



# ANNUAL REPORT

THE MEDIATION AND COMPLAINTS-HANDLING INSTITUTION  
FOR RESPONSIBLE BUSINESS CONDUCT (THE DANISH NCP)

2014



## The Chairman's foreword

# Important issues to work on this year

Another year has passed and the Danish Mediation and Complaints-Handling Institution for Responsible Business Conduct (the Danish NCP) can present its Annual Report for 2014. The NCP has now existed for just over two years, and has gained more experience with handling complaints as well as providing information.

In 2014, the NCP received a number of complaints that concerned complex issues relating to enterprises' compliance with the OECD Guidelines, including retention of employees' passports, sale of high-risk products abroad, and the issue of sufficient due diligence by a Danish enterprise on its establishment in third countries.

The NCP published its first general statement in 2014. The NCP states its overall opinion concerning an issue that may, for example, have been considered as part of a specific instance. It is also an important task for the NCP to inform and advise other Danish enterprises that may be at risk of facing the same situation as the enterprise in the specific instance. The general statement was also disseminated in our international network, so that other OECD countries' NCPs can share this information with their local enterprises.

Our information activities have continued to focus on providing information about the Danish NCP specifically, and the OECD Guidelines for Multinational Enterprises in general.

In 2014, our information activities have had both a national and an international focus, and it has also been important for us to engage in dialogue with potential petitioners, as well as enterprises and their advisers. This has often taken place in collaboration with other parties within this area. The activities are described on the following pages. Here, I would like to mention the debate meeting concerning social responsibility in public procurement that was held in June 2014, in cooperation with the Danish Council for Corporate Responsibility. The NCP gives priority to focusing on how, in their procurement activities, public authorities hold the same responsibility as private enterprises.

### **2014 has been an exciting year for the Danish NCP.**

In 2015, the NCP will have existed for three years and we can take this opportunity to review and assess our practice in order to identify any opportunities for improvement. In dialogue with stakeholders and in close cooperation with other grievance mechanism institutions in the OECD, we will therefore evaluate the NCP and see whether anything should be done differently. We look forward to many new challenges in 2015.

On behalf of the Danish NCP.  
Mads Øvlisen, Chairman



# About the Mediation and Complaints-Handling Institution for Responsible Business Conduct (the Danish NCP)

The Mediation and Complaints-Handling Institution for Responsible Business Conduct was established to consider complaints concerning possible non-compliance with the OECD Guidelines for Multinational Enterprises. The purpose is to contribute to ensuring that enterprises comply with these OECD Guidelines. The Mediation and Complaints-Handling Institution for Responsible Business Conduct is a non-judicial mechanism that enables companies, organisations and public authorities to resolve disputes regarding violations of, for example, human rights and labour rights.

Complaints that are submitted to the NCP typically concern issues to which there are no simple solutions. Firstly, they are often infringements that take place far from Denmark. Secondly, they may involve the conduct of sub-suppliers, for example, which individual enterprises can find it difficult to influence directly. The OECD Guidelines are an important starting point that can help all parties to resolve their disputes in a satisfactory manner.

## **The Danish OECD National Contact Point**

The OECD Guidelines for Multinational Enterprises oblige the countries that have adopted the Guidelines to establish National Contact Points (NCPs).

More than 40 countries have endorsed the OECD Guidelines and have thereby undertaken to establish a National Contact Point. The Danish Mediation and Complaints-Handling Institution for Responsible Business Conduct also serves as the Danish OECD National Contact Point. The Danish NCP can consider complaints concerning private enterprises, but also concerning Danish public authorities.

## **The OECD Guidelines for Multinational Enterprises**

Where does the responsibility of the individual enterprise begin, in a global context, and where does it end? The OECD Guidelines for Multinational Enterprises help enterprises to achieve clarity concerning this. The purpose of the Guidelines is to encourage enterprises to contribute positively to economic, social and environmental progress and also to minimise the adverse impacts arising from the business-related activity.



## **Members:**

The five members of the Mediation and Complaints-Handling Institution for Responsible Business Conduct: From the left: Expert member Jonas Christoffersen, Director of the Danish Human Rights Institute; Jens Erik Ohrt, Consultant at the Danish Confederation of Trade Unions (LO), nominated by LO; Chairman: Mads Øvlisen, former business executive and present adviser for the UN Global Compact, appointed by the Danish Minister of Business and Growth; Karin Buhmann, associate professor at CBS, nominated by the Danish 92 Group; and Kim Haggren, Head of Commercial Law and CSR at DI, recommended by DI.

