Case-handling procedures

# General

## The OECD Guidelines on responsible business conduct

The [OECD Guidelines for Multinational Enterprises on Responsible Business Conduct](https://mneguidelines.oecd.org/mneguidelines/) are the most comprehensive and endorsed guidelines for responsible business conduct. A main goal of the Guidelines is to enhance the business contribution to sustainable development, regardless of where the company operates. By carrying out due diligence in line with the Guidelines, companies can prevent and mitigate adverse impacts on people, planet and society.

The Guidelines are supported by National Contact Points (NCPs) in each signatory country. Their main tasks are to promote the Guidelines and to resolve issues between parties through dialogue and mediation. The NCP system is the only internationally recognised non-judicial grievance mechanism for responsible business conduct and gives organisations and individuals a place to turn when they believe an enterprise has failed to observe the Guidelines. NCPs handle complaints concerning companies operating in or from their territories.

This document outlines the Norwegian NCP’s procedures for the case-handling of so-called specific instances (complaints). The case-handling procedures complement the Guidelines’ general implementation procedures applicable to the case handling of NCPs.

## The norwegian nATIONAL cONTACT POINT (NCP)

The Norwegian NCP has its [mandate](https://files.nettsteder.regjeringen.no/wpuploads01/sites/263/2022/08/REVIDERT-MANDAT-KONTAKTPUNKTET-18.03.2022.pdf) from the Norwegian government.

The NCP is composed of four independent experts appointed by the Ministry of Foreign Affairs and the Ministry of Trade and Industry. Appointments are based on recommendations from the Confederation of Norwegian Enterprise (NHO), the Confederation of Norwegian Trade Unions (LO) and ForUM for Environment and Development. The NCP secretariat manages the promotional activities on the Guidelines and related due diligence guidance, responds to inquiries and prepares specific instances for assessment by the independent experts. Administratively the secretariat is under the Ministry of Foreign Affairs.

## Concepts and principles

The NCP’s case-handling must be consistent with the core effectiveness criteria in the Guidelines, meaning it must be visible; accessible; transparent; accountable; impartial and equitable; predictable and compatible with the Guidelines.[[1]](#footnote-2)

Transparency is a core criterion for the conduct of NCPs. However, the procedures recognise that there are circumstances where maintaining confidentiality of certain facts and arguments brought forward by the parties is justified. The NCP strives to strike a balance between transparency and confidentiality, to build confidence in the process and effective implementation of the Guidelines. Handling of information follows the procedures in the Guidelines and the Norwegian [Freedom of Information Act](https://nmfa.sharepoint.com/sites/msteams_4824bc/Shared%20Documents/Klagesaker/Rutiner%20for%20klagesaker/Prosedyreregler/2023_rev_prosedyreregler/Innspill). Personal information will be handled in line with the Norwegian [Personal Data Act](https://lovdata.no/dokument/NLE/lov/2018-06-15-38).

To ensure an equitable process, the parties will be notified of relevant information, facts and arguments brought forward by the other party – particularly during the good offices phase (see explanation of stages below). However, if a party makes a reasonable request not to share a submission in full to other parties, to protect sensitive business information and the interests of stakeholders, the NCP will work with the submitting party to redact any sensitive content.

The NCP will ensure impartiality in the handling of specific instances.[[2]](#footnote-3) This includes addressing potential or perceived conflicts of interests of people engaged by the NCP to mediate and assist the parties. The NCP is subject to the impartiality provisions of the Norwegian [Public Administration Act](https://lovdata.no/dokument/NLE/lov/1967-02-10).

The Guidelines expect good faith engagement in the proceedings by the parties and includes giving serious consideration to any offer of good offices by the NCP. Further, this means:

* Responding in a timely fashion.
* Mainatining confidentiality where appropriate and consitent with these case-handling procedures.
* Refrain from misrepresentating the issues and the process.
* Refrain from threatening or taking repaisals against parties involved in the procedure, og againstthe NCP.
* Genuinely engaging in the proceedings with a view to finding a Guidelines-compatible solution to the issues raised.

Should the NCP be aware of any threat or repraisals directed at a person involved in a specific instance, or towrads the NCP or any of its member, or any other person involved in the proceedings, the NCP will, in accordance with the Guidelines, take any awailable steps within its capacity to provide adequate protection to the person at risk.[[3]](#footnote-4)

The NCP may request the Working Party for Responsible Business Conduct (WPRBC) or its Secretariat for assistance in the event of doubt about the interpretation of the Guidelines in specific instances.

