



Secretariat, 1 October 2013

Norwegian National Contact Point (NCP)
OECD Guidelines for Multinational Enterprises
www.responsiblebusiness.no

Contact information

Head of Secretariat: Kamilla H. Kolshus
ph. (47) 23950398, khk@mfa.no
Adviser: Mari Bangstad
ph. (47) 23950399, mban@mfa.no
Postal address: P.O. Box 8114 Dep, 0032 Oslo, Norway
Street address: Akersgata 44, 0130 Oslo, Norway

PROCEDURAL GUIDELINES FOR HANDLING COMPLAINTS

The *OECD Guidelines for Multinational Enterprises* (MNEs) are recommendations addressed by governments to multinational enterprises. They provide principles and standards of good practice consistent with applicable laws and internationally recognised standards. The Guidelines cover areas including 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 National Contact Points (NCPs) to promote the Guidelines, handle enquiries, and contribute to the resolution of complaints related to enterprises' implementation of the Guidelines.

The Norwegian NCP was reformed in 2011 and has four expert members and a secretariat. The expert members assess complaints based on background 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 independent 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. This note explains the three main stages of the complaint process and the conduct of the NCP and the involved parties.

BACKGROUND ON THE NCP PROCESS

USEFUL TERMINOLOGY

NCP	National Contact Point for the OECD Guidelines for Multinational Enterprises
Company	The multinational enterprise against which the complaint is made
Complainant (s)	The party or parties who submit the complaint
Parties	The complainant or complainants and the enterprise being complained against
Guidelines	The OECD Guidelines for Multinational Enterprises
Specific instance	A complaint that is submitted to the NCP concerning a company's alleged breaches of the Guidelines; the terms "specific instance" and "complaint" are synonymous



WHO CAN FILE A COMPLAINT?

According to the Guidelines, any “interested party” can file a complaint to the NCP. The complainant may for instance be a community affected by a company’s activities, employees, a trade union, or an NGO. A complainant may act on behalf of other identified and concerned parties.

The NCP will consider all complaints it receives. However, the NCP requires detailed information from the complainant in order to deal with the complaint. Complainants should have a specified interest in the case and be in a position to supply information about it and have a clear view of the outcome they wish to achieve. Complainants must specify in the complaint which chapters or paragraphs in the Guidelines they consider to be breached by the company. The NCP assessment is evidence-based, and parties are invited to substantiate their claims with facts. Complaints falling outside the scope of the Guidelines or complaints that are manifestly ill-founded will not be considered.

NCP CONDUCT

KEY PRINCIPLES

The NCP will contribute to resolving issues that arise in relation to the implementation of the Guidelines. It will operate in an efficient manner and in accordance with applicable law, the standards in the Guidelines and the following principles:

- **Transparency.** The NCP will seek to strike a balance between transparency and confidentiality in accordance with the Guidelines and the requirements of the Norwegian Freedom of Information Act (2009).¹
- **Accessibility.** The NCP will facilitate access to its good offices by business, labour, NGOs and other members of the public. The NCP will respond to all legitimate requests for information, and seek to deal with specific issues raised by parties concerned in an efficient and timely manner.
- **Impartiality.** The NCP will ensure impartiality in the resolution of specific instances. The NCP is subject to the *Administration Act* (1967) rules on disqualification for the members of a public agency cf. § 1.

¹ The Norwegian *Freedom of Information Act* applies to the NCP and the main rule is freedom of information according to § 3. The NCP cannot make agreements that contradict the Act. Sensitive business information may be subject to confidentiality clauses and as such be exempt from disclosure according to the Norwegian Freedom of Information Act § 13, 1 paragraph 2. Source protection to ensure the NCPs future access to information, as well as considering the sources personal security, may also require exceptions. According to the Freedom of Information Act, a public agency can deny disclosure of documents that are prepared for the agencies internal administrative procedures (§ 14 first paragraph).