## Specific instances in 2014

During 2014 the Danish NCP received a total of six complaints concerning claimed infringements of the OECD Guidelines for Multinational Enterprises. Four of the six complaints were rejected or passed on for consideration by other NCPs.

### Rejected complaints

**The complaint fell under the remit of another NCP:** This complaint concerned the issue of whether the respondent, a Danish company, via a business associate (a company in Israel) had infringed the OECD Guidelines by contributing to serious violations of international law and human rights in Israel.

The NCP assessed that the complaint was presented on objective grounds and concerned matters that are subject to the OECD Guidelines. However, the company that was the subject of the complaint was a Danish subsidiary of a British company. The subsidiary was not a supplier, sub-supplier, customer, business partner or parent company in relation to the company in Israel. The Danish company that was the subject of the complaint thus could not be connected directly to the company in Israel and its commercial activities, products or services. The NCP thereby assessed that the company in Israel could not be considered to be the Danish company's business associate in

the sense of the Danish Act on a Mediation and Complaints-Handling Institution for Responsible Business Conduct, and the NCP was not able to consider the complaint.

When the complaint was rejected, the complainant was informed of the opportunity to submit a complaint to the British NCP, which was deemed to be the right NCP to consider the specific instance.

**Rejected due to obsolescence and lack of documentation:** The second complaint concerned pollution in Denmark and abroad, and the sale of hazardous products abroad. Such matters are subject to the OECD Guidelines, and the NCP was therefore in principle able to consider the complaint. However, a complaint must be raised no later than five years after the action or omission in question came to an end. The complaint in question concerned pollution in Denmark that had ceased more than five years previously, and the NCP was therefore unable to consider this aspect of the complaint.

Other aspects of the complaint concerned the sale of hazardous products to, and the use of these products, abroad. These issues concerned current conditions that were not obsolete. However, the NCP assessed that the aspects of the complaint were not sufficiently substantiated by reasonable documentation that, with a reasonable degree of clarity, specified how the respondent had infringed the OECD Guidelines. The NCP therefore rejected the complaint.

In its decision, the NCP emphasised that evidence of a possible infringement is not required when a complaint is made, but a degree of specification must be required of how the respondent has infringed the OECD Guidelines. This can also serve as guidance to petitioners in any future instances.

**Complaints that were not covered by the OECD Guidelines:** In two cases, the NCP rejected the specific instance as it was assessed that the elements of the complaint were not covered by the OECD Guidelines.

### Complaints for further consideration

In 2014, the NCP approved two complaints for further consideration, after its initial assessment.

**Specific instance resolved between the parties after the NCP's initial assessment:** One complaint concerned possible inadequate due diligence by a company in conjunction with its establishment of subsidiaries in several West African countries. After the NCP's initial assessment, the specific instance was approved for further consideration and was submitted for mediation between the parties. The parties reached an agreement, which was then sent to the NCP. The NCP assessed that the agreement between the parties considered all of the aspects of the original complaint and that it was in accordance with the OECD Guidelines. On this basis, the NCP closed the case.

**Final statement: Complaint from 3F concerning Greenpeas Enterprise ApS:** The second complaint was submitted by the trade union 3F (United Federation of Danish

Workers) concerning a Danish horticultural enterprise, Greenpeas Enterprise ApS. 3F believed that the company had infringed the OECD Guidelines by undercutting pay and working conditions in the countries in which the respondent operated, and by violating the employees' rights by withholding passports, etc.

Concurrently with the NCP's consideration of the specific instance, the parties managed to settle the pay and collective agreement issues via the industrial dispute settlement system, and the trade union notified its withdrawal of the complaint.

However, a majority of the NCP's members did not find that the specific instance had been concluded in accordance with the Danish Act on the Mediation and Complaints-Handling Institution and within the framework of the OECD Guidelines because the parties had only resolved the issues in question with regard to the industrially disputed issues, while the settlement agreement did not consider the other aspects

of the complaint, including the petitioner's claim that the employees' passports had been withheld.