# SUBMItting a complaint

A specific instance is a complaint submitted to the NCP concerning a company’s alleged failure to observe the Guidelines. Individuals or entities can submit a complaint to the Norwegian NCP regarding an enterprise operating in or from Norway, subject to the admissibility criteria outlined below (see Stage 2). A [complaint form](https://www.responsiblebusiness.no/dialogue-and-mediation/how-to-submit-a-complaint/#:~:text=Anyone%20can%20submit%20a%20complaint,companies%20with%20operations%20in%20Norway.) available on the NCP website may be used.

The complainant may for example be a local community affected by a company’s activities, employees, a trade union, or an NGO with a legitimate interest in the subject matter of the complaint. A complaint can also be filed on behalf of other identified and concerned parties. The complaint cannot be anonymous to the NCP. If the complainant fears reprisals if his/her identity is revealed, he/she should appoint a representative.

The written submission should provide details of the party raising the issues and of the enterprise concerned. It should name the relevant chapters of the Guidelines, and explain how, in the opinion of the submitting party, the multinational enterprise has failed to observe them. The complainant should substantiate the complaint by including as specific and precise documentation as possible.

# handling specific instances

The NCP, as a non-judicial grievance mechanism, seeks to assist the parties in resolving specific instances (complaints).[[4]](#footnote-5) The NCP aims to facilitate dialogue between the parties and support them in seeking mutually agreeable and Guidelines-compatible solutions. The NCP also actively informs such dialogue with expertise on the Guidelines. The specific instance procedure has five stages:

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| **Stage** | **Timeframe** |
| **1 – Confirmation and co-ordination** | Within two months after receipt of the specific instance. |
| **2 – Initial Assessment** | Within three months after receipt of the specific instance. |
| **3 – Good offices**  | After consultation with the parties, establish a reasonable timeframe to resolve the issues raised. Within a further 6–12 months, with a possibility of extension to obtain facts, or if extension is otherwise deemed necessary.  |
| **4 – Final Statement** | Within three months after conclusion of the good offices phase. |
| **5 – Follow-up** | Within a year after publication of the final statement. |

While the NCP strives to conclude the procedure within 12 months (14 months if coordination to determine a lead NCP is needed), the Guidelines recognise that circumstances may warrant an extended timeframe. When delays occur or are expected, the NCP will keep the parties informed in a timely manner to keep proceedings predictable. The parties are urged to comply with deadlines set by the NCP. Failure to cooperate could result in the NCP making its decision without considering all relevant information.

After the completion of stages 2 (initial assessment), 4 (final statement) and 5 (follow-up) of the process, the NCP secretariat will send the public documents to the OECD for entry into the [database of specific instances](https://mneguidelines.oecd.org/specificinstances.htm). The NCP, in line with its case-handling procedures, may also decide to issue public updates on the status of specific instances.

## Stage 1: Confirmation and co-ordination

When receiving a complaint, the NCP secretariat will confirm its receipt and forward it to the company, or companies, named in the complaint. This is normally done within ten working days of receiving the complaint. The company will be invited to respond, normally within ten working days.

Both parties will be informed of the case-handling procedures and the criteria for the initial assessment by the NCP. The complainants and company may be offered information meetings, held separately, about the case-handling procedures. The parties will be informed that information received by the NCP will be shared with the other party, unless there are valid reasons to retain it.

“Generally, the NCP of the country in which the issues have arisen would be the lead NCP. However, in certain situations other criteria may be applied, e.g. when needed in order to contribute to the resolution of the issues raised, or when issues have arisen in a non-Adherent. The parties should be kept informed with regard to coordination arrangements, and consulted on decisions to transfer the case to a different lead NCP than the NCP to which the case was submitted.”

*OECD Guidelines, Commentary on the Procedures for NCPs, para 30*

If a specific instance concerns NCPs of several adherent countries, the NCP will at this stage consider whether the Norwegian NCP is the correct entity to assess the complaint. Where relevant, the NCP will coordinate with other NCPs with the goal of designating the lead and supporting NCP and adopting coordination arrangements.[[5]](#footnote-6)

If the Norwegian NCP is deemed the correct entity to handle the complaint, the NCP will determine whether any members or the secretariat have conflicts of interest that prevent them from participating in the case-handling. The parties will be kept informed and will when relevant be invited to state their views on the matter.