- **Predictability.** The NCP will ensure predictability by providing clear and publicly available information on its role in the resolution of specific instances, including the provision of good offices, the stages of the specific instance process with indicative timeframes, and the potential role the NCP can play in monitoring the implementation of agreements reached between the parties.
- **Equitability.** The NCP will ensure that the parties can engage in the process on fair and equitable terms, for instance by providing reasonable access to sources of information relevant to the procedure.
- **Based on dialogue.** The NCP will offer a forum for discussion and assist the business community, labour organisations, other non-governmental organisations and other interested parties concerned to deal with the issues raised. The NCP will seek to resolve the issues in dispute through dialogue, and if possible through conciliation or mediation.

STAGES IN THE NCP COMPLAINT PROCEDURE

There are three stages in the handling of complaints and an opportunity for follow-up:

	Activity	Timeframe ²
Stage 1	Initial Assessment Confirmation of receipt and forwarding the complaint to the company Issuance of Initial Assessment	Within 10 working days after receipt. The company is offered to provide an initial response to the complaint within 20 working days Within 3 months after receipt
Stage 2	Mediation / Examination From acceptance of case through conclusion of mediation or examination, with possibility for extensions for fact-finding	Within a further 6 – 12 months
Stage 3	Final Statement Drafting and publication of Final Statement	Within a further 3 months
Optional Follow-up	Monitoring and Evaluation Parties to the complaint are, where relevant, offered to submit an Evaluation of the NCP in the Specific Instance After mediation, the parties are, if relevant, invited to submit a progress report to the NCP	Within 3 months following Final Statement Within a year following Final Statement

² The timeline runs from when the NCP as a collegial body receives the complaint for assessment in accordance with the Public Administration Act (2003). The timeframe is based on the Guidelines Part II, Commentary on the Implementation Procedures, Section 40, Indicative Timeframe.



The NCP is committed to the prompt resolution of each Specific Instance. The NCP aims to complete the entire process from receipt of complaint to publication of Final Statement within 12 months, with the possibility of extension to 18 months. Parties are urged to provide information promptly and comply with deadlines set out by the NCP in order to adhere to the timetable. Failure to do so could result in the NCP making its decision in the absence of that information. Deviations from the specified deadlines may be granted by the NCP in exceptional cases. If deviations become necessary, the NCP will report such delays to the parties concerned, explain the reasons behind the decision, and provide a revised timetable.

STAGE 1: INITIAL ASSESSMENT

"The NCP will: Make an initial assessment of whether the issues raised merit further examination and respond to the parties involved."

- OECD Guidelines, Part II, Procedural Guidance, Section (C)

CONFIRMATION OF RECEIPT

The NCP secretariat will acknowledge receipt to the complainant and forward the complaint to the company named in the complaint normally within 10 working days of receiving a complaint.³

DETERMINATION OF ADMISSIBILITY

In making an initial assessment of whether the issue raised merits further examination the NCP will determine whether the complaint is made in good faith and relevant to the implementation of the Guidelines. The NCP may, in this process, seek the advice of relevant authorities and consult NCPs in countries relevant to the complaint.⁴

In its initial assessment, the NCP will take into account:

- Whether the Norwegian NCP is the correct entity to assess the alleged violation.
- The identity of the party concerned and its interest in the matter.
- Whether the complaint is material and substantiated.⁵
- Whether there seems to be a link between the enterprises' activities and the issue raised in the specific instance.
- The relevance of applicable law and procedures, including court rulings.⁶
- How similar issues have been, or are being, treated in other domestic or international proceedings.

³ *Stage 1:* The company will be invited, but not expected, to submit to the NCP by a set date its comments on procedural aspects of the claim by a set date. *Stage 2:* The parties will be invited and expected to substantiate their claims on material and procedural aspects upon request of the NCP.

⁴ Part II Commentary on the Implementation Procedures. Sections 23 and 39.

⁵ Materiality is understood as a fact that is significant to the issue at hand. Substantiation concerns the extent to which the complaint is supported by proof or evidence.

⁶ Part II Commentary Section 26.

- Whether the consideration of the specific instance would contribute to the purposes and effectiveness of the Guidelines.⁷

Whereas a complaint should be substantiated for the NCP to be able to assess its admissibility, this admissibility decision does not in itself imply that the NCP considers the substantiation as a proof of a breach of the Guidelines. If the NCP does not accept a complaint it means that there is insufficient evidence of any breach of the Guidelines to warrant further examination, that the complaint is manifestly ill-founded or that it falls outside the scope of the Guidelines.