Withholding a passport is a gross infringement, since it restricts the freedom of movement of the persons concerned. The Danish Act on the Mediation and Complaints-Handling Institution states that the NCP must conduct an actual investigation of the issues in question in the event of such gross infringements of the OECD Guidelines, cf. Section 7(4) of the Act. The NCP therefore decided to continue its consideration of the complaint and to investigate this matter further.

On the basis of the investigation, the NCP found that it was not sufficiently documented that the respondent had withheld employees' passports. On this basis, the NCP did not make a critical statement in the actual specific instance, but in view of the nature of the issues in question as a matter of principle, the NCP did issue a general statement (see page 5).

# General statement concerning the retention of employees' identity papers

On the basis of the Danish Act on the Mediation and Complaints-Handling Institution, and any relevant concluded specific instances, the NCP may draw up guidelines and statements of a more general nature.

In its general statements the NCP states an overall opinion concerning an issue that might, for example, have been considered in a specific instance, and makes recommendations for how an enterprise should conduct itself in a similar situation. By disseminating one enterprise's experience to many other enterprises, the aim is to share knowledge and help other enterprises to avoid committing the same infringement.

## **In August 2014, the NCP issued its first general statement.**

The NCP issued the general statement to relevant business organisations, employee organisations and NGOs, with a brief description of the issue, the NCP's recommendations, and a link to the final statement on the NCP's website. In addition, the general statement was translated into English, and the OECD sent the statement to the other NCPs. The Danish NCP has received a lot of positive feedback from several NCPs, stating that they support the statement and will discuss it with their members.

## **Content of the statement**

In October 2013, the NCP received a complaint concerning an employer's retention of the passports of foreign employees. In the specific instance it was not documented that the company had withheld the employees' passports, and the NCP therefore did not make any critical statement.

In order to contribute to ensuring that other enterprises do not face a similar situation, the NCP wished to generally emphasise that retention of employees'

passports is a gross infringement of the OECD Guidelines. The OECD Guidelines' chapter concerning human rights is based, inter alia, on the UN Covenant on Civil and Political Rights. Article 8 states that "No one shall be required to perform forced or compulsory labour", and Article 12 that "Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence".

Retention of employees' identity papers may have the consequence that persons are not able to leave the workplace or are unable to move freely within a country's borders, or leave the country, if the person so wishes.

The NCP acknowledges that an employer may require documentation of an employee's identity, for example if the company pays salary in advance, but this does not entitle a company to withhold employees' identity papers. Instead, the NCP recommends that companies for example request employees to provide copies of their passports, or that the employer, by agreement, takes a copy of the employee's passport or similar identity papers.

The final statement and full description of the specific instance can be found on the NCP's website:  
[www.businessconduct.dk](http://www.businessconduct.dk)



# The Danish NCP's information activities in Denmark

## **Debate meeting on public procurement for procurement managers in municipalities, regions and state institutions**

In cooperation with the Danish Council for Corporate Responsibility, in June 2014 the NCP held a debate meeting on the topic of social responsibility in public procurement. The NCP is required to inform public authorities and enterprises of the OECD Guidelines and to consider any complaints that are submitted. The NCP has therefore given priority to focusing on the special social responsibility challenges faced by public procurement officers. Since this is an area that the Danish Council for Corporate Responsibility has also engaged with for some time, the two institutions found it natural to hold a joint event.

The purpose of the event was to disseminate information, share experience and debate the issue of social responsibility in public procurement. At the meeting, private enterprises with experience from responsible supply chain management, as well as procurement officers at municipal and state levels, presented their respective social responsibility activities in conjunction with procurement and invitations to tender. A representative from the state health service in Southeastern Norway described ethical trade and supply chain management in the Norwegian health sector. The Norwegian health service has a lot of good experience from supply chain management and auditing in Asia. Several cases were presented concerning supply chain management and cooperation with regard to the production of surgical garments in India and of rubber gloves and surgical equipment in Malaysia. In summary, it was found that it is possible to further sharpen the focus on social responsibility in public procurement and to continue to provide information on the OECD Guidelines.

## **Event at the CSR Awards 2014 concerning hidden forced labour**

The NCP introduced the Ministry of Social Affairs' event at the CSR Awards in Holstebro, Denmark, on 30 October 2014. The NCP's presentation focused on hidden forced labour and enterprises' opportunities to avoid this and ensure responsible corporate conduct.

