



THE OCEDS GUIDELINES
FOR MULTINATIONAL
ENTERPRISES

THE NATIONAL CONTACT POINT FOR RESPONSIBLE BUSINESS CONDUCT NORWAY



Complying with the OECD Guidelines will enable businesses to make substantial positive contributions to economic, environmental and social progress across the world.

Frode Elgesem

Chair of the Norwegian NCP

# Content

	Preface	4
	The OECD's unique guidelines	6
	National Contact Points	8
	The Norwegian National Contact Point	10
	Due Diligence Guidance for Responsible Business Conduct	11
1	Promoting the OECD Guidelines and	
	providing guidance to businesses	12
	The Transparency Act is a game-changer	14
	Cooperation with the Consumer Authority	15
	Due diligence tools	16
	Numerous resources	18
	Constructive dialogue meeting	20
	Expert body for responsible business conduct	24
	Increased demand for courses and guidance	26
	New EU sustainability regulations	28
	Media coverage of the NCP	29
2	Handling of specific instances	31
	Major gains, limited risks	32
	How to withdraw responsibly from a market?	37
	Complaints to the NCP	40
	Complex specific instance concluded	42
	Due diligence in conflict-affected areas	44
	Trade unions and investors – common interests?	48
3	International cooperation	50
	Updating the OECD Guidelines	52
	Sharing experiences	52
	Functional equivalence	53
	Nordic-Baltic cooperation	53
	Contributing expertise in international fora	54
	Accounts 2022	55

## **Preface**

# Responsible business conduct in a turbulent world

'Uncertainty is the new normal,' according to the editor of The Economist's global macroeconomic outlook for 2023. How does this affect the role and responsibilities of businesses?

Uncertainty surrounds us on all sides: The war in Ukraine, changing alliances and rising conflict in the world, the climate crisis, energy crisis, possible recession in several major economies, democracies in decline and authoritarian forces on the rise.

At the Confederation of Norwegian Enterprise's (NHO) annual conference in January 2023, Jens Stoltenberg spoke about the lessons learned from the war in Ukraine. He said, among other things, that 'businesses have a responsibility to exercise due diligence,' and, furthermore, that it cannot be the case that all profitable projects are implemented simply because they are profitable.

It is unlikely that Stoltenberg primarily had the OECD Guidelines for Multinational Enterprises in mind. For the Secretary General of NATO, the most important thing is that we refrain from trading with authoritarian regimes in a way that undermines our security. Stoltenberg nonetheless points out something that is also of more general validity: The way businesses operate, who we trade with and how we make our money can have substantial adverse impacts for the society those businesses are a part of.

In a turbulent world, the risk of adverse impacts has become greater, not lower. This applies to human rights, labour rights, the environment, corruption and other themes covered by the OECD Guidelines for Multinational Enterprises.

When the risks change, due diligence must be updated. Russia's unlawful attack on Ukraine on 24 February 2022 brought about dramatic changes for businesses operating in Russia.

Western companies' finances, reputations and security were threatened. The risk associated with continuing business activities in Russia rapidly became too great. Many companies withdrew, entailing extensive financial loss. But the changes we now are seeing have implications far beyond this.

Almost no matter where in the world you operate or have suppliers, there may be reasons to reassess and update risk assessments and due diligence. And where the changes can be sudden due to war or conflict, due diligence must be both more thorough and more frequent, as pointed out in one of the specific instances concluded by the Norwegian National Contact Point (NCP) in 2022 (Committee Seeking Justice for Alethankyaw vs. Telenor ASA).

For the NCP, 2022 has been characterised in particular by work on extensive, complex complaints. The NCP complaint process is first and foremost an arena for learning and dialogue on future-oriented solutions. Companies can learn a great deal from meetings with rightsholders and other stakeholders. Among other things, victims of adverse impacts may be given an opportunity to put forward their demands for change and possibly remediation.



It is important to the NCP that the parties are confident that their complaints will be handled in a predictable and professional manner. The objective of the process is to contribute to good solutions and be experienced as meaningful for all parties. We therefore prioritise work on the complaints and invest a great deal of resources in them.

The NCP is the leading expert body on responsible business conduct in Norway. In 2022, we worked closely with the Norwegian Consumer Authority and contributed our expertise to its work on the new Norwegian Transparency Act. The NCP has also contributed actively to the ongoing work of updating the OECD Guidelines by providing substantive input to both the Norwegian Ministry of Trade, Industry and Fisheries and to OECD meetings in Paris. Both these pursuits will continue in 2023.

In the annual report, we highlight both the Guidelines and the NCP's work to promote them. In turbulent times, it is more important than ever to operate in a responsible manner, not only to protect the company, but also to clearly demonstrate what values we stand for.

And in these times, following the OECD Guidelines will be more important than ever. This is an important motivation for the NCP in our efforts to contribute to ever better adherence to the Guidelines in Norwegian businesses and industries.

↑ War and uncertainty: A girl riding a scooter past a destroyed block of flats in the village of Horenka in Ukraine, about a year after Russia's attack on Ukraine on 24 February 2022. (Photo: Ivan Kashinsky/Panos Pictures/Felix Features)



The NCP complaint process is first and foremost an arena for learning and dialogue on future-oriented solutions.



**Frode Elgesem** *Chair of the Norwegian NCP* 



# The OECD's unique guidelines

The OECD Guidelines for Multinational Enterprises are the most comprehensive and endorsed guidelines for responsible business conduct.

## Sustainable development

A main goal of the OECD Guidelines is that enterprises should contribute to sustainable development, regardless of where they operate. By carrying out due diligence in line with the Guidelines, companies can prevent and address adverse impacts and harm to people, society and the environment. In this way, they can also contribute to meeting several of the UN Sustainable Development Goals (SDGs).

## Clear expectations

The Guidelines are recommendations to business enterprises, and there is a clear expectation on the part of the governments that have endorsed them that they are implemented.

countries have committed to promoting the Guidelines

## Cover all thematic areas

Seen as a whole, the OECD Guidelines cover all the areas that a responsible business should address. According to the Guidelines, businesses should:



Be transparent about their operations



Respect human rights



Protect labour rights



Protect the environment



Prevent corruption



Safeguard consumer interests through fair marketing practices



Pay taxes in accordance with laws and regulations



Ensure competition in accordance with laws and regulations



Contribute to technology transfer and to enhancing the host countries' innovation capacity

## **National Contact Points**

The OECD Guidelines for Multinational Enterprises are supported by a unique mechanism: the National Contact Points (NCPs). The governments of all countries that endorse the OECD Guidelines are obliged to establish an NCP. The NCPs are tasked with promoting the OECD Guidelines, handling complaints and cooperating at the international level. The composition of the NCPs varies from country to country.



## Unique mechanism

The NCP system is the only internationally recognised grievance mechanism related to guidelines for responsible business conduct. The NCPs handle complaints concerning companies operating in or from their territories. The purpose is to resolve issues between the parties through dialogue and mediation.



#### Thematic areas

Since 2011, most complaints have concerned the following areas:

- Human rights (58%)
- General policies (51%)
- Employment and industrial relations (labour rights) (39%)



#### Results

- Since 2011, 36% of complaints handled by the NCPs have resulted in an agreement
- 33% of all concluded specific instances have led to a change in the company's guidelines



## **Complainants**

There has been a significant increase in the number of complaints received in recent years. Since 2011, most complaints have been submitted by:

- Civil society organisations (41%)
- Trade unions (38%)
- Individuals (18%)



## Global coverage

The 51 countries adhering to the OECD Guidelines account for more than 50% of global GDP and more than 70% of foreign direct investment.

Since the system was established in 2000, the NCPs have handled more than 600 specific instances relating to business activities in more than 100 countries.



## OECD countries with National Contact Points

Australia Greece **Poland** Austria Portugal Hungary Belgium Iceland Slovakia Bulgaria Ireland Slovenia Canada Israel South Korea Chile Italy Spain Colombia Japan Sweden Czech Republic Latvia **Switzerland** Denmark Lithuania The Netherlands **Estonia** Luxembourg Turkey UK **Finland** Mexico **New Zealand** USA France Germany Norway

## Adhering countries with National Contact Points

Argentina
Brazil
Costa Rica
Cwypt
Jordan
Kazakhstan
Morocco
Peru
Romania
Tunisia
Ukraine
Uruguay

The map is for illustration purposes only and does not express any position on territorial status or sovereignty. A total of 51 countries have endorsed the OECD Guidelines and are therefore obliged to establish a National Contact Point.

# The Norwegian National Contact Point

The Norwegian National Contact Point for Responsible Business Conduct comprises four independent experts. The members are appointed by the Ministry of Foreign Affairs and the Ministry of Trade, Industry and Fisheries, in cooperation with the Ministry of Labour and Social Inclusion and the Ministry of Finance. They are appointed based on their professional expertise and based on proposals from the social partners (the Confederation of Norwegian Enterprise (NHO) and the Confederation

of Norwegian Trade Unions (LO)) and civil society, represented by the Forum for Development and Environment (ForUM).