## Stage 2: Initial Assessment

After consulting the parties on the issues raised, the NCP will make an initial assessment to determine whether the complaint is accepted, in whole or in part, for further examination or is rejected.[[6]](#footnote-7) The NCP will consider the following six criteria laid down in the Commentaries on the Implementation Procedures in the Guidelines:

1. **The identity of the party concerned and its interest in the matter**
The complainant is required to disclose its identity and its interest in the issue(s) at hand.
2. **Whether the issue is material and substantiated, i.e. relevant to the implementation of the Guidelines and supported by sufficient and credible information**
The issue must fall within the material scope of the Guidelines. It should be presented as actual or potential conduct not in accordance with one or more of the recommendations in the Guidelines.
3. **Whether the enterprise is covered by the Guidelines**
This entails considering whether the entity is an enterprise, whether it is of an international nature and falls within the broad category of multinational enterprises[[7]](#footnote-8) and whether the enterprise operates in or from the territory of an adherent to the Guidelines.
4. **Whether there seems to be a link between the enterprise’s activities and the issue raised in the specific instance**
This pertains to whether the enterprise's activities are connected to the issues raised in a manner covered by the Guidelines. Three types of links are covered: an enterprise may have “caused”, “contributed”, or be “directly linked” to the issues through its operations, products or services by a business relationship.[[8]](#footnote-9)
5. **The extent to which applicable law and/or parallel proceedings limit the NCP’s ability to contribute to the resolution of the issue and/or the implementation of the Guidelines**
Matters covered by the Guidelines may be the subject of domestic law and international commitments. The recommendation that enterprises observe the Guidelines is distinct from matters of legal liability and enforcement. Parallel proceedings[[9]](#footnote-10) that are underway or available to the parties, do not prevent the NCP from handling the case. The NCP will assess whether offering good offices could positively contribute to resolving the issue and/or implementing the Guidelines, or if it would disadvantage either party involved in other proceedings.
6. **Whether the examination of the issue would contribute to the purposes and effectiveness of the Guidelines**
The aim of the Guidelines is tofold: To encourage the positive contributions enterprises can make to economic, evnironmental and social progress, and to minimise the adverse impacts covered by the Guidelines.

The purpose of the initial assessment is only to decide whether the issues raised warrant further examination, and it should not be unnecessarily onerous. Further examination of the issues and merits of the complaint is intended to occur in the next stages of the process, during the good offices phase within the context of a dialogue between the parties, and/or during the conclusion phase when the NCP prepares its final statement.

The initial assessment concludes with the NCP’s publication of its decision on whether to accept the submission for further examination. A decision not to pursue further examination does not indicate that the issues raised have been fully considered, nor does it imply any judgment on whether the enterprise has acted in accordance with the Guidelines. A statement clarifying this will be included in the initial assessment. Additionally, the initial assessment will typically include:

* The names of the parties. If the submission is rejected and a written request has been made, the NCP may consider withholding the names of the parties involved.
* The substance of the complaint, including reference to the relevant sections of the Guidelines and a summary of the process to date.
* The reasons for accepting or rejecting the submission, including which parts of the complaint are found to be within or outside the scope of the Guidelines.
* An outline of the next steps in the handling the specific instance.

The draft initial assessment will be sent to the parties, who will be invited to provide feedback within ten working days. The NCP will decide at its own discretion whether to incorporate input received. The initial assessment will then be shared with the parties and published on the NCP website. At this time, the NCP will typically also make the complaint and the company’s response(s) public.

If the parties reach an agreement independently of the NCP, or the complaint is withdrawn before the NCP has issued the initial assessment, the NCP will conclude its consideration of the complaint. In such cases, the NCP will generally not issue a statement.

## STAGE 3: good offices

Following the initial assessment, and in consultation with the parties, the NCP will offer its good offices[[10]](#footnote-11) if deemed appropriate, to help resolve the issues raised efficiently and in a timely manner. The aim of the good offices is to reach a joint understanding on how to proceed with regards to the issues in the specific instance and how to resolve them, which in turn is reflected in an agreement or joint statement between the parties. The alternative is for the NCP to examine the issues raised.

The NCP will invite the parties to either a joint or separate orientation meeting to discuss the next steps in handling the case. The NCP will explain how dialogue and mediation will proceed if the parties choose this option, as well as outline the process for an NCP-led examination and any other alternative methods for addressing the specific instance. The NCP will clarify its neutral role, specifying that NCP members will not participate in mediation activities, except in cases where a member is selected to act as the mediator.

The NCP will facilitate the participation of all relevant parties in the process and will involve any other concerned parties, if relevant. If one or more parties have concerns about engaging in dialogue and mediation, the NCP will make every effort to help them understand the process and its benefits, emphasizing the advantages of reaching an agreement through dialogue and mediation over a process where the NCP examines the specific instance and issues a final statement. Should one or both parties withdraw or fail to participate in good faith, or if the parties do not reach an agreement, the NCP will generally proceed with examining the specific instance (see option 2).