If the parties reach a settlement and the complaint is withdrawn before the NCP has issued an Initial assessment, the NCP will close its file.

ISSUING THE INITIAL ASSESSMENT

Following the determination of admissibility, the NCP will draft an Initial Assessment that will be shared with the parties. The Initial Assessment will include:

- The names of the parties. If the case is rejected and if there is a written request for confidentiality, the parties will not be named.
- The substance of the complaint including reference to the allegedly breached portions of the Guidelines.
- A statement of the precise nature of the complaint.
- A summary of the process the NCP has followed to date.
- The reasons for accepting or rejecting the complaint including:
 - A note of any parts or all of the complaint found to be outside the scope of the Guidelines or manifestly ill-founded;
 - A statement that acceptance of a complaint for further consideration does not mean that the NCP has determined at this stage that the Guidelines have been breached;
 - An outline of the next stages in the NCP complaint procedure.

The parties will be invited to submit proposals for factual corrections or other written comments to the draft Initial Assessment within 10 working days. It will be in the NCPs discretion whether to take into account any comments received. The Initial Assessment will be sent to the parties and published, normally the same day, on the NCP website: www.responsiblebusiness.no The NCP will take into account the need to preserve the confidentiality of sensitive business, the identity of a party and other information in compliance with the Freedom of Information Act. The NCP may also make publicly available its decision that the issues raised merit further examination and its offer of good offices to the parties involved.

STAGE 2: MEDIATION OR EXAMINATION

“The NCP shall offer a forum for discussion and assist the...parties in dealing with the issues raised...”

⁷ Part II Commentary Section 25.

- OECD Guidelines, Part II Procedural Guidance (C)

ASSESSMENT MEETINGS

The preferred outcome of a complaint is an agreement between the parties. When the NCP has determined that a complaint is admissible, the NCP will offer its “good offices” to contribute to a solution to the issue, ensure the suitability of the parties and involve any other necessary parties. The NCP will offer to meet separately with each party to discuss the complaint. In these meetings, the NCP will:

- Verify that the parties have the authority to move beyond the convening stage, and to make binding commitments on behalf of their organisation;
- Clarify the precise nature of the complaint and if necessary ask the complainant to present documentation, and ask the company for a response to the complaint;
- Clarify the neutral role of the NCP; and
- Explain how mediation will work if the parties choose this option, as well as the option for the NCP to conduct an examination, and any other viable options for addressing the specific instance.

Following the Initial Assessment and meetings, and in consultation with the parties, the NCP will decide whether to recommend mediation or examination. In some cases, the parties may resolve the issues during preliminary meetings. The recommendation of the NCP will be based on the Initial Assessment and the preliminary meetings with the parties.

RESOLVING COMPLAINTS THROUGH MEDIATION**WHAT IS MEDIATION?**

Mediation can be viewed as an “assisted negotiation” between the parties with the aim of reaching a settlement agreeable to both. Mediation differs from negotiations, which occur directly between the parties without a go-between. Mediation can take place between two parties or between more parties that are addressed in the complaint. It is a voluntary and guided process where the NCP or an independent mediator appointed by the secretariat assists the parties in resolving a conflict on which the complaint to the NCP is based. In accordance with the Norwegian Public Administration Act Section 11, the NCP secretariat may use external expertise to guide the parties. The process is not binding if the parties do not reach an agreement.

The NCP will make a recommendation to the parties for mediation by the NCP, or mediation by a third party, and seek the consent of both parties. For each specific instance only one of the mediation courses will be selected.

NCP mediation

The role of the NCP in mediation is to provide a platform and opportunity for each party to discuss the issues raised in the complaint. The NCP will be impartial and fair. If there is a conflict

of interest or an appearance thereof, the NCP member or secretariat staff concerned will be required to waive his or her involvement in the procedure.⁸

External mediation

In cases where the NCP contracts an external mediator, the NCP will prepare terms of reference to be agreed by both parties and the mediator. The NCP and both parties will approve the mediator. The mediator will be responsible for agreeing with the parties the methods and processes for mediation. The NCP will request an update of progress from the mediator every two months.

