

Norway's National Contact Point for Responsible Business Conduct
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Specific instance under the OECD Guidelines

1. Introduction

We refer to our meeting with the Norwegian National Contact Point (NCP) on 11 December 2020 and the subsequent email from the NCP, asking for Norges Bank's response regarding a specific instance under the OECD Guidelines for Multinational Enterprises (the OECD Guidelines).¹

The specific instance concerns a complaint filed with the Dutch NCP by several trade unions² against McDonald's Corp on the basis of gender-based violence and sexual harassment (GBVH). The complainants assert that McDonald's conduct on GBVH issues violate the Guidelines and underlying international labour and human rights norms. The complaint also associates APG Asset Management NV (APG) and Norges Bank with the case as shareholders in McDonald's. We have been informed that the Dutch NCP has transferred the complaint such as it pertains to Norges Bank to the Norwegian NCP.

In this letter, we provide our comments regarding this specific instance. We believe that this case such as it pertains to Norges Bank does not merit further examination and should be dismissed by the Norwegian NCP. We outline the reasons for this below, starting with a description of our approach to responsible investment management and due diligence.

2. Approach to responsible investment and due diligence under the OECD Guidelines

Norges Bank manages the Government Pension Fund Global (GPF) according to the mandate set by the Ministry of Finance.³ Responsible investment management is integrated into the mandate and supports our objective by furthering the long-term economic performance of our investments and reducing financial risk associated with the environmental and social practice of our investee companies.

As required by the mandate from the Ministry of Finance, Norges Bank's Executive Board has established principles⁴ for the responsible management of the investment portfolio. The mandate

¹ Email 17 December 2020 where Norges Bank was invited to respond with comments by 15 January 2021.

² The trade unions are IUF, EFFAT-IUF, SEIU and UGT.

³ <https://www.nbim.no/en/organisation/governance-model/executive-board-documents/investment-mandate---government-pension-fund-global/>.

⁴ <https://www.nbim.no/en/organisation/governance-model/executive-board-documents/principles-for-responsible-investment-management-in-norges-bank1/>.

says that these principles should be based on internationally recognised principles and standards such as the OECD Guidelines. Implementation of the recommendations in the OECD Guidelines is central to the management of the GPFG. We support the OECD NCP mechanism and the Ministry of Finance and Norges Bank participated in the investor working group that provided input to the development of the 2017 OECD Responsible Business Conduct for Institutional Investors (the guidance paper). We welcome opportunities to promote the Guidelines and to share information about our efforts under the Guidelines.

Norges Bank's approach to due diligence has evolved over time, along with international standards and principles for responsible business conduct (RBC). As a financial investor, we believe that respecting human rights is an essential part of good business practice and risk management. In 2016, we published our expectations of investee companies with regards to respect for human rights.⁵ Our expectations are based on relevant international standards, including the UN Guiding Principles on Business and Human Rights and the OECD Guidelines. We expect companies to integrate human rights into their policies, corporate strategy, risk management and reporting.

As a long-term investor, we have regular interaction with investee companies. We take a risk-based approach and forward-looking perspective in seeking to understand whether the companies that are exposed to sustainability risks have adequate systems in place for preventing or mitigating potential and actual negative impacts. In 2020, we raised human rights issues in 125 meetings with investee companies, and we engaged with companies in thematic dialogues on a range of human rights-related issues, including forced labour, responsible marketing, working conditions in own operations and supply chains, and child labour. More broadly, we raised social topics with 428 companies in 677 meetings.

We monitor on an ongoing basis the fund's exposure to unacceptable environmental and social risks. We may follow up unwanted incidents that could indicate weak corporate governance or management of risks. We may also divest from companies where the risks are considered incompatible with long-term sustainability. We further carry out an annual review of the portfolio companies against our expectation documents. This review covers sustainability topics ranging from climate change, water management and ocean sustainability, to children's rights, human rights, including labour rights, tax transparency and anti-corruption.⁶ The aim is to identify companies that could have a strong negative impact on the environment and society, and to prioritise action to reduce the risks from owning such companies. Dialogue with companies is central in this regard.

We welcome information from external stakeholders about environmental, social and governance issues that are relevant for our investments. We hold input meetings with NGOs annually, have meetings on individual topics, take part in initiatives to promote responsible investment and business conduct, and regularly present our own approach to responsible investment in Norway and abroad.

⁵ NBIM, Human rights expectation document, https://www.nbim.no/contentassets/0ff34e35ba1a44c3b6c2039466ccbec7/humanrights_2021_web.pdf.

⁶ Full and updated list of our expectation documents on sustainability topics: <https://www.nbim.no/en/publications/expectation-documents/>.

Moreover, the Ministry of Finance has adopted Guidelines for observation and exclusion of companies from the GPFG⁷, which contain both product- and conduct-based criteria. The independent Council on Ethics is charged with making recommendations to Norges Bank on the observation and exclusion of companies in the Fund's portfolio in accordance with the criteria in these Guidelines. This mechanism, together with ongoing monitoring of the portfolio to identify companies where there is a risk of the most severe norm violations, and a subsequent prioritisation of the response, form part of our framework for responsible business conduct and due diligence.

