

# **NORWAY NATIONAL CONTACT POINT PEER REVIEW PROCESS**

**Final Report of the Peer Review Delegation**

**Peer Review Conducted: 2013  
Report Submitted to the Norway NCP: January 2014**

## ACKNOWLEDGEMENTS

The Peer Review Team would like to extend its sincere thanks to the Norway National Contact Point (NCP) for the opportunity to take part in the voluntary peer review process, and their significant engagement in this constructive peer learning exercise.

Our special thanks and appreciation go to Dr. Hans Petter Graver, Chair of the Norway NCP, the Expert members of the NCP, Jan Erik Korssjoen, Gro Granden, and Elin M. Myrmel-Johansen, and the NCP Secretariat, Kamilla Halvorsdatter Kolshus, Mari Bangstad, and Amelie Lied Haga, for their substantial contribution in diligently assisting the Peer Review Team, from beginning to end, and for their exceptional hospitality.

A heart-felt thanks also goes to David Kovick and Lloyd Lipset with *Shift*, who provided excellent support invaluable to the Peer Review Team. Their research and coordination work prior to the review team's visit, their assistance in facilitating discussions in Oslo, and their aid with the Team's preparation of the final report, were invaluable in ensuring a dynamic, efficient and ultimately successful Peer Review process.

The Peer Review Team would also like to give special thanks to all of the representatives of stakeholder groups, both based in Norway and abroad, as well as government representatives, for their participation, their candor, and their commitment of time in support of the process. Stakeholder participation in the pre-visit surveys, and the in-person meetings in Oslo, provided the Peer Review Team with invaluable insight into how the work of the Norway NCP impacts its client base.

This review came at an important juncture for the Norway NCP, following its recent restructuring and ahead of a planned review by the Norwegian Government. We were impressed by the work and dedication of the Norwegian National Contact Point, and the achievements of the Norwegian NCP are, in part, due to the strong support provided to the NCP. The Government of Norway not only provides significant financial support to the NCP, but it has also demonstrated its commitment to the principles to responsible business practices and stakeholder engagement. We would encourage the continued support of the Norwegian Government to ensure that the National Contact Point remains a strong, active and internationally respected institution.

The Terms of Reference for the voluntary peer review set out two broad objectives: (1) to strengthen the performance and functioning of the Norway NCP, and (2) to contribute to strengthening the NCP system as a whole. In our view, these two objectives were met with resounding success, and we hope that the recommendations provided in this report will be helpful in guiding the Norway NCP in its continued efforts to improve its outreach, its implementation of the OECD MNE Guidelines and its support for broader peer learning exercises. The lessons learned, good practices, and challenges shared during this process has strengthened our collective understanding of National Contact Point systems, and has provided excellent "food for thought" on how we can make our work more effective. We hope these insights will be equally beneficial to the readers of this report and we encourage National Contact Points to undertake their own reviews, or participate in other peer review processes.

*-- Ms. Francine Noftle, Canada (Chair), on behalf of the Peer Review Team*

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## EXECUTIVE SUMMARY

Norway's National Contact Point (NCP) for the OECD Guidelines on Multinational Enterprises (the Guidelines) is recognized as a leader among its peer NCP institutions. In 2011, the Norwegian Ministry of Foreign Affairs volunteered the NCP to undertake a Peer Review exercise, in order to identify opportunities to strengthen the NCP's own performance and to share the lessons learned and its practices with the broader NCP community. The NCP agreed and welcomed the Peer Review exercise in 2013.

**About the Peer Review:** The Peer Review team was conducted by representatives from counterpart NCPs, including Canada (Chair), The Netherlands (Co-Chair), Colombia (Co-Chair), United Kingdom and Belgium, with Hungary and Mexico participating as observers and the OECD Secretariat providing a support function. The information for the peer review included background research and interviews with the Norway NCP's domestic and international stakeholders, culminating with consultations between the Peer Review team and stakeholders of the Norway NCP, conducted in Oslo on 21-23 October 2013.

The peer review examined the different aspects of the Norway NCP's mandate, namely (1) Promotion of the Guidelines; (2) Implementation of the Guidelines in Specific Instances; and, (3) Cooperation with other NCPs. As the Norway NCP was recently re-organized as an independent Expert Panel, the peer review also examined the implications of the new institutional structure on the fulfillment of its mandate.

**Key Findings:** The overall message from the peer review is that the Norway NCP is highly effective at fulfilling its mandate pursuant to the Guidelines. All stakeholder groups conveyed a strong sense of ownership of the NCP, which is a testament to its credibility and importance among Norwegian efforts to promote responsible business conduct. The feedback from stakeholders was overwhelmingly positive and highlighted the following factors: the individual credibility and institutional independence of the members of the NCP's Expert Panel; the dedicated financial resources that support the NCP's various activities; and, the dedicated human resources for the NCP's Secretariat.

***Overall Message from the Peer Review:***

- ***The Norway NCP is highly effective at fulfilling its mandate pursuant to the Guidelines.***
- ***All stakeholder groups conveyed a strong sense of ownership of the NCP, which is a testament to its credibility and importance among Norwegian efforts to promote responsible business conduct.***

**(1) Promotion of the Guidelines:** The peer review highlights a high degree of appreciation of the various activities and tools that the Norway NCP uses to implement its communications plan. In particular, stakeholders appreciated the development of the NCP's website as an effective and transparent means of providing information, and the strong presence of the members of the Expert Panel and Secretariat at events related to corporate social responsibility (CSR) in Norway. These promotional activities have resulted in a dramatic increase in awareness of the Guidelines by Norwegian business enterprises in recent years.

However, even with the recognized effectiveness of the NCP's efforts in this area, promoting the Guidelines represents an on-going challenge, particularly with two specific audiences: **(a) small and medium Enterprises (SMEs) and (b) relevant government departments and agencies**, in part due to the high proportion of State-owned and supported enterprises in Norway. More fundamentally, however, while the shift to an independent NCP structure increased the credibility of the NCP and decreased the direct involvement of the government in its daily performance, the implementation of the OECD Guidelines remains, at its core, a government responsibility, and therefore further promotion efforts should both focus on government actors and be undertaken in concert with relevant government ministries.

**(2) Handling of Specific Instances:** The Norway NCP was also applauded by the great majority of its stakeholders for enhancing the predictability and legitimacy of how it handles specific instances involving Norwegian business enterprises, with particular credit being given to the members of the Expert Panel and the independent institutional structure. **In particular, the greater transparency, clarity and timeliness of the NCP's procedures since the restructuring of the NCP were highlighted as recent strengths.** The use of external resource-people to strengthen procedures and encourage resolution of Specific Instances was also seen as an emerging good practice.

However, with the recent increase in scope of the Guidelines to cover issues such as human rights, as well as the global reach of Norwegian business activities and investments, the Norway NCP is likely to be challenged by a rising number of Specific Instances of increasing complexity. This will present challenges for balancing flexibility for problem-solving in individual Specific Instances with the need to maintain consistency and predictability about the overall Specific Instance procedure, and may present additional challenges of engaging new stakeholders who have not had previous experience with the OECD Guidelines and may not understand their relevance, applicability or intent. Moreover, the fact that many Specific Instances will involve multiple parties, countries and NCPs points to the need for on-going cooperation and communication between NCPs and continued efforts to promote functional equivalence of all NCPs.

**(3) Cooperation with Other NCPs:** The Norway NCP's efforts to cooperate with other NCPs are widely appreciated and have resulted in strong international visibility. While balancing the on-going needs related to promotion and implementation of the Guidelines in Norway, there remains a need for the Norway NCP to continue engaging other NCPs in order to promote functional equivalence across the NCP system. The fact that Norway volunteered to undertake a peer review demonstrates leadership in this regard. Looking forward, the Norway NCP can prioritize cooperation efforts with other NCPs in regions or countries where Norwegian business enterprises are particularly active.

Throughout the report, leading practices of the Norway NCP are highlighted, as well as recommendations respectfully offered to the Norwegian NCP by the Peer Review team to address remaining challenges and further strengthen performance of the NCP.

### Recommendations in Brief

#### **Promotion of the Guidelines:**

- *Develop a specific promotional strategy for the NCP's engagement towards government to raise awareness and understanding of the OECD Guidelines and the role of the NCP with relevant government ministries and agencies, and to combine efforts at promotion with the responsible ministries;*
- *Build upon the strategic communication plan for other stakeholders, incorporating specific targeted suggestions of stakeholders; and*
- *Seek to dedicate adequate resources (human and financial) for Promotion strategies and activities, to support delivery of the promotional strategy recommended above, independent of the understandably unpredictable timing of Requests for Review, and/or management of Specific Instances.*

#### **Implementation of the Guidelines in Specific Instances:**

- *Devote additional planning, focus and attention to helping Parties follow-up on, and implement, mediated agreements Instances;*
- *Proactively develop targeted relationships with NCPs in countries where Norwegian businesses have significant presence, to lay the groundwork for cooperation on potential future Specific Instances; and*
- *Remain vigilant about opportunities for dialogue and conflict resolution at all stages of the process, as dynamics may evolve to create opportunities for dialogue where none may have previously appeared to exist.*

#### **Cooperation with other NCPs:**

- *Continue to support the peer learning of NCPs, through collaborative programs, capacity-building, and other forms of cooperation, as a means of contributing to the objective of strengthening functional equivalence across the NCP system.*

## I. INTRODUCTION

The following report presents information about the performance of Norway's National Contact Point for the OECD Guidelines for Multinational Enterprises (Norway NCP). The Norway NCP undertook a voluntary peer review process in 2013, which included background research, stakeholder consultations and the observations of a Peer Review team, comprised of counterpart NCPs from other OECD countries.

The peer review is focused on the mandate for NCPs under the OECD Guidelines for Multinational Enterprises (the Guidelines). As discussed below, the peer review team's overall assessment is that the Norway NCP is highly effective and is fulfilling its mandate. The move to an independent structure, with an independent Expert Panel and a dedicated budget and Secretariat in 2011 has enhanced the NCP's ability to meet these objectives.

Nonetheless, certain challenges remain for the Norway NCP—some of which may be specific to the Norwegian context and some of which may be common challenges for other NCPs. The peer review exercise therefore provided an opportunity for the members of the review team to identify lessons learned from the Norway NCP's experiences, and to offer observations and recommendations to the Norway NCP for improved performance.

***The Norway NCP's move to an independent structure, with an independent Expert Panel and a dedicated budget and Secretariat in 2011, has enhanced the ability of the NCP to fulfill its mandate.***

***Nonetheless, certain challenges remain – some of which may be specific to the Norwegian context, and some of which may be common challenges for other NCPs.***

The report is structured as follows:

- I: An Introduction, which provides: (A) an overview of the OECD Guidelines and the role of NCPs, followed by information about (B) the Norway NCP; (C) context factors relevant to the peer review exercise; (D) the objectives of the peer review process; and (E) the methodology.
- II: NCP Mandate 1: The promotional activities of the Norway NCP;
- III: NCP Mandate 2: The NCP's handling of Specific Instances;
- IV. NCP Mandate 3: The NCP's cooperation and engagement with the broader NCP system.
- V. Reflections and cross-cutting themes relating to the Norway NCP's institutional arrangements and its success in meeting the core NCP criteria of visibility, accessibility, transparency and accountability.

## I (A). Introduction: The OECD Guidelines and the Role of NCPs

The OECD Guidelines for Multinational Enterprises (the Guidelines) are a comprehensive code of responsible business conduct that adhering countries have committed to promoting.<sup>1</sup> They provide voluntary principles and standards for responsible business conduct in areas such as employment and industrial relations, human rights, environment, information disclosure, combating bribery, consumer interests, science and technology, competition, and taxation.<sup>2</sup>

**Adhering countries commit to establishing an NCP to further the effectiveness of the Guidelines by undertaking promotional activities and contributing to the resolution of issues that arise to implementation in Specific instances.**<sup>3</sup> NCPs in different adhering countries should cooperate to promote and implement the Guidelines.<sup>4</sup>

The Guidelines state that: *“NCPs will operate in accordance with core criteria of visibility, accessibility, transparency and accountability to further the objective of functional equivalence.”*<sup>5</sup> NCPs can take different forms, and adhering countries have flexibility in organizing their NCPs.<sup>6</sup> The Procedural Guidance and its commentary provide more specific guidance about the following aspects of NCPs: institutional arrangements; information and promotion; implementation in Specific Instances; and, reporting to the OECD.

