

# Case-handling procedures



National Contact Point  
for Responsible Business  
Conduct | Norway

# Contents

<b>1. General</b>	<b>3</b>
1.1 The OECD Guidelines for Multinational Enterprises on Responsible Business Conduct	3
1.2 The Norwegian National Contact Point (NCP)	4
1.3 Concepts and principles	4
<b>2. Submitting a complaint</b>	<b>6</b>
<b>3. Handling specific instances</b>	<b>7</b>
Stage 1: Confirmation and co-ordination	8
Stage 2: Initial Assessment	9
Stage 3: Good offices	11
Stage 4: Final statement	14
Stage 5: Follow-up	15



# Case-handling procedures

## 1. General

### 1.1 The OECD Guidelines for Multinational Enterprises on Responsible Business Conduct

The *OECD Guidelines for Multinational Enterprises on Responsible Business Conduct* (the Guidelines) are the leading international standard for how companies and investors should address their impacts on people, the planet and society. They apply to businesses and investors of all sectors, sizes and ownership structures, and cover all key sustainability issues – from climate change to technology, from anti-corruption to human rights and labour standards. By adopting responsible business conduct (RBC), enterprises can prevent and address negative impacts of their activities, while contributing to the sustainable development of the countries and communities in which they operate.<sup>1</sup>

The Guidelines are supported by National Contact Points (NCPs) established by governments in each signatory country. Their main responsibilities are to promote the Guidelines and contribute to resolving issues that arise in relation to the implementation of the Guidelines. In addition, where appropriate and in coordination with relevant government agencies, NCPs may also provide support to efforts by their government to develop, implement, and foster coherence of policies to promote responsible business conduct.

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 specific instances (complaints) concerning companies operating in or from their territories.

This document outlines the Norwegian NCP's procedures for the case handling of specific instances. The case-handling procedures complement the Guidelines' general implementation procedures applicable to the handling of specific instances.

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<sup>1</sup> [Responsible business conduct | OECD](#)

## 1.2 The Norwegian National Contact Point (NCP)

The Norwegian NCP has its *mandate* from the Norwegian government.

The four independent experts in the Norwegian NCP are appointed by the Ministry of Foreign Affairs. The Confederation of Norwegian Enterprise (NHO), the Confederation of Norwegian Trade Unions (LO) and the Norwegian Forum for Environment and Development (ForUM) are invited to propose candidates. The Ministry of Foreign Affairs and the Ministry of Trade and Industry select the candidates jointly, following consultations with the Ministry of Finance and the Ministry of Labour and Social Inclusion.

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.

## 1.3 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.<sup>2</sup>

Transparency is a core criterion for the conduct of NCPs and the NCP emphasises transparency in the handling of specific instances. 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*. Personal information will be handled in line with the Norwegian *Personal Data Act*.

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 with the other party, to protect sensitive business information and the interests of stakeholders, the NCP will work with the submitting party to redact any sensitive content.

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2 OECD Guidelines, p. 58 and Commentary on the Implementation Procedures, para 10.

The NCP will ensure impartiality in the handling of specific instances.<sup>3</sup> 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*.

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;
- maintaining confidentiality where appropriate and consistent with these case-handling procedures;
- refraining from misrepresenting the issues and the process;
- refraining from threatening or taking reprisals against parties involved in the procedure, or against the NCP;
- genuinely engaging in the proceedings with a view to finding a Guidelines-compatible solution to the issues raised.

Reprisals are impermissible. Should the NCP be aware of any threat or reprisals directed at a person involved in a specific instance, or towards the NCP or any of its members, or any other person involved in the proceedings, the NCP will, in accordance with the Guidelines, take any available steps within its capacity to provide adequate protection to the person at risk.<sup>4</sup>

The NCP may seek assistance from the the Working Party for Responsible Business Conduct (WPRBC) or its Secretariat on issues related to the interpretation of the Guidelines in particular circumstances.

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3 See also OECD (2022), *Guide for National Contact Points on Building and Maintaining Impartiality*.

4 See the OECD Guidelines, *Commentary on the Procedures for NCPs*, para 26-27.



## 2. 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). The *complaint form* 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 an interest in the subject matter of the complaint. A complaint can also be filed on behalf of other identified and concerned parties. The complainant cannot be anonymous to the NCP. Complainants who fear reprisals if their identity is revealed should appoint a representative.

The written submission should provide details of the party raising the issues, the enterprise concerned and the complainants' interest in the matter. 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(s) should substantiate the submission by including sufficient and credible information and documentation. The NCP can support translations in cases where submissions cannot be made in Norwegian or English.





### 3. Handling specific instances

The NCP, as a non-judicial grievance mechanism, seeks to assist the parties in resolving specific instances.<sup>5</sup> The NCP aims to facilitate dialogue between the parties and support them in seeking mutually agreeable and Guidelines-compatible solutions. The NCP actively uses its expertise on the Guidelines to inform such dialogues. The specific instance procedure has five stages:

	Stage	Timeframe	Publication
1	<b>Stage 1</b> Confirmation and co-ordination	Within two months after receipt of the specific instance.	Information that submission has been received on specific instance web-page, updated with names of parties after the company has submitted its response.
2	<b>Stage 2</b> Initial Assessment	Within three months after receipt of the specific instance.	Published, normally jointly with the complaint and the enterprise's response.
3	<b>Stage 3</b> Good offices <sup>6</sup>	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.	No publication, unless parties agree to publish update on the dialogue and mediation.
4	<b>Stage 4</b> Final Statement	Within three months after conclusion of the good offices phase.	Published
5	<b>Stage 5</b> Follow-up	Within 12 months after publication of the final statement.	Publication of follow-up statement

<sup>5</sup> See also the OECD Guidelines, Commentary on the Procedures for NCPs, para 25.