The NCP Secretariat consists of three staff members. The NCP members and the Secretariat engage in extensive efforts to promote the OECD Guidelines and due diligence for responsible business conduct. The Secretariat also prepares the handling of specific instances for the NCP and facilitates mediation.

## **Members**



Frode Elgesem
Chair, Judge at Borgarting
Court of Appeal



Cathrine Dehli Head of Product and Sustainability, Celsia



**Gro Granden**Special Adviser,



Beate Ekeløve-Slydal Political Adviser, Amnesty International

Handling of specific instances – temporary staff

## Njål Høstmælingen

Department Director at the Norwegian Institute of Public Health, led the handling of a specific instance as stand-in for Frode Elgesem

## Ola Mestad

Professor dr. juris at the University of Oslo, led the handling of a specific instance as stand-in for Frode Elgesem

## Per Bondevik

Senior Advisor at FOKUS, stand-in for Beate Ekeløve-Slydal

## Katarina Sætersdal

Senior Advisor at NHO, stand-in for Cathrine Dehli

## The Secretariat



Kristel Tonstad Head of Secretariat and Policy Director



Åse Sand Senior Adviser



Elisabeth Andvig

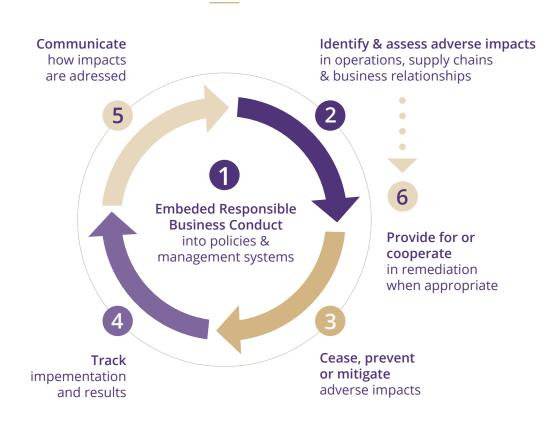
Cathrine Halsaa was head of the Secretariat until October 2022 and is currently on leave.

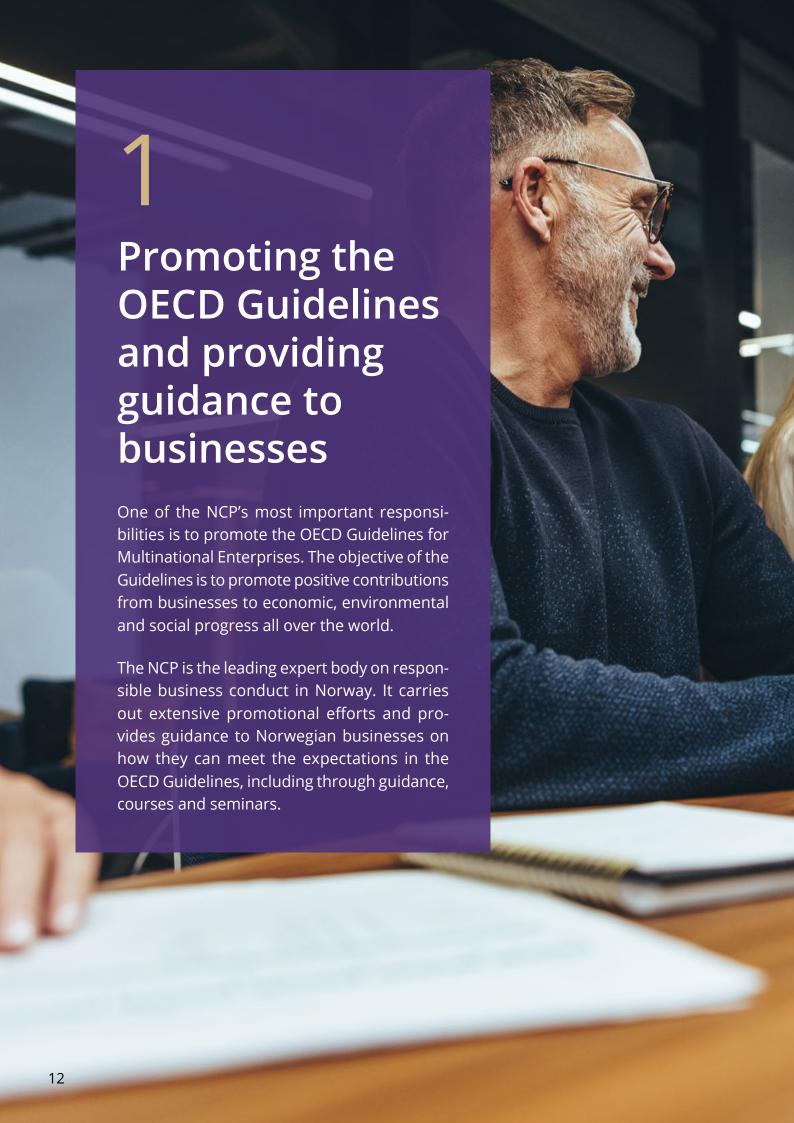
# Due Diligence Guidance for Responsible Business Conduct

A core element of the OECD Guidelines is the expectation that enterprises carry out due diligence to prevent and address adverse impacts and harm to people, society and the environment.

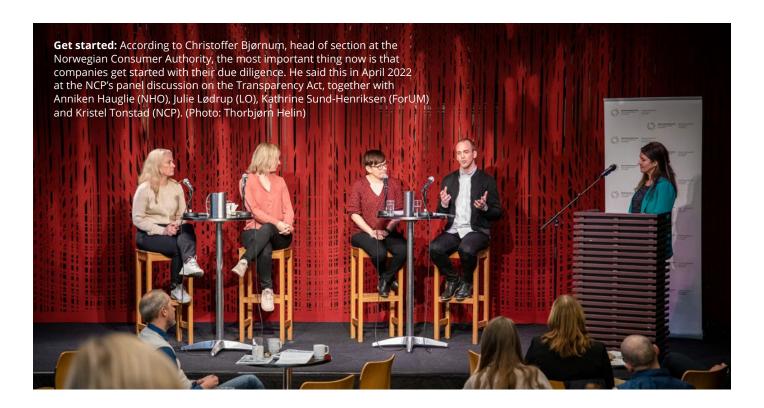
Due diligence is about identifying, preventing, mitigating and accounting for how businesses address actual and potential adverse impacts associated with their operations, supply chain and business relationships. The OECD Due Diligence Guidance for Responsible Business Conduct (2018) provides practical guidance to companies on due diligence in line with the OECD Guidelines.

## The due diligence model









## The Transparency Act is a game-changer

In Norway, the Transparency Act requires larger enterprises to carry out due diligence in line with the OECD Guidelines for Multinational Enterprises. What was previously an expectation from the government is now a statutory requirement.

The purpose of the Act is to promote respect for human rights and decent working conditions in connection with the production of goods and the provision of services. The Act also seeks to ensure access to information about how businesses address this responsibility. The Act entered into force on 1 July 2022.

The due diligence requirement is based on the six steps outlined in the OECD Due Diligence Guidance for Responsible Business Conduct (2018). Due diligence in accordance with the Transparency Act applies to both fundamental human rights and decent working conditions. Under the OECD Guidelines, enterprises are also expected to carry out due diligence in relation to environmental protection, anti-corruption, consumer interests and disclosure.

The Transparency Act requires companies to prepare and publish an annual account of their due diligence.

The first deadline for this account is 30 June 2023. Companies must also respond to any requests for information about how they handle adverse impacts on human rights and working conditions. The Norwegian Consumer Authority provides guidance and monitors compliance with the Act.



← **Due diligence:** The OECD Due Diligence Guidance (2018) provides a practical introduction to due diligence.



## Cooperation with the **Consumer Authority**

The Norwegian NCP and the Norwegian Consumer Authority established close cooperation in 2022.

The NCP held a four-day tailored course for new employees in the department of the Consumer Authority that monitors compliance with the Transparency Act. The course included an in-depth presentation of the OECD Guidelines, the UN Guiding Principles, due diligence and stakeholder dialogue.

Christoffer Bjørnum, head of section at the Norwegian Consumer Authority, participated in a panel discussion on the Transparency Act at the NCP's dialogue meeting.

The NCP's Cathrine Dehli gave a presentation about the OECD Guidelines and the National Contact Point system at the Consumer Authority's course on due diligence for the business sector.

The NCP also contributed at the Consumer Authority's transparency conference in Skien in December through presentations and answering questions about the new due diligence requirement.



The Ministry presumes that there will be close cooperation between the Consumer Authority and the OECD Contact Point so that the guidance with the Transparency Act will to the greatest extent possible be harmonised with the established practices of the OECD internationally and Norway's **OECD Contact Point.** 

Preparatory works to the Transparency Act

# Due diligence tools

In 2022, the NCP launched three tools designed to help Norwegian companies to get started with due diligence.