The key responsibilities of adhering countries include:

- Setting up NCPs, and informing interested parties of the availability of the Guidelines-related facilities;
- Making available necessary human and financial resources;
- Enabling NCPs in different countries to co-operate with each other as necessary; and
- Enabling NCPs to meet regularly and report to the OECD Investment Committee.<sup>7</sup>

**NCPs have become one of the most prominent non-judicial mechanisms for addressing the conduct of multinational enterprises.** The prominence of the NCP system was reinforced through the 2011 update to the Guidelines, which broadened the scope of the Guidelines to cover new issues (e.g. the responsibility of business enterprises towards human rights) and provided clearer and reinforced procedural guidance for NCPs.<sup>8</sup> The 2011 update has **raised the expectations of stakeholders** about how the governments of adhering countries promote responsible business conduct—measured by the performance

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<sup>1</sup> The Guidelines are a key part of the OECD Declaration and Decisions on International Investment and Multinational Enterprises. All 34 OECD countries and 12 non-OECD countries have subscribed to the Declaration. The non-OECD countries that have adhered to the Declaration (and hence the Guidelines) are Argentina, Brazil, Colombia, Costa Rica, Egypt, Jordan, Latvia, Lithuania, Morocco, Peru, Romania and Tunisia.

<sup>2</sup> For further information about the Guidelines, see: <http://mneguidelines.oecd.org/>

<sup>3</sup> See, Part II, paragraph 1 of the Guidelines.

<sup>4</sup> See Part II, paragraph 2 of the Guidelines.

<sup>5</sup> See paragraph I of the Procedural Guidance to the Implementation Procedures of the Guidelines.

<sup>6</sup> See paragraph I.A of the Procedural Guidance to the Implementation Procedures of the Guidelines.

<sup>7</sup> See paragraph 2 of the Commentary on the Implementation Procedures of the Guidelines.

<sup>8</sup> The OECD Guidelines were established in 1976 and have been updated from time to time. For further information about the 2011 revision of the Guidelines, see: <http://mneguidelines.oecd.org/2011update.htm>

of their NCPs and ultimately by the actions of the multinational enterprises operating in or from these countries.

### **I (B). Introduction: The Norway NCP**

At its inception in 2001, the initial Norwegian NCP was established within government and was housed in the Ministry of Foreign Affairs. The NCP consisted of members from the Government (Ministry of Foreign Affairs, the Ministry of Trade and Industry), Industry (the Confederation of Norwegian Enterprise), and other stakeholders (the Norwegian Confederation of Trade Unions).

Based upon feedback and consultations with stakeholders, and on the basis of recommendations in Government Report to the Parliament no. 10, *Corporate Social Responsibility in a Global Economy*,<sup>9</sup> the Government approved changes to the composition, administration and budget of the initial NCP in 2010. For an overview of the reform process, see: *The Road to a More Effective Norwegian NCP*.<sup>10</sup>

The revised NCP became operational as of 1 March 2011, and while it now operates independently from the Government, it remains a public institution that is dependent on the Government for its funding and appointment process. The revised NCP is comprised of a four-person Expert Panel and a two person full-time Secretariat employed by the Ministry of Foreign Affairs. The members of the Expert Panel are responsible for fulfilling the NCP's mandate, and the Secretariat ensures the administrative links with the Norwegian government and supports the Expert Panel in fulfilling its mandate. The Ministry of Foreign Affairs retains the responsibility to provide financial resources and to be the employer of the Secretariat for the NCP.

***In 2011, the Norway NCP was restructured:***

- ***As an Independent body,***
- ***Comprised of a four-person expert panel,***
- ***With Members nominated by stakeholder groups,***
- ***Supported by a secretariat employed by the Ministry of Foreign Affairs.***

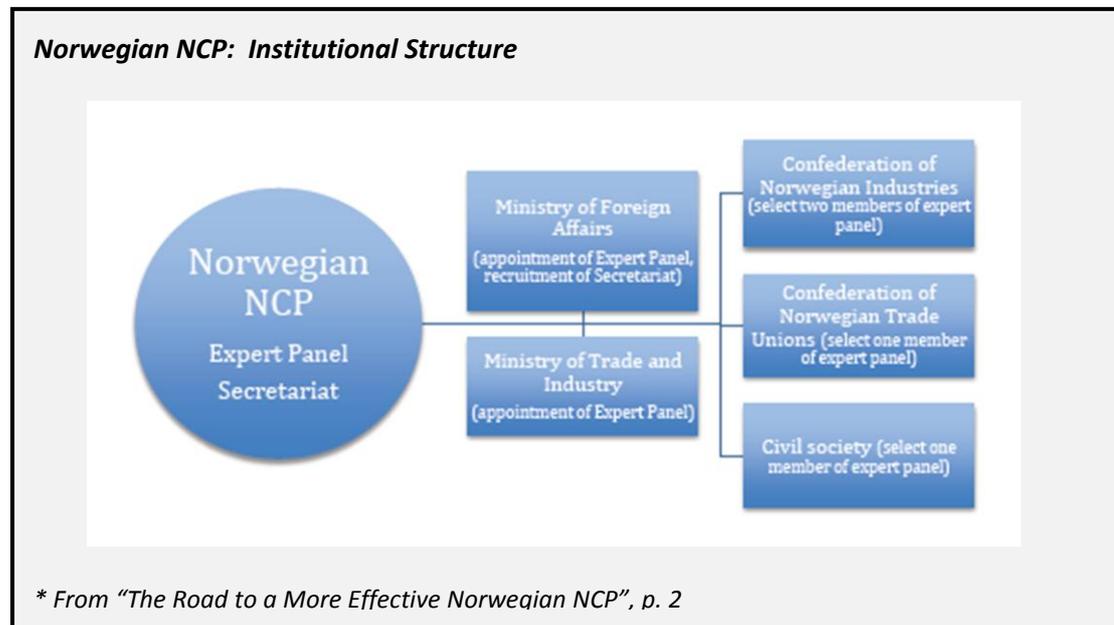
The Ministry of Foreign Affairs and the Ministry of Trade and Industry appoint the Expert Panel based on proposals from the Confederation of Norwegian Enterprise (NHO), the Norwegian Confederation of Trade Unions (LO), and Forum for Environment and Development (ForUM) on behalf of civil society. The Chair is appointed by the Government to a four-year term, and the other members are appointed to three-year terms.

The current Chair of the NCP is the Dean of the Law Faculty of the University of Oslo (Prof. Hans Petter Graver) while the other three members have labour and corporate backgrounds (Ms. Gro Granden, Mr. Jan Erik Korssjoen and Ms. Elin M. Myrmel-Johansen). The Secretariat's tasks include supporting the Expert Panel in fulfilling its mandate, including in relation to its administrative and reporting obligations to the Norwegian government and the OECD; in the resolution of Specific Instances and the preparation of draft statements;

<sup>9</sup> Available online: [http://www.regjeringen.no/pages/2203320/PDFS/STM200820090010000EN\\_PDFS.pdf](http://www.regjeringen.no/pages/2203320/PDFS/STM200820090010000EN_PDFS.pdf)

<sup>10</sup> Available online: [http://www.responsiblebusiness.no/files/2013/12/about\\_the\\_ncp\\_model.pdf](http://www.responsiblebusiness.no/files/2013/12/about_the_ncp_model.pdf)

and, in the active promotion of the Guidelines. The biographies of the members of the NCP Expert Panel and Secretariat can be found on the NCP website.<sup>11</sup>



All members of the NCP have signed a sworn declaration of transparency, confidentiality, trade restrictions, and impartiality, regarding their involvement with the National Contact Point.<sup>12</sup> As a publicly administered institution, the NCP complies with all relevant laws and regulations, such as the Norwegian *Freedom of Information Act* and the *Public Administration Act*.<sup>13</sup>

Although the Norwegian NCP is not required to report to the Parliament, it has done so on a voluntary basis since 1 March 2011. The Norwegian NCP does not have a formal advisory body, but meets with and reports occasionally to KOMpakt, the government's consultative body for corporate social responsibility.<sup>14</sup> The NCP does not have a formal oversight body, apart from reporting on administrative issues to the Ministry of Foreign Affairs. Since 2013, the minutes from the annual administrative meeting with the Ministry are published on the NCP website (in Norwegian).

<sup>11</sup> Available at: [www.responsiblebusiness.no/om-oss/](http://www.responsiblebusiness.no/om-oss/); and at: <http://www.responsiblebusiness.no/en/om-oss/the-secretariat/>

<sup>12</sup> One of the members of the independent Expert Panel and the former Head of Secretariat have previously recused themselves from the handling of a Specific Instance to ensure impartiality.

<sup>13</sup> The NCP practices enhanced access to information, which means that all information in Specific Instances will be made public except when information may cause harm to individuals, reveal business secrets or expose certain details of the mediation process. The NCP Secretariat has granted 100 per cent access to approximately 10 external requests for documents between March 2011 and January 2014. Minutes from NCP meetings and minutes from annual administrative meetings with the Norwegian Ministry of Foreign Affairs, as well as documents from the handling of Specific Instances are published online.

<sup>14</sup> KOMpakt was established in 1998 as the Norwegian government's Consultative Body for Human Rights and Norwegian Economic Involvement Abroad. In 2006, its mandate was modified to include more aspects of CSR. It is comprised of members from government, business, labour and civil society. For more information about KOMpakt and its membership, see: <http://www.regjeringen.no/en/dep/ud/documents/propositions-and-reports/reports-to-the-storting/2008-2009/report-no-10-2008-2009-to-the-storting/9/5.html?id=566008>

In the conduct of its international activities, the NCP can and does contact and plan activities with its NCP counterparts directly, and normally informs relevant Sections in the relevant Ministry, Embassies and Agencies of the Norwegian government for protocol reasons, and for potential collaboration and synergies to be drawn from their involvement.

The NCP has been allocated an annual budget of NOK 4 million (500 000 EURO/660 000 USD) by the Ministry of Foreign Affairs after the 2011 reorganization process, and has a specific mention in the State Budget. This covers the salaries of the Secretariat, remuneration to the panel members,<sup>15</sup> consultancy/fact-finding costs pertaining to Specific Instances, information activities, as well as administrative costs. During the first year only 75 % of the budget was spent, while the second year and the third year 99 % and 93 % were spent. A detailed breakdown of the NCP's annual budget expenditures is expected to be included in future annual reports.

### I (C). Introduction: Factors and Context with Impact on the Peer Review Process

Each peer review exercise takes place at a specific moment in time and within the national context of a particular adhering country; and, it is therefore useful to highlight some of the contextual factors that had an impact on the peer review of the Norway NCP.

**1. Recent Restructuring of NCP:** The peer review follows relatively closely on the 2011 reform of the Norway NCP that resulted in the creation of an independent expert body. On the one hand, the institutional reform process had taken into account the perspectives of many Norwegian stakeholders, and likely had contributed to the awareness and support of the NCP's institutional structure that many stakeholders communicated to the peer review team. On the other hand, the timeframe for assessing the actual performance of the new NCP structure is relatively limited. For example, some of the promotional activities of the new NCP are still being developed and their impact and effectiveness cannot be fully assessed. Moreover, a number of the Specific Instances reviewed had been initiated under the old NCP structure and then were transferred to the new NCP, complicating the assessment of the NCP's performance in this area.

#### ***Important Context Factors Shaping the Norway NCP Peer Review:***

1. *Peer Review taking place only 2 years since restructuring of the new Norway NCP;*
2. *Recent high-profile specific instance which has garnered significant domestic and international attention;*
3. *Significant percentage (30%) of enterprises in Norway are state-owned enterprises;*
4. *Planned government review of NCP in 2014.*

Moreover, a number of the Specific Instances reviewed had been initiated under the old NCP structure and then were transferred to the new NCP, complicating the assessment of the NCP's performance in this area.

**2. Recent High-Profile Specific Instance:** The Norway NCP had recently concluded a Specific Instance that had garnered significant domestic and international attention. This Specific Instance (ForUM v. NBIM<sup>16</sup>) presented a number of novel and challenging elements, and the on-going dynamics of the case were a topic of concern for many stakeholders. It was beyond the mandate of the peer review team to discuss the substance of Specific Instances,

<sup>15</sup> According to the NCP's Annual Report 2012, the members of the NCP are compensated at an annual rate of approximately EUR 16 000 to the chair and EUR 10 000 to each of the remaining three members.

<sup>16</sup> The Final Statement can be accessed at: [http://www.responsiblebusiness.no/files/2013/12/nbim\\_final.pdf](http://www.responsiblebusiness.no/files/2013/12/nbim_final.pdf)

so the discussions of this case were focused upon general implications, the process followed by the NCP in managing this instance, and lessons learned by the NCP.

**3. High Proportion of State-Owned Enterprises:** Norway has a high proportion of State-owned business enterprises. Some stakeholders stated that the government was involved in some manner in nearly 30% of Norwegian business enterprises, creating a very unique business environment compared to many other countries that adhere to the Guidelines.