<sup>6</sup> '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, p. 8. Good offices offered by the NCP involve dialogue, mediation and/or conciliation services. See also FAQs here: <https://mneguidelines.oecd.org/OECD-Guidelines-for-MNEs-NCP-FAQ.pdf>.

While the NCP strives to issue the final statement within 12 months after having received the submission (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*. In line with its case-handling procedures, the NCP 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, with the possibility of extension. 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 specific instance. Where relevant, the NCP will coordinate with other NCPs with the goal of designating the lead and supporting NCP and adopting coordination arrangements.<sup>7</sup>

If the Norwegian NCP is deemed the correct entity to handle the specific instance, 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.

Both parties will be informed of the case-handling procedures and the criteria for the initial assessment by the NCP. The complainants and the company will be offered information meetings 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.

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<sup>7</sup> Commentary on the Implementation Procedures, paras 29 – 32. See also OECD (2019), *Guide for National Contact Points on Coordination when handling Specific Instances*.



## 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.<sup>8</sup> The NCP will consider the following six criteria laid down in the Guidelines' Commentaries on the Implementation Procedures:

**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, i.e. relevant to the implementation of the Guidelines and substantiated, i.e. 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<sup>9</sup> 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.<sup>10</sup>

<sup>8</sup> OECD Guidelines, Commentary on the Procedures for NCPs, para 33.

<sup>9</sup> The OECD Guidelines, Chapter I, paras 4 – 5 and OECD (2020), Considering the purposes of the Guidelines and the notion of "multinational enterprise" in the context of initial assessments, p. 6.

<sup>10</sup> Chapter II, Commentary para 24 of the Guidelines clarifies the notion of a business relationship under the Guidelines.

**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 that are underway or available to the parties, do not preclude the NCP from offering good offices to the parties. The NCP will assess whether offering good offices could positively contribute to resolving the issue and/or implementing the Guidelines going forward and would not create serious prejudice for either party involved or cause a contempt of court situation.<sup>11</sup>

**6. Whether the examination of the issue would contribute to the purposes and effectiveness of the Guidelines**

The aim of the Guidelines is twofold: To encourage the positive contributions enterprises can make to economic, environmental and social progress, and to minimise the adverse impacts on the matters covered by the Guidelines that may be associated with an enterprise's operations, products and services.

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 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, unless the submission is rejected or a written request has been made, in which case the NCP may consider withholding the names of the parties involved;
- the substance of the submission, including reference to the relevant sections of the Guidelines and a summary of the process to date;

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<sup>11</sup> OECD Guidelines, Commentary on the Procedures for NCPs, para 35.

- 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 handling the specific instance.

The draft initial assessment will be sent to the parties, who will be invited to comment/fact-check within ten working days. The NCP will decide at its own discretion whether to incorporate any input received. The initial assessment will then be shared with the parties and published on the NCP website and submitted to OECD's *Database of Specific Instances*. 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, 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 further 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. 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 below).

## 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.

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 are compatible 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 may be part of the final statement prepared by the NCP, provided the parties consent to this.

If the agreement only covers some of the aspects of the submission, 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 wish for the NCP to examine the remaining issues, this should be reflected in the agreement.

## Framework for Mediation

If the parties choose to proceed with mediation, the mediator(s) and secretariat will convene pre-mediation meetings to agree on a Framework for Mediation. 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. 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 organization, who will also 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.

## Option 2: Examination by the NCP

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. 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, business associations, labour and employer organisations, NGOs, or other organisations. If necessary, the NCP will seek independent expert advice.
- **Fact-finding and assessments.** The NCP may seek additional facts and input. This may include field visits and interviews with relevant authorities, trade unions, local communities, indigenous groups, other stakeholders, and/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.<sup>12</sup> In the final statement, the NCP aims to provide guidance on resolving issues and implementing the Guidelines. The final statement will typically include:

- the date when the complaint was submitted to the NCP;
- details about the submission 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, the date when the agreement was reached and compatibility with the Guidelines. Information about the agreement or the agreement itself will be included in the final statement 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 explain, as applicable, why an agreement could not be reached. It may also include a determination regarding observance of the Guidelines, examples of good practices and recommendations on how to implement the Guidelines.

After drafting the final statement, the NCP will give the parties ten working days to submit any comments/fact-check. 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.

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<sup>12</sup> In some cases, the parties may reach a partial agreement. The NCP will in such cases normally examine and address the remaining issues the final statement.

## Stage 5: Follow-up



The NCP will carry out follow-up of agreements facilitated, or recommendations made, following an examination of the issues, where relevant.

The NCP will normally invite the parties to a follow-up meeting within a year after the final statement is published, either to report on the effectiveness of the agreement and progress made on any agreed follow-up measures, or, in the absence of an agreement, to provide an update on implementation of the recommendations and any other activities relevant to the issues raised.

The NCP will then publish a follow-up statement. After drafting the follow-up statement, the NCP will give the parties ten working days to provide any comments/fact-check. The NCP will decide at its discretion whether to make any revisions before finalizing the statement and publishing it.

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.



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