In this respect the challenges of preventing human trafficking were presented, together with examples of how foreign and Danish enterprises have tackled this challenge. Concrete examples were given of a Danish enterprise in the cleaning sector that had been "affected" by a sub-supplier's concealment of forced labour, and experience was shared. The Danish National Board of Social Services presented its new guide with information on how to avoid hidden forced labour, focusing especially on small and medium-sized enterprises. The guide is available here <http://goo.gl/6cUwrc>

## **Cooperation on palm oil with the Danish Ministry of Food, Agriculture and Fisheries**

In conjunction with the Ministry of Food, Agriculture and Fisheries' appointment of a working group on sustainably produced soya and palm oil, in March 2014 the NCP presented expectations of enterprises' work on due diligence, with special focus on documentation requirements and reporting as they are described in the OECD Guidelines, to the working group. Subsequently, in June 2014 Danish Food and Drink Federation (DI Fødevarer) launched a palm oil initiative which they are calling on enterprises to endorse. By endorsing the initiative, enterprises undertake to use responsibly produced palm oil by no later than the end of 2018.



Fotos: Ole Mortensen og Helena Lundquist



## The Danish NCP's information activities abroad

### **Expert conference on effective non-judicial grievance mechanisms in The Hague in April 2014**

The Danish NCP member Karin Buhmann attended an expert conference on 'Improving the effectiveness of non-judicial grievance mechanisms' in The Hague on 3-4 April 2014 that was held by the Dutch organisation Access Facility in cooperation with such parties as the UN's Working Group on the issue of human rights and transnational corporations and other business enterprises. The conference focused on the third pillar of the UN's Guiding Principles on Business and Human Rights, 'Access to Remedy' (access to grievance mechanisms and effective remedy), and in particular the criteria for effective access to grievance mechanisms and legal remedies. Under the third pillar, the UN's Guiding Principles concern both state and enterprise-based grievance

mechanisms and legal remedies. The discussions during the conference concerned the OECD NCPs, other state grievance mechanisms and legal remedies, as well as enterprise-based grievance mechanisms and legal remedies. In particular, it was discussed what is needed for grievance mechanisms and legal remedies to create positive results for the groups that are affected negatively by enterprises' activities, and how they can contribute to creating sustainable solutions and avoiding new conflicts in the future. The experience of the NCPs, including the Danish NCP, constituted a significant element of the basis for discussion. The conference was attended by more than 40 people from all regions, with delegates from civil society, enterprises, public authorities, NCPs, international financing institutions, international organisations and national authorities.



### **Annual joint conference of the NCPs under the OECD, Paris, June 2014**

In order to increase cooperation between the national NCPs and ensure greater dissemination of the OECD Guidelines for Multinational Enterprises, the OECD holds two annual conferences for all of the approximately 40 NCPs. The conferences are held in June and December, with presentations and discussion of information activities, joint activities and actual specific instances. The conferences are important for creating a common basis of interpretation, based on the OECD Guidelines. At the conference in June 2014, there was

special focus on the initial assessment, of whether a complaint should be considered or rejected, that is undertaken by the Danish NCP on receipt of a complaint. The Danish NCP shared the Danish experience in this respect, which is particularly relevant as Denmark is the only country in OECD with a NCP based on law.

On an annual basis, the OECD among other things prepares a shared report on the specific instances and activities of the NCPs during the past year. The report is available here <http://mneguidelines.oecd.org>



### **Participation in the annual UN Global Forum in Geneva, December 2014**

As part of the dissemination of information concerning the UN's Guiding Principles on Business and Human Rights, the UN Working Group on the issue of human rights and transnational corporations and other business enterprises holds an annual major Global Forum attended by states, business organisations, trade unions and NGOs, etc. The Danish NCP member Karin Buhmann contributed to the 2014 Global Forum with a side-event presentation entitled "Ensuring access to effective judicial and non-judicial remedies: progress, trends & recommendations". Karin Buhmann's

presentation focused on how the Danish NCP works on disseminating knowledge of the OECD Guidelines, and especially how the NCP works proactively to share knowledge of how enterprises can comply with the Guidelines. In her presentation, Karin Buhmann described, among other things, how during 2014 the Danish NCP had used a specific instance in which the NCP had been involved to describe to a large group of enterprises, business organisations, authorities, etc. how and why it is an infringement of the Guidelines to withhold employees' passports or identity papers; and how there has been international interest in the NCP's general statement concerning this issue.