## Dilemma collection for reflection

Risk management often entails striving to discern between right and wrong. In 2022, the NCP launched a collection of dilemmas to inspire reflection and discussion.

What would you do if you discovered that your supplier was using child labour? How would you proceed if, as procurer for a food importer, you discovered that the manufacturer was using forced labour? How do you handle bribery attempts and close family ties when awarding contracts?

These are just some of the 22 dilemmas in the collection, all of which deal with concrete challenges related to human rights, decent work and anticorruption. The dilemmas are largely based on reallife examples provided by members of the Sustainability Forum in the Confederation of Norwegian Enterprise (NHO). As such, the collection addresses current and real issues companies face.



Concrete examples of dilemmas a company might encounter make it easier for them to understand how to operate in a responsible manner.

Cathrine Dehli NCP member



Launch workshop: The dilemma collection was launched at NHO on 19 September 2022 where the NCP led a workshop where the participants discussed three selected cases. (Photo: Thomas Kleiven)



Cooperation: The dilemma collection has been developed in collaboration with The Confederation of Norwegian Enterprise (NHO) and Transparency International Norway (TI). From the left: Deputy Managing Director of NHO Anniken Hauglie, Chair of the NCP Frode Elgesem and Secretary General of TI Guro Slettemark present the dilemma collection. (Photo: Thomas Kleiven)



Many stakeholders assist the Norwegian business community with advice on due diligence. As an expert body on the OECD Guidelines, the NCP has the "right answer" when it comes to what is actually required.

Beate Ekeløve-Slydal NCP member



## Digital tool lowers the threshold

The NCP's new digital tool is designed to help companies get started with due diligence. It takes them through a self-assessment and generates a performance profile that tells them what they should address and improve.

The tool is based on the OECD Due Diligence Guidance for Responsible Business Conduct and is a simplified, digital version of the NCP's introductory document to this guidance.



Introductory document: The NCP's introductory document to due diligence has now also been made into a digital tool.

## Quick guide to due diligence

A new animation film has been made to help companies get started with due diligence. In the film, Asta Busingye Lydersen and the fictional and animated sustainability manager Per guide you through the steps of a due diligence process in five minutes. With a touch of humour and zest, it makes the process seem a bit less daunting. And the message is clear: Just get started!



The NCP pursuing new paths: Great atmosphere at the recording of the animation film about due diligence. From the left: photographer Gard Eirik Arneberg from Von Kommunikasjon, Kjersti Hvattum from the Norwegian Government Security and Service Organisation (DSS), narrator Asta Busingye Lydersen, animator Mathilde Abelson Sahlen from Bransjen, and Åse Sand from the NCP Secretariat. (Photo: Karoline Arnesen / Von Kommunikasjon)

## Numerous resources

It can be challenging for companies to familiarise themselves with the recommendations in the OECD Guidelines. The OECD has therefore developed a number of guidance documents on responsible business conduct in selected sectors and topics, which can be downloaded from the NCP and OECD websites.

## Sectoral guidance

The sectoral guidance provides practical advice about due diligence and stakeholder dialogue, adapted to different industries. The guidance documents have been developed in collaboration with stakeholders and represent specific recommendations from the governments of OECD countries. This makes them unique. The NCP promotes the guidance documents through seminars and courses. Guidance documents have been developed for the following sectors:

- · Corporate lending and securities underwriting
- · Institutional investors
- · The garment and footwear sector
- Minerals from conflict-affected and high-risk areas
- Agricultural supply chains
- The extractive sector



Due Diligence for Responsible Corporate Lending and Securities Underwriting



Responsible **Business Conduct** for Institutional Investors



↑ OECD Due Diligence Guidance for Responsible Supply Chains in the Garment and Footwear Sector



↑ OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas



↑ OECD-FAO Guidance for Responsible Agricultural Supply Chains



↑ OECD Due Diligence Guidance for Meaningful Stakeholder Engagement in the Extractive Sector



**Integrating a gender perspective in due diligence** can be necessary. This involves thinking through how actual and potential adverse impacts may differ or be specific to women. The OECD's guidance documents on due diligence, conflict minerals, the extractive sector and the garment and footwear sector provide practical guidance on how to integrate gender perspectives into identifying and addressing risks.

## Thematic publications

The OECD also has other publications on responsible business conduct in the following thematic areas:

- Digitalisation
- The worst forms of child labour in mineral supply chains
- · Artisanal and small-scale gold mining
- · Public procurement
- · Trade: sustainable global value chains



↑ Report on digitalisation and responsible business conduct



↑ Publication with practical actions for companies to identify and address the worst forms of child labour in conflict mineral supply chains



↑ Booklet with practical guidance on sourcing gold from artisanal and small-scale miners



↑ Report on how to integrate responsible business conduct into public procurement



↑ Report on how to build robust and sustainable global value chains through responsible business conduct

# Constructive dialogue meeting

With the introduction of the new Transparency Act, the business sector needs the NCP's guidance more than ever. This was the unanimous feedback at the dialogue meeting in April.

Every spring, the NCP organises a dialogue meeting in connection with the launch of its annual report. The dialogue meeting is an important arena where the NCP receives direct feedback from a wide range of stakeholders.

The NCP invites representatives from The Confederation of Norwegian Enterprise (NHO), Norwegian Confederation of Trade Unions (LO) and the Forum for Development and the Environment (ForUM) to the meeting to give feedback on the past year's work. In 2022, the Ministry of Foreign Affairs also attended the meeting as one of the ministries that provides the mandate to the NCP, together with the Ministry of Trade, Industry and Fisheries.

### Increased need

The natural focal point of the dialogue meeting in 2022 was the Transparency Act, which entered into force on 1 July of the same year.

'The NCP is seeing the "spotlight effect" of the Transparency Act, which has increased the need for guidance on responsible business conduct,' said Frode Elgesem, Chair of the Norwegian NCP.

He is certain that the new Act has made the NCP more relevant than ever.

'Companies are looking to enhance their knowledge about the OECD Guidelines and due diligence, and the NCP's training of the business community through courses and seminars is of great importance,' said Janicke Andreassen, State Secretary at the Ministry of Trade, Industry and Fisheries.

She also pointed out the importance of the good working relationship established between the Norwegian Consumer Authority, the supervisory authority for the Act, and the NCP as an expert body.

#### Important guidance

NHO, on its part, considers courses and guidance to be some of the NCP's most important endeavours, according to Anniken Hauglie, Director of Politics and Public Affairs at NHO.

'Providing guidance should be more important than catching someone in the act,' she pointed out.



'Civil society is not looking for mistakes,' reassured Kathrine Sund-Henriksen, Executive Director of ForUM. She stressed that civil society understands the challenges the new Act presents, but pointed out that the expectations for responsible business conduct have been known for a long time.

'Companies should see the Transparency Act as an opportunity, not an obstacle, and demonstrate willingness to comply with it,' she said.

Sund-Henriksen encouraged companies to get in touch with civil society organisations, which have a great deal of expertise on challenging markets.

## Ongoing work

The Transparency Act constitutes the floor but does not set a ceiling for efforts with respect to human rights and labour rights,' State Secretary Trine Fagervik of the Ministry of Children and Families emphasised in her introduction.

Christoffer Bjørnum, head of section at the Norwegian Consumer Authority, underlined that the Consumer Authority finds it essential that the Act does





The business community needs more guidance. The NCP and other organisations offering guidance should be given increased resources.

Kathrine Sund-Henriksen Executive Director of the Forum for Development and Environment



not become merely about ticking boxes, but a real contribution in the right direction.

'Large companies must be prepared to respond to requests for information. Carrying out due diligence is a continuous process, but it is important to be open about how the work has been prioritised,' he emphasised.

### Uncertain times

Julie Lødrup, First Secretary of LO, pointed out that Norwegian companies also have challenges at home relating to hired labour, social dumping and foreign workers.

'Industries such as construction, seafood and aquaculture may also need the NCP's expertise with regard to due diligence and responsible business conduct,' Lødrup said.

She also pointed out that the war in Ukraine has put several Norwegian companies in situations they could not have foreseen. How Norwegian companies should operate in such situations could be something for the NCP to build expertise on, Lødrup said, and pointed out that the guidance should include challenges in various sectors and in different parts of the world, and not just concern macro level issues.

#### Grievance mechanism

The grievance mechanism was also a topic at the dialogue meeting. Kathrine Sund-Henriksen pointed out that more organisations have become aware of the NCP and that it is positive that the NCP and civil society are in dialogue to make the mechanism even better known.

The participants also discussed whether the threshold for filing a complaint was too low or too high, and whether the case processing could be made more efficient. Opinions were divided, but the debate nevertheless provided useful input that the NCP will take into account in its work.







The Transparency Act is based on the OECD Guidelines but is not a substitute for these Guidelines - which have a broader scope than the law.