**4. Planned Upcoming Government Review:** An additional contextual point that was brought to the peer review team's attention is that the NCP may in addition to the Peer Review be the subject of a governmental performance evaluation in 2014. This evaluation had already been foreseen for the 3-year mark, when the new NCP structure was introduced in 2011, and should be a supplementary matter that relates to the Norway NCPs domestic accountability. Nonetheless, the peer review team hopes that this report will provide useful information for the upcoming evaluation, and that the conclusions and recommendations of the two exercises will be mutually reinforcing.

#### **I (D). Introduction: The Peer Review Process**

Norway's NCP welcomed the peer review process to take place in the autumn of 2013, with participation of representatives of NCPs from other adhering countries. The overarching

##### ***Objectives of the Peer Review Process:***

- *Strengthen the performance and functioning of the Norway NCP by engaging with domestic and international stakeholders to learn from the NCP's performance to date, and to offer recommendations;*
- *Contribute to the strengthening of the NCP system as a whole, by sharing lessons learned, good practices and challenges of the Norway NCP with the broader community of NCPs from OECD countries.*

*\*See Appendix A for the Terms of Reference*

purpose of the Review was to examine the Norwegian NCP's efforts towards fulfilling its mandate pursuant to the Guidelines.

The peer review process is an example of the two-way learning activities that NCPs should undertake to enhance the effectiveness of the Guidelines and to further the goal of functional equivalence across NCPs. As stated in the Guidelines:

"[NCPs] are encouraged to engage in horizontal, thematic peer reviews and voluntary NCP evaluations. Such peer learning can be carried out through meetings at the OECD or through direct co-operation between NCPs."<sup>17</sup>

The Norwegian NCP's peer review process is the third example of this sort of voluntary peer learning by NCPs. The Netherlands (2009) and Japan (2012) have also conducted voluntary NCP peer review exercises.<sup>18</sup>

<sup>17</sup> See Commentary on Procedural Guidance, para. 19.

<sup>18</sup> The peer review of the Dutch NCP took place in November and December 2009 and a "peer learning review" (of more limited scope) of the Japanese NCP took place on 17-19 April 2012. For more information, see: <http://mneguidelines.oecd.org/ncpeerreviews.html>

### I (E). Introduction: Methodology for the Peer Review Process

The peer review was overseen by a team of NCP representatives from other adhering countries who volunteered to participate in the process, including **Canada, Belgium, Colombia, Netherlands and the United Kingdom**. Representatives from Hungary and Mexico participated as observers. The OECD Secretariat participated in an advisory and support capacity. At the request of the Norwegian NCP, the Canadian NCP chaired the peer review team, with Colombia and The Netherlands NCPs as co-chairs.

#### **Key Elements of Norway NCP Peer Review Methodology:**

- *Desktop Research and Background Paper*
- *Stakeholder Surveys*
- *Peer Review Team Visit (5 participating NCPs, 2 Observer NCPs, OECD Secretariat)*
- *Stakeholder Consultations*
- *Consultations with Parties to Specific instances*
- *Site Visit to Norwegian Enterprise*
- *Independent Support*

The Norway NCP also engaged Shift as an independent third-party to accompany and support the peer review process,<sup>19</sup> including working with the Norwegian NCP Secretariat and the Chair of the peer review team, and engaging with a broad range of domestic and international stakeholders. The peer review process began in August 2013 with preparatory team discussions, and included extensive stakeholder consultations, in Oslo, from 21-23 October 2013. The review team also , engaged with the Norway NCP's Expert Panel and Secretariat, and used the opportunity provided by the meetings to exchange views and learn from their respective NCP experiences. The agenda for the working sessions in Oslo is attached as **Appendix B**. Shift prepared a background paper for the members of the peer review team in advance of the working sessions in Oslo. The background paper was based upon desk-based research, interviews with stakeholders, and the administration of a stakeholder questionnaire during April-June 2013.

In terms of the stakeholder consultations, meetings were held with representatives from all of the Norway NCP's main stakeholder groups in order to obtain balanced information. All stakeholder meetings were held in confidence and participants were assured that their statements and opinions would not be attributed in discussion with the Norway NCP or in the peer review report.

#### **Stakeholders Consulted During Peer Review Visit:**

- *Norwegian Government (8)*
- *Norwegian Business Enterprises (9)*
- *Norwegian Civil Society Organizations (7)*
- *Norwegian Trade Union Representatives (7)*
- *Norwegian Indigenous Peoples Organizations (1)*
- *Norwegian Academics (5)*
- *Parties to Specific Instances (4)*
- *NCP Institutional Stakeholders (3) - BIAC, TIAC, OECD Watch*

Individual meetings were held with each stakeholder group, and a multi-stakeholder meeting was held with representatives of KOMpakt, the government's consultative multi-stakeholder body on Corporate Social Responsibility issues. In addition to the

<sup>19</sup> Shift is an independent, non-profit center for business and human rights practice, with substantial expertise and global experience on issues of business and human rights, the OECD Guidelines, the system of National Contact Points, and the broader landscape of non-judicial remedy for business and human rights issues. For further information, see: [www.shiftproject.org](http://www.shiftproject.org).

stakeholder consultations, the peer review team met with parties to two Specific Instances.<sup>20</sup> Separate meetings with each party were organized in order to capture potentially divergent views. It should be highlighted that the peer review exercise was not intended to review the substance of these Specific Instances, but rather to gain understanding of the procedures and practices that have been followed by the NCP, and as an opportunity to engage with stakeholders with direct experiences with the specific instance mechanism and the NCP. The consultation meetings were chaired by the Canadian NCP, and while the discussions were open, conversations were structured around several broad framing questions that had been provided to the participants in advance.

***Framing Questions for Stakeholder Consultations:***

- *Given the Norwegian NCP's objectives of promoting the Guidelines, dealing credibly with complaints, and cooperating with the NCP system as a whole:*
  - *How well are these objectives being met by this NCP?*
  - *What steps or activities has this NCP undertaken that have been particularly effective in helping to meet these objectives?*
  - *If these objectives are not being satisfactorily met, why not?*
  - *How could these objectives be met better by this NCP?*
- *Given the restructuring of the Norwegian NCP to become more independent from government in 2011:*
  - *What expectations did stakeholders have for the new independent Norwegian NCP when it was established in 2011?*
  - *Have stakeholders observed any change in the performance of this NCP since it was restructured?*
  - *What further changes do stakeholders hope to see?*
  - *Is this NCP appropriately resourced to meet its mandate, for example, in terms of staff, financial, and other resources from government?*

At the beginning and end of the peer review team's visit to Oslo, the peer review team met with the Chair and members of the Expert Panel and the Secretariat of the NCP. These meetings provided an opportunity for the NCP to offer its own reflections about its performance and challenges; allowed for exchanges with the peer review team; and, gave the Norway NCP preliminary feedback from the stakeholder consultations. Although the stakeholder consultations and the visit to Oslo were coordinated by the Norway NCP, neither the expert members nor the Secretariat participated in any of the stakeholder consultations.

At the end of the stakeholder consultations, the peer review team visited Telenor, a Norwegian telecommunications company. This visit provided a learning opportunity about the NCP's engagement with business enterprises, as well as an example of a company's approach to applying the Guidelines in its international and domestic operations.

<sup>20</sup> ForUM v. NBIM (concluded by final statement on 27 May 2013) and ForUM v. Cermaq ASA (concluded by mediated joint statement on 10 August 2011).

In furtherance of the objective of peer learning, the Norway NCP has requested that a separate report be prepared about lessons-learned about the methodology of the peer review exercise. This report will be prepared by Shift, in consultation with the peer review team, the Norway NCP and stakeholders that participated in the process, after the peer review exercise has been completed.

## II. PROMOTION OF THE GUIDELINES

The first component of an NCP's mandate is the promotion of the Guidelines. The following section (A) reviews the Guidelines' procedural guidance to NCPs about information and promotion, (B) summarizes the Norway NCP's promotion activities, and (C) examines the performance of the Norway NCP in terms of promotion of the Guidelines based on stakeholder feedback. The section concludes with (D) the observations and recommendations that emerged from the peer review team's examination of this issue.

### II (A). Promotion: Procedural Guidance

The Procedural Guidance in Part II of the OECD Guidelines provides the following directions to NCPs about their information and promotion activities:

**Part II, Section I.B: Information and Promotion**  
 (\* From the Procedural Guidance of the OECD Guidelines)

*The National Contact Point will:*

1. *Make the Guidelines known and available by appropriate means, including through on-line information, and in national languages. Prospective investors (inward and outward) should be informed about the Guidelines, as appropriate.*
2. *Raise awareness of the Guidelines and their implementation procedures, including through co-operation, as appropriate, with the business community, worker organisations, other non-governmental organisations, and the interested public.*
3. *Respond to enquiries about the Guidelines from:*
  - a. *other National Contact Points;*
  - b. *the business community, worker organisations, other non-governmental organizations and the public; and,*
  - c. *governments of non-adhering countries.*

Additional considerations about promotional activities for NCPs are provided in paragraphs 13 to 17 of the Commentary on the Procedural Guidance.

### II (B). Promotion: Background on Norway NCP's Promotion Activities

The Norway NCP's information and promotion activities are guided by a communication plan,<sup>21</sup> which points to the following key target groups:

- **Business** (small, medium and large Norwegian registered enterprises to be reached mainly through their industry organisations, media and the web);
- **Civil Society** (Norwegian and international NGOs and concerned individuals, affected local population including indigenous peoples, to be reached through the NCP home page and through open meetings);

<sup>21</sup> The most recent version of the Communication Plan is included as Annex 2 of the 2012 Annual Report, which can be found on the NCP website (<http://www.responsiblebusiness.no/files/2013/12/aarsrapport2012E.pdf>).

- **Other NCPs** (to be reached through annual meetings and regional and thematic collaboration, with the OECD secretariat or through individual contact);
- **Academia** (national and international research institutions and individual academics to be reached through the home page, open discussion fora, social media, lectures, student internship, availability to researchers and other cooperation with learning institutions, academic periodicals); and,
- **Public Offices and Officials** (to be reached through communications to the Ministries and other relevant public offices).<sup>22</sup>

Based on information in the latest Norwegian NCP Annual Reports to the OECD, the following summarizes the NCP's efforts to provide information in a transparent manner.<sup>23</sup>

- **Website:** The NCP has its own webpage, first launched in June 2011, which is updated regularly.<sup>24</sup> The latest upgrade was published in January 2014 and is based on input from annual surveys and from other stakeholders throughout 2011/2012 that the website is the most important information channel for business and that

**Examples of Promotion Activities of the Norway NCP:**

- *Public website, in Norwegian and English;*
- *Annual Report to the OECD, and brochure version for distribution to domestic stakeholders;*
- *Translation and distribution of 2011 Guidelines and information pamphlet about the Norway NCP;*
- *Short film about the Norway NCP;*
- *Quarterly online newsletter to domestic stakeholders;*
- *Online guidance on human rights due diligence;*
- *Self-Assessment tool for Norwegian businesses;*
- *Speaking engagements, meetings, and stakeholder surveys conducted by the Norway NCP;*
- *Planned development of information packages for Norwegian embassies abroad.*

key information was difficult to find on the former page. In January 2014, the webpage was, on instructions from the Ministry of Foreign Affairs, moved out of Government portal ([www.regjeringen.no](http://www.regjeringen.no)) to further signal the independence of the NCP. The online homepage of the NCP is in Norwegian and English, with additional information in New-Norwegian, Northern Sámi (the language of the largest group of Norway's indigenous peoples), Spanish and Mandarin.

- **Annual Report of NCP:** The Norwegian NCP produces an Annual Report as part of its reporting obligations to the OECD. It is also an important source of information for many stakeholders. For instance, the brochure version of the Annual Report 2011/2012 was more widely distributed in approximately 1000 copies—both digitally and in print—to key stakeholders, including the Norwegian Parliament.

<sup>22</sup> For instance, see the 2013 Norwegian NCP Annual Report p. 7 “Collaboration with GIEK and other public agencies to promote the Guidelines”, available at: <http://www.responsiblebusiness.no/files/2013/12/aarsrapport2013E.pdf> In 2013/2014 a joint effort to reach out to relevant Norwegian embassies is planned together with the Norwegian Ministry of Foreign Affairs.

<sup>23</sup> See Norwegian NCP Annual Report 2012, question 6 and Norwegian NCP Annual Report 2013 questions 11-27, available at: <http://www.responsiblebusiness.no/en/om-oss/disclosure/>.

<sup>24</sup> Available at: <http://www.responsiblebusiness.no>.