THE MEDIATION PROCESS

The mediator will assist the parties to reach a mutually agreeable solution to the conflict on which the complaint is based by facilitating dialogue between the parties. During the mediation, the mediator is responsible for suggesting possible ground rules for mediation and to ensuring that the parties act in good faith; guiding the mediation process according to the principles set forth in this procedural guidance, including the agreed-upon level of confidentiality; preparing, distributing and retaining relevant documents; and ensuring adherence to agreed-upon protocols.

The mediation process generally includes the following main stages:

- ***Pre-mediation:*** The mediator will meet both parties to prepare for the mediation. These meetings will explore the issues, explain the mediation process, and answer questions on how the process will work. The mediator will explain the voluntary nature of mediation, identify the objectives of the parties, set forth possible courses of action, and identify what is necessary for each party to see the mediation as successful. The mediator will ensure that the parties have the necessary authority to be involved in mediation on behalf of their organisation and where needed, identify additional parties. The mediator must obtain formal consent to participate from all parties. The parties involved will be asked to agree to the following conduct, which may be included in a Terms of Reference:
 - Show a genuine commitment to mediation and not view the mediation process as a means of gathering further information or as an opportunity to avoid addressing issues and accounting for conduct.
 - Adhere to the agenda and not raise new issues not known to the NCP or the other party beforehand.
 - Observe confidentiality except to the extent that it is necessary to seek professional advice or guidance from within their organisation. In these circumstances, those consulted will be expected to observe confidentiality.⁹

⁸ See voluntary statements by all NCP members, which extend beyond the requirements of the law on issues such as conflict of interest, impartiality and confidentiality on www.responsiblebusiness.no.

⁹ If necessary for the mediation process, the mediator and the parties may come to a time-limited confidentiality agreement where all information given by one party to the mediator is shared with the other party only by their consent; the parties do not give information about the content of the mediation to the media or online; all contact with and between the parties goes via the secretariat of the NCP unless otherwise agreed; and the parties come to an agreement on when they will publicise the results.



- All parties should be aware of the influence any public statements may have on the mediation process.¹⁰
- **Mediation:** The mediator will bring both parties together in continued meetings aimed at reaching an agreement or mapping out a process of on-going dialogue. These meetings will have an agenda that is agreed upon with the parties, and minutes will be taken.
- **Mediation Agreement:** At the end of a successful mediation process the parties, assisted by the NCP if desired, will draft a Mediation Agreement. The agreement is signed by the highest level(s) in each organisation involved in the process. If the full agreement is not to be published, a summary will be drafted for publication.

If mediation was successful on some aspects of a complaint, the Mediation Agreement or summary will be annexed to the Final Statement and the NCP will examine those aspects where mediation failed. In any case where the majority of key concerns of the complaint were mediated and where the parties are content for the NCP not to investigate the remaining issues, this will be reflected in the Mediation Agreement. Should the mediation process fail, the NCP will begin further examination of the complaint.

EXAMINATION OF A COMPLAINT

The objective of the examination is for the NCP to assess whether the complaint is justified. At the outset, the NCP will identify the steps to proceed with the examination. If, as a result of the examination, the NCP decides that additional steps are required in order to complete the examination, it will notify both parties of any additional steps. The NCP may use the following methods in this examination stage:

- **Information-gathering.** The examination is likely to involve the NCP collecting further information or statements from the complainant or the company. It may also seek advice from other relevant government departments, diplomatic missions, Innovation Norway, Norad, the UN, the OECD secretariat, business associations, NGOs, or other agencies. If the NCP deems it appropriate, it will seek expert or independent opinions.
- **Meetings.** The examination may also involve further meetings between the NCP and the parties. In each case the meeting will have an agenda and minutes will be taken. Unless a good case is made for information to be withheld, all information and evidence received by the NCP will be shared with the parties.
- **Fact-finding.** The NCP may seek further information relating to the complaint through a fact-finding mission carried out by the secretariat or by relevant experts. This may include field visits and interviews with relevant authorities, trade unions, local communities and indigenous groups, or technical assessments.

¹⁰ See Procedural Guidance, Section C.

At the conclusion of the examination, the NCP will review all the information it has received and gathered and on this basis come to a conclusion as to whether the Guidelines have been breached.