## Cooperation with other OECD NCPs

Internationally, the NCP is actively involved in the co-operation between the other National Contact Points within the OECD.

### **Specific cooperation on consideration of specific instances**

In the event of a specific instance or issue that, for instance, concerns enterprises with activities both in Denmark and other countries, the cooperation with the local NCP can be very important to ensuring that the complaint is considered on the most effective basis for both the complainant and the enterprise. In 2014, the NCP received a complaint that led to close cooperation with the British NCP. The complaint concerned a company in Israel and had links to both the parent company in the UK and one of the company's other subsidiaries in Denmark. There was ongoing confidential dialogue with the British NCP in order to quickly establish which enterprise was the correct respondent in the specific instance, which was assessed by the Danish NCP to be the parent company. The complaint was therefore rejected, and referred to the British NCP. There is more information on page 5 above.

### **Mediation workshop in Oslo for NCPs**

There is ongoing cooperation between the national NCPs both under OECD auspices and at conferences and seminars organised by the individual NCPs. These

are important in terms of establishing cooperation that can be used in conjunction with specific instances, discussing interpretation of the OECD Guidelines, and ensuring the effective and reliable consideration of specific instances by the NCPs.

In March 2014, the Danish NCP attended a two-day mediation workshop in Oslo held by the Norwegian NCP. Based on the OECD Guidelines and with strong focus on the NCPs' role as mediation institution, instruction was given in arbitration and mediation, and experience was shared between the NCPs.

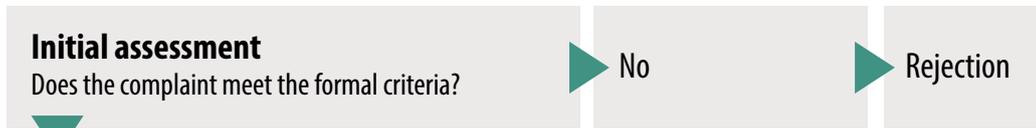
### **Lunch discussion at the Danish OECD Ambassador's offices in Paris**

In June 2014, the Danish Ministry of Foreign Affairs, in cooperation with the NCP, held an event at the Danish Embassy for a number of the other NCPs in connection with the annual NCP conference in Paris. The aim of the event was to share experience concerning information initiatives relating to the OECD Guidelines, in order to disseminate knowledge of the Guidelines and the NCPs. There was informal discussion of how NCPs provide guidance and information concerning the OECD Guidelines, in order to share inspiration and learning from other countries.



# Case handling process:

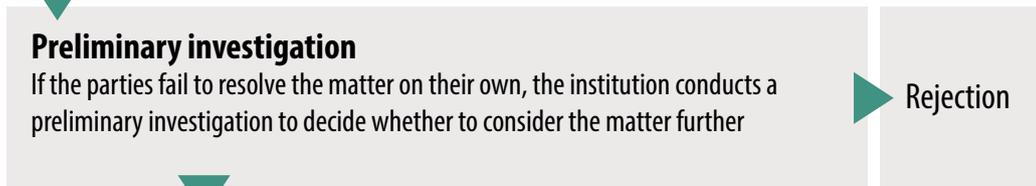
## Complaint



Yes **Maximum of 2 weeks from the complaint is received\***



**Maximum of 2½ month from the complaint is received\***



Accepted



**Maximum of 3 months from the complaint is received\***



If mediation does not succeed **Maximum of 6 months from The complaint is received\***



**Maximum of 9 months from the complaint is received\***

**Publication:**

No form of publication

No form of publication or access to information

The institution publishes its decision on the website with the names of the parties

The next steps are made public with the names of the parties

The result of the mediation is made public with the names of the parties

A statement rejecting the complaint is made public with the names of the parties

A statement with the names of the parties is made public

\* Tentative timeframe for the case handling

## When conflict resolution works at enterprise level

An important element of the NCP's complaint handling procedure is that the parties (complainant and respondent) have the time and opportunity to resolve the issue themselves. When the NCP initially assesses that a complaint can be approved for further consideration, the NCP will urge the parties to the specific instance to resolve the issue themselves within a period of two months.