- **Guidelines and NCP Brochure:** The Norwegian NCP has translated the updated Guidelines and implementation procedures into Norwegian. The commentaries are currently being translated into Norwegian. A brochure about the NCP and the 2011 Guidelines has been made available in Norwegian, English, Spanish, and Mandarin. The 2011 Guidelines and implementation procedures have also been made available in other various forms, such as handouts, pamphlets, and presentations.
- **Short Film:** The NCP has produced a short and low-budget informative film about responsible business conduct for distribution amongst business and other key stakeholders, with the aim of increasing further awareness of the Guidelines and NCP. It published the film on Youtube and on its home page.<sup>25</sup> The film was first shown at the NCP Annual Meeting in June 2012 and has since been shown by the NCP at virtually every meeting and seminar in Norway and abroad. The film has been seen more than 900 times on Youtube in Norwegian and English as of September 2013.
- **Online Newsletter:** NCP Norway issues a periodical online newsletter to well above 400 individuals, including to company, NGO, government, academia and trade union representatives. The first edition was distributed on 30 March 2012. The NCP aims to produce 4 editions per year.<sup>26</sup>
- **Due Diligence Tool:** Based on requests for due diligence guidance, the Norwegian NCP commissioned a report by a Norwegian applied research institution to provide human rights due diligence guidance to companies. The report will be published online after adjusting it to a web- and tablet-friendly format.
- **Self-Assessment Tool for Businesses:** In conjunction with the upgrade of the website and the documented need for guidance expressed through its stakeholder surveys, the Norwegian NCP also hired a consultant to develop a simple self-assessment tool for businesses. The format is a set of statements for companies to develop a general overview of whether their policies and practices are aligned with the Guidelines.
- **Embassy Outreach:** A priority that has been identified for 2013/2014 is to develop an information package to the Embassies in collaboration with the Norwegian Ministry of Foreign Affairs.

Other recent examples of the Norwegian NCP's efforts to promote the Guidelines to different stakeholder groups in Norway<sup>27</sup> include:

- 6 events that the Norwegian NCP co-organized or co-hosted;
- 20 events where the Norwegian NCP was invited to speak or show the short film, including meetings within Government, state-owned agencies and embassies;
- 35-40 meetings with the Norwegian NCP and key stakeholders;

<sup>25</sup> <http://www.youtube.com/watch?v=7GbQwKHkYT0>

<sup>26</sup> 3 editions were published in 2012, and 3 editions in 2013.

<sup>27</sup> See Norwegian NCP Annual Report 2012, questions 3 and 7.b, c, d, e, f and g, and Norwegian NCP Annual Report 2013 questions 17, 18, 21, 22, 23, 24, 27 and 28. Available at NCP website (see footnote 23).

- Providing responses to inquiries from stakeholders, including other NCPs; business community, labour organisations, NGOs and the public; and, governments of non-adhering countries;
- Participating in Peer Learning events with other NCPs, i.e. chairing the Peer Review of Japan; and
- Conducting surveys of Norwegian businesses about their awareness of the Guidelines (and sharing the survey methodology with other NCPs).

## II (C). Stakeholder Feedback on Promotion Activities

*“Impressive promotional work by the NCP, but the Guidelines are still a mystery to some businesses” – A Norwegian business representative*

*“The NCP is very active and is participating in many events. You can always be more outgoing to the public, but it is hard to popularize this sort of stuff.” – A Norwegian labour representative*

*“It’s hard to imagine that they could do anything better. They’ve tried very hard to make the government take pride in the NCP and Guidelines.” – A Norwegian civil society representative*

**Praise and Progress for NCP’s Promotion Activities:** There was great appreciation from all stakeholders of the current efforts of the NCP to provide information and to engage with stakeholders in promotion of the Guidelines. In particular, the following areas of performance were highlighted as being particularly strong and noteworthy:

- The development of a more dynamic, transparent and accessible website;
- The presence of NCP expert members and Secretariat at national CSR events and conferences;
- The development of specific tools and guidance for domestic audiences.

**Stakeholders acknowledged that there has been a great leap forward in business awareness of the Guidelines that can be attributed to the NCPs promotional efforts.** In recent years, the NPC’s surveys have reported a dramatic spike in awareness: from 10% to 60% of Norwegian businesses being aware of the Guidelines. At the same time, business and industry representatives pointed to an on-going gap in awareness—particularly with respect to small and medium enterprises (SMEs). These discussions pointed to the fact that promotion and awareness require on-going efforts by the NCP; but, also that the NCPs promotional efforts are appreciated and will continue to be supported by the business community.

**The Need for More Engagement with Government Actors:** Some domestic stakeholders suggested that the greatest need in the area of promotion was for more effective promotion of the Guidelines with Norwegian government counterparts in particular. Outreach to government was seen as particularly important, given the NCP’s institutional independence from the Norwegian government. While the restructuring of the NCP was seen by domestic stakeholders as an extremely constructive step by the Norwegian

government in terms of enhancing the NCP's credibility and effectiveness, **these stakeholders also observed that, by increasing the NCP's level of operational independence, the government was simultaneously distancing itself from its own continuing responsibility to promote and support the Guidelines.** Some domestic stakeholders pointed to what they perceived as a lack of government policy coherence, in particular, around the applicability of the Guidelines to government entities, and a lack of collaboration between different government departments and agencies and the NCP, on matters related to the Guidelines.

In this regard, the NCP was encouraged to expand its promotional efforts beyond the government departments with specific responsibilities for the NCP (i.e. Ministry of Foreign Affairs and Ministry of Trade). There was a clear expectation from domestic stakeholders that **the NCP could and should be a key actor in promoting (a) consistent implementation of the Guidelines throughout the government and (b) policy coherence in line with the government's CSR strategy.** It was recognized, however, that **the NCP could not be expected to achieve this goal alone**, without the support of relevant government actors. The NCP's collaboration with GIEK (Norway's export credit agency) was highlighted as a good example of the type of positive collaboration that is possible between the NCP and government agencies.

**Specific Stakeholder Suggestions to Strengthen Promotion Activities:** Stakeholders suggested that the issues raised in Specific Instances could provide good opportunities for dialogue and learning. A "case-based approach" to promotion was highlighted as effective in getting the attention of stakeholders, particularly for businesses enterprises, whereby

***Stakeholder Suggestions on Promotion:***

- *Focus on engagement with Government actors*
- *Using Specific Instances and case-based learning as promotion opportunities*
- *Additional partnering with existing networks;*
- *More preventative and proactive guidance and advice to business enterprises;*
- *Collaborate with NCP system on reaching SMEs*

targeted promotional activities could follow the resolution of Specific Instances, with the NCP using such opportunities to discuss learning from Specific Instances that could have broader lessons for the business community and other stakeholders.

Business stakeholders also encouraged the NCP to find appropriate channels to provide

information and advice to business enterprises about the Guidelines before they are involved in Specific Instances, and/or to provide referrals to businesses for specialized experts or consultants that can assist them in implementing the Guidelines in their operations. To continue building awareness about the Specific Instance procedure, stakeholders suggested that the NCP should emphasize its role in providing a space for facilitated dialogue and mediation rather than as a legal remedy. It was suggested that this message would resonate well within the business community.

Stakeholders suggested that partnering with existing networks and industry organizations would be an additional way to further strengthen promotion efforts. This approach can be particularly useful for the NCP to find "the right messengers" as it conducts more targeted outreach. Moreover, stakeholders encouraged continued and deeper collaboration

between the NCP and other CSR-related networks in Norway (e.g. the UN Global Compact’s Norwegian network<sup>28</sup>), which share similar objectives and target audiences.

Other stakeholders suggested that the NCP could identify opportunities to use new media and social media to promote the Guidelines with new stakeholder groups, including young professionals and students that are interested in CSR issues. Outreach to the “younger generation” through their preferred media channels can help build awareness about the Guidelines and support for them as this “younger generation” progresses in the business environment.

A number of stakeholder comments addressed the deficit in awareness of the Guidelines by SMEs in Norway. International stakeholders and members of the peer review team also remarked that this is a common challenge for other NCPs. Therefore, it was suggested that, while specific strategies and efforts should be developed for outreach to Norwegian SMEs, this is an area where NCPs and the OECD might collaborate to develop new tools and best practices.

#### **II (D). Promotion: Observations of the Peer Review Team**

Based on the background information, stakeholder feedback and NCP observations, **the peer review team highlights the strong performance of the Norway NCP with respect to promotion of the Guidelines.** The Norway NCP is commended for its efforts to develop its website and communications plan, as well as its engagement and visibility in domestic events related to CSR. These efforts should be continued as core promotional activities and refined on an on-going basis through dialogue, collaboration and feedback from its stakeholders. At the same time, a few specific promotion challenges seem to emerge for the Norway NCP that captured the attention of the Peer Review team.

***Leveraging Promotion through Existing Networks:*** Effective promotion of the Guidelines is an ongoing challenge, and no amount of resources might ever be fully sufficient to achieve the task. In this regard, suggestions encouraging collaborative approaches to promotion—whereby the Norway NCP can make further use of the existing networks and events of other stakeholders—may be particularly important strategies for the Norway NCP to continue to pursue, and may hold relevance for other NCPs as well. The Norway NCP has earned the respect and goodwill of many stakeholders who appear to be willing to put their own resources at the disposal of the NCP to promote the Guidelines.

***Promotion Challenges Specific to Independent NCPs:*** The independent structure of the Norway NCP is highlighted by all stakeholders as essential to the perceived effectiveness of the NCP. At the same time, it also seems to raise additional challenges in the area of promotion. As a direct consequence of that institutional independence, the Norway NCP cannot as easily rely upon the government authority that lies behind it for its convening power and leverage. **Nevertheless, with business and civil society stakeholders, the Norway NCP has done an impressive job of building that convening power and leverage through its own credibility and performance, despite that less overt link to government.**

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<sup>28</sup> The OECD has an MoU with the UN Global Compact for collaboration between NCPs and the local networks of the UN Global Compact.

However, **the NCP's status of an 'arms-length entity' which seems to have been fundamental to building the credibility of the Norway NCP with key stakeholders – also appears to make the task of promoting the Guidelines within and across government departments, agencies and ministries that much more challenging.** Importantly, the Peer Review team notes that it should not be the sole responsibility of the Norway NCP to promote policy coherence across the Norwegian government – that should remain one of the overarching responsibilities of the Norwegian government. That said, the Norway NCP, does have a critical and central role to play in engaging the relevant parts of government to understand the relevance of the Guidelines to their own policy-making arenas and in supporting relevant parts of government with policy implementation in alignment with the OECD Guidelines. That task may be made more challenging, and may require more explicit attention, the more an NCP is perceived as 'independent' from government, as is the case for the Norway NCP. This has accordingly been recognized by the Norway NCP as an area for further focus in 2014.

***Balancing Promotion with Specific Instances:*** The experience of the Norway NCP also illustrates the inherent and on-going challenge for NCPs to balance promotional activities with the handling of Specific Instances. Successful promotion involves planning, partnerships, and on-going efforts to reach targeted stakeholders. It requires strategic investments to develop key messages and tools and the dedication of resources, human and financial. However, in handling specific instances, NCPs must necessarily be reactive, with little predictability, control or advance notice of when specific instances may be brought before it. The Norway NCP noted that its resources were recently tested when it was handling three Specific Instances at the same time, and acknowledged that as a consequence, its was necessarily limited in its ability to engage in promotional activities in order to ensure that the Specific Instances were handled effectively, efficiently, and within the timetables provided by the NCP's procedures.

**This presents a challenge of planning for the unpredictable, including in allocating a dedicated budget to promotional activities, while maintaining a flexible budget to deal with Specific Instances.** At the same time, the Peer Review team was often reminded of the clear links between promotion and specific instances, with effective promotion playing a role in reducing the occurrence of Specific Instances, and the ability of well-handled specific instances to have a strong promotional effect for the Guidelines and the NCP itself.