Trine Fagervik State Secretary, Ministry of Children and Families





Sustainability and responsible business conduct are two sides of the same coin and require robust due diligence. The NCP has considerable expertise in this respect.

Janicke Andreassen State Secretary, Ministry of Trade, **Industry and Fisheries** 

# Expert body for responsible business conduct

The NCP's expertise is regularly sought and drawn on in meetings, courses and other events about responsible business conduct.

In 2022, the NCP and the Secretariat contributed to a number of events and reached about 1,500 people, mainly from the business community. In addition, nearly 13,500 people were reached through a podcast.

The Norwegian Consumer Authority's transparency conference in December 2022 was a highlight and promises to become an important meeting place for stakeholders working on responsible business conduct. Chair of the NCP Frode Elgesem gave a presentation on the OECD Guidelines and due diligence requirements, and Policy Director Kristel Tonstad gave a talk on the background to the Transparency Act. They answered questions from the participants about the due diligence requirement in the Act.

The Transparency Act has also been an important topic in other forums. Elgesem took part in a panel discussion on the Transparency Act during the Arendalsuka event and in a streamed panel discussion organised by the Norwegian National Human Rights Institution (NIM).

Kristel Tonstad gave a presentation to the Norwegian ILO Committee on the relationship between the Transparency Act and the OECD Guidelines.

The Secretariat was invited to Eksfin to present on the OECD Guidelines, the National Contact Point system and the Transparency Act.

The Secretariat has also given talks on the OECD Guidelines and the legislative developments at a meeting organised by the Coalition for Responsible Business, for the Contractors Association – Building and Construction, for the Norwegian Labour Law Association (NARF) and at a meeting on the gender perspective when it comes to due diligence under the auspices of the Turkish Embassy.

The Secretariat also led a panel discussion on efforts to combat modern slavery in connection with Oslo Peace Days in December 2022.

## Consultation input

The NCP has prepared input to several public hearings and consultations with a view to promoting the OECD Guidelines in various policy areas and processes:

- Norway's position on the EU's proposal for a directive on Corporate Sustainability Due Diligence (Ministry of Children and Families)
- New white paper on state ownership policy (Ministry of Trade, Industry and Fisheries)
- Revised Oslo model for procurement (City of Oslo)







**Transparency conference:** The Norwegian Consumer Authority's conference brought together close to 200 people in Skien, Norway on 7 December 2022. The photo shows Anders Aasland Kittelsen, legal adviser at Virke; Kristine Foss, adviser at the Norwegian Press Association; Johan H Reinertsen, Head of Advocacy at Future in Our Hands; Erlend Andreas Methi, legal adviser at Wiersholm; and moderator Christoffer Bjørnum, Head of Section at the Norwegian Consumer Authority.

(Photo: Norwegian NCP)



**Oslo Peace Days:** The NCP led a discussion on efforts to combat modern slavery organised by the University of Oslo in connection with Oslo Peace Days on 9 December 2022. From the left: Johan Andresen, Chair of the Council on Ethics of the Government Pension Fund - Global; Genevieve LeBaron, researcher at Simon Fraser University; Tomoyo Obogata, UN Special Rapporteur on Modern Slavery; and Kristel Tonstad, Head of Secretariat at the Norwegian NCP. (Photo: Katarina Lavrinenko Friis-Olsen/UiO



Gender perspective: On behalf of the NCP, Ase Sand gave a talk on the OECD Guidelines and OECD guidance documents at a seminar focusing on gender perspectives in due diligence, under the auspices of the Turkish

Embassy and FOKUS – the Forum for Women and Development. (Photo: Turkish Embassy)

# Increased demand for courses and guidance

Stricter requirements for businesses to operate in line with the OECD Guidelines are generating an increased demand for the NCP's expertise.

The Transparency Act has changed the rules of the game for around 9,000 companies, which are covered by the Act and therefore required to carry out due diligence in line with the OECD Guidelines.

At the same time, the NCP's survey of businesses from 2020 showed that knowledge about the OECD Guidelines and due diligence is low among Norwegian business leaders. The new Act is likely to bring about changes both in terms of knowledge and practical implementation. The NCP will conduct a new survey of businesses in 2023 that may provide insight into whether the situation has changed.

#### Significant increase

The NCP has seen a significant increase in the number of requests for courses, guidance and participation in seminars on responsible business conduct.

The NCP's three-day course on responsible business conduct and due diligence for business and industry started in the of autumn 2021 and ended in March 2022, and received positive reviews.

The NCP contributed to three seminars at Future-Proof in Bergen, a collaboration platform established by the Bergen Chamber of Commerce and the

Rafto Foundation to assist the business community in fulfilling its responsibility to respect human rights. The NCP has given talks about developments in the field of responsible business conduct, provided an introduction to the OECD Guidelines and due diligence, and led discussions around dilemmas taken from the NCP dilemma collection.

The NCP has also contributed to workshops on how to prepare for the Transparency Act organised by Sustainability Hub, workshops on responsible business conduct for Innovation Norway and in the Ministry of Foreign Affairs' diplomat training course, with an introduction to the OECD Guidelines, due diligence and the National Contact Point system.

Image 1 - Course activities: Participants in the NCP course particularly appreciate the opportunity to discuss challenges and solutions with each other, with the assistance of advisers, here represented by Margrete Eiliertsen from Ethical Trade Norway (standing). (Photo: Fredrik Naumann/ Felix Features)

Images 2 and 3 - 'Future-Proof': The NCP has contributed to several seminars in Bergen organised by the Rafto Foundation and Bergen Chamber of Commerce. Frode Elgesem, Chair of the NCP, facilitated dilemma training in November. (Photo: Future-Proof)







# New EU sustainability regulations

The EU is actively working on new regulations to promote responsible business conduct and sustainable finance.

The EU has adopted new rules on corporate sustainability reporting: the Corporate Sustainability Reporting Directive (CSRD). The directive amends the EU Accounting Directive on non-financial reporting, among other things, which is implemented in Norwegian legislation through the Accounting Act Section 3-3c.

The new directive seeks to provide better, more comprehensive and accessible information about companies' impacts on sustainability. Among other things, companies will now be required to disclose their due diligence efforts and report on the most significant actual and potential adverse impacts associated with their business operations and value chains.

Companies must report on actions taken to prevent, mitigate, remediate or cease adverse impacts, and the results of such measures. They must also report on the main sustainability risks they face and how these are managed.

#### The EU taxonomy

The financial sector plays an important role in the transition to a low-emission economy. The EU taxonomy is a classification system for sustainable economic activities. Its aim is to shift capital to sustainable projects and solutions and prevent greenwashing of financial products.

The taxonomy establishes a common understanding of sustainable economic activities and investments,

in line with the EU's long-term climate and environmental goals. In order to be defined as sustainable, an economic activity must contribute significantly to achieving at least one of the six defined environmental objectives and do no significant harm to any of the other objectives.

The company must also meet minimum social and governance safeguards, which refer to the OECD Guidelines for Multinational Enterprises and the UN Guiding Principles on Business and Human Rights. Businesses can fulfil these conditions by carrying out due diligence in line with the OECD Guidelines.

## Disclosure requirements

The Sustainable Finance Disclosure Regulation requires financial market participants and financial advisers to disclose how sustainability risk considerations are integrated into risk assessments and advisory services, and about adverse impacts on sustainability as a result of investment decisions.

The EU taxonomy and the Sustainable Finance Disclosure Regulation are implemented in Norwegian legislation through the Sustainable Finance Act (Lov om offentliggjøring av bærekraftsinformasjon i finanssektoren og et rammeverk for bærekraftige investeringer - in Norwegian only). The Act entered into force on 1 January 2023.

## Media coverage of the NCP

In 2022, the media showed considerable interest in several of the specific instances handled by the NCP.

Several pieces were written in the Norwegian media about the complaints relating to Telenor's operations in Myanmar and the complaint against several oil companies after a serious shipbuilding accident in South Korea. In addition, the NCP continued to contribute to the debate on the Transparency Act, which entered into force on 1 July 2022.







## Major gains, limited risks

Everyone wins by engaging in dialogue. This is the unanimous verdict of the Norwegian mediators who have contributed to the NCP's handling of specific instances in 2022. The key to the success of the OECD grievance mechanism is that it offers a non-judicial arena for dialogue.

Text: Marianne Alfsen

'Any dispute system that offers dialogue is a fantastic alternative when you are involved in a conflict, whether it's about child custody or major commercial disputes,' says Professor Knut Kaasen at the Faculty of Law, University of Oslo.

Kaasen mediated on behalf of the Norwegian NCP in the specific instance between two organisations in South Korea and three European oil companies, which, together with a large South Korean shipyard, were the subject of a complaint concerning alleged breaches of the OECD Guidelines concerning a serious crane accident (read more about the specific instance on page 40).

'Being able to discuss the matter in a forum that can help create an understanding of one's own and the other party's positions is valuable,' says Kaasen about the OECD's grievance mechanism.