STAGE 3: FINAL STATEMENT

"If the parties involved do not reach agreement on the issues raised, the NCP should issue a statement and make recommendations as appropriate."

- OECD Guidelines, Part II Procedural Guidance (C)(3)

If mediation is successful, the process concludes with a Final Statement from the NCP on the process with an attached Mediation Agreement drawn up jointly by the parties. The Final Statement will present the parties, facts and relevant aspects of the Guidelines, the agreed-upon solution and any agreements regarding monitoring or supervision.

If mediation does not succeed, the NCP will draw up a Final Statement on the process and the merits of the complaint. The NCP will emphasise the cooperativeness of the parties, the facts, and the interpretation of the relevant portion of the Guidelines. The Final Statement will often include recommendations to the company, and where relevant, to the complainant.

The Final Statement will generally include:

- Details of the parties involved i.e. complainant and the company, and the date on which the issues were raised with the NCP.
- Details of allegation and those chapters/paragraphs of the Guidelines that it is alleged have been breached.
- A summary of the process the NCP has followed, the extent to which the parties participated in good faith, and the outcomes of any mediation.
- The NCP may offer its good offices to the parties involved to follow up the Mediated Agreement or the Final Statement.

In the case of examination, the Final Statement will in addition generally include;

- Any observations the NCP deems appropriate to include on the reasons for why no agreement was reached.
- The results of the examination as to whether or not the company is in breach of the Guidelines, including a rationale behind each conclusion.
- Details of ill-founded aspects of the complaint not identified in the Initial Assessment.
- Where appropriate, forward-looking recommendations to the company to improve its conduct in accordance with the Guidelines.
- A date by which both parties will be asked to submit to the NCP an update on measurable progress towards meeting the recommendations (if any).
- Where relevant, good company practice consistent with the Guidelines

Once the NCP has drafted the Final Statement, it will be sent to the parties for factual checks and a deadline of 10 working days for comments. The NCP will, in its discretion, incorporate any



necessary factual changes before sending the finalised statement to the parties. The statement will then be published on the NCP website. In order to foster policy coherence, the NCP will inform relevant government agencies of its statements and reports when they are relevant to a specific agency's policies and programmes.

OPTIONAL FOLLOW-UP: MONITORING AND EVALUATION

"If the NCP makes recommendations to the parties, it may be appropriate under specific circumstances to follow-up with the parties on their response to these recommendations."

- OECD Guidelines, Part II Commentary on the Implementation Procedures (31)

The complainant and company will normally be asked to evaluate the performance of the NCP in the mediation or examination within three months following the Final Statement to improve the NCP-process.

If there is a mediated outcome, this may include monitoring. Where the Final Statement includes recommendations to the company, it may also specify a date by which both parties are asked to provide the NCP with a substantiated update on the company's progress towards implementing these recommendations. Progress reports should be submitted to the NCP no later than a year following the Final Statement.

If there is a monitoring provision in the mediated outcome, the NCP will prepare a Follow-Up Statement reflecting the parties' response and, where appropriate, the NCPs conclusions. The NCP will ask the parties to send factual comments on the Follow-Up Statement within 10 working days of receiving the draft. The NCP will, in its discretion, incorporate any necessary factual changes before sending the finalised Follow-Up Statement to the parties and publishing it on the website www.responsiblebusiness.no.

USEFUL CONTACTS

OECD Guidelines for Multinational Enterprises

www.oecd.org/daf/investment/guidelines
investment@oecd.org

Trade Unions

Trade Union Advisory Committee to the OECD (TUAC)
www.tuac.org/en/public/index.phtml
tuac@tuac.org

Norwegian Confederation of Trade Unions

www.lo.no
lo@lo.no

Non-governmental organisations (NGOs)

OECD Watch
www.oecdwatch.org
info@oecdwatch.org

ForUM for Environment and Development, Norway

www.forumfor.no
forumfor@forumfor.no

Business organisations

The Business and Industry Advisory Committee to the OECD (BIAC)

www.biac.org/
biac@biac.org

Confederation of Norwegian Enterprise (NHO)

www.nho.no
firmapost@nho.no

Virke Federation (former Federation of Norwegian Commercial and Service Enterprises)

www.virke.no
info@virke.no