### option 1: dialogue and mediation

Through good offices involving mediation, the NCP provides a platform for dialogue between the parties. Mediation facilitated by the NCP is a voluntary and non-judicial process, requiring both parties to engage in good faith. This process can be seen as assisted negotiation, where a third party helps resolve the dispute to the satisfaction of both parties. The mediator(s) will facilitate discussions and propose potential solutions.

“As part of making available good offices, and where relevant to the issues at hand, the NCP will offer, or facilitate access to, consensual and non-adversarial processes, such as mediation or conciliation, to assist the parties in resolving issues at hand. In common with accepted practices on conciliation and mediation, these processes would be used only upon agreement of the parties concerned and their commitment to participate in good faith during the procedure.”

*OECD Guidelines, Commentary on the Procedures for NCPs, para 38*

If the parties agree to participate in mediation, the NCP may choose to carry out the mediation itself or appoint external mediators in consultation with the parties. If an NCP member serves as a mediator and the parties do not reach an agreement, that member will not participate in any further examination of the case, unless both parties explicitly consent. In cases involving external mediation, the NCP secretariat will formalize this through a contract with the mediators.

The NCP may set a specific timeframe for the mediation. Mediation normally takes place in Norway with the support of the NCP secretariat. Other locations can be considered. If physical mediation is not possible for all parties, the mediation may be conducted in a virtual or hybrid format. The language spoken during the proceedings is determined by the NCP in advance. The NCP can provide the parties assistance to participate in the mediation, where required.

The mediators will be responsible for establishing procedures with the parties and ensuring that any agreements comply with the Guidelines. At the beginning of the process, the parties will be informed that they may not at any time disclose any information shared during mediation that is not already public, without the consent of the other party or the NCP. The mediator(s) may seek advice from the NCP secretariat throughout the process.

A successful mediation process will typically result in an agreement or joint statement signed by both parties, preferably at the highest levels of each organisation involved. It is recommended that the parties, assisted by the mediator(s), incorporate as concrete and specific measures and formulations as possible into the agreement; what actions are to be taken, by whom, and by when. The parties should also address to what extent and how the content of the agreement is to be made public. The agreement will normally be part of the final statement prepared by the NCP.

If the agreement only covers some of the aspects of the complaint, the NCP can examine the issues where mediation failed. If most of the key concerns were resolved through mediation, and the parties agree that they do not with for the NCP to examine the remaining issues, this should be reflected in the agreement.

### option 2: Examination by the Ncp

#### The mediation process

If the parties choose to proceed with mediation, the mediator(s) and secretariat will convene one or several pre-mediation meetings to agree on a Framework for Mediation. The mediator(s) will explain the voluntary nature of mediation, identify the objectives and interests of the parties, set forth possible courses of action and identify what is necessary for each party to consider that a positive outcome, that is compatible with the Guidelines, has been reached. The mediator(s) will ensure that the parties have the necessary authority to be involved in mediation on behalf of their organisation and where needed, identify additional parties.

The mediator(s) shall facilitate a discussion regarding the alleged non-observance of the OECD Guidelines by the company, and help the parties seek mutual understanding. The parties undertake to show a genuine commitment to mediation and not view it as a means of gathering further information or as an opportunity to avoid addressing issues or being held accountable for their conduct. The parties are asked to adhere to the agenda and not raise new issues not known to the other party. The parties will be reminded that the Guidelines are non-judicial. Normally, high level involvement and participation from the company involved is recommended, and experience suggests that instructing legal counsel to represent the party in mediation may not be constructive.

Parties undertake to observe confidentiality except to the extent that it is necessary to seek professional advice or guidance from within their organisation. In these circumstances, those consulted will be expected to observe confidentiality. Parties should be aware of the effect any public statements may have on the mediation process. If a party fails to respect confidentiality, the mediator(s) may discontinue the process.

If mediation is rejected by any of the parties or is unsuccessful, in whole or in part, the NCP will examine the specific instance on the basis of the recommendations in the Guidelines. The NCP will normally need to invite the parties to submit further information or statements. The examination may also involve further meetings between the NCP and the parties, either in plenary or individual meetings, as appropriate. The meetings will have an agenda and minutes will be taken. Unless a strong case is made for information to be withheld, all information and documentation received by the NCP will be shared with the parties. The NCP may also use other methods in examining the specific instance:

* **Information from other sources**. The NCP may gather information from other relevant government agencies, embassies, Innovation Norway, Norad, the UN, the OECD secretariat, business associations, and labour or employer organisations, NGOs or other organisations. If necessary, the NCP will seek independent expert advice.
* **Fact-finding and assessments**. The NCP may seek additional input, assessments and facts. This may include field visits and interviews with relevant authorities, trade unions, local communities and indigenous groups, or technical assessments.