#### External mediators

The NCP is increasingly drawing on the expertise of external mediators. The specific instances are often complex, and it can be an advantage to have both experience as a mediator and knowledge of the issues the complaints concern.

In the South Korea case, Knut Kaasen mediated together with the National Mediator of Norway, Mats Ruland.

Deputy Director of the Norwegian National Human Rights Institution, Gro Nystuen, and Professor of Economics at the University of Oslo, Nils-Henrik Mørch von der Fehr, mediated between the parties in the specific instance between four trade unions and Norges Bank Investment Management (NBIM) (read more about the specific instance on page 46).



Together, they have experience from wage mediation, peace negotiations and contract mediation.

'Basically, all mediation boils down to the same thing: communication between people,' says Kaasen.

## High gain, low risk

'The OECD's grievance mechanism is very valuable. We have a whole range of solutions and room for tailoring, which does not exist in a legal process. This means we can resolve conflicts that would not otherwise have been resolved,' says Ruland.

This is because even if some businesses fail to observe the OECD Guidelines, it does not necessarily entail a breach of law.

'The parties risk little from engaging in the process. A company that is the subject of a complaint has more to gain from participating than not participating. That is one of the major strengths of the grievance mechanism,' Ruland points out.

The key lies in the fact that the system does not aim to apportion blame, as is the case for a legal process, but to find a solution that the parties can agree on. And a solution can take many forms: from an acknowledgement of challenges, via changes in the way the business is run, to remedy for potential victims. The framework is broad and there is room for creativity.

'The moment a company admits guilt, they expose themselves to a possible lawsuit, so they will rarely do that,' says Gro Nystuen.



The OECD's grievance mechanism has a clear framework for what will happen and what the outcome may be. A clear framework gives the parties predictability, security and control.

Knut Kaasen Professor at the Faculty of Law, University of Oslo

The purpose is to get both parties to recognise that there is a challenge, and then to influence processes and procedures in the companies so they can prevent it from happening again,' Nils-Henrik Mørch von der Fehr points out.

The mediators also say that the solutions can have knock-on effects beyond the tangible significance for the parties, by influencing other companies or organisations in a more positive direction.

## Successful dialogue

At the heart of all this is dialogue. In the specific instance between the four unions and NBIM, the results came about faster than anyone had imagined - already two days into the mediation, which was scheduled to last three days. The case concerned due diligence requirements for largescale institutional investors faced with allegations of gender-based violence and harassment, in this case in the McDonald's corporation.

The matter was largely resolved after NBIM was given an opportunity to explain to the four trade unions how the organisation works on active ownership dialogue and conducts due diligence based on the OECD Guidelines and the due diligence guidance for institutional investors. Ownership dialogue takes place bilaterally with the companies the fund is invested in, but is based on public expectation documents and international standards. NBIM's

framework and activities were not well known by the trade unions that filed the complaint.

'NBIM was able to present all the good values they stand for, and everything they have actually done,' says Nils-Henrik Mørch von der Fehr.

The process ended with a joint statement affirming the important role of institutional investors in defining expectations and influencing companies in cases concerning adverse impacts on human rights, and that NBIM is doing its utmost to follow the OECD Guidelines and guidance on Responsible Business Conduct for Institutional Investors.

'I think both parties gained something from the process,' says Nystuen, pointing out in particular that the employee side will be able to use the statement when working with other institutional investors in the future.

#### Preparation is crucial

It was not a given that the parties would meet. The fact that the mediation could be carried out in Oslo in March 2022 is due to thorough preparations and a predictable process. A dialogue and mediation begins precisely by clarifying and planning the framework for the process together with the parties.

'The OECD's grievance mechanism has a clear framework for what will happen and what the out-



**Gro Nystuen** Deputy Director of the Norwegian National Human Rights Institution (NIM). Expert in international law and experience from peace negotiations.



Nils-Henrik Mørch von der Fehr Professor of Economics at the University of Oslo, and specially appointed mediator with the National Mediator of Norway.



Mats Wilhelm Ruland National Mediator of Norway. Mediates in conflicts of interest in industrial relations, including wage settlements.



Knut Kaasen Professor at the Faculty of Law, University of Oslo and expert on maritime law. Has been involved in commercial mediation in the petroleum sector since the late 1980s.

come may be. A clear framework gives the parties predictability, security and control,' says Kaasen.

Before the mediators become involved, the NCP has carried out considerable preparatory work to identify the core issues and get the facts on the table. The mediators continue on the same track in their own preparations.

Much is achieved by merely getting the parties to agree to participate in the voluntary complaint process:

When the responding party accepts mediation, both parties come into the process with a desire to find a solution,' Ruland points out.

'But to succeed, both parties must genuinely want to refine their own positions, be willing to listen and accept the consequences of what they hear,' Kaasen adds, and continues:

'Unlike for negotiation between the parties, the added value of mediation is the third party: The mediator serves as a filter between admission and consequence, and can also test the waters without it being assumed that one has taken a stand.'

## Complicated mediation

Mediators Ruland and Kaasen had a much more difficult job with the South Korean specific instance than their fellow mediators who dealt with the NBIM complaint. The process spanned a whole 19 months, through 2021 and 2022. The mediators and parties - based in South Korea, France and Norway - never met in person due to the pandemic. All mediation took place online.

'It's about people and communication, and without meeting in person, it becomes demanding,' says Kaasen, and points out the importance of reading body language and mimics, and feeling how the atmosphere in the room fluctuates - especially when different cultures meet, as in this case. Not to mention everything that happens in the informal venues, like at the coffee machine and during lunch breaks.

'Everyone involved in mediation knows that that's where it really happens,' Ruland adds.

The parties did not reach an agreement, and the specific instance concerning South Korea ended with a final statement from the NCP. So, what was the point? Here, too, the mediators emphasise dialogue: When opposing parties meet for talks and gain more knowledge and a greater understanding of each other's standpoints, it is sometimes possible to achieve a shift in the parties' positions. This can have implications for how a company handles its responsibilities in the future.

## International mediators

In some cases, it is useful for the parties' trust in the process to engage international mediators, without a national connection to the parties - who also have expertise in the field of business that is under scrutiny.

In 2021, the OECD established a resource database, where professional mediators can register their interest in assisting various countries' National Contact Points (NCPs).

The Norwegian NCP engaged two international experts to mediate in the specific instance involving

Telenor Myanmar and 474 local civil society organisations, represented by the Centre for Research on Multinational Corporations (SOMO) - following the company's market exit in the wake of the 2021 military coup.

The complainants were concerned about possible misuse of customer data by the new military regime. The complaint concerned risk-based due diligence, stakeholder dialogue and disclosure in Telenor's disengagement from Myanmar.



### Mark Stephens, CBE

British lawyer, founder of law firm Howard Kennedy, and one of the world's leading legal experts on business and human rights. He has worked on stemming conflict funding by illicit flows of extractives and other natural resources from conflict zones - diamonds, oil, ore, jade, lumber and more. For 10 years, Stephens was also the Independent Board Chair of the Global Network Initiative - helping companies, among other things, to respect privacy rights when faced with government pressure to hand over user data.



### **Anna Triponel**

Internationally renowned business, human rights and climate expert, and the founder of Human Level, advising companies on how to implement their responsibility to respect human rights in practice across the globe. She worked with John Ruggie on the development of the UN Guiding Principles on Business and Human Rights. Triponel also has in-depth knowledge of Myanmar, after working extensively in the country.

# How to withdraw responsibly from a market?

The question is not only how to conduct responsible business. Increasingly, companies must deal with how to responsibly exit a market in the wake of conflict, sanctions and - increasingly climate change.

Text: Marianne Alfsen

'This is one of the most significant cases I have ever worked on, as it has led to some interesting learnings on how to responsibly exit a market,' says Mark Stephens, about the Telenor Myanmar case.

That says a lot, coming from an experienced lawyer who has been involved in everything from defending, Julian Assange, and decriminalizing same-sex relationships in Botswana, to representing FIFA in the wake of corruption allegations in relation to the 2022 Qatar World Cup.

The Telenor case resulted in a preliminary Memorandum of Understanding (MoU), and the mediation process is still ongoing. However, it has already had a 'profound international impact', according to Stephens.

'It has already been used as a template and a learning platform for companies exiting Russia after the sanctions,' says Stephens, explaining how he has disseminated the knowledge to companies seeking his advice, as news of the Telenor case spread.



Corporations consider the OECD Guidelines as more binding than for instance the UN business and human rights principles. They feel they must comply, as their investors care and it carries heavy reputational risks to ignore them.

Mark Stephens

According to Stephens, too many companies simply abandoned their Russian business, leaving thousands of employees and customers in a dire situation.

### Companies need a plan

Co-mediator in the Telenor case, Anna Triponel, who has also worked in conflict and post-conflict countries ranging from Myanmar, to Ethiopia, Côte d'Ivoire and Libya, emphasises the reality companies sometimes find themselves of being stuck between a 'rock and a hard place' at the point of exit.