## II (E). Recommendations for Norway NCP on Promotional Activities

While recognizing the exemplary work of the Norway NCP in its efforts to promote the Guidelines, the Peer Review team respectfully offers the following recommendations to the Norway NCP to address identified challenges and continue to strengthen performance:

**1) Develop a specific promotional strategy for the NCP's engagement efforts towards government and combine efforts with the responsible ministries.** There are important opportunities for additional and more targeted outreach within government, including after the forthcoming governmental evaluation of the NCP. A specific NCP promotional strategy towards government can include departments, agencies and embassies, beyond those with direct administrative responsibilities for the NCP (i.e. beyond the Ministry of Foreign Affairs and Ministry of Trade). This could include those that have a role in trade negotiations, foreign investment and/or involvement with State-owned enterprises. As noted above, these promotional efforts can contribute to greater policy coherence for the Norwegian government in implementing the OECD MNE Guidelines, and its national CSR strategy. The

**2) Build upon the strategic communication plan for other stakeholders:** Within the evolving context for its outreach activities, stakeholders provided a number of constructive suggestions to help the NCP build upon its existing promotional activities:

- To use individual Specific Instances, once resolved, as opportunities for targeted promotional activities with specific stakeholder groups, using a 'case-based' approach to exploring the issues that arose and practical approaches to implementation of the Guidelines,.
- To continue building awareness about the Specific Instance procedure, emphasizing its role in providing a space for facilitated dialogue and mediation, and to find appropriate channels to engage with business enterprises before they are involved in Specific Instances.
- To identify additional opportunities to leverage existing networks, by finding "the right messengers" and partnering with other networks and industry associations to conduct more targeted outreach.
- To identify opportunities to use new media and social media to promote the Guidelines with new stakeholder groups, including young professionals and students.

**3) Ensure adequate and dedicated resources for, and continued attention and focus on, promotion activities, recognizing the unpredictability of Specific Instances:** In light of the recommendations above for further development and implementation of the communications plan, the Norway NCP should ensure that it has adequate and dedicated human and financial resources for promotion—particularly when called upon to handle new Specific Instances. The upward trend in Specific Instances in Norway means that this will likely be an issue in the future. There may be ways for the NCP to plan and earmark dedicated human and financial resources for on-going promotional activities even when handling Specific Instances. This includes ensuring that the NCP expert members and Secretariat maintain time for on-going promotional events.

### III. IMPLEMENTATION OF THE GUIDELINES IN SPECIFIC INSTANCES

The second component of the NCP's mandate is the implementation of the Guidelines in Specific Instances, i.e. the resolution of disputes about how a particular business enterprise has implemented the Guidelines in its operations.

The following section (A) reviews the procedural guidance about Specific Instances provided to NCPs, (B) examines the performance of the Norway NCP based on stakeholder feedback, (C) provides observations and (D) recommendations that emerged from the peer review team's inquiries around this issue.

#### III (A). Procedural Guidance for Specific Instances

The Procedural Guidance in Part II, Section I.C of the OECD Guidelines provides the following directions to NCPs:

***Part II, Section I.C: Implementation in Specific Instances***

*(\*From the Procedural Guidance of the OECD Guidelines)*

*The National Contact Point will contribute to the resolution of issues that arise relating to implementation of the Guidelines in Specific Instances in a manner that is impartial, predictable, equitable and compatible with the principles and standards of the Guidelines. The NCP will offer a forum for discussion and assist the business community, worker organisations, other non-governmental organisations, and other interested parties concerned to deal with the issues raised in an efficient and timely manner and in accordance with applicable law. In providing this assistance, the NCP will:*

- 1. Make an initial assessment of whether the issues raised merit further examination and respond to the parties involved.*
- 2. Where the issues raised merit further examination, offer good offices to help the parties involved to resolve the issues. For this purpose, the NCP will consult with these parties and where relevant:*
  - a. seek advice from relevant authorities, and/or representatives of the business community, worker organisations, other non-governmental organisations, and relevant experts;*
  - b. consult the NCP in the other country or countries concerned;*
  - c. seek the guidance of the Committee if it has doubt about the interpretation of the Guidelines in particular circumstances;*
  - d. offer, and with the agreement of the parties involved, facilitate access to consensual and non-adversarial means, such as conciliation or mediation, to assist the parties in dealing with the issues.*
- 3. At the conclusion of the procedures and after consultation with the parties involved, make the results of the procedures publicly available, taking into account the need to protect sensitive business and other stakeholder information, by issuing:*

- a. a statement when the NCP decides that the issues raised do not merit further consideration. The statement should at a minimum describe the issues raised and the reasons for the NCP's decision;
- b. a report when the parties have reached agreement on the issues raised. The report should at a minimum describe the issues raised, the procedures the NCP initiated in assisting the parties and when agreement was reached. Information on the content of the agreement will only be included insofar as the parties involved agree thereto;
- c. a statement when no agreement is reached or when a party is unwilling to participate in the procedures. This statement should at a minimum describe the issues raised, the reasons why the NCP decided that the issues raised merit further examination and the procedures the NCP initiated in assisting the parties. The NCP will make recommendations on the implementation of the Guidelines as appropriate, which should be included in the statement. Where appropriate, the statement could also include the reasons that agreement could not be reached.

The NCP will notify the results of its Specific Instance procedures to the Committee in a timely manner.

4. In order to facilitate resolution of the issues raised, take appropriate steps to protect sensitive business and other information and the interests of other stakeholders involved in the Specific Instance. While the procedures under paragraph 2 are underway, confidentiality of the proceedings will be maintained. At the conclusion of the procedures, if the parties involved have not agreed on a resolution of the issues raised, they are free to communicate about and discuss these issues. However, information and views provided during the proceedings by another party involved will remain confidential, unless that other party agrees to their disclosure or this would be contrary to the provisions of national law.
5. If issues arise in non-adhering countries, take steps to develop an understanding of the issues involved, and follow these procedures where relevant and practicable.

Additional considerations for NCPs are provided in paragraphs 20 to 42 of the Commentary on the Procedural Guidance.

### **III (B). Background Information about Norway NCP's Specific Instances**

The Norway NCP has handled 12 Specific Instances to date,<sup>29</sup> with a notable uptick in complaints submitted in recent years, in part coinciding with the revisions of the Guidelines and the restructuring of the Norwegian NCP.

The NCP's procedures have been modified in accordance with the revised Procedural Guidelines and reflect the Norwegian NCP's transparent practice. The Norwegian NCP has detailed Procedural Guidelines for Handling Complaints, which are available in both Norwegian and English on the NCP website.<sup>30</sup> The Norwegian NCP also invites all parties involved in a Specific Instance to complete a "feedback form" on how they perceive the case was handled by the NCP and to provide recommendations for improvement.

<sup>29</sup> This includes one Specific Instance that was withdrawn before an initial assessment or final statement was issued.

<sup>30</sup> See: <http://www.responsiblebusiness.no/files/2013/12/NCP-Norway-Procedural-Guidelines.pdf>.

The following table presents a snapshot of the Specific Instances that have been handled by the Norwegian NCP.<sup>31</sup>

<b>Specific Instances of the Norwegian NCP</b>		
<b>Parties</b>	<b>Relevant Sections of Guidelines</b>	<b>Status</b>
Jijnjevaerie Sami Village v. Statkraft AS	Chapter II (General Policies); Chapter IV (Human Rights); Chapter VI (Environment)	Submitted: October 2012 Deferred after joint initial assessment with NCP Sweden in which decided that NCP Sweden takes the lead: February 2013
Lok Shakti Abhiyan, Korean Trans National Corporations Watch, Fair Green and Global Alliance, and Forum for Environment and Development vs. Posco (South Korea), ABP/APG (Netherlands) and NBIM (Norway)	Chapter II (General Policies) Chapter IV (Human Rights) Chapter VI (Environment)	Submitted: October 2012. Final Statement: May 2013
Norwegian Support Committee for Western Sahara v. Sjovik AS	Chapter IV (Human Rights)	Submitted: December 2011. Joint Statement by parties: July 2013
Norwegian Climate Network and Concerned Scientists Norway v. Statoil ASA	Chapter VI (Environment)	Submitted: November 2011 Rejected after initial assessment: March 2012
US lawyer representing 129 Roma individuals v. Norwegian Church Aid.	Chapter IV (Human Rights) Chapter VI (Environment)	Submitted: June 2011 Rejected after initial assessment: September 2011
Friends of the Earth Norway/Norwegian Society for the Conservation of Nature and Forum for Environment and Development (ForUM) v. Cermaq ASA	Chapter II (General Policies) Chapter IV (Labour and Industrial Relations) Chapter V (Environment)	Submitted: May 2009 Joint Statement by parties: August 2011
Future in Our Hands v. Intex Resources ASA	Chapter II (General Policies) Chapter V (Environment)	Submitted: January 2009 Final Statement: November 2011.
Norwegian Support Committee for West Sahara v. Fugro	Chapter II (General Policies)	Submitted: December 2009 Withdrawn: April 2010.
Norwegian United Federation of Trade Unions v. Kongsberg Automotive	Chapter IV (Employment and Industrial Relations)	Submitted: 2009. Final Statement: May 2009.
Cedha v. Nordea	Chapter II (General Policies) Chapter III (Disclosure)	Led by Swedish NCP Complaint received: June 2006. Final Statement issued: 2007
Forum for Development and Environment and Environment v. Aker Kvaerner ASA	General Policies II.2 (Human Rights)	Submitted: June 2005. Final statement: November 2005.
International Transport Workers' Federation v. Gard	Chapter IV (Employment and Industrial Relations)	Complaint received in 2002. Initial assessment determined no violation.

There is an upward trend in the caseload of the Norway NCP, coinciding with both the shift to an independent NCP structure and the revision of the OECD Guidelines, which included a specific chapter on human rights. In the 7-year period from 2002 to 2009, 7 Specific Instances were received (average of one case per year) and 4 concluded.<sup>32</sup> In the last 2

<sup>31</sup> Additional information about each Specific Instance is available at: <http://www.responsiblebusiness.no/en/assessment-of-complaints/specific-instances/>; and in the OECD database of Specific Instances, at <http://mneguidelines.oecd.org/database/>.

<sup>32</sup> 1 was withdrawn, and 2 handed over to the new NCP after the reorganisation.

years from 2011 to present, 5 Specific Instances have been received (an average of 2.5 cases per year). The new NCP has concluded 2 Specific Instances by Mediation, 2 by Final Statement, rejected 2 Specific Instances on formal grounds and accepted, but deferred 1 due to an on-going dialogue between the parties in the case.

### III (C). Stakeholder Feedback on Handling of Specific Instances

*“Businesses see a value for a good Specific Instance procedure. However, businesses prefer a constructive CSR approach rather than a punishment approach.” – An international business representative*

*“The Specific Instance procedure is an important model, but there have not been enough cases to judge whether the goals of influencing business conduct and providing access to justice for victims are being met.” – A Norwegian academic*

*“We didn’t get we want in terms of the NCP’s final statement, but we were nonetheless impressed by the NCP. It was quick to respond and the process was fine.” – A Norwegian participant in one of the Specific Instances*

There was consistent appreciation and support from stakeholders about the NCP’s work in handling Specific Instances. The majority of stakeholders that had been involved in Specific Instances provided convergent feedback that the NCP was fulfilling the criteria of impartiality, predictability, equity and conformity with the Guidelines. As discussed further below, there was a strong opinion that the NCP’s handling of Specific Instances has been strengthened by the move to an independent expert body.

**Clearer Procedural Guidance and Implementation:** In particular, stakeholders commented upon their appreciation for the transparency and consistency provided by the revised procedural guidelines of the Norway NCP. In addition, the NCP provides early guidance to parties about the processes for submitting Specific Instances when necessary. It was noted that the new NCP structure was providing clear timelines about the different procedural stages, and was timely in its handling of the Specific Instances. The increase in mediated resolution of Specific Instances was also highlighted. Even stakeholders that were hoping for a different result often indicated their satisfaction with the fairness of the process.

#### ***Stakeholder Feedback: Norway NCP and Specific Instances***

- ***Appreciation for clear procedures and implementation of good process;***
- ***Praise the use of external 3<sup>rd</sup> parties in different capacities to assist resolution;***
- ***More focus on follow-up;***
- ***Important role of Final Statements.***

It must be noted that critical feedback about the procedure and result of one Specific Instance was heard from one of the parties with which the Peer Review team met. As it is beyond the mandate of the peer review exercise to comment on the merits of individual Specific Instances, the peer review team has tried to reflect upon the critical and challenging issues raised by this party in its observations below, while also bearing in mind that this feedback was not reflective of the broader stakeholder groups consulted.

**Engaging 3<sup>rd</sup> Parties to Support the Process:** Stakeholders also commended the NCP practice of increasingly utilizing external resource people to strengthen the process in a variety of third-party roles, including addressing gaps in technical capacities and resources and reinforcing opportunities for problem-solving approaches between the parties. The examples discussed included:

From the perspective of stakeholders, the use of external resource-people at different stages of the process was important in moving Specific Instances forward, providing critical technical or process inputs at important junctures to facilitate resolution. Stakeholders suggested that the use of external resource-people in Specific Instances can help the NCP to balance the time and human resources that are dedicated to on-going promotional activities. At the same time, it is acknowledged that the use of external resource-people has a cost and therefore must be used strategically and judiciously.