3. Regarding the NCP's assessment of the specific instance

In its email of 17 November 2020, the NCP outlines the criteria for determining whether a complaint merits further consideration by the NCP as set out in its own procedural guidelines for handling of specific instances⁸ and those of the OECD⁹. These procedures state that the NCP should take into account:

- the identity of the party concerned and its interest in the matter.
- whether the issue is material and substantiated.
- whether there seems to be a link between the enterprise's activities and the issue raised.
- the relevance of applicable law and procedures, including court rulings.
- how similar issues have been, or are being, treated in other proceedings.
- whether the consideration of the specific issue would contribute to the purposes and effectiveness of the Guidelines.

Below, we provide our comments on the specific instance, considering some of these criteria. First, we address whether the Norwegian NCP is the right contact point to assess the complaint and specifically whether an allegation of non-observance exists against Norges Bank. We then turn to a more general consideration of the potential link between Norges Bank's activities and the issues raised. Finally, we look at the specific issue in light of the purposes and effectiveness of the Guidelines.

Whether the Norwegian NCP is the correct entity to assess the complaint

The OECD outlines that "Generally, issues will be dealt with by the NCP of the country in which the issues have arisen."¹⁰ Moreover, the procedures of the Norwegian NCP states that in considering whether the Norwegian NCP is the right entity to assess the complaint, "the NCP will consider whether the complaint concerns a Norwegian company's activities or alleged conduct in Norway. If the complaint concerns other countries' NCPs, the NCPs concerned should consult with each other to agree on which one should lead the work to assist the parties."¹¹

The Norwegian NCP has informed us that, for procedural reasons, the matters pertaining to Norges Bank was transferred to the Norwegian NCP. We further understand that the core case

⁷ <https://www.nbim.no/en/organisation/governance-model/guidelines-for-observation-and-exclusion-from-the-fund/>.

⁸ https://nettsteder.regjeringen.no/ansvarlignaringsliv2/files/2013/12/FINAL_KPprosedyreregler_eng_godkj1.pdf.

⁹ Guide for National Contact Points on the initial assessment of specific instances, 2019, <http://mneguidelines.oecd.org/Guide-for-National-Contact-Points-on-the-Initial-Assessment-of-Specific-Instances.pdf>.

¹⁰ <https://mneguidelines.oecd.org/RBC-for-Institutional-Investors.pdf>, page 47.

¹¹ https://nettsteder.regjeringen.no/ansvarlignaringsliv2/files/2013/12/FINAL_KPprosedyreregler_eng_godkj1.pdf, page 5.

against McDonald's was transferred to the US NCP and that the Dutch NCP continues to follow up with APG.

In this case there is no formal allegation of non-observance under the Guidelines against Norges Bank, as further explained below. Furthermore, since the alleged misconduct did not take place in Norway, we do not believe that the Norwegian NCP is the correct entity to assess the complaint. Rather, it would be more in line with established procedures for this complaint to be considered by the NCP in the US, where McDonald's is listed and the group has its headquarters, or in one of the countries where the alleged GBVH took place.

It should be noted that APG and Norges Bank are only two of many OECD-based, institutional investors in McDonald's, and not the largest ones. Norges Bank alone invests in around 9 000 companies globally. The concept and goal of functional equivalence of NCPs contributing to a coherent approach to the OECD Guidelines, also supports the fact that the Norwegian NCP is not the right entity to assess the complaints.

Whether there is an allegation of non-observance under the Guidelines against APG and Norges Bank

The complaint concerns McDonald's conduct on GBVH issues. The complaint also associates APG and Norges Bank with the case as shareholders in McDonald's, stating that these institutions should have human rights due diligence procedures and use their leverage to raise issues with companies where instances arise. The complaint does not seek to inculcate APG and Norges Bank for failure in their due diligence efforts, but asks that the NCP brings together the unions, McDonald's, APG and Norges Bank in a mediation process to agree on practises to address GBVH at McDonald's.¹²

Under the OECD Guidelines, the NCP complaint mechanism concerns issues of alleged failure to comply with the OECD Guidelines. In this case, a formal allegation of non-observance of the Guidelines against APG and Norges Bank does not seem to exist.

Link with the issues raised, and the role of institutional investors under the OECD Guidelines

Under the OECD Guidelines, investors are expected to carry out due diligence to identify, prevent or mitigate adverse impacts and account for how adverse impacts are addressed.¹³ The practical application of the Guidelines themselves to investors under the NCP mechanism is complex in situations where investors are linked to a potential norm violation through a business relationship. The 2017 OECD Responsible Business Conduct for Institutional Investors provide extensive guidance in this regard.

¹² As noted in the complaint "The petitioners in this Specific Instance do not inculcate APG and Norges Bank for their failure to act on sexual harassment at McDonald's. (...) Instead, petitioners ask the Netherlands NCP to bring these investors into a mediation with McDonald's under the NCP's auspices in line with their commitment to engagement between with workers and workers' representatives and advocates on RBC matters. APG and Norges Bank together can provide important insights and a powerful voice to help guide McDonald's and the petitioning groups to a mediated agreement in this Specific Instance."