'Responsible disengagement considerations come in at the point of exit, but we find this process can be facilitated if the company sought to build leverage from the outset when entering the market, as well as throughout its time there. This acts as a basis upon which responsible disengagement can build. In reality, when exiting a market, it can be a question of finding the least bad of the bad options for the people impacted by this exit,' she says.

Through her work with forward-looking companies at Human Level, Triponel is already seeing how rapidly the field of responsible disengagement is evolving, especially as it connects to climate change.

'The importance of exiting a market in a responsible manner, that considers the impacts on those left behind and seeks to mitigate those impacts, will significantly increase with time. We are already starting to see companies consider disengagement

in connection with the climate crisis. As the planet continues to warm up, impacting the availability of crops, heat stress and conflict, these disengagement discussions will accelerate. This Telenor case could therefore have significant ripple effect, when it comes to the considerations that are intrinsic to a responsible disengagement strategy.'

### Enhancing the framework

'We have a framework for responsible disengagement in the OECD Guidelines and the UN Guiding Principles, and these kinds of instances can flesh out further what responsible disengagement entails,' she adds.

Mark Stephens agrees and calls for the OECD to step up engagement on the issue:

'The Telenor case has already resulted in some interesting learnings on how to plan for a responsible exit, but they need to be operationalised. I would like to see OECD further amplify these learnings for others to build on,' says Stephens, as increasingly the divestment challenges are coming thick and fast from a variety of states - and no longer just for reasons of conflict.

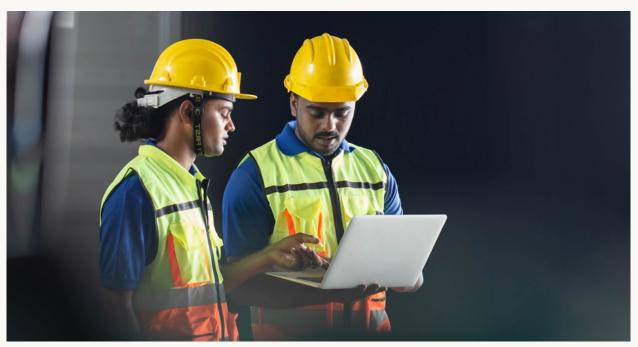
'It is also critical that governments know how to stage sanctions to make an ethical exit possible,' he says, adding that: 'The war in Ukraine has shown how quickly everything can change'.



The soft law contained in the **OECD Guidelines and UN Guiding** Principles capture the essence of what responsible business looks like. Having a responsible disengagement strategy in place that builds on these authoritative frameworks will benefit any company operating globally these days – there is too much volatility in sourcing markets now to not have one.

Anna Triponel





# Complaints to the NCP

The OECD Guidelines provide a clear framework for the handling of complaints. A complaint should be submitted to the NCP in writing and set out the factual grounds for the complaint, including a description of the situation, references to relevant provisions in the OECD Guidelines and what the complainant(s) hope(s) to achieve.

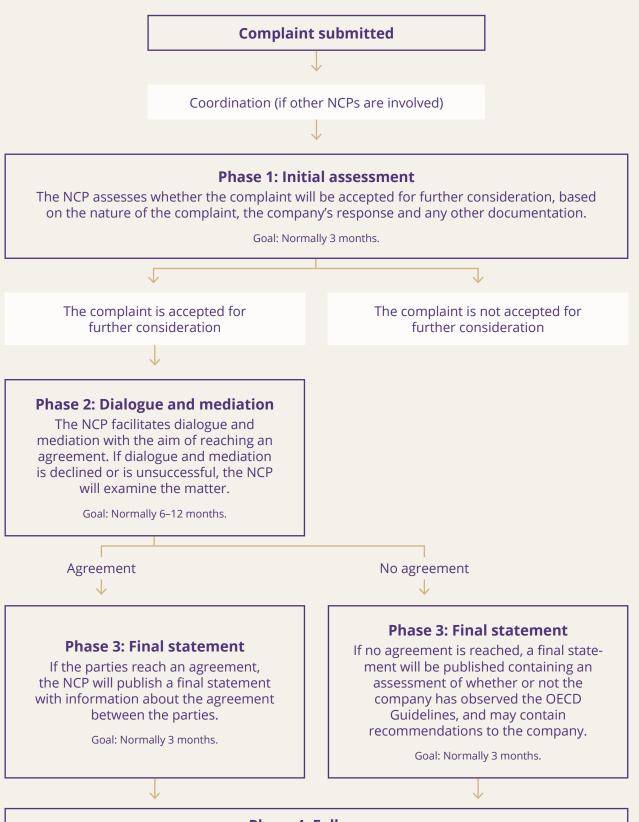
The NCP then makes an initial assessment of whether it will accept the complaint for further consideration based on the following criteria:

- The identity of the party concerned and its 0 interest in the matter.
- Whether the issue is material and substantial.
- Whether there seems to be a link between the company'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 domestic or international proceedings.
- 0 Whether the consideration of the specific issue would contribute to the purpose or effectiveness of the Guidelines.
  - Would you like to know more about what kind of complaints are handled internationally? The OECD logs all specific instances handled by the NCPs in a public database: http://mneguidelines.oecd.org/database/

### Complaints from A to Z

These are the NCP procedures for handling specific instances:



### Phase 4: Follow-up

The NCP can follow up the agreement or recommendations in the final statement.

# Complex specific instance concluded

On 1 May 2017, two cranes collided at a shipyard in Korea. Six people died and 25 people were injured. Many workers were said to have been traumatised. This is the background to a complex specific instance that was concluded by the NCP in February 2023.

The parties did not reach an agreement, in what has been one of the Norwegian NCP's most extensive and complex specific instances.

In its final statement, the NCP concluded that the companies TotalEnergies EP Norge (TEPN), Equinor and Technip Energies had not caused or contributed to the accident. The companies were, however, directly linked to the accident through a business relationship with Samsung Heavy Industries, which caused the accident.

The accident occurred in connection with the construction of an oil platform module for the Martin Linge project on the Norwegian continental shelf. Samsung HI was the builder and owner of the yard. Technip Energies was responsible for the design and, together with Samsung HI, made up the consortium that was hired to build the platform. The buyer was a joint venture composed of TEPN, Equinor and Petoro, and TEPN was the operator at the time of the accident. Petoro was not part of the complaint.

### Submitted complaint to three NCPs

In 2019, Workers Support Team and Korean Transnational Corporation Watch filed a complaint to the NCPs of Korea, France and Norway concerning non-compliance with the OECD Guidelines with regard to due diligence, remediation and disclosure.

They claimed that the companies had not carried out adequate due diligence in relation to identifying and mitigating the risk of a crane collision. The complainants also asserted that at least 150 workers had been traumatised by the accident, without having been offered help or treatment.

According to the complainants, the companies had caused or contributed to the accident and thus had a responsibility for providing remediation for the workers. The complainants also referred to an investigation report on the accident, which the companies would not disclose, citing confidentiality reasons. The complainants argued that the report was important to uncover the cause of the accident and to improve the safety of Korean shipyards.

### Demanding process handled by several NCPs

This was an extensive specific instance based on the occurrence of a serious accident. The specific instance involved four companies with different roles with regards to the construction of the platform module. Clarifying the responsibilities of the companies involved was demanding and became a central part of the mediation and of the examination by the NCP. Furthermore, the case was demanding in terms of coordination and practical arrangements



Accident became a complaint: The collapsed crane at the Samsung Heavy Industries shipyard in South Korea, photographed the day after the accident on 1 May 2017. (Photo: Kim Dong-Min / Yonhap / Epa / NTB)

as it involved four NCPs and six parties in different continents and time zones: three in Asia and three in Europe. For a period of time, one of the parties was in the United States.

The Norwegian NCP would have preferred a joint process, while the Korean NCP wanted to handle the part of the complaint that was related to Samsung HI separately. It was unfortunate that not all parties took part in the mediation together and that it had to take place online due to the coronavirus pandemic. Handling two specific instance processes and the absence of physical meetings resulted in a prolonged and less than optimal process.

The NCP strived to facilitate the best possible conditions for the mediation, with a professional technical set-up, simultaneous interpretation and experienced mediators with expertise from the oil and gas sector and from mediation processes. Professor Knut Kaasen was the principal mediator and the National Mediator of Norway, Mats Ruland, was the co-mediator.

The NCP commended the parties for investing significant time and resources in the mediation process, together with skilled mediators, but it was ultimately not possible to reach agreement.

#### Conclusion and recommendations

The NCP examined the issues raised and concluded in its final statement that the companies in the part of the complaint handled by the Norwegian NCP had not caused or contributed to the accident. At the same time, the NCP referred to stakeholder engagement as an area for improvement and recommended that the companies strengthen their work in this respect. According to the OECD Guidelines, meaningful stakeholder engagement is a key component throughout the due diligence process. Dialogue with employees is particularly relevant in this specific instance.