If the parties succeed in resolving the issue themselves, the NCP will have no further involvement. If the NCP thus approves the solution found by the parties, the specific instance will be concluded without any publication.

In 2014, the NCP considered a complaint that the parties subsequently resolved themselves. The parties have given their consent to publish the specific instance in this annual report.

ActionAid Denmark (Mellempfolkeligt Samvirke) had been in dialogue with Arla Foods for some time concerning the sale of powdered milk in developing countries.

The basis for the initiation of this dialogue was that, over a long period, ActionAid Denmark had pinpointed certain negative consequences of exports of subsidised European powdered milk to developing countries, where local dairy sectors primarily consist of small producers and peasant farmers. Arla Foods is planning to increase its activities in sub-Saharan Africa up to 2017, which in particular will be achieved by selling powdered milk and UHT milk. So far, Arla Foods has sold its products in Nigeria and the Ivory Coast, and the company's strategic focus is also on the markets in Ghana, Senegal, Congo and a number of East African countries.

ActionAid Denmark submitted a complaint to the NCP in which it, among other things, expressed a wish for greater awareness by Arla Foods of the need to exercise due diligence in order to identify and prevent potential negative impacts. After the NCP had called on the parties to resolve the matter themselves, in December 2014 Arla Foods and ActionAid Denmark entered into an agreement that Arla will take a number of initiatives to, among other things, ensure the following:

- Exercise due diligence in connection with the sale of powdered milk in developing countries, so as to avoid unintended negative consequences for e.g. small producers and peasant farmers.
- Compliance with the OECD Guidelines for Multinational Enterprises, and the UN's Guiding Principles on Business and Human Rights – in addition to the UN's Global Compact.
- Performance of due diligence processes prior to new acquisitions or partnership agreements in developing countries, so as to ensure compliance with the aforementioned guidelines when Arla Foods expands its activities in a developing country.
- Review of existing activities in the Ivory Coast and Nigeria, to ensure that there are no negative consequences for local players.

This specific instance emphasises how the Danish model, whereby the Danish NCP – after receiving a complaint – can offer the parties one further opportunity to resolve the matter themselves, can yield good results.

There is more information concerning Arla Foods and social responsibility in developing countries here <http://goo.gl/koF8hq>



## Workshop in India for embassy employees and local enterprises

In November 2014, the Danish NCP attended two workshops concerning corporate social responsibility at the Danish Embassy in India. The events were aimed at employees who work with CSR at the Danish embassies in Asia, and who are important channels of information concerning NCPs to both enterprises and potential petitioners, as well as the Indian enterprises that are suppliers to Danish enterprises, and Danish enterprises' subsidiaries in India.

The workshop for employees at the Danish embassies took the form of a three-day training course in conducting CSR change projects at local suppliers to Danish enterprises. The CSR-responsible employees of the Danish Trade Council who attended the training course are local employees at the embassies who have extensive knowledge of the international CSR standards and how they are achieved in practice in their respective countries. The NCP's contribution to the workshop aimed to give the CSR-responsible employees insights into how the OECD Guidelines can be part of their ongoing cooperation with enterprises,

and how enterprises can make the most of them and the NCP.

The workshop for enterprises focused directly on members of the Indo-Danish Business Association. The Danish Ministry of Foreign Affairs gave a presentation on the current international CSR policies, and the Danish NCP presented the OECD Guidelines for Multinational Enterprises and the NCP, followed by presentations of the requirements in new legislation on CSR activities in India. This framework was very well-suited to presentations on the international guidelines, the creation of the NCP and its mode of operation.

"For me there is no doubt that workshops of this type are a really good way of presenting the NCP. When we meet enterprises and local stakeholders, such as NGOs, trade unions and authorities, the NCP must be presented in a day-to-day CSR context, and not as an isolated entity." – *Carl Christian Hasselbalch, Senior Adviser, The Danish Trade Council*





## Contact

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## Other useful links

[www.csrkompasset.dk](http://www.csrkompasset.dk)  
[www.samfundsansvar.dk](http://www.samfundsansvar.dk)  
[www.mneguidelines.oecd.org](http://www.mneguidelines.oecd.org)  
[www.ohchr.org](http://www.ohchr.org)  
[www.ec.europa.eu/enterprise/policies/sustainable-business](http://www.ec.europa.eu/enterprise/policies/sustainable-business)