***Examples of 3<sup>rd</sup>-Party Roles  
Engaged by the Norway NCP:***

- *Expert assessments of key issues and facts in Specific Instances*
- *Neutral fact-finding to corroborate facts on the ground in a Specific Instance;*
- *External mediation to help facilitate dialogue.*

**Follow-Up Procedures for Specific Instances:** Another important area of stakeholder feedback related to the expectations of stakeholders for follow-up to Specific Instances. **Parties expressed a desire for the NCP to have greater involvement in follow-up:** to provide guidance about what is required to honour an agreement that resolved a Specific Instance, and to help monitor that the Guidelines are more effectively implemented on the ground after a Specific Instance. The NCP is conscious of this issue, but also cautious about the potential resource implications of maintaining an on-going involvement with every Specific Instance. The NCP also was wary of the risk of re-opening cases that have been closed, or becoming involved in a follow-up role that had not been agreed to from the outset. The NCP reported that it has been advising parties to include more detailed provisions about the implementation of the parties' agreement as part of the follow-up in any mediated statements. While specific concerns remain, there was consensus among the NCP and stakeholders that this as an area that requires further attention and guidance.

**Specific Instance Terminology:** Several stakeholders also raised issues around the terminology used for Specific Instances. For instance, it was noted that "rather than referring to handling 'complaints,' the NCP should stick to the term 'Specific Instances' which can help bring the Parties to the table and focus on problem solving." Others, however, felt that the term 'Specific Instances' was not clear for people unfamiliar with the OECD system and that 'complaints' is more straightforward.

**Resolution of Specific Instances – Mediation and Final Statements:** There was widespread agreement that mediation and problem-solving should be the primary focus of the NCP when it receives a request for review, which subsequently merits examination as a Specific Instance. As one business stakeholder stated, "The NCP needs to make clear that the goal is mediation, in order to diminish business fears of collaborating." However, as one civil

society stakeholder noted, “it’s good to focus on mediation, but not all cases can be mediated.” In other words, some parties believe that the issues raised in Specific Instances (e.g. allegations of human rights abuses) may in some instances require a determination by the NCP that the Guidelines were breached.

In this regard, stakeholders discussed the use of final statements by the Norway NCP. **Several stakeholders noted the importance of the NCP’s practice of issuing final statements that determine whether or not the Guidelines have been breached, in situations in which the Parties do not agree upon a mediated outcome and/or when Parties elect not to engage in problem solving processes, in that it provides the NCP with leverage to encourage Parties to engage.** Apart from this, the NCP has few other tools to use when a Party does not want to engage in the Specific Instance process, or when mediation fails. According to stakeholders, the use of final statements that determine whether business enterprises have observed the Guidelines can reinforce the NCP’s role in promoting adherence and implementation of the Guidelines: it sends an important message to stakeholders that the NCP and the Guidelines should not be ignored. Domestic and international stakeholders from labour and civil society organizations noted that this is considered to be an important practice for enhancing the overall credibility of NCPs.

### III (D). Observations of the Peer Review Team on Specific Instances

The Norway NCP’s performance with respect to the handling of Specific Instances demonstrates many good practices. Specifically, the Peer Review team took note of the clear procedural guidance provided by the NCP (and the adherence to that guidance) and the creative use of third-party resources to assist parties in the Specific Instance process.

**1. Good Procedural Guidance:** With the restructuring of the NCP, one of the most observable differences is the efficiency and effectiveness with which the new independent NCP resolves Specific Instances, and confidence of the majority of parties to specific instances in the NCP’s ability to do so with impartiality and fairness. The NCP developed clear procedures with indicative timeframes, which it published as procedural guidance for parties to enhance the transparency of the Specific Instance process. Moreover, the NCP has taken great effort to resolve cases within its procedural timeframes, to further build the confidence of parties to Specific Instances in the process. This has clearly brought increased transparency to the NCP’s processes, resulting in greater confidence among Parties to Specific Instances. At the same time, the Peer Review team recognizes that at times, amending timeframes may be in the best interests of a particular process, in order to ensure all opportunity for consensual resolution.

*Clear procedural guidance has been a key factor in helping to build confidence among business and civil society stakeholders in the Norway NCP’s handling of Specific Instances.*

**2. Supporting Problem-Solving Approaches with External Resources:** While several NCPs have utilized third-party resources in the handling of specific instances, this has most often been limited to utilizing professional mediators in promoting resolution between the parties to a specific instance. **The Norway NCP has shown a high degree of creativity in identifying additional 3<sup>rd</sup>-party roles that may be necessary or helpful in facilitating resolution among**

**the parties to a Specific Instance.** In addition to using professional mediators, the NCP has used third parties in neutral fact-finding missions to inform the process and has chosen to offer the Secretariat's technical support to smaller, civil society groups in preparing their request for review by offering early guidance on the process. The Peer Review team observed that many NCPs may not have the resources required for such roles, and that some of these third-party roles could potentially raise concerns for other NCPs or some stakeholders. Providing technical resources to a potential Notifying Party could ensure that a Notification is properly researched, substantiated, and framed, while at the same time it may risk perceptions among some stakeholders that this type of support is inappropriate for the NCP itself to be providing, and could risk the perceived neutrality of the NCP. However, in the Norwegian context, each of these roles seemed to be acceptable across the NCPs stakeholder base as an appropriate way for the NCP to support understanding and implementation of the Guidelines.

The Peer Review team also recognized that the members of the Expert Panel are independent experts in their own right and are able to provide assistance to the Parties in Specific Instances, for example in offering the good offices of the NCP in terms of mediation. However, there may be some cases in which using external-resource people has an added value. For instance, it can help balance NCP's efforts between promotion and Specific Instances, and helps maintain a neutral role for the NCP if it assigns external resource-people for some aspects of more complex or controversial Specific Instance.

**3. Specific Instances – Increasing in Number and Complexity:** In recent years, the Norway NCP has seen an increase not only in the number of Specific Instances brought to its attention, but also in the complexity of issues, involving multiple jurisdictions, and centering on topics not previously addressed by NCPs or respective OECD bodies. This is in large part due to the visibility of the Norway NCP, and perceptions among domestic and international stakeholders of its credibility and effectiveness. The Norway NCP is therefore often among the first to experience challenges that may confront other NCPs in the handling of Specific Instances.

At the same time, stakeholders may pursue Specific Instances in Norway, even though there may be more obvious connections to other parties or other adhering countries. It is legitimate for the Norway NCP to address business enterprises domiciled in their country,

and that are linked through their activities and relationships to an alleged non-adherence to the Guidelines—especially when the Specific Instance involves corporate policy issues that can only be decided at the company's headquarters in Norway.

**Why so many cases in Norway?**

*Norway NCP is seeing an increasing number of cases in recent years, in large part due to the fact that domestic and international stakeholders perceive it as credible and effective. While this is can be seen as a compliment to the Norway NCP, it can pose challenges of legitimacy as well, if Norwegian enterprises perceive that they are unfairly singled out solely because of the effectiveness of their NCP.*

*Managing this challenge places emphasis both on the NCP's Promotional Activities, so that stakeholders understand the intent of the Specific Instance process, and on cooperation with other NCPs, where connections to individual Specific Instances may be more obvious and natural.*

However, these types of Specific Instances can also raise challenges of the credibility of the NCP process, if Norwegian enterprises perceive that they are unfairly singled out for responsibility, solely because the Norway NCP is perceived to be one of the most effective among all NCPs. Such cases raise two important points: (1) the important link to the NCP's promotion activities, so that all parties have a better understanding of the Guidelines, their intent, the role of the NCP, and the role of the Specific Instance process, before disputes arise (as discussed above); and (2) the importance of collaboration across NCPs in Specific Instances that involve multiple jurisdictions.

**4. Enhancing cooperation in Specific Instances across NCPs:** In cases involving the activities of Norwegian enterprises abroad, it is increasingly important to ensure that, where appropriate, other NCPs are involved in the case, especially those that are most proximate to the business operations and alleged impacts on workers or communities. This can assist in fact-finding, in follow-up and implementation, in perceived legitimacy of the process as a whole, and in providing practical opportunities to promote functional equivalence. The Norwegian experience in recent Specific Instances points to the on-going need for cooperation and coordination between NCPs and the OECD Secretariat in handling complex Specific Instances—with the objective of strengthening functional equivalence and ensuring a harmonized and consistent approach to the implementation of the Guidelines.

**Cooperation with Other NCPs**

*Cooperation with other NCPs in handling Specific Instances may not always be easy, but may offer solutions to some of the most difficult challenges facing NCPs:*

- *Fact-Finding on the Ground*
- *Representing affected stakeholders*
- *More Effective Follow-Up*
- *Greater Legitimacy of the Process*
- *Promoting Functional Equivalence*

**5. Access for Affected Stakeholders:** One of the additional ways that cooperation across NCPs can help in handling Specific Instances is by ensuring effective representation of affected parties. As the experience of the Norway NCP demonstrates, many Specific Instances are brought by domestic civil society organizations on behalf of individuals, workers or communities overseas. **This raises a challenge for NCPs about how to involve the affected individuals and communities in Specific Instances.** There can be a tension in these situations: on the one hand, there is a legitimate role for domestic and international civil society organizations in Specific Instances; but, on the other hand, there can be a real or perceived disconnect from the issues and local stakeholders on the ground, where impacts occur. In situations where agreements may be reached among stakeholders in Norway, there is often a need to ensure effective implementation and follow-up to these agreements overseas, among companies and local stakeholders.

In this regard, the Peer Review team takes note of the point made by stakeholders that Specific Instances ultimately should result in improved business conduct and better implementation of the Guidelines on the ground, in the lives of directly affected stakeholders. Involving affected local individuals and communities is therefore critical to achieving a sustainable outcome from a Specific Instance process, and at the same time may be challenging due to practical and financial constraints when a Specific Instance involves business activities in remote countries. Enhanced cooperation between home and host

country NCPs may prove to be the most effective way to ensure meaningful and direct access to NCP processes for affected stakeholders.

**6. Engaging Reluctant Parties:** The Norway NCP – like many NCPs – faces challenges with respect to its convening power and leverage in engaging reluctant parties to specific instances, and particularly those who refuse to engage in a dialogue or mediation process and/or who challenge the application of the Guidelines to their operations. **Independent NCPs such as the Norway NCP may face the added disadvantage of being perceived as more removed from government and the implicit authority of the state.** The Norway NCP is therefore even more dependent on the credibility it has built among stakeholders for its convening authority. In such instances, the practice of the Norway NCP of issuing final statements, even when parties have refused to engage, has been seen as an important source of leverage for the Norway NCP, and in the eyes of its stakeholders, adds to its credibility. At the same time, efforts to engage parties to participate, while wielding the threat of a sanctioning statement, can risk bringing the NCP into conflict with the parties and risk the institutional positioning of the NCP. This may point to additional reasons for the NCP to utilize 3<sup>rd</sup>-party resources where available, as a way to guard against that risk.

In addition, efforts to engage reluctant parties can pose challenges related to the indicative timelines contained within the NCP's procedural guidance for handling specific instances. In such cases, some flexibility in timing may be useful for the NCP to build understanding with a reluctant party about how the Guidelines apply and to encourage voluntary collaboration with the Specific Instance process. Of course, all deviations from the indicative timelines must be balanced against the importance of avoiding delays and offering predictability.

### III (E). Recommendations for Norway NCP in Handling of Specific Instances

The peer review team offers the following recommendations to the Norway NCP to address identified challenges and strengthen performance in handling Specific Instances:

**1) Develop further guidance for parties about follow-up to Specific Instances:** The Norway NCP should consider developing further procedural guidance addressing the follow-up stage of Specific Instances to assist parties in reaching sustainable resolutions. This is an area where the Norway NCP has already made adjustments in response to stakeholder feedback and is providing more advice to parties. Additional clarifications about follow-up issues can be integrated on an on-going basis into the NCPs procedural guidelines and dialogue with parties. The NCPs efforts in this regard can also contribute to OECD work on supporting good practices for follow-up on Specific Instances.

**2) Proactively develop relationships with NCPs in countries where Norwegian businesses have activities, to strengthen future cooperation around Specific Instances.** Recognizing that the Norwegian NCP has a strong record of collaboration with the NCP system, the peer review team recommends that the NCP continue to develop its working relationships with other NCPs—with a particular focus on countries where Norwegian businesses and investors have a significant presence. Developing these relationships can contribute to improved functional equivalence of NCPs; enhance the chances of successful cooperation and coordination if and when a Specific Instance is initiated; and, integrate the needs and concerns of local communities into the process.

**3) In the context of individual Specific Instances, continuously search for opportunities for dialogue and problem-solving.** Specifically, the NCP might wish to highlight in its procedural guidance that consensus-based decision-making is the preferred outcome, and that specific aspects of procedural guidance (such as indicative timeframes) may be amended in the service of promoting consensual resolution, wherever deemed helpful. In some ways, the burden for exhausting all possible options towards consensual resolution is greater when the NCP holds the option of issuing a final statement should the parties ultimately fail to participate or reach an agreement.