The NCP recommended that the companies use their leverage with Samsung HI to follow up recommendations from Korea's NCP on remediation for traumatised workers. The NCP also recommended that the companies use their leverage with Samsung HI to take sector-wide initiatives in collaboration with other shipbuilders and the Korean government to improve health and safety at Korean shipyards.

Regarding the investigation report, before the mediation process was concluded, the companies were open to sharing parts of the report with the complainants. In its final statement, the NCP called on the companies to follow up on this intention.



# Due diligence in conflictaffected areas

Two complaints against Telenor ASA in Myanmar turned the spotlight on the responsibility of companies when operating in conflict-affected areas.

The first complaint was filed in 2019 by the Committee Seeking Justice for Alethankyaw (CSJA) – a small group of refugees in Bangladesh. The complainants believed that lack of due diligence on the part of Telenor had led to the military's misuse of a telecommunications tower as a vantage point to kill and drive out civilians from the village of Alethankyaw in Rakhine State, Myanmar, in August 2017.

The tower was owned and operated by one of Telenor Myanmar's network providers. The complaint also raised issues concerning land use and Telenor's role in a network shutdown in 2019.

### Did not wish to participate

The complainants did not wish to participate in dialogue and mediation due to lack of trust in the company. The NCP examined the issues raised in the complaint in line with its Procedural Guidelines and concluded the specific instance by issuing a final statement in August 2022. The final statement is based on documentation from the parties and publicly available information.

The NCP found no grounds for concluding that Telenor caused or contributed to the misuse of the telecommunications tower in August 2017. However, there was a direct link between Telenor's operations and the adverse impacts through a business relationship.



Mediation: The parties met for three days of mediation in Stockholm in June 2022. From the front left: Ana Uribe (mediation support), Ma Htaike (representing the complainants), Anita Househam (Telenor), Anna Triponel (co-mediator), Mark Stephens (mediator). From the rear left: Joseph Wilde-Ramsing (representing the complainants), Morten Kristiansen (Telenor), Johannes Schreuder (representing the complainants), Ko Ye (representing the complainants), Eirik Andersen (Telenor), Kristel Tonstad (NCP Secretariat). (Photo: Anna Triponel)

The NCP considered that the risk of misuse of the mobile tower was not reasonably foreseeable at the time. Today, this is a known risk that must be identified and mitigated in Myanmar and other high-risk areas.

### In line with the OECD Guidelines

The NCP concluded that Telenor generally sought to respect human rights and carry out due diligence in accordance with the OECD Guidelines in Myanmar. There were several positive features in the company's efforts to identify, prevent and mitigate human rights risks and communicate about these.

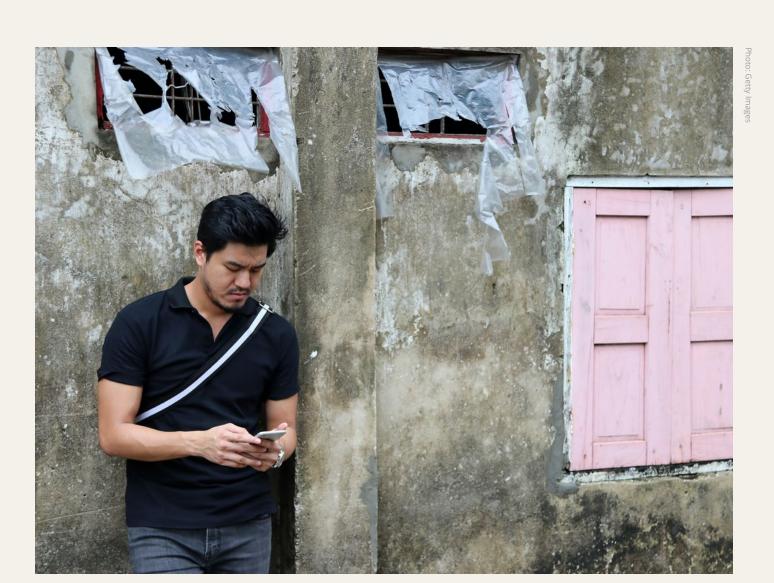
There was also room for improvement. In general, stakeholder engagement had not given sufficient priority to the most vulnerable groups, in this case the Rohingya. The NCP recommended that Telenor prioritise the most vulnerable groups in future stakeholder engagement.

As regards the issues raised relating to land use and internet shutdown orders, the NCP considered that Telenor identified and worked to mitigate these risks in both pre-investment and ongoing due diligence.

### Should we stay or should we go?

A dilemma for companies that operate in conflictaffected and high-risk areas will often be whether to continue operations there or to withdraw. This question was on the agenda in another complaint against Telenor.

The Centre for Research on Multinational Corporations (SOMO) filed a complaint with the NCP on behalf of 474 civil society organisations in Myanmar



in July 2021. The complaint concerned risk-based due diligence, stakeholder engagement and disclosure in connection with Telenor's disengagement from Myanmar.

The NCP facilitated a series of meetings in the spring of 2022 as well as mediation between the parties in Stockholm in June 2022. The parties reached a Memorandum of Understanding (MoU). The NCP commended the parties for their participation in constructive dialogue and mediation, and for showing transparency in the discussions so far through the MoU.

The NCP will continue to facilitate dialogue and mediation with a view to reaching a final agreement in 2023. Two external experts, Mark Stephens and Anna Triponel, are mediating in the specific instance on behalf of the NCP.



The specific instance shows the need for heightened due diligence in conflict areas. Vulnerable groups require particular attention.

Frode Elgesem Chair of the NCP



Both parties share a deep concern for the people of Myanmar and the deterioration of respect for human rights in the country after the military takeover in February 2021. In this context, the parties have started taking steps to implement the agreements made in the MOU.

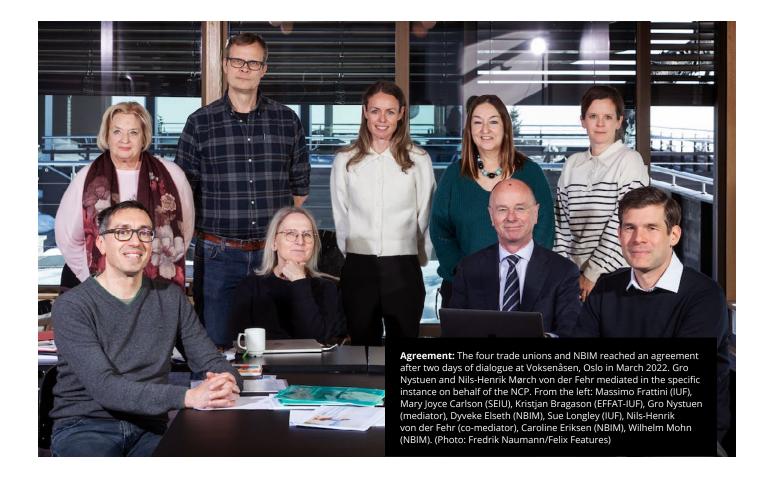
One such step, to enhance the understanding of risks to users related to their digital footprints, the parties will jointly select an independent researcher to conduct an ICT Eco-System Risk Study. Furthermore, Telenor is sharing expertise and experience about risks to digital rights and freedoms in Myanmar under the military junta.

Joint update from Telenor and SOMO, October 2022

### OECD and UN: heightened due diligence in conflict areas

The OECD Guidelines and associated guidance documents recommend heightened, proactive and reactive due diligence in conflictaffected and high-risk areas.

The UN Working Group on Business and Human Rights produced a report on this topic in July 2020, entitled Business, human rights and conflict-affected regions: Towards heightened action. The report is useful reading for anyone who has business activities in conflict-affected areas.



# Trade unions and investors - common interests?

In 2022, the Norwegian NCP concluded a specific instance that explored institutional investors' due diligence.

The complaint concerned allegations of genderbased violence and harassment in McDonald's restaurants, and due diligence by two institutional investors: the Dutch APG and Norges Bank Investment Management (NBIM).

The complaint was submitted by four trade unions: the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF); the European Federation of Food, Agriculture and Tourism Trade Unions (EFFAT-IUF); Service Employees International Union (SEIU) and União Geral dos Trabalhadores (UGT). The Norwegian NCP handled the part of the complaint that was related to NBIM.

### Facilitated dialogue

The NCP facilitated dialogue and mediation between the parties, who reached an agreement in March 2022. The agreement confirms that NBIM is doing its utmost to follow the due diligence recommendations in the OECD Guidelines.

It shows that institutional investors have an important role to play in contributing to responsible business conduct by assessing the risks associated with their investments and influencing the companies they invest in with a view to preventing and mitigating adverse impacts. The parties agree that gender-based violence and harassment represent a significant risk that companies in the fast-food industry must manage in order to create a safe and respectful working environment.





As a long-term financial investor, we believe that companies that invest in their human capital are more likely to be successful in the long term.