The NCP will keep the parties informed on the methods used. At the conclusion of the examination, the NCP will review all available information to determine whether the expectations in the Guidelines have been fully or partially met, or if the company's conduct is considered to constitute non-observance of the Guidelines.

## STAGE 4: Final statement

The process concludes with a final statement from the NCP, regardless of whether mediation results in an agreement. The final statement will typically include:

* The date when the complaint was submitted to the NCP
* Details about the complaint and relevant sections of the Guidelines
* Information on the parties involved
* A summary of the process followed by the NCP
* An assessment of the extent to which the parties have participated in good faith

If the parties reach an agreement, the final statement will outline their respective positions, the steps taken by the NCP to assist the parties, and the date when the agreement was reached. Information about the agreement or the agreement itself will be included only with the consent of the parties. The NCP may include recommendations for implementing the Guidelines, as appropriate.

If the parties involved fail to reach an agreement, the final statement will describe the issues raised, the positions of the parties, and the steps taken by the NCP, including information on the parties' engagement. Unwillingness to cooperate with the NCP is not in keeping with the Guidelines and may be highlighted in the final statement.

In the final statement, the NCP aims to provide guidance on resolving the issues and implementing the Guidelines. This may include recommendations on how to implement the Guidelines, the NCPs determination regarding observance of the Guidelines, and examples of good practises. The statement will also explain, where applicable, why an agreement could not be reached.

After drafting the final statement, the NCP will give the parties ten working days to submit any inputs. The NCP will decide at its discretion whether to make any revisions before finalizing the statement and publishing it, usually accompanied by a press release. To ensure policy coherence, the NCP will also inform relevant government agencies of its statements, as relevant.

## stage 5: follow-up

The NCP will typically publish a follow-up statement on the implementation of the agreement between the parties and/or on the recommendations made following an NCP examination of the issues. The NCP will invite the parties to a follow-up meeting within a year, where the parties report on the effectiveness of the agreement and progress made on any agreed follow-up measures.

In cases where mediation did not result in an agreement and the final statement includes NCP recommendations to the company or companies, the NCP will generally, when appropriate, invite the parties to a follow-up meeting within a year. This meeting will provide an update on implementation of the recommendations and any other activities relevant to the issues raised.

The parties involved will also be given the opportunity to submit an evaluation of the process and the NCP’s handling of the specific instance. If the parties request that the evaluation be made public, it will be published along with other relevant documents concerning the specific instance.

1. OECD Guidelines, Commentary on the Implementation Procedures, para 10. [↑](#footnote-ref-2)
2. See also OECD (2022), Guide for National Contact Points on Building and Maintaining Impartiality. [↑](#footnote-ref-3)
3. See the OECD Guidelines, Commentary on the Procedures for NCPs, para 26-27. [↑](#footnote-ref-4)
4. See also the OECD Guidelines, Commentary on the Procedures for NCPs, para 25. [↑](#footnote-ref-5)
5. Commentary on the Implementation Procedures, paras 29 – 32. See also OECD (2019), Guide for National Contact Points on Coordination when handling Specific Instances. [↑](#footnote-ref-6)
6. OECD Guidelines, Commentary on the Procedures for NCPs, para 33. See also OECD (2024), Guide for National Contact Points for Responsible Business Conduct on the initial assessment of specific instance. [↑](#footnote-ref-7)
7. The OECD Guidelines, Chapter I, paras 4 – 5 and OECD (20XX), “Considering the purposes of the Guidelines and the notion of “multinational enterprise” in the context of initial assessments”. [↑](#footnote-ref-8)
8. Chapter II, Commentary para 24 of the Guidelines clarifies the notion of a business relationship under the Guidelines. [↑](#footnote-ref-9)
9. OECD Guidelines, “Commentary on the Procedures for NCPs”, para 35. [↑](#footnote-ref-10)
10. ‘Good offices’ typically refers to a method whereby an independent third party – in the case of the Guidelines, the NCP – offers its services to two or more parties to a dispute by facilitating dialogue and assisting parties towards a settlement of the dispute. See the Good Offices Manual for National Contact Points for Responsible Business Conduct. [↑](#footnote-ref-11)