## IV. COOPERATION AND ENGAGEMENT WITH THE NCP SYSTEM

The third component of an NCP's mandate is cooperation and engagement with other NCPs. Issues related to cooperation and coordination with other NCPs in handling Specific Instances are discussed in the previous section; and, therefore, this section discusses other aspects of cooperation and engagement with the NCP—including in relation to the OECD's Proactive Agenda.

### IV (A). Procedural Guidance for Cooperation with NCP System

Paragraph 18 of the Commentary states that NCPs should contribute to a Proactive Agenda with the following objectives:

*(\* From the Commentary on Implementation Procedures for the OECD Guidelines)*

*18. In accordance with the Investment Committee's proactive agenda, NCPs should maintain regular contact, including meetings, with social partners and other stakeholders in order to:*

- a. consider new developments and emerging practices concerning responsible business conduct;*
- b. support the positive contributions enterprises can make to economic, social and environmental progress;*
- c. participate where appropriate in collaborative initiatives to identify and respond to risks of adverse impacts associated with particular products, regions, sectors or industries.*

### IV (B). Background on Norway NCP's Cooperation with the NCP System

Amongst its recent initiatives, the NCP initiated increased Nordic NCP collaboration by organizing a Nordic roundtable discussion in November 2012, with funding from the Nordic Council of Ministers. This was followed-up by a second meeting in November 2013, and NCP Norway is considering proposing video-conferences for exchange of information on awareness raising and experiences with Specific Instances.

In relation to the OECD Investment Committee's Proactive Agenda, the Norwegian NCP has been an active participant. Priority has been given to issues relevant for the NCP's past or current Specific Instances or issues especially relevant for Norwegian stakeholders. In particular, the Norwegian NCP has participated in the OECD working groups on due diligence in the financial sector, and the Norwegian government has supported OECD-level work on stakeholder engagement in extractive industries. In addition, the NCP has also invited the Sami Parliament to suggest candidates to the working group on stakeholder engagement, co-organized a workshop on NCPs and the extractive sector with Institute for Human Rights and Business in March 2012 and participated in a follow-up workshop organized by IHRB and NCP UK in March 2013, participated in a panel on NCPs and the financial sector as well as co-organized a workshop on due diligence in the ICT Sector with IHRB at the OECD Global Forum on Responsible Business Conduct in Paris June 2013. The NCP has also had workshops with fellow NCPs, for instance in Santiago with the Latin American NCPs and a Chilean-Norwegian workshop on challenges for Chilean investors on responsible business conduct in November 2012. Workshops were also held with the

Brazilian and UK NCPs in Brasilia and Sao Paulo in January 2013 and January 2014 on the Guidelines and the NCPs; in 2014 with a special focus on the financial sector. The Norwegian NCP commissioned reports from these seminars from an academic/independent rapporteur, and the reports are upon completion available on the Norwegian NCP website and presented to the OECD.

The NCP has reported upon its cooperation and projects with other NCPs in its digital newsletters and in its annual reports.

The Ministry of Foreign Affairs also involves Norwegian stakeholders in projects related to the OECD Proactive Agenda through the Government consultative forum on CSR issues, KOMpakt.<sup>33</sup>

As discussed below, the Norway NCP also was one of the first NCPs to volunteer for a peer review that engages other NCPs in a two-way learning process.

**Examples of Norway NCP's Cooperation Activities:**

- *Increased Cooperation among Nordic NCPs;*
- *Contributing to OECD-level projects on due diligence, stakeholder engagement and the financial sector;*
- *Participating in workshops hosted by Chilean and Brazilian NCPs;*
- *Welcoming the Peer Review exercise, facilitating participation of Peer Review team members, and offering process lessons to OECD system.*

**IV (C). Stakeholder Feedback on Cooperation with NCPs**

Understandably, there was less of a focus by domestic stakeholders on these NCP activities; and, therefore, there was less stakeholder feedback to inform this section.

Engagement with other NCPs may not be understood by all stakeholders to be a requirement for the Norway NCP; and, some of the NCP's international activities may be perceived by stakeholders to distract it from engagement at the domestic level. Some stakeholders therefore raised a point of caution about the need for the NCP to give priority to its domestic stakeholders and promotion of the Guidelines in Norway, and to be selective and strategic about international activities.

At the same time, stakeholders understood the value in developing shared tools and common interpretations for the Guidelines, which requires the NCP to engage in international activities. Furthermore, the fact that Norwegian business enterprises have significant operations and investments abroad means that the scope of the Norway NCP's mandate and activities must also be international.

**IV (D). Observations of the Peer Review Team**

The peer review team's main observation is that this review exercise was an excellent example of collaboration and engagement with other NCPs. Norway NCP's willingness to be an early volunteer for a peer review was appreciated, as was the strong and thorough support provided by the NCP expert members and Secretariat to the peer review team. The

<sup>33</sup> The NCP is an observing member of KOMpakt.

support for some NCPs to participate as observers was highlighted as a valuable contribution to their learning and development.

As noted above, the Norway NCP intends to use this exercise as an opportunity to learn from and identify good practices for future peer reviews. A number of the international stakeholders consulted signaled their appreciation for having had the opportunity to participate in this process. Once the Norway NCP peer review has been completed, *Shift* will prepare a separate report summarizing the lessons-learned about peer review methodologies in consultation with the peer review team, the stakeholders who participated in the review, and the NCP members and Secretariat. The plan is to present the report at the NCP annual meeting in June 2014.

#### **IV (E). Recommendations for Norway NCP for Cooperation with other NCPs**

In addition to the recommendation made in the previous section on encouraging interaction with other NCPs, the peer review team recommends that the Norway NCP:

**1) Continue to support the peer learning of NCPs:** *The peer review team highlights the need for focused cooperation and engagement among NCPs, including on a regional and thematic basis.*

*For instance, Norway NCP's efforts to support Nordic cooperation and to develop further guidance on the financial sector are strategic and should be continued. Wherever possible, involving NCPs from newly adhering countries can help develop the capacity of the overall system. As mentioned above, it is worth considering where bilateral or regional cooperation and engagement with NCPs can be focused where Norwegian businesses and investors have strong presences.*

## V. FURTHER REFLECTIONS ON INSTITUTIONAL ARRANGEMENTS OF NORWAY NCP

In this section, the peer review team offers some further reflections the institutional arrangements of the Norway NCP, which emerged in various ways throughout the peer review consultations.

*“I welcome the independence of the NCP. It gives me more faith in a fair outcome, especially when dealing with projects supported by the State.” – A Norwegian civil society representative*

*“We appreciate the independence, timeliness and opportunities for mediation and dialogue that the NCP provides.” – A Norwegian business representative.*

*“The new model is much better. The NCP has good standing amongst civil society and social partners.” – A Norwegian labour representative*

As mentioned above, the NCP was restructured as an independent body in 2011. Currently, few NCPs have been structured in this manner, with the majority of NCPs being composed of government representatives with some form of additional stakeholder input, oversight or involvement.<sup>34</sup>

- First, the independent structure of the Norway NCP is uniformly welcomed by stakeholders. **The Peer Review team was repeatedly struck by the strong sense of ownership that Norwegian stakeholders feel in their independent NCP.** Whereas other NCPs have created formal advisory bodies to ensure effective engagement and ownership across stakeholder groups, Norwegian stakeholders see no such need for any formal advisory group at this stage.
- **Second, effective institutional design will always be context-specific.** The independent structure of the Norway NCP is particularly important in light of the Norwegian context, where more than 30% of business is state-owned or state-supported enterprises. In such a context, the independent structure is essential for stakeholders to have confidence that the NCP could act impartially in addressing a Specific Instance involving a state-owned enterprise.
- **Third, performance of the Norway NCP has improved substantially since the shift to an independent structure.** This may in part be due to improved perceptions among stakeholders of the new Norway NCP. As one stakeholder stated, “It’s not realistic to have people promote Norwegian trade in the morning and handle complaints after lunch.” According to another, the independent structure provides a more credible voice on sustainability issues: “On sustainability and CSR issues, the perception can be that government is more of a laggard than a leader. So it’s less difficult for the NCP to get attention as an independent institution.”

<sup>34</sup> Further background information about the institutional and structural arrangements is included in the introduction to this report, as well as in the NCP’s publication “The Road to a More Effective NCP” which can be found on the NCP website (see footnote 10).

- However, the improved performance of the NCP is as much a result of the composition of the independent expert panel, and the integrity, credibility and skill of the individual members. This has proved critical in providing the new independent NCP with an initial kernel of credibility, and the human capital to earn further credibility through its performance. In particular, stakeholders highlighted the role of the Chair in setting the tone and giving profile to the NCP. Stakeholders noted that the mandates of three members of the NCP are expiring in 2014, raising questions about continuity, succession strategies, as well as the expertise and affiliations of future members. At the same time, stakeholders expressed confidence in the Norwegian tradition of non-political appointments and tripartite management of public institutions.
- Keys to the Success of the Independent Model in Norway***

  - ***The composition of the Expert Panel;***
  - ***The full-time Secretariat; and***
  - ***The dedicated budget***
- Equally important to the success of the model is the dedicated Secretariat (and its capabilities and competencies) and the accompanying dedicated financial resources and budget. The combination of the expert panel, the full-time secretariat, and the dedicated budget were all pointed to as essential in making the independent structure work effectively.
  - Performance has also improved because of the specific activities and areas of focus undertaken by the NCP, including targeted promotion activities premised on a foundation of substantial stakeholder engagement, and concerted efforts to detail procedural guidance for Specific Instances and to honor indicative timeframes within that procedural guidance.
  - Despite these advantages, the Peer Review team nonetheless identified some challenges related to the Norway NCP’s institutional independence. **The peer review team understood the main challenge facing the Norway NCP as being able to operate independently without becoming isolated.** As one stakeholder stated: “a certain degree of independence is important, but this must be balanced with political responsibility and government involvement—which remains relevant and is of interest to business.” In other words, the positive aspects of the independent operation of Norway NCP’s Expert Panel should not be understood as the out-sourcing of the NCP.

This can raise two specific challenges: (1) An independent NCP, if too disconnected from the government authority that created it, risks losing some of the convening power that comes from the implicit authority of the state. It is this state authority that differentiates the NCP from other entities focused on responsible business conduct. The Norway NCP has thus far managed this risk through the legitimacy it has created for itself, and by exercising its power to write final statements when parties fail to agree or refuse to participate. However, this perception can be fragile, particularly if stakeholders perceive that the government that established the NCP is not fully supportive of the NCP and the Guidelines it is intended to promote. (2) The

second risk is that an independent NCP, without a clear government home and political champion, may face greater challenges in ensuring coordination and policy coherence with government departments on issues related to the Guidelines. This particular set of challenges highlights the important role of the Secretariat as the point of connection between the NCP expert panel and the government.

***In its work to date, the Norway NCP has done an exemplary job of establishing its independence from government, and building its reputation as an independent, effective, and credible voice for the OECD Guidelines and for responsible business conduct.***

***To meet this next set of challenges, the Norway NCP may look to re-establish stronger links with government, and find the balance between 'operating independently without becoming isolated.'***

## VI. CONCLUSION

This conclusion offers some cross-cutting reflections on the performance of the Norway NCP in relation to the core criteria for NCPs, i.e. visibility, accessibility, transparency and accountability. The Norway NCP deserves recognition for strong performance across all of these criteria.

In terms of **visibility**, the NCP has made great strides in improving its visibility amongst Norwegian stakeholders through its promotional activities and the handling of Specific Instances. The Norway NCP's move to an independent structure has attracted attention from international stakeholders, and its strong cooperation with other NCPs contributes to its international visibility. The role and resources of the NCP Secretariat have helped to contribute to the NCP's visibility. Areas for targeted promotion have been identified above to raise visibility with some key stakeholder groups, including government departments and SMEs.

In terms of **accessibility**, stakeholder feedback suggests that the independent structure contributes to the NCP accessibility—or at least the perception of accessibility. Accessibility is related to the clear procedural guidance that the NCP provides to stakeholders. Accessibility has also been enhanced by efforts it has made to provide support to parties at various stages of the Specific Instance process

In terms of **transparency**, the Norway NCP performs very strongly. The NCP is highly transparent, in part because it operates under the strong transparency laws for Norwegian public institutions. The website is a key tool for transparency and efforts to develop the NCP's website have been appreciated by stakeholders. While transparency is the general rule supported by the Guidelines, there remains a role for confidentiality in the handling of Specific Instances in order to create the space for dialogue between the parties.