Companies should have a strategy anchored in the board for how they are going to invest in their workforce to secure growth, innovation, and good and safe workplaces.

We expect companies to have a zero-tolerance policy against all forms of discrimination, violence and harassment and that they should implement appropriate training programmes and reporting mechanisms as well as clear policies against retaliation.

Human capital management is a priority for our ownership work. We raise this with companies through dialogue and voting, and we hold boards to account.

Carine Smith Ihenacho Chief Governance and Compliance Officer, Norges Bank Investment Management

### Follow-up meeting

The NCP invited the parties to a follow-up meeting in October 2022, six months after the agreement was signed and in line with the final statement of the NCP.

The complainants described their plans to continue disclosing information about gender-based violence and harassment and their measures to combat this in the fast-food industry and in general. They referred to ILO's important decision of June 2022 to make health and safety part of the fundamental principles and rights at work.

NBIM provided an update on its expectation documents on human rights, human capital management and child rights, and the inclusive process to prepare these and other expectation documents. Key expectations when it comes to human capital management concern the role and responsibilities of the board, training programmes and reporting mechanisms. It is also considered important to focus not only on the company's own employees, but also workers in the supply chain through franchise and other business relationships.

The parties agreed to continue the dialogue outside the NCP process. The NCP commends the parties for their thorough efforts in these important areas.





**OECD Working Party for Responsible Business Conduct** 

## Updating the **OECD Guidelines**

The OECD Working Party for Responsible Business Conduct held several meetings in 2022 where the main topic was the update of the OECD Guidelines for Multinational Enterprises. The Guidelines were last updated in 2011, and a great deal has happened since then.

Both the content of the Guidelines and the procedures for handling specific instances are being updated, and the process will be completed in 2023.

The Ministry of Trade, Industry and Fisheries represented Norway at these meetings, and the NCP Secretariat participated as an observer.

OECD Ministerial meeting: A good laugh during the break gives you more energy for long meetings. From the left: Marian Ingrams, Coordinator of OECD Watch; State Secretary Anne Marit Bjørnflaten from the Ministry of Trade, Industry and Fisheries; and Christine Kaufmann, Chair of the OECD Working Party for Responsible Business Conduct. (Photo: Margrethe Rosbach, Ministry of Trade)





**Network for National Contact Points** 

## Sharing experiences

The NCPs meet at the OECD headquarters in Paris twice a year to attend NCP Network meetings where they share their experiences with promoting the OECD Guidelines and guidance documents and handling specific instances. It is important for confidence in the National Contact Point system that companies are met with the same expectations and treated equally regardless of where they operate.

Spirits were high when the NCPs met in person in June 2022, for the first time since the pandemic. The Norwegian NCP shared experiences from its work to promote the OECD Guidelines in Norway and the significance of the Norwegian Transparency Act in this respect. The NCP also led a group exercise on how to deal with situations involving what are known as parallel procedures, for example where a specific instance is also the subject of a legal process.

At the NCP Network meeting in November, the Chair of the Norwegian NCP gave a presentation on the role of lawyers in specific instances. Elgesem underlined that mediation under the auspices of the NCP is non-judicial. If one party is assisted by a lawyer, it can make it harder to find solutions. It is important to ensure equal standing between the parties in mediations. The Secretariat also led a discussion on experiences with frameworks for mediation. This can be important to ensure predictability and trust in the dialogue between the parties.

**NCP Network meeting:** Twice a year, the National Contact Points meet at the OECD's headquarters in Paris. The photo is from the network meeting in June 2022. (Photo: OECD)





Peer Review of the Peruvian NCP

## **Functional** equivalence

All National Contact Points must undergo a Peer Review – an important measure to encourage functional equivalence between the NCPs. NCP member Beate Ekeløve-Slydal participated in the Peer Review of the Peruvian NCP on 22-24 November in Lima. The Portuguese NCP was also part of the team, together with the OECD Secretariat.

Peer Reviews look at whether an NCP operates in a visible, accessible, transparent and accountable manner. They also look at whether the handling of specific instances is impartial, predictable, equitable and compatible with the OECD Guidelines. In Peru, the team met relevant ministries, the ombudsperson, civil society organisations, business organisations representing various sectors, trade unions and a representative of the complainants in a specific instance.

The Peer Review culminates in a report from the OECD with recommendations for the NCP concerning its organisation, promotion activities and handling of specific instances. The process enhances learning and development both for the NCP being reviewed and for the NCPs that are part of the team.

Stakeholders: The OECD Peer Review team meet the Peruvian NCP and various stakeholders in Lima, Peru. The team, from the left: German Zarama (OECD Regional Centre for Competition in Latin America in Lima), Maria Xernou (OECD Secretariat), Pedro Marques (Portuguese NCP) and Beate Ekeløve-Slydal (Norwegian NCP). To the right: the Peruvian NCP. (Photo: Peruvian NCP)





#### Regional networks

## **Nordic-Baltic** cooperation

Developments in Europe such as mandatory due diligence, the benefits of business surveys and lessons learned from Peer Reviews were topics at the Nordic-Baltic network meeting in Stockholm in 2022. The network was established in 2018 and consists of the NCPs in the Nordic and Baltic countries. The network organises annual meetings to exchange experiences and learn from each other. In the wake of the pandemic, last year's meeting was mainly digital, organised by the Swedish NCP with assistance from the Danish NCP.

The Secretariat of the Norwegian NCP gave a presentation on the Norwegian Transparency Act, together with the French NCP, which presented the French Corporate Duty of Vigilance Law (loi sur le devoir de vigilance). The OECD Secretariat spoke about legal developments in general and their significance to the National Contact Point system. The Secretariat of the Norwegian NCP also spoke about practical experience of its survey of businesses from 2020. The OECD Secretariat presented a template for this type of survey. The Swedish and Danish NCPs shared their experiences from Peer Reviews.

The network consists of the NCPs for Denmark, Estonia. Finland, Iceland, Latvia, Lithuania, Norway and Sweden.

**Regional network:** From the rear left: Hampus Löwstedt and Jonas Berggren from the Swedish NCP and Kim Christiansen from the Danish NCP. From the front left: Cecilia Ekholm from the Swedish NCP, Julie Torup-Villadsen, Sofia Said Birch and Cecilie Meciah Haugen Ngwenya from the Danish NCP. (Photo: Swedish NCP)







↑ UN Delegation: The Permanent Mission of Norway to the UN in Geneva hosted a breakfast for Norwegian participants in the UN Forum on Business and Human Rights in November 2022. (Photo: Permanent Mission of Norway in Geneva)

## Contributing expertise in international fora

The Norwegian NCP was invited to give talks at a number of international meetings in 2022.

The Norwegian Transparency Act and how it relates to the OECD Guidelines for Multinational Enterprises has attracted a great deal of international interest. The NCP participated in several international meetings where this has been an important topic.

The Secretariat has given talks at several international meetings on due diligence, the OECD Guidelines and legislative developments:

- Panel on legislative developments at the UN Forum on Business and Human Rights
- Roundtable for World Conflict Resolution Day in October, organised by, among others, PeaceNexxus
- · Meeting under the auspices of Business for Inclusive Growth
- The annual Responsible Business Alliance European Conference in Brussels, including experts from the EU, ILO and business and industry
- Policymakers Roundtable on Regulatory Developments concerning Due Diligence for Responsible Business Conduct
- · Roundtable on public procurement organised by Electronics Watch and IndustriAll Global Union, among others



**UN Forum:** Policy Director of the NCP Kristel Tonstad gave a presentation on the Transparency Act in a panel on international legislative developments at the UN Annual Forum on Business and Human Rights.

## Accounts 2022

# The Norwegian National Contact Point for Responsible Business Conduct

The NCP budget has mainly gone to the remuneration of its members, temporary staff and salaries of the staff in the Secretariat. Other funds have gone to mediation in specific instances and outreach activities. The NCP exceeded the budget in 2022 by NOK 251,899, which was mainly due to the expenses of mediation in specific instances.

### All figures in NOK

	2022 EXPENDITURE
Fees, NCP members and temporary staff	432,500
Temporary staff / fees for mediators	405,250
Pay and overtime, Secretariat	2,866,166
Travel	180,657
External services (mediation, etc.)	1,124,954
IT, misc. office equipment and printed matter	37,464
Outreach activities, courses and meetings	580,977
Translations	120,872
Other	3,059
Total	5,751,899

PUBLISHED BY:

The National Contact Point for Responsible Business Conduct Norway

CONTACT US: oecdncp@mfa.no

Public institutions can order more copies from: The Norwegian Government Security and Service Organisation www.publikasjoner.dep.no Publication code: E-1015-BE

DESIGN: Anagram Design as

CONTENT DEVELOPMENT AND PRODUCTION: Felix Media AS

Cover photo: Getty Images

Print: The Norwegian Government Security and Service Organisation

Published: April 2023 Print-run: 100