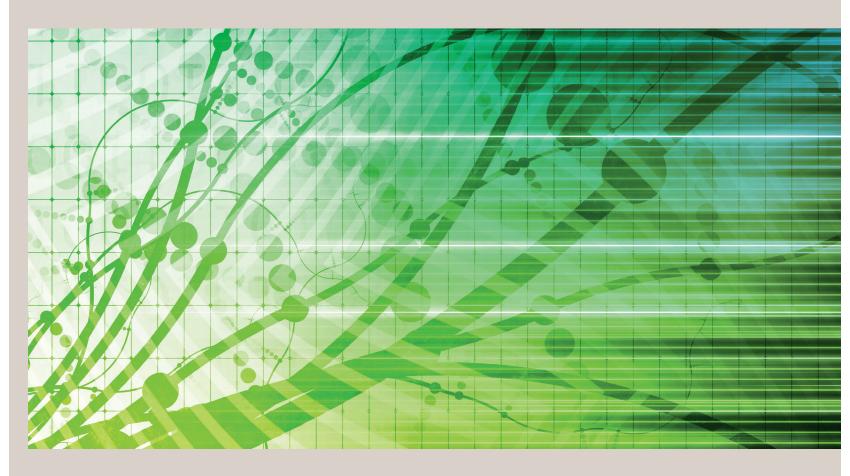
- make the guidelines known and available
- respond to enquiries from companies, labour organisations, civil society, and other interested parties
- report annually to the Investment Committee
- assess complaints and contribute to resolving cases that arise regarding breaches of the Guidelines, and where dialogue or mediation is not feasible, publish a final statement on the complaint
- Share experience, discuss cases and best practices with NCPs in other countries



From left: Chair Hans Petter Graver, dean and professor of law at the University of Oslo; Gro Granden, special adviser at LO; Elin M. Myrmel-Johansen, Director Storebrand Life Insurance; and Jan Erik Korssjøen, former CEO Kongsberg Group, and lecturer at Buskerud College and Norwegian University of Life Sciences. Photo: Anita Arntzen



Members of NCP Norway are individually appointed by the Ministry of Foreign Affairs and the Ministry of Trade and Industry after proposals from the Confederation of Norwegian Enterprise (NHO), the Norwegian Confederation of Trade Unions (LO) and the Forum for Environment and Development (ForUM).



# Norwegian NCP: Procedures

The Norwegian NCP complaint process is divided into the following key stages:

### Stage 1:

Initial Assessment

Normally three months

This consists of a desk-based analysis of the complaint, the company's response and any additional information provided by the parties. The Norwegian NCP uses this information to decide whether further consideration of a complaint is warranted.

### Stage 2:

Conciliation/mediation OR examination

If a case is accepted, the Norwegian NCP offers conciliation/mediation to both parties with the aim of reaching a settlement agreeable to both. Should conciliation/mediation fail to achieve a resolution or should the parties decline the offer, the Norwegian NCP will examine the complaint in order to assess whether it is justified.

Normally within 6-12 months

### Stage 3:

Final statement

If a mediated settlement has been reached, the Norwegian NCP will publish a final statement with details of the agreement. If conciliation/mediation is refused or fails to achieve an agreement, the Norwegian NCP will examine the complaint and prepare and publish a final statement on whether or not the Guidelines have been breached and, if appropriate, recommendations to the company for future conduct.

Normally within three months after the procedure is complete

The complaint procedures and statements are published on the Norwegian NCP's website: www.responsiblebusiness.no





# **Contact us**OECD NCP Norway

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