In terms of **accountability**, the Norway NCP has demonstrated its commitment to domestic accountability through its voluntary annual reporting, forthcoming governmental evaluation, and on-going engagement with stakeholders. The NCP has demonstrated its commitment to accountability to its peers through the peer review exercise and its highly detailed annual reporting to the OECD. The Norwegian government shares accountability for the NCP by providing adequate resources, making timely and credible appointments and sharing efforts to promote the Guidelines.

The peer review of the Norway NCP provided the peer review team with an opportunity to review substantial background information and obtain significant stakeholder feedback about the NCP's performance against the core criteria and procedural guidance in the Guidelines.

The overall assessment of the peer review team, and the vast majority of stakeholders who participated in the peer review, is highly favourable. In response to the question of whether the Norway NCP is meeting its objectives, it is seen as highly effective. The recent decision to create a new structure, comprised of independent experts, has enhanced the NCP's credibility and ability to meet its objectives in the Norwegian context. Beyond

independence, the human and financial resources of the Norway NCP Expert Panel and Secretariat play a critical role in the NCP's effectiveness.

The following comment from one stakeholder sums up the key message from the peer review: "The NCP does not need to do anything additional, but just more of what it is doing."

## Appendix A: Peer Review Terms of Reference

### OECD National Contact Point – Norway 2013 Peer Review Process

#### *Terms of Reference*

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#### **1. Background**

During the 2011 update of the OECD Guidelines for Multinational Enterprises, National Contact Points (NCPs) agreed to reinforce their joint peer learning activities, and in particular, those involving voluntary peer reviews. These reviews highlight the achievements of individual NCPs as well as areas for improvement and recommendations to ensure the efficient structure and functioning of an NCP. The Peer Review process also serves as an important tool in meeting the goal of functional equivalence between NCPs, by sharing lessons learned, good practices and challenges across NCPs.

The NCP of Norway has signed up for a voluntary peer review in 2013. This follows the Peer Review of the Japanese NCP in 2012, and an earlier peer review of the Dutch NCP in 2011.

The Peer Review itself is anticipated to take place in October/November 2013, during which time a delegation of fellow NCPs adhering countries and the OECD Secretariat will visit Norway for consultations and meetings with the Norway NCP and its stakeholders. In anticipation of these consultations, the Norway NCP is undertaking various preparatory activities, including the preparation of background documents on the performance of the NCP and preliminary consultations with its domestic stakeholders, in order to identify constructive areas of focus during Peer Review week.

These Terms of Reference are intended to clarify the objectives, methodologies, and anticipated outputs for each stage of the Peer Review process.

#### **2. Objectives**

The broad objectives of the Norway NCP Peer Review process are two-fold:

- To strengthen the performance and functioning of the Norway NCP, by engaging with domestic stakeholders and peer NCPs;
- To contribute to the strengthening of the NCP system as a whole, by sharing lessons learned, good practices and challenges of the Norway NCP with the broader community of NCPs.

To achieve these broad twin objectives, the Peer Review process will seek:

- To solicit open and honest feedback from domestic stakeholders on the performance and functioning of the Norway NCP;
- To solicit comparative experiences from counterpart NCPs on some of the challenges facing the Norway NCP;
- To identify good practices of the Norway NCP, based on feedback from domestic stakeholders and counterpart NCPs;
- To identify specific opportunities for the Norway NCP to strengthen its performance and functioning based on stakeholder feedback;
- To look comprehensively at all areas of the Norway NCP's mandate, including promoting and supporting implementation of the OECD Guidelines, providing a credible platform for the resolution of specific instances, and undertaking activities as part of a proactive agenda.

### 3. Methodology

The Peer Review process is based around Peer Review Week, scheduled for October/November 2013, during which time a delegation of peer NCPs and the OECD Secretariat will visit Norway for consultations and discussions with the Norway NCP and domestic stakeholders. In preparation for that visit, Norway NCP is undertaking several preparatory activities, including:

- Drafting and circulating these Terms of Reference (January-April, 2013);
- Preparing and circulating a Stakeholder Questionnaire with domestic stakeholders, the OECD Secretariat, BIAC, TUAC and OECD Watch (January-June, 2013);
- Preparing a Background Note on the structure, activities and performance of the Norway NCP, based upon desktop research and stakeholder feedback through the Stakeholder Questionnaire (January-July, 2013); and,
- Developing an Agenda for Peer Review week, based upon an understanding of constructive areas for further discussion and exploration with the Peer Review delegation and domestic stakeholders (Tentatively August 2013).

This Terms of Reference will be shared with NCPs and the OECD Secretariat at the OECD meeting of NCPs (24-25 June 2013).

Peer Review Week itself will involve a combination of presentations, facilitated discussions (between Norway NCP and the visiting delegation, and others including various domestic stakeholders as well), and site visits to relevant Norwegian industries.

The process will conclude with a written report, detailing the discussions held during Peer Review Week and issues emerging from those discussions, including lessons learned, identified good practices of the Norway NCP, and remaining challenges facing the Norway NCP.

#### 4. Independent Support

Additionally to the OECD Secretariat, the Norway NCP has engaged *Shift* as an independent third-party to accompany and support the process throughout. *Shift* is an independent, non-profit center for business and human rights practice, with substantial expertise and global experience on issues of business and human rights, the OECD Guidelines, the system of National Contact Points, and the broader landscape of non-judicial remedy for business and human rights issues. The support is intended to provide thorough documentation throughout the Peer Review process and to work with both the Norway NCP and the Chair of the Peer Review delegation in the preparation and implementation of the Peer Review process.

#### 5. Key Stakeholders

Throughout the Peer Review process, the Norway NCP will be looking to engage with a broad range of critical stakeholders. These include both domestic stakeholders – such as relevant government actors, Norwegian civil society organizations, Norwegian trade unions, and Norwegian business enterprises – as well as international stakeholders, including institutional stakeholders at the OECD level such as the Investment Committee Secretariat, BIAC, TUAC, and OECD Watch, and other actors that have interacted with the Norway NCP through specific instances that have been brought to its attention.

The visiting delegation represents another critical stakeholder. That delegation is likely to be chaired by the Canadian NCP and include representatives from 4-6 additional NCPs, as well as the OECD Secretariat, and invitations to key OECD stakeholders such as BIAC, TUAC and OECD Watch. The Norway NCP hopes for a diverse composition of the delegation, in terms of geography, how long the NCP has existed, and how active the NCP has been.

As part of this engagement, the Norway NCP is developing a list of relevant stakeholders that will be consulted throughout the process. Domestic stakeholders will be asked to provide input into the overall design of the Peer Review process, to provide preliminary feedback through a Stakeholder Questionnaire, to participate in various aspects of Peer Review Week, and to review reports that summarize the issues that emerge through the Peer Review process. International institutional actors such as the OECD Secretariat, BIAC, TUAC and OECD Watch, will be asked to share their feedback on the Stakeholder Questionnaire and, as appropriate, follow-up interviews. Members of the Peer Review Week delegation will be asked to share their objectives for the Peer Review process, to provide their input into the agenda and design of Peer Review Week, and to share their comparative experiences and reflective analysis in discussions and consultations during Peer Review Week.

## 5. Detailed Description of Key Stages of the Process

**Terms of Reference:** The Terms of Reference are intended to provide an initial, clear articulation of both the purpose and the process for the Norway NCP Peer Review. They will be circulated to all stakeholders, in order to solicit feedback on the process as a whole, ensure that stakeholders understand the various opportunities to provide input, to clarify and align expectations, and to solicit stakeholder suggestions for improving the process.

**Stakeholder Questionnaire:** The online stakeholder questionnaire is designed to provide preliminary input from domestic stakeholders about the performance and functioning of the Norway NCP. The questionnaire is based on a combination of similar questionnaires from the Dutch and Japanese peer review processes, as well as other questionnaires developed by institutional stakeholders such as the OECD Secretariat, BIAC, TUAC, and OECD Watch. The questionnaire is intended to identify constructive areas for further exploration during Peer Review Week, including areas of strength and areas for improvement. Stakeholders will be asked to submit written responses to the questionnaire, and in addition, the independent support to the process intends to follow-up via telephone interviews with specific stakeholders for further information. An analysis of stakeholder responses will be summarized as a separate background document, and the findings will also be incorporated into relevant sections of the Background Note.

**Background Note:** The Background Note is intended to provide all stakeholders participating in Peer Review Week (both domestic stakeholders and members of the visiting delegation) with essential baseline information about the Norway NCP. The Background Note is likely to include information about the history and structure of the Norway NCP, including its positioning within government and relation to other mechanisms; its institutional arrangements and resources, including its recent restructuring; a description of its activities aimed at supporting promotion and implementation of the Guidelines; a description of performance related to the specific instances that have been raised and addressed through the mechanism; and an initial identification of key issues that could be addressed during Peer Review Week.

The Background Note will be based on both desktop research – including the annual reports of the Norway NCP, relevant government regulations establishing the NCP, stakeholder submissions during the restructuring process, and other internal documents of the NCP – as well as stakeholder perspectives from the Stakeholder Questionnaire.

The Background Note will be circulated to all stakeholders tentatively in September 2013, to provide a common foundation for Peer Review Week discussions and consultations.

**Agenda Design:** The agenda for Peer Review Week will be developed to focus attention on constructive areas for further exploration and discussion – including areas where the Norway NCP may be excelling, and areas where the Norway NCP faces continuing challenges. These will be identified based on several critical inputs, including: the Norway NCP's own self-assessment of these areas; areas identified by the NCP members of the Peer Review delegation; and areas identified through feedback from domestic and institutional stakeholders, including the Stakeholder Questionnaire and follow-up consultations.

The agenda for Peer Review week will aim to be comprehensive, in looking at the Norway NCP's performance and functioning on each of the main areas of its mandate, including promotion and implementation of the Guidelines, specific instances, and the proactive agenda. The agenda will include a mix of sessions involving just the Peer Review delegation and others involving domestic stakeholders from government, business, trade unions and civil society.

**Peer Review Week:** Peer Review Week is anticipated to take place in October/November 2013. The 3 days will include facilitated discussions among the delegation and the Norway NCP, as well as the involvement of key domestic and OECD level stakeholders at various points in the process. The week is also likely to include a site visit to relevant Norwegian industries organized by the Ministry of Foreign Affairs. Activities during the week will be chaired by the Head of the visiting delegation.

**Final Report:** A final report will be prepared by the independent support to the process, in order to provide an analysis of the issues emerging through the Peer Review and offer recommendations to the Norway NCP to address those issues. One purpose of the final report will be to share lessons learned from the Peer Review process with the broader community of NCPs, thereby contributing to the goal of functional equivalence across NCPs and strengthening of the NCP system as a whole. The report will be presented at a subsequent annual meeting of all NCPs. In addition, a version of the final report will be shared with domestic stakeholders that contributed to the process, in order to report back on the issues and lessons that have emerged through the Peer Review process and any follow-up actions recommended to the Norway NCP as a result.

## Appendix B: Agenda for Peer Review Consultations



OECD **GUIDELINES**  
FOR MULTINATIONAL ENTERPRISES

NATIONAL CONTACT POINT  
NORWAY

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### PEER REVIEW AGENDA

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#### 20 OCTOBER

Arrival evening/night. Informal dinner/gathering for the Peer Review Team

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#### 21 OCTOBER

- 08:30 Norway NCP (Initial Meeting and Presentation)
- 10:10 KOMpakt Members (Government Consultative ForUM on CSR, key stakeholder groups + Sami Council)
- 11:45 Combined lunch and Peer Review Team wrap-up session
- 13:10 Government Stakeholders
- 14:45 Business Stakeholders
- 16:20 Trade Union Stakeholders
- 18:00 Peer Review Team wrap-up session

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#### 22 OCTOBER

- 08:00 NGO Stakeholders (Breakfast Meeting)
- 09:40 Case 1: Final Statement (ForUM vs. NBIM)
  - 09:40-10:40 NBIM
  - 10:45-11:45 ForUM
- 11:45 Morning session wrap up
- 12:30 Academia Stakeholders (Lunch Meeting)
- 14:00 Case2: Mediated solution (Friends of the Earth Norway and ForUM vs. Cermaq ASA)
  - 14:00-15:00 Cermaq ASA
  - 15:05-16:05 ForUM, Friends of the Earth Norway

16:10 Afternoon session wrap up

17:30 Visit to the Oslo Opera

Dinner with the NCP

## 23 OCTOBER

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09:00 Peer Review Team Session (brainstorming, discussing conclusions and recommendations to the final report, including overall format and content of the final report).

12:15 Lunch meeting with NCP

14:30 Visit to Telenor: Corporate responsibility and due diligence. Case: Myanmar