¹³ <https://mneguidelines.oecd.org/RBC-for-Institutional-Investors.pdf>, page 49.

It seems reasonable to expect that institutional investors have adequate processes for monitoring and prioritising companies for follow-up on the basis of their risk exposure and potential contribution to social and environmental risks. However, as the 2017 guidance paper makes clear, “the approaches investors can employ to use their leverage to influence companies they invest in are broad in scope”, and not limited to direct engagements with a company. The paper also highlights that it “[...] is important that such leverage is also exerted within the framework of good corporate governance” and does not shift responsibility from the company that may be responsible for or contributing to the RBC risk.

It further says that “Remediation is an expectation in situations where an enterprise causes or contributes to adverse impacts”¹⁴ and that “in the context of adverse impacts arising from investee companies, investors will in most instances not cause or contribute to, but only be directly linked to the adverse impact. As a result, investors would not be expected to provide remedy, but they should seek to encourage the investee company to do so as a component of their responsibility to seek to prevent and mitigate, based on prioritisation.”¹⁵ Although there is an expectation that investors use their leverage, it is the investors themselves who prioritise potential actions based on their due diligence. Norges Bank takes a risk-based approach to our due diligence and prioritisation of actions. Where we do decide to follow up an issue with a company, it will be through a direct interaction between Norges Bank as a shareholder and the company, in line with good corporate governance.

In this instance, even if the complainants presume that more effort could have been exerted vis a vis McDonald's, the complaint commends the investors for their leading practices, recognising “these funds’ progressive role in the responsible investment field” and noting that they “have enormous respect for their accomplishments.”

The concept of institutional investors participating in the NCP mediation between complainant and a company does not follow from the Guidelines or established procedures. Both in principle and practice this would be challenging for an institutional investor. According to RBC considerations and good corporate governance, such matters should be handled by the entity contributing to or responsible for a potential RBC risk. As shareholder, we expect company boards to have put in place appropriate mechanisms to ensure the respect for human rights. Stakeholder engagement and access to remedy is a core component of this, and in dialogue with companies we reiterate that.

Whether the consideration of the specific issue would contribute to the purposes and effectiveness of the Guidelines

NCPs work to promote the OECD Guidelines. At times, this means considering new aspects or angles in their application. In its initial assessment and final statement of two specific instances involving Norges Bank in 2015¹⁶, the NCP noted that it would not proceed with examination of the cases due to the ongoing process at the OECD to develop clearer guidelines for the financial

¹⁴ <https://mneguidelines.oecd.org/RBC-for-Institutional-Investors.pdf>, page 20.

¹⁵ <https://mneguidelines.oecd.org/RBC-for-Institutional-Investors.pdf>, page 49.

¹⁶ https://nettsteder.regjeringen.no/ansvarlignaringsliv2/files/2015/06/Initial-Assessment-and-Final-Statement-02072015_.pdf.

sector in general and institutional investors in particular on how they can use due diligence to ensure responsible business conduct. It also referred to the fact that the NCP had recently considered the same type of issues that these specific instances addressed and therefore concluded that a new examination of Norges Bank so shortly after the last case would not contribute to the purposes or effectiveness of the OECD Guidelines.

With the publication of the OECD Responsible Business Conduct for Institutional Investors in 2017, the expectations of, and opportunities for, institutional investors have been further clarified. In this case, we are not in a situation where a principle needs to be clarified, or additional guidance is needed. Accepting a further examination of this case such as it pertains to Norges Bank would therefore not constitute a meaningful contribution towards the purposes and effectiveness of the Guidelines. As the role for the investors in remediation sought by the complainants in this specific instance is not one envisaged under the Guidelines, accepting the case may lead to confusion about the RBC role and responsibilities of institutional investors, and in principle and procedurally, about the coherence of the NCP function across the OECD.

4. Conclusion

We support the OECD NCP mechanism and the Ministry of Finance and Norges Bank participated in the investor working group that provided input to the development of the 2017 Responsible Business Conduct for Institutional Investors. We have a systematic approach to monitoring and following up on RBC risks at portfolio companies. We also welcome opportunities to promote the Guidelines more generally and to share information about our efforts under the Guidelines. We believe, however, that in this specific instance, the Norwegian NCP should conclude that the complaint, such as it pertains to Norges Bank, does not merit further examination.

We would like to emphasise that, as a financial investor in more than 9000 companies, we benefit from receiving environmental, social and governance-related information about the companies that we own. We encourage stakeholders to share information with us that they believe could be relevant for our investments, and we regularly receive information at company, sector and market level that is useful in investment analyses and due diligence. Although we consider that this case does not merit further consideration by the Norwegian NCP, we encourage the complainants to reach out to us outside of the NCP mechanism with information they would like to share. We are also very happy to present our mechanisms for RBC due diligence to them in more detail.

We appreciate the opportunity to contribute our view and remain at your disposal should you require further information about any of the points made.

Sincerely yours,



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